NEWS BRIEF

Provided by: Ronstadt Insurance

Employers Now Required to Justify COVID-19 Testing, According to EEOC

In an update to its technical assistance manual, the U.S. Equal Employment Opportunity Commission (EEOC) recently announced that employers must now justify mandatory COVID-19 testing for their workers. Going forward, employers must "assess whether current pandemic circumstances and individual workplace circumstances justify viral testing of employees to prevent workplace transmission of COVID-19."

Previously, the EEOC stated that COVID-19 testing for on-site employees was permissible under the American with Disabilities Act's (ADA) standard for medical examinations. Employers now need to show that mandatory COVID-19 testing of employees is job-related and consistent with business necessity, as defined by the ADA. In determining whether a mandatory testing measure meets business necessity, employers may consider the following:

- Community transmission levels

- The vaccination status of employees

- The accuracy and speed of processing different types of COVID-19 viral tests

- The degree to which breakthrough cases are possible for vaccinated employees

- The ease of transmissibility of current COVID-19 variants

- The possible severity of illness from current COVID-19 variants

- Types of contact employees may have with others in the workplace or where they are required to work

- Potential impacts on an employer's operations if an employee enters the workplace with COVID-19

Employers should also check the latest guidance from the Centers for Disease Control and Prevention (CDC) to determine whether COVID-19 testing is appropriate for employees.

The EEOC clarified that this change does not suggest that COVID-19 testing is or is not warranted. Instead, the EEOC recognizes that the pandemic is evolving and employers must determine whether viral testing is necessary based on individual assessments.

What This Means

In light of this recent change, all employers currently practicing or considering COVID-19 testing requirements will want to review their requirements to determine whether they meet business necessity. Any employers seeking to implement mandatory COVID-19 testing of employees will need to show that their testing measures meet the ADA's business necessity standard. Additionally, based on recent CDC guidance, employers likely cannot require employees to receive antibody tests in order to return to work, as the CDC has stated antibody tests cannot determine whether individuals are currently infected with or immune to COVID-19.

Contact Ronstadt Insurance for more COVID-19-related resources.