Jason Habinsky in Law360: ‘New EEOC Guidance Complicates Virus Testing Landscape’

By Jason Habinsky | July 20, 2022

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Jason Habinsky, partner and head of Haynes Boone’s Labor and Employment practice, was quoted in a *Law360* article on the complications of testing employees for COVID-19. Read an excerpt below:

Guidance the U.S. Equal Employment Opportunity Commission issued last week rolling back a blanket clearance for businesses to test employees for COVID-19 muddies the legal waters around this safety protocol, experts said.

In a revision to earlier guidance that said mandatory virus testing was automatically justified by the pandemic, the EEOC told employers in a July 12 update that it's now up to them to make their case to conduct this kind of screening. Unless it's "job-related" and a "business necessity," viral testing of employees could run afoul of the Americans with Disabilities Act, the agency said.

Employment lawyers said the update saddles businesses with another pandemic-related administrative burden, one for which the rules are hazy. …

"You need someone, or a group or a team, who are smart and sophisticated in really deliberating and understanding the decision-making process and the factors to consider, and really understand how things change on a minute-by-minute basis," according to Haynes Boone partner Jason Habinsky, who heads the firm's labor and employment practice.

"What might be OK now legally might not be OK a few weeks from now, when things are better," Habinsky added. "So it's really important to have an appropriately staffed team who are making these decisions and discussing these decisions."

To read the full article from *Law360*, click here.

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