EEOC Issues Updated Guidance Regarding COVID Screening by Employers

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On July 12, 2022, the Equal Employment Opportunity Commission issued updated guidance for employers regarding COVID-19 testing and accommodations.

Perhaps most impactful, the EEOC altered its position regarding employers testing employees for COVID-19 as part of a mandatory screening prior to entering the workplace. Previously, the EEOC provided that employers could administer viral tests without conducting any prior analysis of the requirement.

Under the new guidance, employers can administer COVID-19 viral tests to employees as part of a screening protocol only if doing so is "job-related and consistent with business necessity." Employers can generally satisfy the "business necessity" prong if/when: (a) the employees tested are or will be in the workplace; and (b) testing is consistent with guidance from the CDC, FDA, and/or public health authorities that is current at the time of the testing. In analyzing the former, employers should consider several factors including, but not limited to: the level of community transmission, the vaccination status of employees, the degree to which breakthrough infections are possible for employees who are "up to date" with vaccinations, the ease of transmissibility of the current variant(s), the possible severity of illness from the current variant(s), the accuracy and speed of processing for different types of COVID-19 viral tests, what types of contacts employees may have with others in the workplace or elsewhere that they are required to work, and the potential impact on operations if an employee enters the workplace with COVID-19.

The EEOC further stated that employers cannot require an employee to



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submit to COVID-19 antibody testing before being permitted to enter the workplace, as antibody testing does not show whether an employee has a current infection. However, employers may require an employee who was out with COVID-19 to submit a note from a qualified medical professional prior to their return to the workplace.

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