



## EMPLOYMENT LAW ALERT

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### COVID-19 Antibody Tests and Returning to Work

On June 17, 2020, the Equal Employment Opportunity Commission (the “EEOC”) issued new guidance clarifying that COVID-19 antibody tests are considered medical examinations under the Americans with Disabilities Act (“ADA”). The EEOC has been regularly updating the publication “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act and Other EEO Laws” throughout the COVID-19 pandemic.

In its most recent update, the EEOC stated that in light of the Center for Disease Control’s Interim Guidelines, antibody test results should not be used by employers to make decisions regarding employees returning to the workplace. The antibody test does not meet the ADA’s job related and consistent with business necessity standard for medical examinations or inquires for employees. Therefore, as employers begin to allow employees to return to the workplace, employers may not require antibody testing, or they will run afoul of the ADA and be subject to possible penalties. Please note that an antibody test is different from a test to determine if an individual has an active case of COVID-19. The EEOC has previously stated that COVID-19 viral tests are permissible under the ADA.

As the EEOC and other federal and state agencies continue to publish new guidance regarding COVID-19, it is important that employers stay up-to-date on the latest rules and regulations surrounding their returning workforce to ensure ongoing compliance with the law.

**For additional information, please contact**

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