

Testing Dental Employees for Antibodies and Antigens

Can an employer require employees to undergo antibody testing for COVID-19? What about antigen testing?

With respect to antibody testing, the short answer is no. According to the most recent guide from the US Equal Opportunity Commission (“EEOC”), an antibody test at this time does not meet the Title I of Americans with Disabilities Act’s (“AwDA”) “job related and consistent with business necessity” standard for medical examinations or inquiries for current employees. Therefore, requiring antibody testing before allowing employees to re-enter the workplace is not allowed under the AwDA.

However, a covered employer is permitted to administer a COVID-19 antigen test (viral test that is used to detect the presence of the COVID-19 virus). AwDA allows employers to take steps to determine if employees entering the workplace will pose a “direct threat” to the health of others, which includes the risk of infecting others with COVID-19. (See <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act> ; Section II-B outlines what constitutes a “direct threat”.)

Generally, AwDA covers dental practices and hospitals with 15 or more employees. However, state laws may be more stringent and impose obligations on employers with fewer employees. Given that laws relating to COVID-19 are still emerging, a dental practice would be prudent to be familiar with current federal and state laws and guidance from EEOC to ensure compliance.

- **Reference: U.S. Equal Employment Opportunity Commission, [What you should know about COVID-19 and the ADA, the Rehabilitation Act, and other EEO laws.](#)**

If I can't require my employee be tested for antibodies, how should I determine when it is safe for them to return to work?

For employees displaying symptoms, please follow the [current CDC recommendations](#).

- **Reference: Centers for Disease Control and Prevention, [“Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19 \(Interim Guidance\)”](#)**

When my employee comes back to work after a COVID-19 infection, is there anything I need to do?

Employees returning to work should practice source control at all times. A facemask or N95 respirator must be worn until all symptoms are completely resolved. (If the employee is providing patient care and a N95 mask is required, it should be worn during patient care and a facemask at other times).

After complete resolution of all symptoms, the employee can follow the office’s policy regarding source control during the pandemic.

If you have 10 or more employees, OSHA’s record keeping requirements state you must maintain a log of persons with work-related COVID-19 infections. For employers with fewer than 10 employees, you must report work-related COVID-19 illnesses that result in a fatality or an employee’s in-patient hospitalization.

- **References: Centers for Disease Control and Prevention, [“Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19 \(Interim Guidance\)”](#) and the**
- **U.S. Department of Labor, Occupational Safety and Health Administration’s [“Enforcement Memos Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 \(COVID-19\)”](#)**

Disclaimer. These materials are intended to provide helpful information to dentists and dental team members. They are in no way a substitute for actual professional advice based upon your unique facts and circumstances. ***This content is not intended or offered, nor should it be taken, as legal or other professional advice.*** You should always consult with your own professional advisors (e.g. attorney, accountant, insurance carrier). To the extent ADA has included links to any third party web site(s), ADA intends no endorsement of their content and implies no affiliation with the organizations that provide their content. Further, ADA makes no representations or warranties about the information provided on those sites.