

EEOC issues new COVID-19 guidance; employers may NOT require COVID-19 antibody testing of employees.

In response to updated [guidelines from the CDC](#), the EEOC issued new guidance as follows:

A.7. CDC said in its [Interim Guidelines](#) that antibody test results “should not be used to make decisions about returning persons to the workplace.” In light of this CDC guidance, under the ADA may an employer require antibody testing before permitting employees to re-enter the workplace? (6/17/20)

No. An antibody test constitutes a medical examination under the ADA. In light of CDC’s [Interim Guidelines](#) that antibody test results “should not be used to make decisions about returning persons to the workplace,” an antibody test at this time does not meet the ADA’s “job related and consistent with business necessity” standard for medical examinations or inquiries for current employees. Therefore, requiring antibody testing before allowing employees to re-enter the workplace is not allowed under the ADA. Please note that an antibody test is different from a test to determine if someone has an active case of COVID-19 (i.e., a viral test). The EEOC has already stated that COVID-19 viral tests are [permissible under the ADA](#).

Based on the CDC’s guidance, the EEOC concludes that antibody tests do not meet the “job related and consistent with business necessity” standard required for lawful medical examinations under the ADA.

An antibody test determines whether a person was infected with COVID-19 in the past, and is different from a viral test, which determines whether a person has an active case of coronavirus. [Viral tests are still permitted.](#)

This new EEOC guidance contradicts previous recommendations permitting antibody testing, including information from the [Ohio Department of Health](#) in April. Employers should be careful to rely on the most current guidance from the EEOC, the CDC, and other public health officials when bringing employees back to the workplace. If you have questions about how the EEOC’s new guidance affects your organization, please contact a member of the Labor and Employment Law Practice Group at Marshall Melhorn.



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