

COVID-19 Alert: Antibody Testing

EEOC Updates COVID-19-Related Employer Guidance on Antibody Testing

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The U.S. Equal Employment Opportunity Commission (“EEOC”) again updated its employer **guidance** related to COVID-19 late last week, this time with guidance related to employers requiring antibody testing before allowing employees to return to the workplace.

The EEOC previously released guidance allowing employers to conduct temperature checks on employees and to inquire about COVID-19-related symptoms as part of their outbreak mitigation strategies. The EEOC also advised employers that they could require employees to test for COVID-19 prior to returning to the workplace. These are temporary practices that are typically disallowed by the Americans With Disabilities Act (ADA).

The EEOC clarified now, however, that based on guidance from the Centers for Disease Control (CDC), employers cannot require *antibody testing* before allowing employees to return to the workplace. Antibody testing, the EEOC advises, is considered a medical examination under the ADA and does not meet the “business necessity” standard. Employers may still require viral testing to determine if an employee has an *active* COVID-19 case, but antibody testing is strictly disallowed.

Morse is focused on assisting our clients through these unprecedented and challenging times. Please contact the Firm should you have questions concerning this subject, or any other COVID-19 response matters.