



MANAGING THE PANDEMIC

COVID-19

WHAT YOU
NEED TO KNOW



- 4 UNDERSTANDING COVID TESTS
- 6 WORKPLACE COVID TESTING & THE LAW
- 8 RETURNING EMPLOYEES TO WORK

COVID-19

What you need to know

First identified in December 2019 in Wuhan, Hubei, China, coronavirus disease, commonly known as COVID-19, is an upper respiratory infection caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). By January 30th, 2020, the World Health Organization (WHO) declared the outbreak a public health emergency of international concern and on March 11th it was declared a pandemic.¹

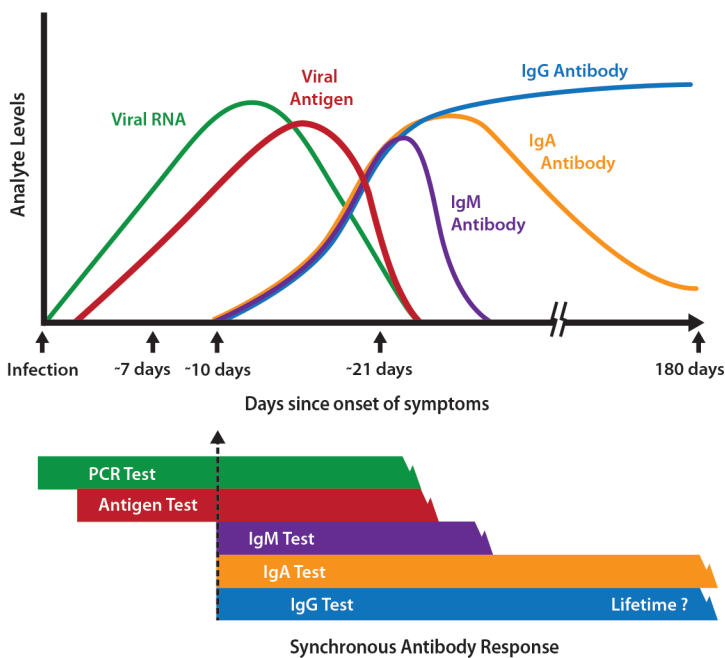
What is the difference between viral and antibody tests?

Viral test²

- Indicates if you are currently infected.
- Accomplished through a polymerase chain reaction (PCR) or antigen test.
- To be used if you are currently experiencing symptoms.

Antibody test³

- Indicates if you have been previously infected.
- Antibodies are developed as a human response to infection and every person develops antibodies at a different rate.
- To be used if you have previously experienced symptoms OR believe you were exposed to COVID-19.



Biomarkers and testing methods for COVID-19⁴

This graph depicts analytes for the detection of COVID-19 infection or exposure. Viral RNA and antigen appear first showing active virus/current infection. Antibodies appear later showing past exposure or infection.

Type	Test description	Test locations	Result value	Sample types
Viral	PCR / NAAT test Detects nucleic acid or part of the viral genome	Laboratory Point-of-care	Infected vs. not infected Can lead to treatment and care	Nasopharyngeal swab (NP) Nasal swab Oropharyngeal swab (OP) Saliva / oral fluid
Viral	Antigen test Detects an “outer core” protein	Laboratory Point-of-care	Infected vs. not infected Can lead to treatment and care	Nasopharyngeal swab (NP) Nasal swab Oropharyngeal swab (OP) Saliva / oral fluid*
Antibody	Antibody test Detects antibodies, also known as immunoglobulins (e.g., IgM, IgG) 1-3 weeks after infection	Laboratory Point-of-care	Indicates immune response to past infection (by indicating the presence of IgM and / or IgG)	Whole blood Serum Oral fluid*

For more information on COVID-19 test interpretation:

CDC Guidance on Interpreting COVID-19 Test Results: <https://www.whitehouse.gov/wp-content/uploads/2020/05/Testing-Guidance.pdf>

Why use oral fluid as testing sample?

- Specimen is easy to collect.
- Does not require close contact with people and minimal use of personal protective equipment (PPE).
- No biohazard waste and no need for Sharps™ containers.
- Proven to be an accurate specimen type for COVID-19 testing.^{5,6}
- Used for antibody detection for decades.
- Easy-to-train collection techniques, allowing for use in unsupervised settings (pending FDA approval).

