

## **Taking Employee's Temperature and Employee Health**

### **Employers Taking Employee's Temperature**

On March 18, 2020 The Equal Employment Opportunity Commission (EEOC) gave employers permission to take employees' temperatures to try to mitigate the spread of Coronavirus.

The EEOC stated that "Generally, measuring an employee's body temperature is a medical examination".

The Americans with Disabilities Act (ADA) normally prohibits medical examinations unless they are job-related and consistent with business necessity. But because the Centers for Control and Prevention (CDC) and state and local health authorities have acknowledged community spread of COVID-19, employers taking employee's body temperature is job-related and consistent with business necessity. Employers should be aware that some people with COVID-19 do not have a fever. And some people with a fever do not have COVID-19.

### ***Details***

- You should be paying employees sent home for high temperatures to limit any legal risk, if you can afford do so.
- Employers should consider what they'd do if employees refuse to have their temperatures taken. Would you send these workers home without pay? Are you mandated by the Families First Coronavirus Response Act?
- The temperature reading should be kept confidential and the person administering the temperature should be trained on the procedure.
- You need to ensure that there is still social distancing and keep people at least 6 feet apart when they are standing in line to have their temperature taken.
- This process may not be as effective at preventing the spread of the coronavirus as sheltering in place when possible.
- It is suggested to use an infrared digital thermometer rather than an oral thermometer.
- You will want to pay employees for time spent waiting to have their temperature checked.

### ***Concerns***

- Infrared forehead thermometers are "notoriously unreliable", according to medical experts
- This is one medical characteristic to make a big assumption
- Long lines may form to get into work
- A person may not have a fever but still be a carrier of the virus
- Although the EEOC has provided guidance, it is far from clear that a court would follow EEOC's guidance

We don't want anyone believing that temperature testing ensures that there are no communicable disease in the workplace. It is a precaution. It does not equal prevention.

## **Is Asking About Symptoms Permitted?**

The EEOC has stated that during a pandemic, ADA-covered employers may ask employees who call in sick if they are experiencing symptoms of the pandemic virus. For COVID-19, these include fever, chills, cough, shortness of breath and sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

The coronavirus is not a disability covered by the ADA but other respiratory conditions that last longer are. So while asking about coronavirus symptoms is permitted, don't ask about symptoms of other conditions.

## **Doctor's Notes Options**

Under normal circumstances, when an employee returns to work, the employers can require a doctor's note certifying his or her fitness for duty. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation.

So, new approaches may be necessary, such as reliance on local clinics to provide a form, a stamp or an e-mail certifying that an individual does not have the pandemic virus, the EEOC stated.

But that is only if someone can actually get tested, right now that is a challenge. So, until more tests for coronavirus are available, if an employer can't get such alternative documentation, it will have to consider how much risk it's willing to take if the employee can't prove he or she is free of the virus, he said.

## **Other Guidance**

The EEOC guidance also provided that:

- An employer may take an applicant's temperature as part of a post-offer, pre-employment medical examination.
- An employer may screen applicants for symptoms of COVID-19 after making a conditional job offer.
- An employer may delay the start date of an applicant who has COVID-19 or symptoms associated with it.
- An employer may withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it. Based on current CDC guidance, the individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer, the EEOC explained.

Sources:

<https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/coronavirus-checking-temperatures.aspx>

<https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/eoc-coronavirus-temperature.aspx>