

## 6 Factors Employers Must Consider When Taking Employees' Temperatures

5.4.20

Employers may be required to take the temperatures of employees when businesses begin to reopen in the coming days and weeks following the expiration of many states' stay-at-home orders. Screening for fevers is a task never previously undertaken by many companies. Given that many states will require or highly recommend this practice, now is the time for to consider what precautions and procedures to undertake to implement this safety measure.

You should consider these six issues when contemplating whether to take temperatures at your workplace:

### 1. Do You Have To Do It?

Unless required by a local or state order, taking temperatures is not required in most workplaces. Doing so will require extensive planning, training, and could even be quite expensive. In addition, many individuals infected with COVID-19 won't exhibit any symptoms, and thus temperature screening likely won't prevent all workers who can transmit the disease from entering your worksite.

Although the CDC recommends screening employees for fevers of more than 100.4 degrees Fahrenheit, keep in mind some states make recommend different thresholds. If you decide to screen your employees, also plan to check the temperatures of guests, clients, vendors, and contractors to ensure a safe work environment.

### ATTORNEYS

Travis W. Vance

### SERVICES

Workplace Safety and  
Catastrophe Management



## 6 Factors Employers Must Consider When Taking Employees' Temperatures

### 2. Training And Personal Protective Equipment For Those Taking Temperatures

The safety of all employees is paramount, but those administering temperature screenings will be especially vulnerable to hazards. If you require employees to be within six feet of any individual who may have COVID-19, the Occupational Safety and Health Administration (OSHA) recommends that they wear personal protective equipment (PPE) consisting of some combination of gloves, a gown, a face mask, and/or a face shield or goggles.

The screening employees should also be trained on the required PPE under OSHA's PPE standard. You should also prepare a job hazard assessment and PPE certification related to the screening. To the extent that screeners may also be exposed to bloodborne pathogens (BBP), such as mucous or saliva, you should ensure they are properly trained under OSHA's BBP standard – which requires employers to prepare an exposure control plan.

Keep in mind that, where not required by a local or state order, the CDC allows employers to screen employees for COVID-19 symptoms, including a fever, without ever touching or interacting with them. You can do so by standing more than six feet away and asking the employee to confirm they don't have a temperature and making a visual inspection of the employee (e.g., looking for flushed cheeks or fatigue). Only under this method could the employee screener not be required to wear PPE.

### 3. Maintaining Social Distancing

Not only should screening employees be protected, safety measures should also be taken for workers waiting in line to be screened. This includes ensuring employees stand six feet or more from each other while they wait to have their temperature taken.

### 4. Logistics

You may have to screen 50 or more employees prior to the beginning of each shift. This likely will cause delays and create disruption to normal production activities. Be prepared to create outdoor waiting areas (e.g. tents and other temporary structures) where employees must be in lengthy lines prior to entering the facility. Employee privacy, especially where screening takes place and results are announced, should be accounted for during this time.

### 5. Privacy Concerns

Employee privacy concerns will be prevalent during the employee screening process. The Equal Employment Opportunity Commission (EEOC) has cautioned that employers can ask employees if they are experiencing symptoms of COVID-19, including taking their



## 6 Factors Employers Must Consider When Taking Employees' Temperatures

---

temperatures, provided that all biomedical information is maintained as a confidential medical record, and separate from the employee's personnel file. Some states, such as California, require employers to provide a notice to all employees prior to screening them for biomedical data.

For many businesses, maintaining employee privacy can be challenging as you may not have the experience or knowledge to ensure compliance. To mitigate these issues, and if not required by a governmental order, avoid collecting or storing an employee's biomedical information to the extent possible. Instead, use an instantaneous-reading thermometer and show the employee their temperature simultaneously with the screening.

### 6. Wage Issues

Keep in mind that employees may claim that their time waiting in line or being screened for a fever before their shift is compensable and thus they should be paid for it. Although no case law or Department of Labor guidance on point currently exists on this topic, we recommend that you err on the side of paying employees throughout the screening process. This also requires you to implement a system to have employees "clock in" when they get in line for screening and to document their time.

### What Should Employers Do?

As you begin the process of reopening, you should also familiarize yourself with our alert: 5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance. You should also keep handy our 4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers.

### Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of our Post-Pandemic Strategy Group Roster.

---

*This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*