

EEOC Updates Pandemic Guidelines

UPDATE:

On April 23, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) updated its pandemic guidelines to include information for employers on COVID-19 testing in the workplace. The EEOC's guidelines note that employers may administer COVID-19 tests to employees entering the workplace. Consistent with the Americans with Disabilities Act, the COVID-19 tests must be "accurate and reliable." The EEOC guidelines point employers to the Food and Drug Administration's [guidance on safe and accurate testing](#) and notes that employers should record the number of false-positives or false-negatives associated with a particular test.

Original article:

The U.S. Equal Employment Opportunity Commission (EEOC) on April 17, 2020, updated its pandemic guidelines. Employers should be aware of the following key updates:

Confidentiality

- Employers must store all medical information related to COVID-19 in an employee's confidential medical file, including an employee's statement that he/she has or thinks he/she has the virus and any documentation regarding their symptoms. The medical file should be stored separately from the employee's regular employee file with access generally limited to human resources.
- An employer may require all employees to have a daily temperature check entering the workplace. Information garnered from this temperature check should remain confidential.
- An employer may disclose the name of an employee who has tested positive for COVID-19 to a public health agency.
- A temporary staffing agency may notify an employer if an employee that the agency placed in the employer's workplace has tested positive for COVID-19. A temporary staffing agency may share the name of the affected employee so the employer can determine if the employee had contact with anyone in the workplace.

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Age and Sex Discrimination

- An employer may not withdraw a job offer or unilaterally postpone a start date because the individual is 65 years or older or is pregnant. An employer may, however, allow such individuals to telework, provided they agree to telework, or ask such individuals if they would like to postpone their start date.

Disability Accommodation

- If a disabled employee is unable to telework due to the nature of the job, and thus must work at the employer's workplace, the employer may be obligated to provide reasonable accommodations to the employee if the disability puts the employee at greater risk of contracting COVID-19. Such an accommodation may include changes to the work environment such as designating one-way aisles; using plexiglass, tables or other barriers to ensure minimum distances between customers and coworkers; or other accommodations that reduce chances of exposure.
- An employee with a mental illness or disorder may qualify for a reasonable accommodation because of the effect the disruption to daily life has had on the employee's mental health. In this instance, an employer may ask questions to determine whether the condition is a disability, discuss with the employee how the requested accommodation would assist and enable the employee to keep working, explore alternative accommodations that may effectively meet his needs and request medical documentation if needed.
- An employer may prioritize discussing accommodation requests that relate to teleworking.
- Employees who were already receiving an accommodation may be entitled to altered or additional accommodations.
- An employer may ask employees if they will need reasonable accommodations once they return to the workplace. In other words, an employer may begin the interactive process before it reopens its workplace.

Return to Work

- An employer may require employees to wear protective gear (e.g., masks) and observe infection control practices (e.g., regular hand washing and social distancing).
- If an employee requests modified protective gear (e.g., latex-free gloves) as a



disability or religious accommodation, the employer should discuss the request with the employee and, if feasible, provide the modified gear or offer an alternative if it is not an undue hardship on the employer.

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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