

EEOC Releases ‘Return to Work’ and Employee COVID-19 Testing Guidance

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Recently, the Equal Employment Opportunity Commission (EEOC) updated its technical assistance questions and answers for employers dealing with the COVID-19 pandemic. The added questions elaborate on advice for disability accommodation requests and harassment and adds a section regarding employees returning to work after the pandemic.

In the new “Return to Work” section, the EEOC included questions and answers about screening workers when entering the workplace and providing accommodations for personal protective equipment. The EEOC responses are in line with the ADA in that employers are allowed to make “disability-related inquiries and conduct medical exams if job-related and consistent with business necessity.” This standard is met if medical exams and inquiries are required to exclude employees with a medical condition that poses a direct threat to health or safety.

“Direct threats” must be determined based on guidance from the CDC or other public health authorities. Currently, CDC guidelines state “employers should measure the employee’s temperature and assess symptoms prior to starting work.”

The EEOC also provided insight into whether employers must grant requests for modified protective gear. Employers are allowed to require employees to wear protective gear (masks and gloves) and observe infection control practices (hand washing and social distancing). However, the employer should discuss any accommodation requests and provide modifications or alternatives if feasible and does not cause undue hardship on the employer’s business.

The EEOC authorizes employers to ask now about requests accommodations that employees believe they may need when the workplace re-opens. To determine if a requested accommodation poses an undue hardship or “significant expense” during the COVID-19 pandemic, the EEOC states employers must weight the costs of accommodations against its current budget, which may be lessened due to the pandemic. However, even under the current pandemic circumstances, there may be many no-cost or very low-cost accommodations.

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