



ROADMAP TO REOPENING: Equal Employment and Americans with Disabilities Act Considerations

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Presented by ANGELA ROCHESTER
ASSISTANT GENERAL COUNSEL and
HUMAN RESOURCES CONSULTANT

THIS SEMINAR IS NOT LEGAL ADVICE

Although the seminar may contain discussions of legal rights and responsibilities, the seminar itself does not constitute legal advice. This seminar is intended as an informational guide only; therefore, no statement should be considered as legal advice and no action should be taken by your organization in reliance on any statements.

The COVID-19 situation is changing daily and this presentation is based on current recommendations.



AGENDA

- EEO Considerations as Employees Return to Work
- Testing Employees Who Return to Work
- Employees Who Refuse to Return to Work

DISCRIMINATION



ZERO TOLERANCE

for Harassment,
Discrimination, and
Retaliation

DISCRIMINATION

Discrimination and harassment based on an employee's protected class status is prohibited by law.

Protected Groups include:

Age	Sex	Religion	Race	National Origin
Disability	Color	Marital Status	Veteran Status	Creed
Citizenship	Genetic Information	Pregnancy	Sexual Orientation	Gender Identity or Expression

HARASSMENT

Harassment based on race, age, color, religion, national origin, disability, or other protected classes may also lead to harassment liability.

- *Example: Treating employees differently because of the perception that COVID-19 originated in any one country*

RETALIATION

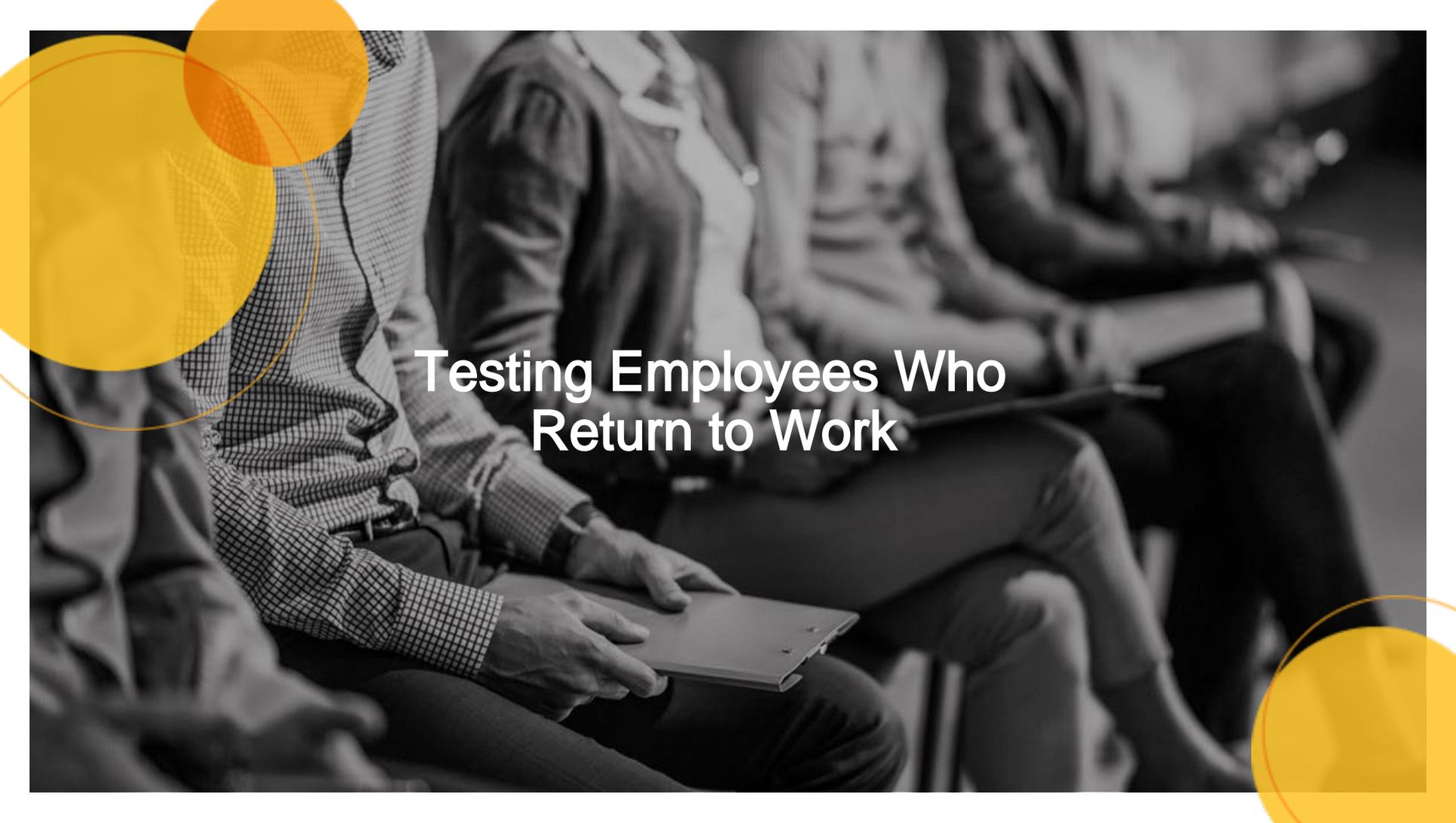
- The law prohibits retaliation against an individual who complains of discrimination and/or harassment or who participates in an investigation.
- Thus, please emphasize to your managers and employees that there should be no retaliation (in any form) against an employee who lodges a complaint of discrimination and/or harassment.

