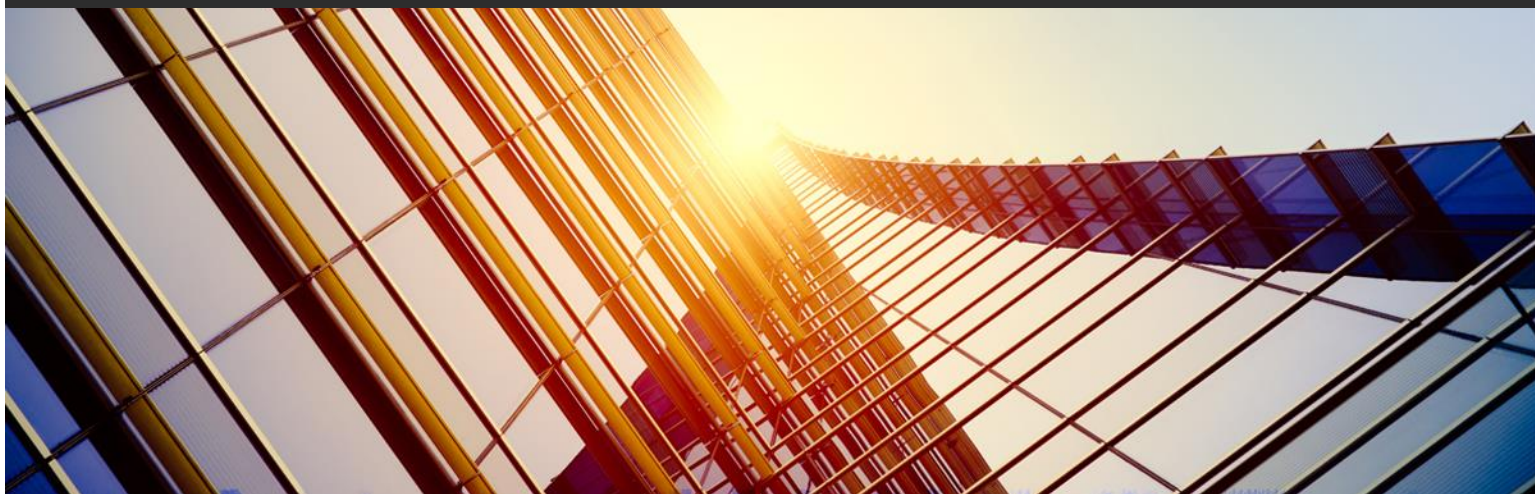


**Alert | Health Emergency Preparedness Task Force:  
COVID-19 – Reopening the Economy**



June 2020

## **EEOC Issues Updated Guidance on COVID-19 Antibody Testing**

On June 17, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) issued [guidance](#) (see A.7.) stating employers cannot require workers to undergo Coronavirus Disease 2019 (COVID-19) antibody testing (as distinguished from testing for the COVID-19 virus itself). Increased COVID-19 antibody (or “serology”) testing has been cited as a helpful tool because it aids in understanding the prevalence of the virus in the general population. It can also produce useful information about populations that may have some level of immunity from the virus. But the EEOC has now made clear that employers may not mandate such testing, as doing so violates the Americans with Disabilities Act (ADA).

The EEOC issued its new antibody test guidance as an update to an EEOC-maintained technical assistance document designed to answer employer questions during the COVID-19 public health emergency. In announcing its new guidance, the EEOC cited Centers for Disease Control and Prevention (CDC) guidelines, which state that the results of antibody testing “should not be used to make decisions about returning persons to the workplace.” The CDC made this decision based on a current lack of data on COVID-19 antibodies, including the degree of immunity antibodies may provide. Additionally, some antibody tests may produce false positives or false negatives, and some individuals who have been infected with COVID-19 may not develop detectable antibodies, or antibodies may decrease over time to undetectable levels, further reducing the reliability of these tests, at least as indicators of risk for future infection.

The EEOC's latest guidance comes two months after it issued guidance expressly authorizing employers to test employees for the COVID-19 virus as a precondition to return to work. In that instance, the EEOC determined mandatory testing did not run afoul of the ADA because the ADA already requires any mandatory medical test of employees be reliable, "job related and consistent with business necessity." In applying this standard to the COVID-19 public health emergency, the EEOC concluded employers may take steps to determine if employees entering the workplace are infected with COVID-19, given the direct risk infection poses to other workers.

In sum, while employers are authorized to test employees for the COVID-19 virus, employers may not, as of the date of this GT Alert, require employees to undergo testing for COVID-19 antibodies.

The EEOC has stated it will continue to monitor CDC recommendations on COVID-19 antibody testing and may update its guidance as needed to respond to changes from the CDC.

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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