

Uptick in COVID Cases Prompts Additional EEOC Guidance

By Aretta Bernard & Stephanie Olivera Mittica

With COVID variant cases on the rise, the EEOC published new, additional guidance to employers on July 12, 2022. All of the EEOC's updates can be found [here](#). A few significant updates are summarized below:

- **Screening Employees:** Prior to yesterday's update, an employer was legally permitted to require on-site COVID-19 viral screening testing. According to the new guidance, employers have to prove that testing employees is "job-related and consistent with business necessity." Whether testing is a "business necessity" can be based on several factors, including community transmission rates, employee vaccination status, and working conditions.
- **Antibody Testing:** The EEOC clarified that employers cannot require antibody tests before allowing employees to re-enter the workplace, as they do not reliably determine whether someone is currently infected or immune.
- **Applicants:** The guidance makes clear that employers may test applicants for COVID-19, after making a conditional job offer, so long as they are doing so consistently.
- **Rescinding Job Offers:** A job offer can only be rescinded if it is absolutely necessary that the employee start his/her employment immediately and in-person. Current CDC guidelines should be evaluated prior to making this decision.

Please contact a listed Roetzel attorney should you have any questions regarding these important updates.

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