Since the outbreak of the COVID-19 pandemic earlier this year, employers have been placed in the position of having to deal with numerous conflicting legal and moral obligations. Prior to the pandemic, by virtue of the Americans with Disabilities Act and similar state and local laws, employers were greatly limited in the questions they could ask perspective and current employees about their individual health conditions. Similarly, unless they were seeking a workplace accommodation, employees did not have to disclose their personal health conditions to their employer.

In the battle to quell the pandemic, the rules have changed significantly. Employers have greater leeway to ask questions related to the pandemic and employees who may have medical conditions previously unknown to the employer are disclosing them because of their concerns about increased susceptibility to becoming infected by the virus. At the same time, getting quick and reliable information about an employee’s COVID-19 status may be difficult. Frequently, an employee will only receive an initial verbal confirmation of a positive test and have to wait days for the written report. Complicating matters are reports in the media of employees who have falsely told their employer they tested positive. In some of the reported cases, upon hearing of a positive test, the employer shut down its entire operation for a deep cleaning only to later have the employee retract their statement they were positive. In some of these falsification incidents, employees are now facing criminal
What is an employer to do?

**Trust but Verify**

The vast majority of employees are honest and deeply concerned about their employer's response to COVID-19. Therefore, if an employee reports they have tested positive, the employer should not wait for written verification and immediately begin to follow the Centers for Disease Control or local health authority protocols. At the same time, employers should take all possible steps to verify the accuracy of what the employee is reporting.

In cases of suspected fraud, here are some steps an employer can and should take:

1. Require the employee to provide written confirmation. As noted above, employers should understand that a written confirmation of a positive COVID-19 test may not be immediately available to the employee. Many test sites provide only a verbal response with the written verification following days later. Employers should still require written confirmation of the verbal positive result.

2. While waiting for written confirmation of test results, ask the employee specifically where and when they went for testing and verify the accuracy of that information. In one case reported in the media, a suspicious HR manager determined that the hospital where the employee claimed to have been tested was not even performing COVID-19 tests.

3. Carefully examine any written documentation provided by the employee. Doctor’s notes and other non-detailed information can be verified by a Google search to determine that the practitioner is real. A phone call to that practitioner should be able to easily confirm the truth of the matter on the documentation.

4. Communicate to employees in advance that falsification of employee records and information, especially something as critical as a positive COVID-19 test, can be grounds for discipline, including termination of employment.

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