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Mandatory Workplace COVID-19 Testing Must Be Justified, EEOC Says

By Roy Mauer

Employers will need to assess pandemic and workplace circumstances in order to justify mandatory COVID-19 testing of employees going forward, the U.S. Equal Employment Opportunity Commission (EEOC) announced in a July 12 guidance update.

Job-Related and Necessary

The EEOC said employers must show that coronavirus testing is job-related and consistent with business necessity, as defined by the Americans with Disabilities Act.

Until now, worksite COVID-19 testing was permitted without any required justification or assessment.

The agency provided several possible factors to consider when making an assessment, including:

- The level of community transmission.
- The vaccination status of employees.
- The degree of breakthrough infections of vaccinated workers.
- The transmissibility of current variants.
- The possible severity of illness from a current variant.
- Contacts employees may have with others during the course of their work.
- The potential impact on operations if an employee enters the workplace with COVID-19.

"This change is not meant to suggest that such testing is or is not warranted," the EEOC said. "Rather, the revised [guidance] acknowledges that evolving pandemic circumstances will require an individualized assessment by employers to determine whether such testing is warranted."

When Workers Refuse a COVID-19 Vaccination

The EEOC allows workplace vaccination mandates when they are job-related and consistent with business necessity. Employers must consider reasonable accommodations when employees refuse to get vaccinated for medical reasons, including pregnancy-related reasons, or based on sincerely held religious beliefs,

Handling Religious Objections to Workplace Vaccine Mandates

Employers generally must explore reasonable accommodations for employees who refuse to get vaccinated against the coronavirus based on a sincerely held religious belief—but objections based on personal or political views are not protected under federal anti-discrimination laws.

Recruiting Tips

Everyone is struggling to find talent in today's tight labor market. Unfortunately, how employers recruited in the past isn't working today. The expectations and requirements employers have had in the past for their positions should be reevaluated and potentially modified.

Employers should be prepared with market research on the position they are trying to fill. This should include research on the role and industry. Pay comparisons and/or compensation studies for the job that you are trying to fill.

Consider streamlining the job requirements. Be ready to cut down the requirements to must haves versus would like to haves. Determine the minimum requirements and what are the dealbreakers for the position.

Be prepared to answer the following questions with potential candidates about the position:

- Why is it open? Who was last in the role? Is it new? How will you sell the position to a potential candidate?
- What is the culture and personalities of the team? What kind of personality would be the

best fit? We know that the skill set is only a piece of this puzzle; not all candidates that have the right skill set will be a match for the team's culture or the organization.

- Lastly, being able to explain the importance of filling this role and when is the candidate needed?

Interviewing and the interview process, from the initial screen to the last sit-down with the hiring manager, can be the make-or-break moment in the candidate's experience with your organization. All your preparation and work up to this point could be for nothing if the interview doesn't go well. Even if the candidate isn't the best one for the job, you want him or her to leave with a good impression of the company.

- Be prepared. Prepare by reviewing the candidate's background and have questions ready to go when interviewing. Not being prepared for an interview is a disservice to the candidate and the organization. If you haven't done your homework, the candidate will leave without having a positive feeling about the company.
- Be Respectful. Give candidates your undivided attention, put them at ease and be transparent about the process. It's important to be on time for the interview. Many candidates are turning to Glass Door and Indeed to share their less than positive experiences while going through the interview process.
- Build Rapport. Establish trust and a genuine connection to build the foundation of a good relationship. The more comfortable and trustworthy the candidate feels about the person interviewing them, the more freely they will share information and experiences with them.
- Communicate Well and Often. Be responsive and maintain a high level of communication with your candidates and hiring managers. If you don't, they will end up being someone else's employee.
- Review Your Process and make sure it's working for your organization to recruit the best and brightest talent.

Employers Prepare Benefits and Policy Responses to Abortion Ruling, SHRM Survey Finds

By Stephen Miller

Many employers are prepared to revisit employee benefits and leave policies in the wake of the U.S. Supreme Court overturning the *Roe v. Wade* decision that legalized abortions across the U.S., a new survey of HR professionals by the Society for Human Resource Management (SHRM) shows.

