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CLIENT ALERT: EEOC Issues New Guidance on Antibody Testing
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On June 17, the EEOC issued new guidance on an employer's ability to require antibody test results as part of return to work protocol. The EEOC explicitly states, "requiring antibody testing before allowing employees to re-enter the workplace is not allowed under the ADA." More specifically, the EEOC states that antibody test results do not meet the ADA's standard for permissible medical examinations or inquiries of current employees. The guidance incorporates recent [CDC guidelines](#) advising that antibody test results "should not be used to make decisions about returning persons to the workplace."

In this latest guidance, the EEOC draws a sharp distinction between antibody tests and viral tests. Viral tests, which are used to determine if someone has an active case of COVID-19, remain permissible under the ADA. The EEOC encourages employers to follow FDA and CDC guidance to ensure their viral tests are accurate and reliable.

This guidance is an addition to the EEOC's [Q&A](#) on COVID-19 and the ADA. The EEOC states they will continue to monitor CDC guidance and may update their advice accordingly. For more information, please contact Peter Lowe at plowe@brannlaw.com or 207-754-5672, or Dan Stockford at dstockford@brannlaw.com or 207-607-3290.