NO RETALIATION



- **Don't** exclude an employee from decisions and work activity
- **Don't** give the “cold shoulder” or be abusive (bullying)
- **Don't** harass online
- **Don't** make an employment decision based on the employee lodging a complaint

Anyone found to have retaliated against an employee who has made a good faith complaint will be subject to disciplinary action up to and including termination.



Testing Employees Who Return to Work

TESTING EMPLOYEES WHO RETURN TO WORK

QUESTION:

After shelter-in-home orders are lifted, can I take an employee's temperature at work to determine whether they might be infected?

TESTING EMPLOYEES WHO RETURN TO WORK

ANSWER:

Yes. Until further notice, you may continue to operate under the EEOC's guidance, which confirms that measuring employees' body temperatures is permissible.

TESTING EMPLOYEES WHO RETURN TO WORK

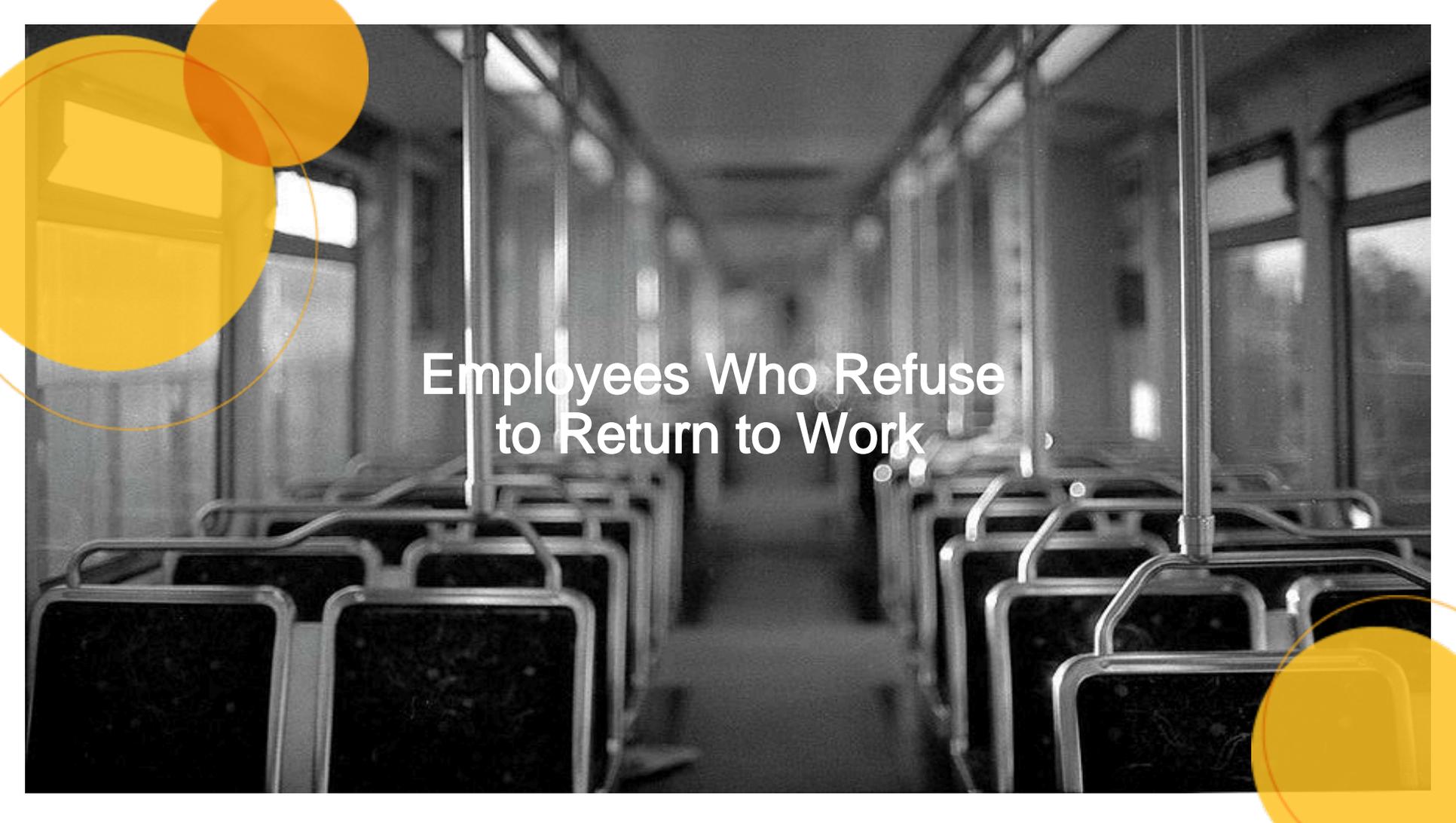
QUESTION:

