



# Return to the Workplace

## COVID-19 Testing and Attestation Playbook

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# **COVID-19: Law and Compliance**

# COVID-19 and the EEOC

U.S. Equal Employment Opportunity Commission (EEOC)

1. **In general, the Americans with Disabilities Act (ADA) prohibits an employer from making disability-related inquiries and requiring medical examination of employees.**
2. **One caveat to this ruling is ‘direct threat’:** A ‘direct threat’ is *“a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.”*
3. **Direct threat conditions are determined by the Centers for Disease Control (CDC) and public health officials.** Based on guidance from the CDC and public health authorities as of March 2020, the **COVID-19 pandemic meets the direct threat standard.**
4. Based on direct threat conditions, **employers are allowed to screen and/or test employees for COVID-19 as long as any mandatory medical tests of an employee are “job related and consistent with business necessity”,** and that *“an individual with the virus will pose a direct threat to the health of others.”*

# COVID-19 and MMA Compliance COE

MMA Compliance Center of Excellence (COE)

## Interpretation from EEOC



**Guidance from the EEOC support the following:** Many employers cannot require all of their employees to submit to COVID-19 testing because one or more employees likely fall into some sort of “protected class” and requiring testing will violate one or more of their legal rights.

An employer can require testing before employees enter the workplace, and send home employees who test positive or who decline to test. This shifts the conversation to whether the employee can work remotely from home or should receive paid/unpaid leave.



















**Regarding HIPAA as it relates to temperature checks and monitoring:** This is not health plan information, so HIPAA does not apply. However, the data is employment information and should be kept separate from employee records and handled in a private and confidential manner. Having a confidentiality notice would be prudent.

# Employer Strategies

# COVID-19 Strategies

## Strategy Options and Information

Strategy	Implementation Scale (Easy to Difficult)	Effectiveness Score (low 0 – high 5)	Cost
 Social Distancing		5	\$
 Cleaning/Disinfecting		4	\$\$
 Masks		3 - 4	\$
 Employee Communications		4	\$
 Enhanced Paid Sick Leave Policies		4	\$\$\$\$
 Screening Questionnaires		2	\$\$
 Temperature Screening		2	\$\$
 Antibody Screening		2	\$\$\$\$
 Virus Screening (i.e. Diagnostic)		3	\$\$\$\$

# Employee Attestation



# COVID-19 Attestation

## MMA Employer Attestation Playbook

### Purpose



**Employers want to feel confident in providing a safe work environment for employees to return to work.** Many are facing a business critical time, dependent on employee's returning to the workplace. For many, this is a business necessity.

**Employees want to feel safe in returning to work and in returning to some form of normality.** Many need to return to work for their financial livelihood, as well as their mental health. For many, this is a wellbeing necessity.

### Reason



**Limitations exist with current tests, several are unreliable and many require follow-up testing due to unknowns.** Temperature screenings identify employees with current symptoms or infection, and misses the asymptomatic. Molecular (PCR) tests are identifying individuals at a specific point in time, so future exposure and/or antibody levels are unknown. Antibody tests are not all FDA approved, and there are unknowns regarding immunity.

**Costs for mass employer testing is and can become very expensive, particularly with follow-up test needs** (temperature screenings and molecular/PCR tests). Antibody testing without a physician order is not covered by insurance carriers, and thus the financial responsibility of the employee or employer.

# COVID-19 Attestation Playbook

## MMA Employer Attestation Playbook

**A COVID-19 Employee Self-Attestation can be used as a tool to have employees self-monitor and affirm their health and readiness to return to the workplace.**

MMA's Employer Attestation Playbook **includes simple, easy to read information for employees to gauge their health based on CDC guidelines**, along with editable form content for employee self-screening and attestation regarding COVID-19 status.

Per EEOC guidelines and MMA's Compliance Center of Excellence, **COVID-19 employee screening forms are not considered HIPAA, but should be kept confidential and private**. It is also recommended to send a privacy notice to employees.

