

SAFETY DIRECTOR BULLETIN

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Return to Work: Can Employers Take Workers' Temperatures?

Due to the severity of the COVID-19 outbreak, the U.S. Equal Employment Opportunity Commission (EEOC) issued guidance for employers considering taking the temperature of workers re-entering the workplace and if this could lawfully be done. The EEOC issued guidelines on temperature taking as being permissible back in 2009 as a result of the H1N1 outbreak. More recently, the EEOC re-issued its guidance confirming that the COVID-19 pandemic permits employers to measure employees' temperatures before allowing them to enter the workplace.

Per the EEOC guidelines, such screening should be implemented on a non-discriminatory basis and all information obtained should be treated as highly confidential medical information under the Americans with Disabilities Act (ADA). Specifically, the identity of workers exhibiting a fever or other COVID-19 symptoms should only be shared with members of company management with a true "need to know". Additionally, employers should understand that screening employees' temperatures is just one of the screening techniques that may be utilized and that it will not completely mitigate the risk of contagion since many people with COVID-19 may not have a fever. People without a fever could also be contagious without experiencing any symptoms. Given the increased focus on taking temperatures, it is important for employers to ensure that when they take employees' temperatures they do so safely. As of this date, the EEOC, CDC or the Occupational Safety and Health Administration (OSHA) have yet to issue guidelines or requirements specific to temperature checks. Since some employers are already required by state and local orders to institute temperature checks, below are general best practices in place by many and specific compliance approaches that employers may consider if they implement temperature checks when workers come back to the office:

- Communicate clearly in advance with their workforces regarding temperature checks and related implications (e.g., where, how, being sent home, etc.).
- Set a temperature screening threshold over which employees will not be permitted to enter the workplace. The CDC considers a person to have a fever when he or she has a measured temperature of at least 100.4° Fahrenheit; many employers have adopted screening thresholds in the 100-100.4°F range.
- Seek to facilitate testing in the least invasive way possible, including by attempting to procure devices that can register temperature without exposure to bodily fluids (e.g., no-contact thermometers).
- Select an external testing firm to take temperatures; perhaps a wellness vendor or local community provider, to take the temperatures using appropriate steps and procedures. By selecting an external firm, the employer can outsource related other obligations like those from OSHA that will be the responsibility of the vendor to address and comply with.
- Maintain social distancing (e.g., by establishing multiple temperature check stations to minimize crowding), clean and disinfect medical equipment, and take other COVID-19 related precautions.
- Employers may also consider alternate means for temperature screenings. For example, allowing employees to self-test at home and report their results to their employer on a daily basis before entering the facility.

Employers will need to individually consider a host of procedures when evaluating “return to work” measures to protect employees. The possible taking of temperatures may be one of many possibilities to consider. It is expected that as the country begins to “open” and employees return to work federal agencies will issue further guidance on temperature taking. Employers should check with their legal and other safety professionals before adopting any procedures.