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Do I have to take the COVID Test?

May an employer require employees to submit to a medical test to detect the presence of the COVID-19 virus or antibodies to the virus before permitting employees to enter the workplace?

Under the FEHA, an employer may mandate a medical examination when it is “job-related and consistent with business necessity.” Applying this standard in light of present guidance from the CDC, and consistent with [guidance](#) from the Equal Employment Opportunity Commission, employers may require employees to submit to [viral testing](#) but not [antibody testing](#) before permitting employees to enter the workplace, as explained below.

Viral Testing. Employers may require that employees submit to viral testing in order to determine whether an employee has COVID-19 infection, before allowing an employee to enter the workplace. That is because an employee with COVID-19 is unable to perform the employee’s essential duties in a manner that would not endanger the health or safety of others in the workplace even with reasonable accommodation there. Employers should ensure that the testing used is accurate and reliable, and that any viral testing is part of a [comprehensive plan](#) for reducing transmission of COVID-19 in the workplace. Employers should be aware that viral tests can have false-negative results and that a negative viral test does not mean that an employee will not acquire COVID-19 in the future.

Antibody Testing. The CDC’s current [guidance](#) states that “[antibody] test results should not be used to make decisions about returning persons to the workplace.” Whereas viral testing directly tests for the presence of COVID-19, antibody testing indirectly detects past or waning COVID-19 infection by testing for immune response. Antibody

currently meet the FEHA's requirement that a medical examination be "job-related and consistent with business necessity."

AVUTA Members,

I realize this is a highly controversial issue. However an employer does have a right to test their employees. Just think of it like the TB test, it is a requirement. If an employee refuses, you can be placed on unpaid admin leave. However, I just got info that a certain AV charter school was told not to test all their staff because the county does not have enough tests to test every teacher in the county. I reached out to Mr. Conrad to ask if knew about this and he said he is "aware and they will only test what they have a capacity for." Let's first see who they test and how many are affected. I have asked what type of COVID-19 test they are administering Nasal or Saliva, but haven't received an answer, they are checking on it. As soon as I receive an answer I will let you know. Please click on the button for an attachment that answers a lot of COVID related questions having to do with employers and employees.

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AVUTA President

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