Signs and Symptoms

Symptoms of COVID-19 appear within 2-14 days after exposure. The most common symptoms are listed as cough and/or shortness of breath, or at least two of the following: fever, chills, repeated shaking with chills, muscle pain, headache, sore throat, new loss of taste or smell.⁷ **COVID-19 can mimic other respiratory syndromes.**

References

- 1 <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>
- 2 <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html>
- 3 <https://institute.global/tony-blair/path-mass-testing> (p 24)
- 4 Long, et al., Antibody responses to SARS-CoV-2 in patients with COVID-19, <https://www.nature.com/articles/s41591-020-0897-1>
- 5 Randad, et al., COVID-19 serology at population scale: SARS-CoV-2-specific antibody responses in saliva, <https://doi.org/10.1101/2020.05.24.20112300>
- 6 Wyllie, et al., Saliva is more sensitive for SARS-CoV-2 detection in COVID-19 patients than nasopharyngeal swabs, <https://doi.org/10.1101/2020.04.16.20067835>
- 7 <https://thenativeantigencompany.com/why-we-need-antigen-and-antibody-tests-for-covid-19/>

*Oral fluid based COVID tests are currently in development.



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UNDERSTANDING COVID-19 TESTS¹



It can be overwhelming to understand the different types of COVID-19 tests and how to interpret their results. This chart offers a snapshot of the different types of COVID-19 tests, analysis options and how to interpret results.

TEST TYPE	ANALYSIS OPTIONS	RESULT		INTERPRETATION	RECOMMENDATION
VIRAL (Current infection)	Point-of-care* or lab-based ⁺	Positive	☹️	Donor likely has COVID-19 and is contagious.	Self-quarantine and follow the CDC's guidance.
		Negative	😊	Donor likely does not currently have COVID-19.	If donor has symptoms, monitor symptoms and seek medical advice.
ANTIBODY (Past infection)	Lab-based ⁺	Positive	😐	Donor has likely HAD COVID-19.	Donor has antibodies but immunity has not yet been confirmed by doctors. Donor should continue taking steps to protect themselves and others.
		Negative	😐	Donor has not likely had COVID-19 or did not develop antibodies to COVID-19.	Donor could still get COVID-19. Take steps to protect themselves and others.
BOTH (Antibody and viral testing, current and past infection)	Lab-based ⁺	Viral AND antibody positive	☹️	Donor most likely has COVID-19 and is contagious.	Self-quarantine and follow the CDC's guidance.
		Viral positive, antibody negative	☹️		
		Viral negative, antibody positive	😐	Donor likely HAD COVID-19 but has recovered.	Donor may not be subject to re-infection; however, should continue taking steps to protect themselves and others.
		Viral AND antibody negative	😊	Donor likely has never had COVID-19.	Donor could still get COVID-19. Take steps to protect themselves and others.

* Point-of-care test (POCT) or instant test results are typically available at the testing site within an hour of performance of the test.
⁺ Lab-based tests must be sent to a laboratory for analysis. Once the lab receives the test, analysis typically takes 1–2 days.

1. This chart is based on the CDC chart titled "Guidance On Interpreting COVID-19 Test Results", which can be found at the following link: <https://www.whitehouse.gov/wp-content/uploads/2020/05/Testing-Guidance.pdf>.

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WORKPLACE COVID-19 TESTING AND THE LAW

BY YVETTE FARNSWORTH BAKER, ESQ.

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If 2020 could be summed up in one word, it would be: unprecedented.

Employers have navigated a whole new world this year and have continually adapted to changing tides. One unprecedented issue that is suddenly at the forefront of employers' minds is the testing of employees for COVID-19. What laws apply to employers who want to test employees for COVID-19? What can employers do about employees who refuse to be tested or employees who test positive?

Medical testing of employees involves the intersection of disability law, discrimination law and employment law. These laws may have both federal and state law components. Employers need to educate themselves on several fronts to ensure that their workplace policies and COVID-19 testing practices are complying with a multitude of federal and state laws.

Medical testing of employees involves the intersection of disability law, discrimination law and employment law.

