



CDC Updates COVID-19 Testing Guidance For Employees And Students

Insights

10.22.20

The Centers for Disease Control and Prevention (CDC) recently released updated guidance on COVID-19 testing protocols for K-12 schools, making clear that the Equal Employment Opportunity Commission (EEOC) permits schools to implement required testing policies for their employees. However, the October 13 additions to the CDC's published guidance suggests limits on how testing policies should be applied to students. Although CDC guidance is developed with public and charter schools in mind, private schools may also find these developments helpful.

Employment Guidance

As it applies to employees, EEOC guidance under the Americans with Disabilities Act (ADA) requires that any mandatory medical test of employees (including COVID-19 testing) be "job related and consistent with business necessity." As long as we remain in a pandemic, testing will be appropriate. If COVID conditions ease substantially, the EEOC may only permit testing in certain geographic areas.

Schools may engage in initial and periodic COVID-19 testing as a part of their comprehensive strategies to slow the spread of COVID-19. When doing so, schools must ensure that the tests are considered accurate and reliable according to CDC and FDA recommendations and guidelines. The EEOC and CDC do not approve the use of antibody tests to make decisions about returning persons to the workplace, so employers may not require antibody testing of their employees. Additional information can be found on CDC's SARS-CoV-2 testing pages.

Guidance For Student Testing

As it applies to students, the most recent guidance from the CDC advises that testing should be done only on a voluntary – rather than mandatory – basis. Indeed, the CDC declares that "it is unethical and illegal to test someone who does not want to be tested, including students whose parents or guardians do not want them to be tested."

We do not disagree with this concept. We have stressed that a school should always receive parental consent if it believes that student testing is an important part of its overall health and safety COVID-19 strategy to prevent campus spread. Any parents who choose not to consent should have a distance learning alternative for their child.

For those schools in areas of the country already considering limiting the availability of optional distance learning, this issue should be part of analysis in determining in the necessity of continuing voluntary remote learning. Of course, all the other testing safeguards should be in place for student testing, such as ensuring that the type of testing is reliable, that the results are confidential, etc.

What Should Your School Do?

School leadership teams who may be considering implementing employee and/or student testing at school should consult with their Fisher Phillips lawyer to determine the scope of allowable protocols when imposing required testing, the type of test being considered, determinations of who will administer the tests, how tests will be paid for, and how results will be reported to ensure appropriate confidentiality. Some states are making free testing available to private and public schools. Be sure to discuss the strings attached to those programs with your school's legal counsel as well.

If you have questions about any of these procedures, including obtaining appropriate consent forms, please contact your Fisher Phillips attorney or any member of [our Education Practice Group](#).

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [our alert system](#) to get the most up-to-date information.

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Ten Stallings also contributed to the development of this legal alert.

Related People



Suzanne K. Bogdan

Partner

954.867.1705

734.047.4700
Email

Service Focus

Workplace Safety and Catastrophe Management

Industry Focus

Education

Trending

COVID-19/Vaccine Resource Center