

Considerations for Workplace Safety in Light of Updated EEOC Guidance

June 18, 2020

COVID-19 has created new, unexplored territory for employers. Even in a pandemic, it's imperative that employers follow all EEO laws. Since COVID-19 is consistently evolving, it is important that employers continue to follow [the most current information](#) on maintaining workplace safety.

Now that employers are bringing their employees back to work in different capacities, we suggest keeping these six tips in mind:

1.

Decide whether to administer a test to detect the presence of the COVID-19 virus before permitting employees to enter the workplace.

The ADA requires that any mandatory medical test of employees be “job-related and consistent with business necessity.” Therefore, employers may take steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat. It is important to note that while it is permissible under the ADA to administer a test to determine if someone has an active case of COVID-19, it is NOT permissible to require antibody testing before allowing employees to re-enter the workplace.

2.

Create a system regarding how you will maintain confidential medical information.

Remember that the ADA requires that all medical information about a particular employee be stored separately from the employee's personnel file.

3.

Determine how your hiring and onboarding processes may change.

Just because a person is identified as having high risk of contracting COVID-19 by the CDC (those age 65 or older, or pregnant), employers are not justified in postponing a new hire's start date or withdrawing a job offer.

4.

Evaluate how you will review requests for reasonable accommodations.

Even with the constraints imposed by a pandemic, some reasonable accommodations may meet an employee's needs on a temporary basis without causing undue hardship on the employer.

5.

Review the practical tools available in order to prevent pandemic-related harassment due to national origin, race, or other protected characteristics.

All employers covered by Title VII should ensure that management understands in advance how to recognize such harassment.

6.

Assess what waiver responsibilities apply when you are conducting layoffs.

Special rules apply when an employer is offering employees severance packages in exchange for a general release of all discrimination claims against the employer.

Please reach out to any member of McGlinchey's Labor and Employment team for help or questions.

Related people

Camille R. Bryant

Magdalen Blessey Bickford