

EEOC Revises COVID-19 Testing Guidance for Employers

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On July 12, 2022, the EEOC revised its informal guidance regarding COVID-19 and related matters in the workplace. In doing so, the EEOC made several revisions concerning employer testing protocols, items to consider for vaccine mandates, among other revisions to FAQs.

Most notably, the EEOC revised its guidance regarding viral screening of employees for COVID-19. The EEOC no longer considers viral screening (or testing) to automatically meet the business necessity standard under the ADA as it did at the outset of the pandemic. Rather, employers need to evaluate whether current pandemic and individual circumstances warrant testing to prevent workplace transmission. Those factors must lead to a decision that testing is a business necessity and not just a preferable policy.

The EEOC guidance provides the following factors to consider in determining whether circumstances indicate testing would be a business necessity:

- 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 variant(s);
- The possible severity of illness from the current variant;
- What types of contacts employees may have with others in the workplace or elsewhere that they are required to work (e.g., working with medically vulnerable individuals); and
- The potential impact on operations if an employee enters the workplace with COVID-19 may include.

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