

HR COMPLIANCE BULLETIN

Highlights

- ✓ CDC guidance states that workplace testing should not be conducted without the employee's informed consent.
- ✓ Informed consent requires disclosure, understanding and free choice.
- ✓ COVID-19 testing may be incorporated as part of a [comprehensive approach](#) to reducing transmission in non-health-care workplaces.

CDC Provides Guidance on Consent Elements and Disclosures for Workplace COVID-19 Testing

The Centers for Disease Control and Prevention (CDC) has issued [guidance](#) on the elements of consent and disclosures necessary to support employee decision-making when employers incorporate workplace COVID-19 testing.

Differences in position and authority (such as workplace hierarchies), as well as employment status in nonstandard working arrangements (e.g., temporary help, contract help or part-time employment) can affect an employee's ability to make free decisions. This guidance suggests measures employers can take when developing a testing program.

To fully support employee decision-making and consent, these measures should include:

- ✓ Safeguarding employees' privacy and confidentiality;
- ✓ Providing information that is complete and understandable on how the employer's testing program may impact employees' lives;
- ✓ Explaining any parts of the testing program an employee would consider important when deciding to participate;
- ✓ Providing information about the testing program in the employee's preferred language using nontechnical terms;
- ✓ Encouraging supervisors and co-workers to avoid pressuring employees to participate in the testing; and
- ✓ Encouraging and answering questions during the consent process.

Action Steps

Employers should follow these measures to create a supportive environment when employees need to make decisions about workplace-based testing.

Employer Resources

- CDC COVID-19 [website](#)
- Employer [strategies](#) for incorporating testing for COVID-19 in the workplace
- Nonstandard working arrangements [information](#)



Disclosures for Workplace Testing

An employer's testing program (including the implementation of a testing protocol to test employees) may be complex and technical. Certain aspects of the testing program may be more relevant than others to an employee's decision whether to accept an offered test. The CDC's [SARS-CoV-2 Testing Strategy: Considerations for Non-Healthcare Workplaces](#) identifies disclosures important for employees contemplating testing. Many of these disclosures are addressed in the U.S. Food and Drug Administration (FDA) emergency use authorization patient fact sheet for the test, which must be provided during the consent process. Those disclosures include:

- The manufacturer and name of the test;
- The test's purpose;
- The type of the test;
- How the test will be performed;
- Known and potential risks of harm, discomforts and benefits of the test; and
- What it means to have a positive or negative test result including test reliability and limitations, public health guidance to isolate or quarantine at home, including:
 - Test reliability and limitations; and
 - Public health guidance to isolate or quarantine at home, if applicable.

Discussion Topics

Employers should be prepared to discuss the following topics:

Topic	Questions to Address
General Considerations	<ul style="list-style-type: none">• Why is the employer offering to test employees?• How frequently will employees be tested and will they be asked to consent to each test?• What happens if an employee declines to be tested?
Scheduling and Payment	<ul style="list-style-type: none">• Is the employee obligated to schedule the test and travel to the site?• Will the employer pay for the employee's time and travel?• Are there any available accommodations or alternatives for an employee who declines to take the test?• Who pays for the test, including:<ul style="list-style-type: none">○ Will the employer pay for the test?○ Will the employee's insurance be billed for the test or will the employee be billed for a copayment?○ Will the employee pay for the test?○ Will the employee's insurance be billed for follow-up care if needed?○ Will the employee pay for follow-up care if needed?
Testing Site	<ul style="list-style-type: none">• Who will be administering the test and what are their qualifications?• Where will the test be performed?• Will the test provider require any temperature and symptom screening prior to administering the test?

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Communication and Interpretation Results	<ul style="list-style-type: none">• When will the results be provided to employees and in what confidential manner?• Who will interpret the test and what are their qualifications?• What is the test provider’s obligation to report a positive result to the public health authority?• What happens if the employee tests positive, including:<ul style="list-style-type: none">○ Who will inform the employee about guidance for employee isolation and quarantine for those who have been around the employee?○ Is there a need for follow-up testing?○ Is there a need for medical evaluation?○ Will the employer take any action, including any follow-up with the employee, such as contact tracing?○ When can the employee return to the worksite?○ Are there any flexible and supportive leave and other benefit policies available to the employee?○ Will the employee be paid for any lost work time?○ Will the employee’s benefits be affected?• What happens if the employee tests negative, including any need for follow-up testing?
Privacy	<ul style="list-style-type: none">• What personal information does the employee need to provide (e.g., name, date of birth) to the test provider?• Will that demographic information be retained and, if so, by whom and for how long?• How will personal information be kept confidential and secure (i.e., restricted from unauthorized access or disclosure)?• Which employer representative(s) will have access to the employee’s result?• Where and for how long will the employer retain the result, if at all?• How will the employer keep the result confidential and secure?
Seeking Additional Help or Reporting Injuries	<ul style="list-style-type: none">• Who should be contacted for additional information about the employer’s testing program (e.g., an employer or union representative)?• Who should be contacted to explain an employee’s rights?• Who should be contacted if assistance is needed (e.g., language translation or transportation to and from the testing site)?• Will the employer provide treatment for any employee injuries from the test procedure and during transport to or from the testing site?