



COVID Testing and the ADA

Joshua P. Odén

On April 23, 2020, the EEOC came out with an additional guideline with respect to permitted testing for COVID-19 and how such testing would interact with the American with Disabilities Act, as amended (the "ADA").

The ADA requires that any mandatory medical test of employees be "job related and consistent with business necessity." Applying this standard to the current circumstances of the COVID-19 pandemic, 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](#) to the health of others. As a consequence, an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.

Consistent with the ADA standard, employers should ensure that the tests are accurate and reliable. For example, employers may review the [guidance](#) from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as the guidance from CDC or other public health authorities. Employers may also wish to consider the incidence of false-positives or false-negatives associated with a particular test; however, accurate testing only reveals if the virus is currently present and a negative test does not mean the employee will not acquire the virus later.

Based on the guidance from medical and public health authorities, employers should still require - to the greatest extent possible - that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

Meet the Author



Joshua P. Odén

Call 214.698.3564

Fax 214.748.7949

odenj@passmanjones.com