



# Recent Important COVID-19 Related Guidance Updates for Employers

## **OSHA PUBLISHES FAQ ON CLOTH FACE COVERINGS IN THE WORKPLACE**

On June 10, 2020, the U.S. Occupational Safety & Health Administration posted a [Frequently Asked Questions](#) concerning the use of cloth face coverings in the workplace. Importantly, the FAQ clarifies that if surgical or cloth masks are being used only as source control—not to protect workers against splashes and sprays (i.e., droplets) containing potentially infectious materials—OSHA’s PPE standards do not require employers to provide them to workers. However, the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act, requires each employer to furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm, which may include the provision of cloth masks as a control measure where appropriate.

## **EEOC UPDATES ITS PANDEMIC GUIDANCE TO CLARIFY EMPLOYERS MAY NOT REQUIRE ANTIBODY TESTS**

On June 17, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) posted an updated and expanded [technical assistance publication](#) addressing questions arising under the Federal Equal Employment Opportunity Laws related to the COVID-19 pandemic. The

latest question added to the publication, “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws” explains that in light of current CDC Interim Guidelines, the ADA at this time does not allow employers to require antibody testing before allowing employees to re-enter the workplace. This information is provided in Q&A A.7. It is important to remember that an antibody test is different from a test to determine if someone has an active case of COVID-19 (i.e., a viral test). The EEOC has already stated that COVID-19 viral tests may be permissible under the ADA.

## **DOL TOUTS ENFORCEMENT ACTIONS AGAINST EMPLOYERS WHO VIOLATE PAID LEAVE LAWS**

As a reminder, the DOL has continued to step up enforcement efforts for employers that do not comply with the emergency paid leave provisions provided for in the Families First Coronavirus Response Act (FFCRA). In a recent press release, the DOL highlighted two such enforcement actions, including recovery of back pay for an employee after a Georgia, custom machine and fabrication company wrongly denied emergency paid sick leave and reinstatement and back pay after an employee of a Maryland electrical contractor was denied paid leave to care for a child when the child’s school closed and instead was terminated in violation of the FFCRA.

## **ODJFS PUBLISHES STEP-BY-STEP GUIDE ON UNEMPLOYMENT APPLICATIONS, ASKS EMPLOYERS TO DISTRIBUTE TO LAID OFF EMPLOYEES**

Lastly, the Ohio Department of Job and Family Services has published a Quick Tips and Step by Step Guide for employers to provide to employees who are being laid off because of the COVID-19 pandemic in order to expedite the unemployment claim process.

*As always, please contact the attorneys at Wegman Hessler if you have any questions about your rights and obligations as an employer during the pandemic. #WeAreAllInThisTogether*