

EEOC UPDATES COVID-19 GUIDANCE TO REQUIRE JUSTIFICATION FOR TESTING

On July 12, 2022, the Equal Employment Opportunity Commission (EEOC) issued updated guidance on whether and when employers may test their employees for COVID-19. While the previous guidance generally allowed employers to require testing for all employees entering a workplace, the new guidance requires an individualized assessment of current circumstances.

Background

The Americans with Disabilities Act (ADA), which is enforced by the EEOC, prohibits employers from conducting medical examinations of employees unless they can show that an examination is “job-related” and “consistent with business necessity.” Early in the pandemic, the EEOC indicated that, for COVID-19 testing, these standards would virtually always be met for any employees entering a workplace with other people.

Updated Testing Guidance

In its updated guidance, the EEOC makes clear that going forward, employers will need to assess whether current pandemic circumstances and individual workplace circumstances justify COVID-19 testing requirements.

Assessment Factors

Possible factors to consider in making the assessment include community transmission levels, types of contact between employees and others in the workplace, transmissibility rates of current COVID-19 variants, types of contact employees may have with others in the workplace, and the potential impact on operations if an employee enters the workplace with COVID-19.

In making these assessments, employers should check the latest guidance from the Centers for Disease Control and Prevention (and any other relevant sources) to determine whether testing is appropriate for their employees.

Important Information

Change to Testing Guidance

Under the EEOC’s updated guidance, justification for workplace COVID-19 testing is no longer automatic.

New Standard

Employers must now make individualized assessments of their specific workplaces and of the current status of the pandemic to justify testing employees for COVID-19.

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