

## Considerations for Testing

Parameters employers should have in mind when considering whether to screen employees for COVID-19 are:

- Just as with temperature screening, screening/testing for COVID-19 must be conducted on a nondiscriminatory basis, which likely means that all employees entering the worksite must be tested.
- Assuming the results of such testing are retained, they need to be retained as confidential medical records according to the ADA's requirements.
- Any screening, test or inquiry that is broader than necessary to address the potential direct threat is prohibited.
- Although unlikely, it is possible that an employee could have a medical condition that could require the employer to determine whether it can provide the employee with an accommodation, such as making available an alternative testing method to the (likely nasal swab) method being used.
- Employers will need to consider how to handle an employee's refusal to submit to a test. For example, the employer could bar access to the worksite for an employee who refuses to cooperate.

Other considerations for employers include:

- Being aware that there may be an obligation under wage and hour laws to pay employees for time spent waiting to be tested, as well as time spent waiting for the results of the test, assuming the employee will not be admitted to the workplace until the employer has the results.
- Requiring employees to consent in writing to the screening, including, but not limited to, acknowledging that the test is not a diagnostic test.
- Exercising care in selecting a test to use, particularly in light of well-documented issues with test accuracy.
- Determining when and under what conditions an employee who tests positive for COVID-19 will be able to return to the workplace. For example, is a subsequent negative test sufficient? Two subsequent negative tests?
- Weighing the implications of a positive test result as it relates to addressing potential exposure in the workplace (e.g., if the employee was at work in the days leading up to the date of the positive test).