

# Employee Covid-19 Testing Requirements

## Redress of Grievances:

This redress of grievances focuses its attention on Title II of the Genetic Information Nondiscrimination Act of 2008. The mass testing of people for Covid-19 is completely novel and unprecedented. There has never been a time that a testing campaign of such magnitude and scope has been conducted.

Despite this fact, the Genetic Information Nondiscrimination Act still offers protection for employees against discrimination based on their genetic information.

The novelty of this mass testing campaign of employees' genetic information in order to maintain or gain employment raises a new question. Does the Genetic Information Nondiscrimination Act also protect an employee from discrimination based on a lack of genetic information?

We assert that the intention and spirit of the Genetic Information Nondiscrimination Act indeed does protect employees from this sort of discrimination, testing requests and requirements, and intrusion of an individual's bodily autonomy and genetic information.

However, because a testing campaign of this nature has never before been conducted it has yet to be clarified and fully protected against.

Due to Covid-19 it is being claimed that an employer has the right to test their employee or a prospective employee for Covid-19. This claim is correct only if said employee provides prior, knowing, voluntary, and written authorization.

However, any employee or prospective employee reserves the right NOT to be subjected to a Covid-19 test and to be without fear of discrimination or reprisal from their employer for choosing so.

Also, any employer reserves the right to protect their employees or prospective employees right not to be requested or required to be subjected to a Covid-19 test and to be without fear of discrimination or reprisal from the Town of Mammoth Lakes, Mono County, and the state of California.

According to Mammoth Lakes Chambers of Commerce legal counsel, Robert Brumfield,

*"The Americans with Disabilities Act requires that any mandatory medical tests of employees be job related and consistent with business necessity" Additionally Robert Brumfield asserts that due to Covid-19 employers may take screening steps to determine if employees entering the workplace have Covid-19 because an individual with the virus poses a direct threat to the health of others. Therefore, an employer may choose to administer Covid-19 testing to employees before initially permitting them to enter the workplace and/or periodically to determine if their presence in the workplace poses a direct threat to others."*

This assertion by Robert Brumfield is simply not accurate and is contrary to the Genetic Information Nondiscrimination Act.

**Whereas**, many employees are not fully knowing of their right not to be requested or required to be subjected by their employers to a Covid-19 test due to the Town of Mammoth Lakes and Mono County's one sided Covid-19 Policy which does not emphasize people's rights.

**Whereas**, forcing a current employee to be tested for Covid-19 without prior, knowing, voluntary, and written authorization from said employee is a violation of the Genetic Information Nondiscrimination Act.

**Whereas**, pre-employment genetic screening of a prospective employee for Covid-19 without said prospective employee's prior, knowing, voluntary, and written authorization is a violation of the Genetic Information Nondiscrimination Act.

**Whereas**, the Genetic Information Nondiscrimination Act bars employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions.

**Whereas**, "it shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee."

**Whereas**, it is discriminatory for an employer to classify a healthy employee or prospective employee as infected with Covid-19 based on a lack of genetic information that said employer is now unlawfully requesting or requiring.

**Whereas**, healthy employees are being presumed guilty of a Covid-19 infection unless they submit to an unlawfully requested or required Covid-19 test to prove their innocence.

**Whereas**, requesting or requiring any current or prospective employee by their employer or prospective employer to be subjected to a Covid-19 test in order to gain or maintain employment is in violation of said employees rights as protected by the Genetic Information Nondiscrimination Act.

**Whereas**, employees or prospective employees who choose not to be tested for Covid-19 are being considered to be members of a particular group (non-tested individuals) and are being stigmatized or discriminated against for choosing not to be subjected to a Covid-19 test.

**Whereas**, any employer who fires a current employee for choosing not to be subjected to a Covid-19 test that is being unlawfully requested or required is in violation of the Genetic Information Nondiscrimination Act.

**Whereas**, any employer who refuses to hire a prospective employee that chooses not to be subjected to a Covid-19 test that is being unlawfully requested or required is in violation of the Genetic Information Nondiscrimination Act.

**Whereas**, the PCR test is an analysis of an individual's genetic information of "RNA and or DNA" and therefore, it is unlawful to be requested or required by an employer as proclaimed by the Genetic Information Nondiscrimination Act.

**Whereas**, the antigen test is an analysis of an individual's genetic information of "proteins" and

therefore, it is unlawful to be requested or required by an employer as proclaimed by the Genetic Information Nondiscrimination Act.

**Whereas**, an employer's Covid-19 testing requirement is not tantamount to being a "wellness program."

**Whereas**, the Town of Mammoth Lakes and Mono County, through health orders, mandates, and guidelines, acting under color of law or not, are attempting to coerce employers to unlawfully request or require their employees', or prospective employees' genetic information.

**Whereas**, the Town of Mammoth Lakes and Mono County's Covid-19 policy is in actuality unlawfully coercing employers to violate the Genetic Information Nondiscrimination Act or be subjected to penalties, fines, or closure.

**Whereas**, healthy employees are being effectively coerced by their employers', the Town of Mammoth Lakes, and Mono County through color of law or not, to invasive or non-invasive Covid-19 testing, and regardless of frequency of testing, it is discriminatory, disrespectful, demeaning, unethical, and unlawful to do so.

This redress of grievances desires to put an immediate end to all the unlawful testing of employees by their employers In hopes to protect and preserve ones right to bodily autonomy without discrimination.

This redress of grievances is an effort to educate and inform employees, employers, the Town of Mammoth lakes, Mono County and the state of California about employee rights as it pertains to requests or requirement for genetic information.

We implore employers, the Town of Mammoth Lakes, Mono County and the state of California make known to employees or potential employees their rights as it pertains to requests and requirements for genetic information.

