

## COVID-19: EEOC Says Employers Can Test Employees Before Returning to Work

Applies to: All Employers

Effective: April 23, 2020

The Equal Employment Opportunity Commission (EEOC) recently updated its “What You Should Know” [website](#) with information related to testing for COVID-19. Specifically, the EEOC says that employers may require employees to be tested for COVID-19 before permitting them to return to work. What does this entail?

- Employers can require that **employees get tested** for COVID-19 before they are permitted to return to work. Employees who get tested should provide documentation supporting their fitness for duty (e.g., healthcare provider form, stamp, or email). Because of the current inaccessibility of tests and the testing response time, employers should provide employees with sufficient advance notice of this requirement so that they can plan accordingly.
- **Employers can test employees themselves** before permitting them to return to work. This must be done in a manner to ensure accurate and reliable results. There are many things to consider if selecting this option, such as quality of the test (testing has not been standardized and the quality varies widely), invasiveness of the test (a saliva test would be among the least invasive to employees), training of the person administering the test, and conducting the test in a sanitary and confidential environment. Employers may review [guidance](#) from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as 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.
- Employers can **take employee temperatures** upon entry to the workplace. The person administering the temperature reading should be trained in how to conduct the reading accurately. This should also be done in a confidential and sanitary environment. Employers should keep in mind that a normal temperature reading is not indicative that the person does not have the virus.
- Employers can **ask if employees are experiencing symptoms** related to COVID-19. Although employers cannot ask about a medical diagnosis, they can inquire about what symptoms the employee may be experiencing. Employers should rely on the CDC, other public health authorities, and reputable medical sources for guidance on emerging symptoms associated with the disease. (The CDC recently added [new symptoms](#) associated with COVID-19 to its official list.) This should be done in a confidential setting.

If using COVID-19 testing as a barrier to reentry for the workforce, note that accurate testing only reveals if the virus is currently present; a negative test does not mean the employee will not acquire the virus later. For any employee administering temperature exams or COVID-19 testing, employers should provide them with PPE, including training on how to properly use the PPE.

Whatever measures employers take, they must be applied consistently in a nondiscriminatory manner. Employers must also ensure confidentiality of any medical information obtained or stored in connection with COVID-19 inquiries or testing.

### Action Items

1. Review return-to-work procedures appropriate for your workplace.
2. Provide employees with advance notice of procedures you will be implementing.

3. Have personnel trained in administering questionnaires, temperatures, and COVID-19 tests.
4. Ensure proper storage for medical documentation.
5. Subscribers can call our HR On-Call Hotline at (888) 378-2456 for further assistance.