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EEOC Issues Guidance that Employers May Not Require COVID-19 Antibody Tests of its Employees

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On Wednesday, June 17, 2020, the United States Equal Employment Opportunity Commission (EEOC) issued guidance that employers cannot mandate COVID-19 antibody tests before allowing employees back to work. The EEOC referenced the recent guidance issued by the Centers for Disease Control (CDC), indicating that antibody tests should not be used to determine if someone is immune to the virus, or as a basis for decisions about allowing workers back to the workplace.

"An antibody test constitutes a medical examination under the ADA," the EEOC said. "In light of CDC 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," the EEOC added.

Please note the EEOC indicated that it will "closely monitor" recommendations by the CDC and may adjust this guidance accordingly if the CDC changes its stance.

Employers can take note, however that the EEOC has said that employers may administer viral tests to determine if an individual is actively infected with COVID-19 before permitting a worker back on a job site.

If you are an employer with questions about this legal alert or any other employment law related matter, contact [Tracy Armstrong](#) or any member of the Wilentz [Employment Law team](#).

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