

# MSF CLIENT ALERT

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## Updated Guidance for Employers on Employee Return to Work Post COVID-19

*The U.S. Equal Employment Opportunity Commission (“EEOC”) has once again updated its COVID-19 guidance to assist employers as they prepare for employees to return to work. These updates focus on testing employees, collecting and protecting medical information and disability accommodations.*

October 6, 2020

On September 8, 2020 the EEOC updated its guidance addressing what employers should know about COVID-19 and the ADA, the Rehabilitation Act, and other EEO laws. The update added 18 new questions and answers that address COVID-19 testing and screening employees, protecting employees’ medical information, and reasonable accommodations for those with disabilities.

### **Medical Exams and COVID-19 Testing**

In addition to administering COVID-19 testing to employees before they enter the workplace to determine if they have the virus, the EEOC guidance now permits employers to periodically administer COVID-19 testing to employees to determine if their continued presence in the workplace poses a direct threat to others. Employers must ensure that the tests are accurate and reliable consistent with ADA standards.

### **Employee Screening**

Employers can bar an employee from entering the workplace if the employee refuses to have their temperature taken or refuses to answer questions about whether or not the employee has COVID-19, has associated symptoms, or has been tested for COVID-19.

### **Employees’ Medical Information**

Employers may ask employees entering the workplace if the employee has COVID-19 or associated symptoms, or if they have been tested for COVID-19. The updated EEOC guidance also permits employers to ask individual employees COVID-19 related questions (as described below) so long as the employer has a reasonable belief based on objective evidence that the individual may have the virus. The permitted COVID-19 related questions include seeking information about symptoms the employee may be experiencing and employee travel. However, employers may not ask employees for medical information about the employee’s family members.

Employees may report to the employer that another employee has COVID-19 symptoms without violating the ADA’s confidentiality requirements. Managers may also report that an employee exhibits COVID-19 symptoms, but should only report the information to those in the organization that need to know this information.

Employers should take precautions to protect the identity of employees who have contracted the virus or reported symptoms from those in the organization who do not

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need to know this information. Employers may disclose to employees that they were in close contact with a person who tested positive for the virus but are prohibited from confirming or otherwise revealing the identity of the employee who tested positive.

## **Reasonable Accommodations**

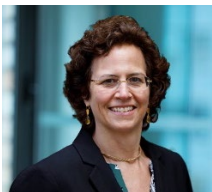
The updated guidance also addresses accommodations for employees who wish to telework. Employers are not necessarily required to continue teleworking arrangements when the workplace reopens as an accommodation. While teleworking arrangements may be considered by the employer as a reasonable accommodation,

the employer is not obligated to permit continued teleworking as a reasonable accommodation if it requires the employer to excuse the employee from performing an essential function of their job, even if the employer had excused that function temporarily due to the COVID-19 pandemic. Employers are not required to permanently eliminate the essential functions of a job as an accommodation under the ADA.

The guidance encourages employers and employees to be flexible and creative about what can be done for employees who need an accommodation to telework at home and proposes that interim accommodations may be appropriate.

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Please contact an attorney in MSF's Employment Group if you need assistance with respect to this information.



**Andrea B. Neuman**  
Partner | Chair, Employment  
(212) 655-3513 | [abn@msf-law.com](mailto:abn@msf-law.com)



**Gregg M. Kligman**  
Counsel | Employment  
(646) 273-8209 | [gmk@msf-law.com](mailto:gmk@msf-law.com)



**Cassidy Mara**  
Associate | Employment  
(646) 273-8204 | [cm@msf-law.com](mailto:cm@msf-law.com)



**Samantha Frenchman**  
Associate | Employment  
(212) 655-3580 | [slf@msf-law.com](mailto:slf@msf-law.com)

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