# COVID-19 Attestation

## Employee Self-Attestation

### MMA Employee Self-Attestation content is outlined for delivery with 3 scenarios:



**Readiness to Return Attestation:** For employees who have either recently tested negative and/or are asymptomatic. Includes an option for high-risk individuals to self-identify, based on employer return policy or stance.



**Unable to Return Attestation:** For employees who have either recently tested positive and/or are exhibiting symptoms that would make them unable and unsafe to return. Includes an option for high-risk individuals to self-identify, based on employer return policy or stance.



**Readiness Following Illness Attestation:** For employees who at some point tested positive, but are no longer under quarantine orders, and are no longer sick or contagious (per CDC guidelines).

**Specific documents include:** Fact sheet, symptom information, temperature check chart, screening forms, high risk information, protect yourself information, stop the germs information, face covering use and directions, manage your symptoms information, employee screening forms and condition status specific attestation forms.

# Guide to Attestation Process



## STEP 1

**Employer notifies employees of RTW.**

Employer to send employees:

1. [CDC COVID-19 fact information](#).
2. [CDC symptom information](#).
3. [Temperature check chart](#) (optional).
4. [Employee screening form](#) and [temperature screening form](#) (optional).
5. [CDC high risk information](#) (optional).
- 6-7. Attestation [readiness to return form](#) or [unable to return form](#).
8. [Employer developed privacy notice](#) (optional).



## STEP 2

**Employee receives and reviews the COVID-19 information documents and responds with completed attestation form** (optional screening form can be remitted as well).

Employer receives attestation forms (and optional screening form), identifies those returning and those unable to return.

All forms must be kept secure and confidential.



## STEP 3

**A. Employer sends next steps to returning employees:**

1. [CDC protect yourself and others information](#).
2. [CDC stop the spread of germs](#).
- 3-4. [CDC face covering use and directions information](#).

**B. Employer sends next steps to those not returning:**

1. [CDC 10 things to manage](#).
2. [Return to work information](#).
3. [Employee screening form](#) and [temperature screening form](#) (optional).
4. Follow-up/return from illness attestation form.

# **COVID-19: Employer Workplace and Testing**

# COVID-19 and the Workplace

## The Workplace



### Social Distancing

**We know it works**, so we need to make it a priority in the workplace.

We know that the virus spreads when people are closer together, and that **the only truly effective method of slowing the spread is to keep our distance** – 6 feet or more.

**Might take some creativity**, like creating unique and/or rotating shifts, forming smaller cohorts to help limit and track exposure.



### Cleaning

**Cleaning frequently, consistently and diligently** may help slow the spread of SARS-CoV-2.

While it is certainly **feasible that surface-to-person transmission is occurring**, such transmission is not thought to be the main way this virus spreads according to the CDC.

**Current evidence does suggest that SARS-CoV-2 may remain viable for hours to days on surfaces made from a variety of materials.**

As additional cleaning efforts will be required, this may be a significant source of cost.



### Masks

**May help limit spread** in the workplace, especially where employees may have a difficult time maintaining social distancing.

This recommendation **relates to cloth masks**, not surgical masks or N-95 respirators which must be reserved for healthcare workers.

Masks are not perfect to contain SARS-CoV-2, and **should not be a substitute for social distancing efforts.**

Sources:  
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>  
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html>  
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>

# COVID-19 and Employer Testing

## Employer Testing



### Viral and Antibody Testing

Serologic antibody testing (blood test) can tell us who had the virus and is immune.

Viral detection testing (swabs) looks to identify presence of the virus.

Approved tests can be Clinical Laboratory Improvement Amendments (CLIA) waived point of care tests or approved for CLIA certified labs only.

#### Limited availability...for now.

Will we have enough tests, capacity and processes in place to test the volume of people we need to test?



### Screening Questionnaires

Screening with a questionnaire before employees enter the workplace is a practical step.

Relative value is unknown.

**Such screenings are considered medical information, therefore maintaining privacy is necessary.**

Common questions include asking whether the employee has symptoms and whether they've been exposed to someone with symptoms. It will be important to carefully draft the questions to avoid legal liability.



### Temperature Screening

While the EEOC has approved, there is little guidance from the CDC or OSHA.

