

# Electronic Alert

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## **EEOC Updates its Guidance Regarding COVID-19 Testing**

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On Tuesday, July 12, 2022, the Equal Employment Opportunity Commission (EEOC) updated its guidance for employers regarding COVID-19 in the workplace. This guidance includes two significant updates related to employer-required testing for COVID-19.

**COVID-19 Viral Testing:** The EEOC made clear that, going forward, employers that require an employee to be tested for COVID-19 must be able to satisfy the Americans with Disabilities Act's (ADA) standard for medical examinations and inquiries of employees. Specifically, the employer must show that a viral test for COVID-19 is job-related and consistent with business necessity. Some of the considerations identified by the EEOC that may be used in making the "business necessity" assessment include working conditions, community transmission levels, workers' vaccination status, breakthrough infection risk, ease of transmissibility of current variants, possible severity of illness, and potential impact on operations if an employee enters the workplace with COVID-19. Additionally, use of a COVID-19 test to screen employees who are or will be in the workplace must be in line with current guidance from the Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and state and local public health authorities.

**COVID-19 Antibody Testing:** The EEOC's updated guidance states that employers may not require an employee to submit to COVID-19 antibody testing to enter the workplace. This update is based on current CDC guidance which explains that antibody testing may not show whether an employee has a current infection, nor does it establish that an employee is immune from infection. Accordingly, at this time, testing for COVID-19 antibodies does not meet the "business necessity" standard under the ADA for medical examinations or inquiries of employees.

The EEOC's updated guidance highlights the need for employers to continually take into account current pandemic circumstances as well as their individual workplace to remain in compliance with applicable employment laws. Employers should take time now to review and update their policies and practices related to COVID-19 in the workplace in light of current trends and shifting regulatory guidance.

*For questions about compliance with the EEOC guidance and navigating COVID-19 in the workplace, contact Amy Angel at 503-276-2195 or [aangel@barran.com](mailto:aangel@barran.com).*