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EEOC Says No Mandatory Antibody Tests For COVID-19

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The Equal Employment Opportunity Commission (EEOC) issued revised guidance about COVID-19 and the Americans with Disabilities Act on June 17, 2020, stating that employers cannot force employees to undergo COVID-19 antibody testing before returning to work. The EEOC's guidance follows the CDC's interim guidelines stating that antibody test results "should not be used to make decisions about returning persons to the workplace."

The Centers for Disease Control and Prevention (CDC) based its recommendations on the current accuracy of antibody testing as well as uncertainty about the level of potential immunity antibodies may provide. Therefore, antibody testing would not be "job related and consistent with business necessity" as required by the ADA for medical exams of current employees, and thus it is unlawful.

If an employer cannot require antibody testing, what alternatives are there for obtaining documentation that an employee is fit to return to work? In the same guidance document, the EEOC has already approved mandatory COVID-19 testing to verify if an employee is infected with COVID-19. This is "job related and consistent with business necessity," as employees with COVID-19 pose a direct threat to the health and safety of others. Moreover, an employer can require that an employee obtain a doctor's note certifying the employee's fitness for duty.

As information and guidance from governmental agencies appears to be

changing rapidly regarding COVID-19, the EEOC reserved the right to "update this discussion in response to changes in CDC's recommendations." Stay tuned for future updates.