If an employee either did not meet the criteria to be tested for COVID-19 or tested negative for COVID-19, can the employer require the employee provide a doctor’s note before allowing the employee to return to work? (3/30/20)

The Equal Employment Opportunity Commission (EEOC), along with the CDC, have issued guidance as to whether an employer may require a doctor’s note prior to allowing the employee to return to work, generally. According to the EEOC guidance, an employer “may require employees who have been away from the workplace during a pandemic to provide a doctor’s note certifying fitness to return to work.” According to the EEOC, such inquiries are permitted under the Americans with Disabilities Act (ADA) because they would not be disability-related or, if the pandemic were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees. The ADA covers employers with 15 or more employees.

Both the CDC and EEOC point out, however, that practically speaking, doctors and other health care professionals may be too busy to provide such documentation. As a result, according to the EEOC, “new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp, or an e-mail to certify than an individual does not have the pandemic virus.” The CDC’s statement is stronger. The CDC says that “employers should not require a […] healthcare provider’s note […] to return to work.”

In sum, while it is lawful under the ADA to request such a note, guidance encourages employers to be flexible or to not require a note at all. It is important to note, however, that there may be local ordinances or orders that provide further limitations, and employers and employees are encouraged to review those carefully. If an employer continues to require such note, the employee may wish to consult with a private attorney.

Note: There are provisions under the federal Family and Medical Leave Act (FMLA) which allow an employer to request “fitness-for-duty” certifications in certain situations. For more information, visit the Department of Labor’s COVID-19 and the Family and Medical Leave Act Questions and Answers website.

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