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EEOC Provides Additional Updates to COVID-19 Guidance

On September 8, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) once again updated its pandemic guidelines, this time to include additional information on COVID-19 screening and testing in the workplace, confidentiality, accommodations for teleworking employees and discrimination. Employers should be aware of the following updates:

COVID-19 Testing and Screening in the Workplace

- An employer may ask all employees physically entering its workplace if they have COVID-19 or symptoms associated with COVID-19 and if they have been tested for COVID-19. However, an employer is generally not permitted to ask these questions to teleworking employees because they do not pose a direct threat to the physical workplace.
- If an employer wants a particular employee to undergo COVID-19 testing or screening, the employer must have a reasonable belief based on objective evidence that this person might have COVID-19.
- An employer may ask employees who are physically entering the workplace if they have been exposed to or in close contact with anyone who has or has had COVID-19. An employer may not, however, ask employees whether they have specific family members who have COVID-19 or COVID-19 symptoms. Employees can volunteer this information.
- If an employee refuses to participate in COVID-19 screening or testing before entering the workplace, an employer can bar the employee from entering the workplace unless the employee qualifies for an accommodation because of his or her disability or religious beliefs.
- Due to the COVID-19 pandemic, and employer may ask employees who work on-site, whether regularly or occasionally, and report feeling ill or who call in sick, questions about their symptoms as part of workplace screening for COVID-19.
- An employer may ask an employee why he or she is absent from work because it is not a disability-related inquiry.

Confidentiality

- A manager may report information that an employee has symptoms of, or a diagnosis of, COVID-19. The manager should limit the type of information

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shared and who it is shared with to protect the employee's confidentiality. The manager should instruct those individuals they provide information to of their obligations to maintain the employee's confidentiality under the Americans with Disabilities Act (ADA).
- An employee who knows a coworker has symptoms associated with COVID-19 can inform his or her supervisor about the coworker's symptoms without violating the ADA.

Reasonable Accommodations

- In preparation for a workplace reopening, an employer may inform its workforce that employees with disabilities may request accommodations in advance that they believe they may need when the workplace re-opens.
- An employer may be required to accommodate its teleworking employees. An employer should engage in the same process to assess whether an accommodation is reasonable for a teleworking employee as it would for an accommodation in the workplace.
- Just because telework is offered as a reasonable accommodation during the pandemic does not mean telework will be a reasonable accommodation in every scenario after the pandemic is over.
- The COVID-19 pandemic may result in excusable delays during the interactive process. Employers and employees are encouraged to use interim solutions to enable employees to keep working as much as possible.

If you have a question about how the pandemic guidelines impact your business and your employees, please contact Rob Driscoll, Katie Triska or your Reinhart attorney.

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