

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 (“ADA”) “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](#).** (Updated on Sep. 8, 2020)

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, the CDC recommendations allow for a symptom-based or time based strategy instead of a test based strategy. Health care workers who are symptomatic with suspected or confirmed COVID-19 should be excluded from work until at least 3 days have passed since recovery AND at least 10 days have passed since symptoms first appeared. Recovery is defined as resolution of fever without using fever reducing medications and improvement in respiratory symptoms.

Employees with a positive laboratory test for COVID-19 and no symptoms should not work for 10 days since the date of the first positive COVID-19 test. Should symptoms present during this period of time, symptoms have to resolve for at least 3 days and the 10 day work exclusion period begins following the date the symptoms presented.

Local infectious disease experts, as well as state and local health authorities, may be able to provide advice and guidance concerning employees with higher COVID-19 risk factors.

- **Reference: Centers for Disease Control and Prevention, [“Criteria for Return to Work for Healthcare Personnel with Suspected or Confirmed COVID-19 \(Interim Guidance\)”](#)** (page last updated Aug. 10, 2020)

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 \(Interim Guidance\)”](#)** (page last updated Aug. 10, 2020) 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 \(COVID-19\)”](#)** (page last updated Aug. 10, 2020)

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