

EEOC Issues Updated Guidance on “What You Should Know” About COVID-19’s Effects on Federal Equal Opportunity Laws.

Yesterday, the Equal Employment Opportunity Commission (EEOC) released an updated technical document entitled “[What You Should Know About COVID-19 and the ADA, Rehabilitation Act, and Other EEOC Laws](#) (WYSK),” to address questions about COVID-19’s effect on laws implicating employers and workers. The updated guidance draws on up-to-date information from other EEOC [resources](#) and existing government [Q&As](#) to create a single comprehensive guide for readers.

Changes to the updated WYSK document consist of 18 new questions and answers. These new questions focus on whether employers may inquire if employees have been exposed to, diagnosed, or tested for COVID-19, whether employers may require employee testing, and confidentiality concerns associated with employee COVID-19 status. The added questions are labeled A.8 - A.14, B.5 - B.8, D.14 - D.18, F.2, and H.2.

The EEOC further updated two existing questions to provide additional detail on prior EEOC statements about COVID-19 and EEOC rules. First, updated Question A.6, more fully explains an employer’s ability to require a COVID-19 test when evaluating whether an employee may re/enter the workplace and that employer’s ability to

periodically require testing to determine if the employee has COVID-19.

Employers may require initial testing before permitting an employee to enter the workplace and/or may periodically test employees to ensure the safety of others. The updated guidance informs employers that the Americans with Disabilities Act (ADA) does not prevent employers from following public health authorities' guidance on testing. So long as testing is consistent with current CDC guidelines, it shall meet the "business necessity" requirement for medical examinations under the ADA.

The second update is to Question D.8, where the EEOC clarifies its existing position on an employer's ability to encourage remote employees to request disability accommodation prior to the date of their expected return. Employers may encourage employees to provide advance notice and initiate discussions centered on whether the employee's impairment is a disability and what accommodation is necessary before the employee returns from remote work. However, if an employee requests an accommodation at a later time, the employer must still consider the request at that time.

Employer Takeaways

The key takeaway from the updated guidance is that employee safety is paramount. Employers should continue to focus all their efforts on ensuring workplace safety confident that at this stage in the pandemic, with no cure or vaccination on the horizon, they will not be

penalized by federal agencies for making good faith determinations regarding what is best for their business and their people.

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