

EEOC Issues Updated Covid-19 Guidance Addressing Antibody Testing

On June 17, 2020 the U.S. Equal Employment Opportunity Commission (EEOC) issued an updated guidance on permitted COVID-19 employee testing under the Federal Equal Employment Opportunity Laws.

The EEOC stated that, in light of the current Interim Guidelines of the Centers for Disease Control and Prevention (CDC) indicating that antibody test results “*should not be used to make decisions about returning persons to the workplace*”, an antibody test at this time does not meet the Americans with Disabilities Act (ADA) “job related and consistent with business necessity” standard for medical examinations or inquiries for current employees. Therefore, requiring antibody testing before allowing employees to re-enter the workplace is not allowed under the ADA.

Employers must note the distinction between the molecular or viral test and the antibody test. The EEOC confirmed that the molecular or viral test is permissible under the ADA, as the presence of the virus in an employee is a direct threat to others in the workplace.

If you have any questions, please contact us.

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