COVID-19's Impact on Employment Law in 2022

After a tumultuous couple of years in which the EEOC issued and updated COVID-related guidance at breakneck speed, the pace has slowed. Nonetheless, as we are frequently reminded, COVID-19 is still with us. Accordingly, earlier this month, the EEOC issued new guidance for employers on coronavirus testing.

In the new guidance, the EEOC "makes clear that going forward employers will need to assess whether current pandemic circumstances and individual workplace circumstances justify viral screening testing of employees to prevent workplace transmission of COVID-19." To implement screening testing for employees, the testing must meet the "business necessity" standard. Possible considerations are as follows:

- level of community transmission
- vaccination status of employees
- accuracy and speed of processing COVID-19 viral tests
- degree to which breakthrough infections are possible
- ease of transmissibility of the current variant
- possible severity of the illness from the current variant
- types of contacts employees have with others and the setting
- potential impact on operations of an infected employee enters the workplace

Employers are to refer to the latest CDC guidance to determine the appropriateness of screening testing.

Based on this update, employers must be able to demonstrate testing is necessary for the safety of the workplace and consistent with the employee's job. Accordingly, employers who utilize screening tests for COVID-19 should take the applicable considerations into account and modify their policies moving forward.

Source: https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#A.6

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