

# EEOC Updates COVID-19 Guidance

## Practices

Employment & Labor Law

09.10.2020

This week, the U.S. Equal Employment Opportunity Commission (“EEOC”) published an update to its guidance titled “What You Should Know About COVID-19 and the ADA, Rehabilitation Act, and Other EEO Laws (WYSK).” The updated guidance adds new questions and answers adapted from other EEOC technical resources, with a focus on providing employers with guidance on testing, inquiries, and return-to-work issues. Below are a few highlights from the update:

- **Testing:** The guidance reiterates that employer testing to determine whether employees entering the workplace have COVID-19 is generally permissible when “job-related and consistent with business necessity” to determine whether such employees may be a direct threat to others. The updated guidance also confirms that employers who follow CDC recommendations regarding whether, when, and for whom testing is appropriate will be considered as compliant with the “job-related and consistent with business necessity” standard. Any employee who refuses permissible testing (or who refuses permissible inquiries, as discussed below) may be denied entry into the workplace.
- **Inquiries:** The updated guidance confirms that employers are generally permitted to ask employees who will be physically entering the workplace whether they have symptoms associated with COVID-19, and that any employee who reports symptoms may be denied entry into the workplace. However, employers are generally not entitled to ask symptom-related questions of employees who will be teleworking or who will not be in close contact with coworkers or others while performing their jobs. In addition, the guidance reiterates that if an employer wishes to make inquiries (or impose testing) on only one (rather than all) employees, the ADA requires the employer to have a “reasonable belief based on objective evidence” that the particular employee may have COVID-19.
- **Absences from Work:** The guidance confirms that employers are always permitted to ask an employee why he/she was absent from work, even if the reason may be health-related. The guidance also confirms that an employer may ask an employee returning from personal travel where he/she has been, and may require that

employees comply with quarantine guidance before returning to work depending on the location of their travel.

- **Reasonable Accommodations:** Some employers who have adopted temporary, pandemic-related “work from home” policies are concerned that employees will request permanent telework as a “reasonable accommodation” under the ADA, even after the pandemic subsides. The guidance confirms that employers are not required to grant every telework request as a “reasonable accommodation,” even if the employee has demonstrated the ability to perform his/her job remotely during the pandemic. Rather, the EEOC states that if there is no disability-related limitation that requires teleworking, then the employer does not have to provide telework as an accommodation. In addition, if the employee has a disability-related limitation that can be effectively addressed with another form of accommodation in the workplace, the employer can choose the alternative to telework.

If you have questions about the updated EEOC guidance or other employment issues related to COVID-19, please contact your Nexsen Pruet employment counsel.