Disability Law and COVID-19 Testing

The Americans with Disabilities Act (ADA) contains several provisions that apply to workplace COVID-19 testing. The Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces federal workplace discrimination laws, including the ADA. The EEOC has provided some guidance to employers about COVID-19 and the workplace.¹

The ADA permits employers to test employees for COVID-19 so long as this disease remains a direct threat to the health and safety of the public. Medical tests of employees and applicants are not permitted by the ADA across the board, but one exception is if the employee could pose a direct threat in the workplace. As circumstances change, COVID-19 may not always be considered a direct threat. But for the near future, workplace COVID-19 testing will be allowed under the ADA. Under this same logic, however, employees teleworking cannot be required to

submit to testing because they do not pose a threat to the workplace. The ADA requires that medical information collected by an employer be kept confidential. Medical information must be kept in a file separate from other personnel records and must be accessed only by authorized personnel. Employers must understand that they are not authorized to disclose the results of an employee's COVID-19 test to other employees without their consent, even if the test is positive. Medical information about a positive test can be disclosed to health authorities, but not to other employees in the workplace. Employers must rely on health authorities or the voluntary consent of the employee who tested positive, to disclose that a particular employee tested positive for COVID-19.

Employers must be cautious about inquiring about employee's risk factors for COVID-19. Many risk factors (especially underlying conditions) can be considered disabilities, and inquiring about employee's disability/ies triggers ADA protections. A better practice is to inquire about symptoms rather than risk factors, and to discuss risk factors only if the information is offered voluntarily by the employee.

Additionally, employers should be cautious if considering terminating employment based on a positive COVID-19 test. The EEOC has not yet determined that COVID-19 patients are or are not considered persons with disabilities for purposes of the ADA. An employer should act carefully and consider whether terminating employment for a positive COVID-19 test could be considered disability discrimination. As well, employers may be required to offer medical leave to employees who test positive.

Discrimination Law

Employers need to avoid policies or practices that target protected demographics such as age, pregnancy or nationality. Anti-discrimination laws prohibit employers from instituting different requirements on employees based on the employee's age or based on an employee's pregnancy. Employers cannot decide to test only employees who are over 65 or who are pregnant, and likewise, employers cannot craft different policies for employees who are over a certain age or who are pregnant. Additionally, employers cannot engage in any kind of discrimination based on an employee's national origin and must address any harassment or discrimination that takes place in the workplace based on an employee's national origin.

Employment Law

When an employee tests positive for COVID-19, an employer's next steps must adhere to state and federal law requirements about medical leave. Some states and municipalities require employers of a certain size to grant employees medical leave, and some such regulations require medical leave to be paid. Some state governments have spelled out specifically that employees who test positive for COVID-19 must be granted medical leave pursuant to state law. New York, for example, has specified:

"If you send employees home on a precautionary quarantine, they are entitled to job protection, COVID-19 sick leave and/or paid benefits through your Paid Family Leave, and disability benefits insurance provided for the duration of their quarantine, provided they follow the process noted above."²

In addition to state medical leave requirements, the federal government also has applicable laws. Congress passed the Families First Coronavirus Response Act (FFCRA) in March 2020. FFCRA requires certain employers to provide employees with paid sick leave for COVID-19. FFCRA is set to expire in December 2020, but it will likely be extended further if COVID-19 remains a threat. Employers should be cognizant of their responsibilities to provide medical leave rather than terminating a COVID-positive employee, especially while FFCRA is in force. Also pertaining to employment law is the question of whether employers must pay for COVID-19 testing if they require it of employees. Some state laws obligate employers to pay for employees' medical tests if the employer makes the test a requirement of employment.

Testing employees for COVID-19 is legal, and even advisable.

An Employer's Rights

So, what can an employer do to maintain a safe and effective workplace without violating this myriad of regulations? The EEOC has confirmed that an employer can test employees who are reporting to the workplace for COVID-19, and can perform temperature checks of employees who are reporting to the workplace, so long as the tests and checks are carried out in a non-discriminatory manner. An employer can terminate an employee who refuses to submit to testing unless the employee is working from home. An employer can send employees home who have tested positive and can bar them from the workplace until they are no longer infected, but must offer medical leave if they are subject to the FFCRA or state medical leave laws.

As employers make plans for the second half of 2020, they should know that testing employees for COVID-19 is legal, and even advisable. When policies regarding testing are crafted correctly, with an eye to various federal and state laws that govern, employers can feel confident that they are steering their workplace with a steady hand during turbulent times.

1. "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws." U.S. Equal Employment Opportunity Commission. May 7, 2020. <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>.

2. "New Paid Leave for COVID-19." The Official Website of New York State. May 21, 2020. <https://paidfamilyleave.ny.gov/COVID19>

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RETURNING EMPLOYEES TO WORK

BY BILL CURRENT

During a national crisis, substance abuse increases dramatically.

