



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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EEOC ALLOWS EMPLOYERS TO TEST FOR COVID-19

On April 23, 2020, the United States Equal Employment Opportunity Commission (“EEOC”) issued guidance stating that employers have a right to test employees for COVID-19 before they enter a work site without violating the Americans with Disabilities Act (“ADA”).

The EEOC stated that any medical test that businesses require workers to take must be “job related and consistent with business necessity” to comply with the ADA. The EEOC reasoned that screening for COVID-19 complies with the ADA because carriers “pose a direct threat to the health of others.”

The EEOC guidance states that “an employer may choose to administer COVID-19 testing to employees before they enter the workplace to determine if they have the virus.” However, the employers have to ensure that the tests are “accurate and reliable.”

The EEOC’s guidance is silent as to whether COVID-19 antibody tests are in compliance with the ADA. This is a link to the [EEOC’s guidance](#).

CORRECTION UNIONS SUE NYC FOR LACK OF COVID-19 TESTING AND LONG SHIFTS

The Correction Officers’ Benevolent Association, the Correction Captains’ Association and Assistant Deputy Wardens/Deputy Wardens Associations, the unions that represent 10,000 officers, captains and wardens filed a lawsuit against New York City arguing that new jail policy puts their health and safety in danger. The new policy requires officers work 24-hour shifts and return to work from sick leave without a negative COVID-19 test.

Correction Officers’ Benevolent Association (“COBA”) President Elias Hesamuddin said that the new policy jeopardizes COBA members’ “bodily integrity” in violation of the New York State Constitution’s due process clause and common law doctrine. Husamudeen also said “our members’ health, safety, and legal rights must be protected and that’s precisely what we are asking the court to do in this action.”

COBA recently filed a lawsuit against the New York City for failing to provide Corrections workers with personal protection equipment and sanitizing facilities. A state judge ordered the City to provide Correction workers with masks, sanitize the facilities and examine officers for signs of COVID-19 before their shift.

HOUSE PASSES COVID-19 ECONOMIC RELIEF BILL, SBA ISSUES NEW PPP GUIDANCE

The House of Representatives passed H.R. 266, the Paycheck Protection Program and Health Care Enhancement Act. The Senate passed H.R. 266 by unanimous consent on April 21, 2020. President Donald Trump is expected to sign the bill today.

H.R. 266 replenishes the Paycheck Protection Program (“PPP”) by adding an additional \$321 billion to the PPP. The bill also adds \$50 billion for the Small Business Administration’s (“SBA”) Disaster Loan Program, \$10 billion for the SBA Emergency Economic Injury Disaster Loan and \$100 billion for the Department of Health and Human Services for hospitals and COVID-19 testing. H.R. 266 did not include any funding to provide aid to state and local governments as Governor Andrew Cuomo and the National Governors Association have asked for. This is a copy of [H.R. 266](#).

The SBA in consultation with the Department of Treasury issued new guidance for the PPP. This is a link to the [guidance](#).

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