

Employer Alert: EEOC Updates COVID-19 Testing Guidance

08/11/22

In July, the U.S. Equal Employment Opportunity Commission (EEOC) updated its guidance regarding COVID-19. A critical change was made regarding COVID-19 testing. Previously, the EEOC stated that COVID-19 testing was generally acceptable for employees working on site. The new guidance provides that employers can only test their employees if it is job-related and consistent with business necessity.

In determining whether there is a business necessity, the EEOC provided that employers may consider the following:

- 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.

The EEOC also explained that employers should check the latest guidance from the CDC in determining whether testing is appropriate.

Takeaway: Employers should review their policies on COVID-19 to ensure they comply with the updated guidance. Employers with questions about the latest COVID-19 guidance can contact Tracy Armstrong or another member of the Wilentz [Employment Law](#) Team.

Attorney

- Tracy Armstrong

Practice

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