

Eye on Washington Regulatory Update



EEOC Updates Guidance on COVID-19 Testing & Related Issues

The U.S. Equal Employment Opportunity Commission (the EEOC) has updated its guidance on conducting COVID-19 tests on employees and its guidance on certain other pandemic-related issues. The EEOC says the changes were made to acknowledge that pandemic circumstances have evolved.

The Details:

COVID-19 Viral Testing of Employees:

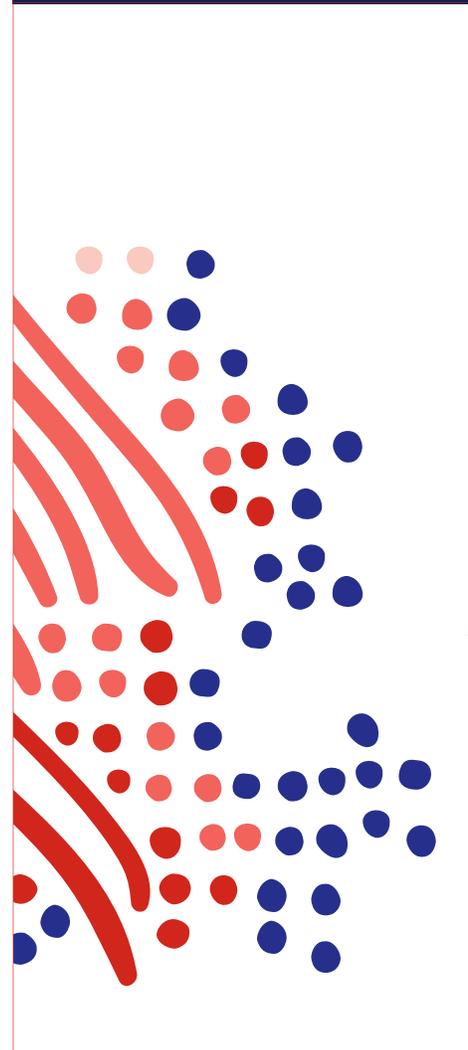
Under previous guidance, the EEOC stated that the Americans with Disabilities Act's (ADA's) standard for all employers to conduct COVID-19 viral testing for on-site employees had been met.

In the updated guidance, the EEOC makes clear that ADA-covered employers must now assess whether the current pandemic and workplace circumstances justify such testing to prevent the transmission of COVID-19. Specifically, employers must show viral testing is job-related and consistent with business necessity.

The EEOC suggests employers consider various factors when assessing whether testing is consistent with business necessity, including:

- The level of community transmission
- The vaccination status of employees
- The accuracy and speed of processing for different types of COVID-19 viral tests
- The degree to which breakthrough infections are possible for employees who are “up-to-date” on vaccinations
- The ease of transmissibility of the current variants
- The possible severity of illness from the current variants
- What types of contact employees may have with others in the workplace or elsewhere that they are required to work (e.g., working with medically vulnerable individuals)
- The potential impact on operations if an employee enters the workplace with COVID-19

Note: In its guidance, the EEOC retains its stance that antibody testing for COVID-19 is still prohibited under the ADA, but the EEOC provides an updated rationale for its position.



Eye on Washington

Regulatory Update

Screening Applicants for COVID-19 Symptoms:

In previous guidance, the EEOC stated that an employer may screen job applicants for symptoms of COVID-19, provided it is conducted after making a conditional job offer and as long as the employer does so for all entering employees in the same type of job.

In the updated guidance, the EEOC retains that language, but adds that if an employer screens **everyone** (i.e., applicants, employees, contractors, visitors) for COVID-19 symptoms before permitting entry to the worksite, then an applicant in the pre-offer stage who needs to be in the workplace as part of the application process (e.g., for a job interview) may likewise be screened for COVID-19. However, the screening must be limited to the same screening that everyone else undergoes.

Other Updates:

The EEOC also updated its guidance on:

- Withdrawing job offers for reasons related to COVID-19
- Providing reasonable accommodations

- Return-to-work procedures after an employee has COVID-19
- COVID-19 vaccination requirements
- And other issues.

See [the guidance](#) for details.

Next Steps:

- Read the guidance in full (the changes discussed above are dated 7/12/22).
- Consult legal counsel to consider the impact the guidance, as well as state and local laws, have on current COVID-19 policies and practices.

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP Eye on Washington Web page located at www.adp.com/regulatorynews.

ADP is committed to assisting businesses with increased compliance requirements resulting from rapidly evolving legislation. Our goal is to help minimize your administrative burden across the entire spectrum of employment-related payroll, tax, HR and benefits, so that you can focus on running your business. This information is provided as a courtesy to assist in your understanding of the impact of certain regulatory requirements and should not be construed as tax or legal advice. Such information is by nature subject to revision and may not be the most current information available. ADP encourages readers to consult with appropriate legal and/or tax advisors. Please be advised that calls to and from ADP may be monitored or recorded.

If you have any questions regarding our services, please call 855-466-0790.