May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) before permitting employees to enter the workplace?

TESTING EMPLOYEES WHO RETURN TO WORK

ANSWER:

Any mandatory medical test of employees be "**job related and consistent with business necessity.**"



Employees Who Refuse to Return to Work

EMPLOYEES WHO REFUSE TO RETURN TO WORK

QUESTION:

We are ready to call our employees back to our worksite, but an employee has expressed a fear of returning to the office or a preference for working from home.

Now what?

AMERICANS WITH DISABILITIES ACT

The ADA requires employers to provide **reasonable accommodations** to qualified individuals with a disability who can perform the essential functions of the job with or without accommodation, unless doing so would constitute an “undue hardship”.



* Individualized inquiry/context specific

* Focus on whether the worker can perform the **essential functions** of the job

AMERICANS WITH DISABILITIES ACT

- “**Disability**” is defined as “a physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having an impairment”

*Note that under some state and local laws, such as in **California** and **New York**, a “disability” can be defined more broadly*

- Must engage in the **interactive process**
- A leave of absence may be an accommodation

REASONABLE ACCOMMODATION

BASIC RULE

You must reasonably accommodate a disabled employee unless the accommodation is an **undue hardship** or creates a **direct threat**.

REASONABLE ACCOMMODATION

- Equal opportunity to be considered for the job individual holds or desires.
- Enable employee/applicant to perform essential functions of job employee holds or desires.
- Has equal opportunity to enjoy equivalent benefits and privileges.

WHAT IS THE INTERACTIVE PROCESS

A timely good-faith exchange of information between employer and a disabled employee or applicant to explore both:

- * Necessity for accommodation and
- * Accommodation options

REASONABLE ACCOMMODATION

EXAMPLE:

If a job may only be performed at the workplace, are there **reasonable accommodations** for individuals with disabilities absent undue hardship that could offer protection to an employee who, due to a preexisting disability, is at a higher risk for COVID-19?

REASONABLE ACCOMMODATION

EXAMPLE:

If an employee has a preexisting mental illness exacerbated by the COVID-19 pandemic, may the employee be entitled to a **reasonable accommodation** (absent undue hardship)?



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Contact Us

1 (888) 780-8807



Corporate Headquarters

4000 Hollywood Blvd.
Suite 400-N
Hollywood, FL 33021



Nat'l Operations Center

3001 Executive Drive
Suite 340
St. Petersburg, FL 33762



Email/Website

contact@engagepeo.com
www.engagepeo.com