#### Relative value is unknown.

Risk of asymptomatic spread is a concern.

Limits to accuracy and availability of thermometers.

There are regulatory implications – check the requirements.

Sources:

[https://www.eeoc.gov/eeoc/newsroom/wysk/wysk\\_ada\\_rehabilitaion\\_act\\_coronavirus.cfm](https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm)

<https://www.who.int/news-room/commentaries/detail/advice-on-the-use-of-point-of-care-immunodiagnostic-tests-for-covid-19>

# COVID-19 Tests

## Test Types

### PCR (polymerase chain reaction)

This kind of testing really got its lift from the HIV/AIDS epidemic of the late 80s and early 90s. **This testing looks at the genetic information on the virus, as it is an antigen test. Antigens tell us who is acutely (currently) infected with COVID-19.** This is the test that almost all of the 3.2 million tests performed are based on. Also known as molecular testing, the current and most common test is a nasopharyngeal (nasal) swab. Less-invasive saliva tests are in development.

### Antibody Test

These are not swabs, but actual blood tests. The FDA has just recently approved a few antibody tests for COVID-19, so they will become more commonplace in the weeks and months ahead. Antibodies tell us who HAS been infected as opposed to who currently is infected. **The importance of the antibody test is that it will eventually indicate who is immune and can return to work (so will likely first be deployed for healthcare workers, may even be mandatory at some point), and then eventually tell providers which of their patients would need a vaccine based on their immune status.** These are also known as serology tests, and are currently completed via venipuncture, with point-of-care (POC) fingerstick tests pending FDA authorization.



# COVID-19 Testing Market

## Testing Vendors

### Numerous vendors have flooded MMA with requests to market their testing for COVID-19. Why?

On the basis of the February 4, 2020, HHS Emergency Use Authorization determination, the Secretary of HHS then declared that circumstances exist justifying the authorization of the emergency use of in vitro diagnostics for detection and/or diagnosis of the novel coronavirus. **Many commercial and healthcare system/academic laboratories have notified the FDA that they have validated their own COVID-19 test and have started patient testing.** The laboratories listed here have agreed to be identified on the FDA's website:

<https://www.fda.gov/medical-devices/emergency-situations-medical-devices/faqs-diagnostic-testing-sars-cov-2#offeringtests>

MMA has a compilation of vendor's who provide COVID-19 testing, screenings and return to work programs.

Laboratory	Authorization Status
Baptist Hospital of Miami Clinical Lab	FDA Authorized
Boston Children's Hospital Infectious Diseases Diagnostics Laboratory	FDA Authorized
Integrity Laboratories	FDA Authorized
Ipsum Diagnostics LLC	FDA Authorized
Orig3n, Inc.	FDA Authorized
Quest Diagnostics Infectious Disease, Inc.	FDA Authorized
Specialty Diagnostics Inc	FDA Authorized
Stanford Health Care Clinical Laboratory	FDA Authorized
The Children's Hospital of Philadelphia	FDA Authorized
University of North Carolina Medical Center McLendon Clinical Laboratories	FDA Authorized
Viracor Eurofins Clinical Diagnostics	FDA Authorized
Avellino Lab USA, Inc.	FDA Authorized

# COVID-19 Considerations

## Testing Considerations

### Temperature Screenings

We are seeing several clients offer temperature screenings (temp checks). Questions remain regarding testing frequency (can get expensive), along with clinical considerations, such as afebrile (not-feverish) individuals who are positive but asymptomatic and already infected.

### Antigen Tests

Capture those currently infected. As above, cost can become a factor and an employer has to decide the frequency and cadence for re-testing to ease uncertainty within their workforce.