The COVID-19 pandemic is responsible for, perhaps, the greatest economic collapse of all time. Since March 1, 2020, thousands of businesses have been forced to close their doors, at least temporarily, causing literally millions of Americans to become unemployed. Now, months later, employers are anxious to reopen their businesses and those who lost jobs are eager to find employment and get back to work.

Studies show that during a national crisis, substance abuse increases dramatically.¹ Now is not the time to consider suspending a drug testing program; it's actually time to recommit to pre-employment and random testing, and consider alternative testing methods that make it possible to continue testing regardless of any obstacles that may arise.



Return-to-Work Drug Testing

The old saying goes: “An ounce of prevention is worth a pound of cure.” Maybe in drug testing terminology a more appropriate way to say this would be: “Drug testing done right helps employers avoid a whole lot of problems down the road.” Consider the following:

“A survey of business executives underscored the benefits of drug testing from a company’s perspective. For example, 77% of the respondents said that, since implementing drug testing, they were seeing a better caliber of job applicants. A ‘better public image’ was cited by 58%, while 56% said they were experiencing fewer workplace drug problems. Also noteworthy was that 54% had noticed an improvement in employee morale.”²

Pre-employment drug testing not only identifies would-be employees with drug problems before they get on the payroll, it also prevents some of them from even applying for the job.

“Almost 30 percent of workers who reported current illicit drug use, and only 5.9 percent of workers who reported no current illicit drug use, said that they would be less likely to work for an employer who tests for drugs at hiring.”³

Random testing has also proven to be a powerful deterrent to substance abusing job seekers applying for work with companies that employ this practice. The same report stated:

“Moreover... when asking about random drug testing, 40 percent for those reporting current illicit drug use said they were less likely to work for a company that conducted random testing.”⁴

For employers that are federally regulated, it is important to remember that it is essential to meet required random rates, regardless of the current pandemic. Although in many industries work has slowed, employers should continue testing throughout the year rather than backloading all tests in the fourth quarter. Consider the following chart, detailing the potential testing needs should you choose to delay random testing.

A typical oral fluid collection is employee-driven—significantly reducing the possibility of any exposure to COVID-19.

Understanding the Results of Delaying Random Testing

Random Drug Testing Rate: 50%	Small Company (Approximately 30 Employees)	Medium Company (Approximately 600 Employees)	Large Company (Approximately 6,000 Employees)
YEARLY TESTING TOTAL	15	300	3,000
AVERAGE PER QUARTER	4	75	750
NO TESTS 2ND QUARTER	5 each quarter	100 each quarter	1,000 each quarter
NO TESTS 2ND OR 3RD QUARTER	9 in 4th quarter	225 in 4th quarter*	2,250 in 4th quarter

* For a medium size company that chooses not to test in the second or third quarter of the year, that would equate to 225 tests that would need to be completed in the fourth quarter.

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Drug Testing in the COVID Era

During the COVID-19 pandemic some collection sites have shut, at least temporarily, while others have reduced their hours of operation causing employers to experience problems getting urine collections done. Additionally, there have been regular reports of employees and job applicants who have simply refused to visit off-site collection facilities for fear of being exposed to the coronavirus.

The inherent ease of a typical oral fluid collection makes it possible for a collection to take place virtually anywhere in a clean environment. Because there is no need to use a secured restroom or toilet stall, an oral fluid collection can take place in an office, outdoors at a remote construction site, or virtually anywhere else. Conversely, urine collections require the privacy of a bathroom stall, which creates the risk of exposure to the virus via unsanitized toilets, toilet handles, sinks, faucet handles, stall doors, door knobs, and any other surface typically touched by people who use a restroom.

Additionally, a typical oral fluid collection is employee-driven, meaning donors physically conduct the collection themselves without the collector ever touching the collection articles and containers. This significantly reduces the possibility of any exposure to the COVID-19 virus via a donor's saliva because the collector never comes in contact with the donor's sample. While professional technicians at offsite facilities may be used to collect oral fluid samples, it is optional and depends on the circumstances such as concerns about the cost of using such services or possible exposure to the coronavirus.

Generally, following the Centers for Disease Control and Prevention (CDC) guidelines and other common-sense practices can give everyone involved in the collection process an assurance of knowing that all precautions were taken to ensure the safeness and cleanliness of the collection area and the individuals involved. The CDC guidelines include, among other things, social distancing (maintaining at least six feet distance between people), the use of face masks or facial coverings, rubber gloves and, in the case of health care providers, a gown.⁵

There are two primary types of COVID-19 tests—viral or molecular tests and antibody tests.