The Supreme Court's June 24 ruling in *Dobbs v. Jackson Women's Health Organization* lets individual states allow or restrict abortion access, with a wide variety of state abortion laws expected to emerge.

The SHRM Research Institute surveyed a nationally representative sample of 1,003 HR professionals from May 24, 2022, to June 7, 2022, shortly before the Supreme Court's widely anticipated ruling and after a draft of the decision had been leaked to the press in early May. Here are some key findings from the survey.

Formal Position Statements

Most organizations (97 percent) did not issue a statement regarding the Supreme Court's leaked draft opinion overturning *Roe v. Wade*.

Respondents indicated that employees (94 percent), clients/customers (96 percent) and stakeholders (96 percent) did not have a reaction to their organization not issuing a statement on the draft opinion leak.

"Many employers were reticent to take a formal position on the draft leak," said Casey Sword, a researcher at SHRM. "However, that could change based on the court's opinion, as employees, customers and stakeholders increasingly expect their organizations to take a stance on social issues."

Benefits and Resources

When asked to name the top five resources or benefits they currently provide to employees to better support reproductive care, which includes abortion access, respondents answered:

- **Paid time off (PTO) to access reproductive care** (32 percent).

- **Unpaid time off to attend marches**, protests, demonstrations and similar events in support of reproductive rights (18 percent).
- **PTO to attend marches**, protests, demonstrations and similar events in support of reproductive rights (15 percent).
- **Travel expense benefits** (gasoline, airfare, hotels) outside of a health savings account (HSA) for employees to access abortion and reproductive services that are not accessible in their state of residence (5 percent).
- **Company matches (including double matches) for employee donations** to groups that support reproductive rights (4 percent).

When asked to name the top six resources or benefits that employers do not currently offer but are thinking of offering to better support abortion access/reproductive care, respondents answered:

- **PTO for employees to access reproductive care** (7 percent).
- **Relief funds** for employees to access reproductive care (7 percent).
- **Travel expense benefits** (gasoline, airfare, hotels) outside of an HSA for employees to access reproductive services that are not accessible in their state of residence (6 percent).
- **Unpaid time off to attend marches**, protests, demonstrations and similar events in support of reproductive rights (6 percent).
- **Company matches (or double matches) for employee donations** to groups that support reproductive rights (5 percent).
- **PTO to attend marches**, protests, demonstrations and similar events in support of reproductive rights (5 percent).

Business Tax Deductibility

Over one-third of organizations (35 percent) would *not* be more likely to provide travel expense benefits (gasoline, airfare, hotel fees) outside of an HSA for employees to access abortion and reproductive services, even if those payments were tax-deductible as a business expense related to health coverage; 6 percent would be more likely to

provide travel expense benefits if deductible from business taxes, and 59 percent are unsure.

HSA Contributions

Knowing that employees can use HSA funds for travel-related expenses to receive reproductive care in another state, organizations that currently make employer contributions to employees' HSAs responded as follows:

- Most organizations (87 percent) would not change their contributions to employees' HSAs.
- 10 percent would consider increasing their employer contributions.
- 3 percent would consider decreasing their employer contributions.

When asked of all respondents who don't currently offer an HSA to employees:

- 76 percent of organizations would still be unlikely to consider adopting an HSA in the next year.
- 24 percent would be likely to adopt one.

Attracting and Retaining Talent

Nearly one-quarter of organizations (24 percent) agree that offering an HSA for employees' travel-related expenses to receive abortion services/reproductive health care in another state will enhance their ability to compete for talent, while 18 percent disagree and 58 percent neither agree nor disagree.

Among HR respondents at companies that said providing travel-related expenses would enhance their ability to compete for talent:

- 33 percent work at extra-large organizations (more than 5,000 employees).
- 25 percent work at large organizations

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