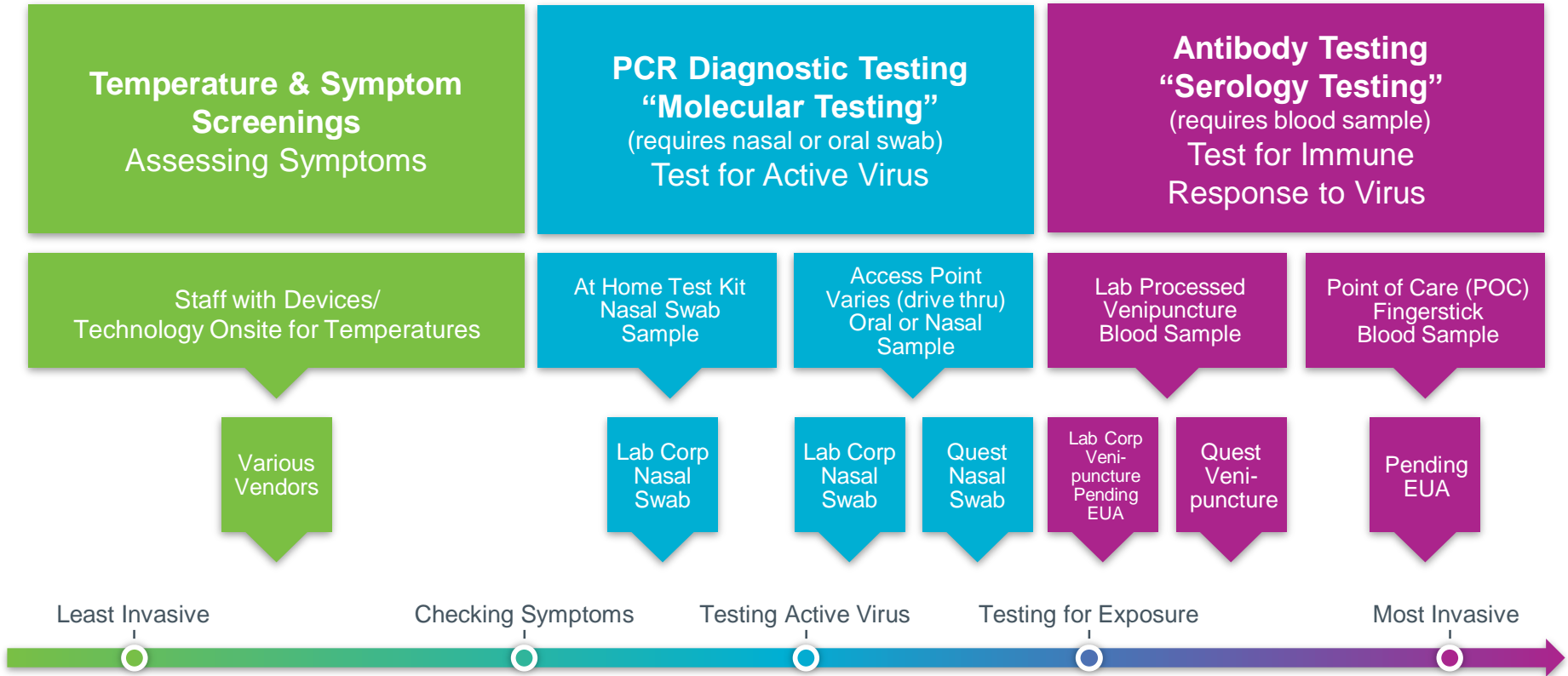
### Antibody Tests

In absence of a vaccine, antibody tests show prior infection and recovery, and assumed natural immunity. However, it is unknown how long immunity lasts.

### Claims and Carriers

Are currently stating that they are only covering physician ordered and FDA-authorized or approved tests. This means an employer wanting to test their employees would most likely be responsible for testing of employees as not all vendors are providing FDA supported tests and most physicians are ordering tests only for those displaying symptoms, those at-risk and front-line workers. Note: Most carriers are allowing employers to use wellness funds to cover the cost of screenings and tests.

# COVID-19 Test Types





# Questions and Discussion

# Mapping a Bright Future Workplace Steps for Recovery



1

## SUPPORT

**Offer guidance and resources** to your employees

2

## SURVIVE

**Help your business** manage expenses

3

## OPTIMIZE

**Adopt the best path** and navigate through changing market conditions

4

## THRIVE

**Execute on the strategies** to help your business excel now and in the future



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