

CDC Issues Guidance That Serological Testing of Employees Violates ADA

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As more states are reopening and employees are returning to work, some employers will be considering testing employees for COVID-19 before allowing them to return to the workplace. In a prior post, we [wrote about guidance](#) from the EEOC that states that employers may test employees before returning to work as long as the testing complies with the Americans with Disabilities Act (ADA). We also wrote about the various types of COVID-19 testing available, including serological testing and diagnostic testing. Serological testing looks for the presence of COVID-19 antibodies, while diagnostic testing checks for the presence of the COVID-19 virus itself.

The Center for Disease Control (CDC) has released new guidance that cautions employers against using serological tests on employees. According to the CDC, serological tests can yield false positive test results because they can detect the presence of antibodies for other viruses. Thus, serological tests may not accurately show the presence or absence of a current or prior COVID-19 infection. The CDC also noted that additional data is needed to determine whether serological tests accurately determine an individual's immunity to COVID-19.



The CDC's guidance is important because the Equal Employment Opportunity Commission (EEOC) has advised employers who test employees to use testing that is accurate and reliable. In light of the CDC's new guidance, the EEOC updated its own guidance to prohibit employers from using serological testing on employees. Now, the EEOC's guidance states that using serological testing on employees would violate the ADA.

To ensure compliance with the EEOC's guidance, employers should only use diagnostic testing, due to the issues with serological testing outlined by the CDC.

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