**In Support of Safe Session and Enforcement Policies**

Every legislator and legislative staff have a right to a healthy and safe workplace at the Capitol.

To date, there have been seven state legislators who have died because of COVID-19; three of those deaths occurred within the past 60 days. All of those deaths could have been prevented.

Legislative Council COVID-19 mitigation policies are based on Centers for Disease Control (CDC) recommendations and are allowable under applicable federal laws to keep a workplace reasonably safe. Those Alaska cities that have the authority, including Anchorage, Fairbanks and the City and Borough of Juneau, and many others have face covering mandates.

The Equal Employment Opportunity Commission (EEOC) has declared COVID-19 testing allowable under the Americans With Disabilities Act (ADA) in the context of the global pandemic public health emergency since an employee with COVID-19 constitutes a “direct threat” to others. The need to perform testing for possible COVID-19 infection meets the ADA requirements that mandatory medical tests be “job related and consistent with business necessity.”

Even though allowable, certain legislators or staff may resist testing.  If testing is refused, it is important to first ask for the reason supporting refusal as the response may depend on the reason given.

For instance, an employee may cite religious reasons for refusal.  Under Title VII of the Civil Rights Act of 1964, employers are required to consider the “sincerely held” religious beliefs of employees that can be accommodated without undue hardship.  An undue hardship exists if accommodation would cause more than a de minimis cost to operations.  A refusal to test may impose an undue hardship because a COVID-19 infection in the workplace poses a direct threat to others.  However, other accommodations in the manner or logistics of testing may be possible, depending on the employee’s religious beliefs.  The employer and employee should engage in a discussion to determine if an accommodation is possible.

A similar discussion should occur if an employee cites disability-related concerns for refusal as the ADA requires employers to provide reasonable accommodation to qualified individuals with disabilities, provided the accommodation does not constitute an “undue hardship”.  The threshold is much higher for “undue hardship” under the ADA than for religious accommodation.  Nonetheless, depending on the employee’s disability constraints with testing, accommodations may be possible in the testing process.

Other employees may resist testing for entirely personal reasons.  Under these circumstances, employers may remind employees that all medical information obtained will remain confidential.  If the employee continues to refuse in violation of a mandatory testing policy, the employer can discipline the employee and/or exclude the employee from the workplace until s/he agrees to be tested.  Employers should document any refusal to cooperate. Documenting refusal (and the employee’s workplace departure) is particularly important in the event of a subsequent Occupational Safety and Health Administration (OSHA) investigation.

OSHA has issued a [new requirement](https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19) (reversing previous guidance) that all employers must investigate and determine whether an employee with COVID-19 contracted it at work. Maintaining documentation that supports the employer’s efforts to maintain a safe, COVID-free workplace (including documentation that an employee was sent home upon testing refusal) is important.

Historically, members have been denied access to the floor for failing to be in proper attire, having perceived improper dress as a violation in floor decorum. Requiring members to wear a face covering while on the floor and in the Capitol in the presence of others during global pandemic where human-to-human transmission can be deadly extends far beyond decorum.

These simple safety precautions should be considered the bare minimum we, as elected officials can do to keep the business of Alaska’s Legislature operating, our constitutional duties intact, and our people safe.