

COVID-19 Recent EEOC Guidance

Prepared for Sykes & Co.
by
Brown & Fortunato, P.C.

April 28, 2020



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A LAW FIRM

Sykes & Co. is committed to providing important information to its pharmacy clients as they face the COVID-19 pandemic. One of the steps that Sykes & Co. has taken is to team up with the Health Care Group of Brown & Fortunato (“B&F”), a law firm that specializes in representing pharmacies. B&F has prepared this whitepaper for Sykes & Co. to share with its pharmacy clients. On April 23, 2020, the EEOC gave employers a green light to test employees for COVID-19—but only for active infections.

Recent EEOC Guidance

On April 23, 2020, the EEOC addressed one of the open issues that many employers have been asking: “Can I require employees to have a negative COVID-19 test in order to return to work?” The EEOC addressed this question in the affirmative but with the following caveats:

- The requirement for testing must be “job related and consistent with business necessity.”
- The employers will be responsible for ensuring that the tests administered are accurate and reliable.
- Employees should still observe all infection control practices since the COVID-19 test only provides results for an employee at a given moment in time—an employee can acquire the virus at any time.
- In earlier guidance, the EEOC noted that employers can take an employee’s temperature but that the medical data must be kept confidential.
- The EEOC did not address whether employers can administer COVID-19 antibody tests to ascertain whether the employee has been infected by the virus and recovered from it.

Discretion is advised. Pharmacies should maintain documentation of decisions and the reasons for such decisions.

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