COVID-19 Testing and Screening Guidance for Employers

Introduction

Many organizations are preparing plans to restart business operations after either operating in a diminished capacity or ceasing operations during COVID-19 stay at home orders. Employers are focused on how they can best protect their workers, families, and the community, and many are considering what role testing and screening can play. This testing and screening overview will help to answer many common questions. This is a rapidly changing field, and there are likely to be substantial advances in testing and screening in coming months.

Employee Testing vs Employee Screening

Companies are considering whether and when to screen or test those who enter the workplace. There are currently no laws requiring testing, although there are some states that require screening of those who enter the workplace or a place of business. There is no screening or testing strategy that will guarantee that no one who is contagious will enter the workplace. The chance of workplace spread of the coronavirus which causes COVID-19 is minimized by having fewer workers at the workplace, by opening the workplace at a point where the level of transmission in the local community is low, and by changing workplace design, policy, and processes to allow physical/ social distancing.

Employee Testing

The Occupational Safety and Health Administration (OSHA) requires employers provide employees with a safe work environment free from recognized hazards under the General Duty Clause (Section 5 of the OSH Act–5(a)(1)). Some employers are considering or are implementing testing a regimen designed to identify COVID-19 cases.

There are currently tests available to diagnose current COVID-19 infection and to assess whether a person had COVID-19 in the past. Tests for acute infection could identify those who should be excluded from the workplace. Tests for past COVID infection do not necessarily show immunity from future infection, and so cannot guide employer or

employee decision-making. All tests have false negatives and false positives, and we will review why this is important for employers as they consider and design a testing program.

Tests must be ordered by a licensed health professional, and companies must have clear policies and procedures about how they will address both positive and negative test results.

Two kinds of tests are available for COVID-19: tests for current infections and tests for previous infections.

Note that the Food and Drug Administration (FDA) has offered emergency use authorizations for some tests, but has not as of mid-May formally approved any COVID-19 test. The FDA initially allowed test vendors to market antibody tests with no oversight, although it has begun to require makers to provide information on test accuracy and has required some manufacturers to stop selling tests in the U.S.

Public health authorities can require that employers provide information about COVID-19 diagnoses among employees. Employers cannot, however, discriminate against those with positive tests or share information with other employees about a positive test without the employee’s express permission.