

Multiemployer Construction Sites in the COVID-19 Era

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Employers have encountered COVID-19-related unique and challenging workplace law circumstances in multiemployer construction sites. For example, a hospital under construction may have imposed COVID-19 testing requirements on its general contractor, which, in turn, imposed testing requirements on the numerous subcontractors on the job site. Such situations require reviewing contractual and legal obligations.

As in most multiemployer construction sites, much of the liability and much of the responsibility is pushed down to the various subcontractors. Often, the contractual agreements between the general contractor and its various subcontractors dictate the parties' legal obligations. However, in the new pandemic world, those contracts are likely silent on what general contractors and the various subcontractors can do versus what they must do, when it comes to COVID-19.

In these instances, the construction site owner may be a hospital seeking to expand into a wing or create a new building adjacent to existing ones. The hospital is concerned about construction workers possibly exposing its healthcare workers and patients to COVID-19. Therefore, the construction site owner will impose testing responsibilities on the general contractor. These testing responsibilities include temperature screening, nasal swabs, and blood testing. Certainly, under the Americans with Disabilities Act, these invasive tests are considered medical examinations pursuant to the Equal Employment Opportunity Commission's (EEOC) regulations. While an employer may refuse to permit any of those tests to be conducted on its employees, in response to the pandemic, the EEOC has loosened its regulations on medical examinations. The EEOC has expressly permitted the use of temperature screening and nasal swabs to detect symptoms consistent with COVID-19 or to obtain positive or negative results to COVID-19.

On the other hand, the EEOC has announced that employers cannot mandate blood tests for COVID-19 antibodies before allowing employees back to work. It is certainly an invasive medical examination.

An employer who refuses to submit to temperature screening and nasal swabs must perform an internal analysis not only of its contractual obligations, but also the strength and importance of the business relationships involved. While an employer may still safely refuse to have its employees undergo blood tests for the presence of COVID-19 antibodies, it may have no choice when it comes to temperature screening and nasal swabs.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 Team](#).

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