COVID Testing – Returning to Work

The Equal Employment Opportunity Commission (EEOC), the federal agency that regulates the Americans with Disabilities Act (ADA), has determined that because COVID-19 is a “direct threat” under the ADA, the EEOC will permit employers to conduct some types of COVID-19 tests, check employees’ temperature and send home workers who have tested positive for the coronavirus or who are exhibiting COVID-19 symptoms.

Regarding pre-employment COVID testing, the EEOC has stated:

“An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule allowing post-offer (but not pre-offer) medical inquiries and exams applies to all applicants, whether or not the applicant has a disability.”⁶

There are two primary types of COVID-19 tests—viral or molecular tests and antibody tests. A viral or molecular test reveals if a person has a live infection. An antibody test reveals if a person had a previous infection. Most testing methods require either a blood, nasal or oral fluid sample, and the sample collection should be conducted or be supervised by a trained professional technician.

Guidance for workplace COVID testing seems to be changing regularly. Employers should routinely check the EEOC and CDC websites for specific regulatory updates (what’s permitted and not permitted) and defer to their respective state governments for workplace COVID testing guidance.





An individual who has COVID-19 or symptoms associated with it should NOT be in the workplace.

Employee Health Protocols

All 50 states have issued “reopen” guidelines that provide specific advice and, in some cases, requirements for employers to follow as workplaces open again. These guidelines include what should be done to ensure workers are healthy and free of a COVID-19 infection, and what to do when a worker has COVID-19 symptoms and/or tests positive, and later wants to return to work.

According to the CDC, employees who have symptoms (e.g., fever, cough or shortness of breath) should notify their supervisor and stay home.⁶ Additionally, such individuals should not return to work until they meet the following conditions:

- At least three days (72 hours) have passed since recovery (resolution of fever without the use of fever-reducing medications);
- The individual has improvement in respiratory symptoms (e.g., cough, shortness of breath); and
- At least seven days have passed since symptoms first appeared.⁷ (Different states may have their own specific return-to-work criteria.)

Regarding returning workers providing a note from a doctor, the EEOC has stated:

“Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees.”⁸

The bottom line the CDC has stated: “According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.”⁹

Conclusion: What You Should Be Doing Now

No one can predict when the pandemic will be completely under control, but the day will surely come. In the meantime, there are important things employers can do to be prepared for the new “normal,” whatever it may look like. For instance:

- Review your state’s “reopen” guidelines. Every state has issued its own unique set of instructions to help employers prepare for a post-pandemic workplace. Study all applicable guidelines and ensure your workplace COVID testing policy and employee health protocols align with those state requirements.
- Review and update your drug testing policy, including applicable state laws, marijuana laws, and workers’ and unemployment compensation laws.
- Get caught up on all Department of Transportation (DOT) required supervisor training or refresher training utilizing online, easy-to-use courses. Also, provide online DOT-required education for all covered employees.
- Provide non-DOT supervisor training and employee education, as well.
- Enhance and expand your drug testing program by adding alternative testing methods to your existing urine drug testing program that allow self-collection and social distancing. This includes lab-based oral fluid testing and saliva alcohol screening.
- Consider alternative collection methods such as on-site and telehealth video-observed sample collections.

Continues on next page...

1. Scientists Find a Connection Between 9/11 and Substance Abuse. Scholastic. 2007. <http://headsup.scholastic.com/students/scientists-find-a-connection-between-911-and-substance-abuse>
2. Current, WF. In Favor of a Drug-Free Workplace: Why Drug Testing? WFC & Associates. Coral Springs, FL; 2008.
3. An Analysis of Worker Drug Use and Workplace Policies and Program. P. 41. July 1997. <https://books.google.com/books?hl=en&lr=&id=73milg2lzlWC&oi=fnd&pg=PR3&dq=samhsa+workplace+issues+1997&ots=I2NIZFwyjr&sig=VqApSMrtYcxkWtno689VjuU0hJE#v=onepage&q=samhsa%20workplace%20issues%201997&f=false>
4. Coronavirus Disease 2019 (COVID-19) Guidance Documents. <https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance-list.html?Sort=Date%3A%3Adesc>
5. EEOC. <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>
6. Centers for Disease Control and Prevention (CDC). <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
7. How to discontinue home isolation. CDC. <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/care-for-someone.html>
8. Pandemic Preparedness in the Workplace and the Americans with Disabilities Act. Equal Employment Opportunities Commission (EEOC). March 21, 2020. <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>
9. EEOC. <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>.

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