

U.S. COVID-19: WORKPLACE TEMPERATURE SCREENING: HOW TO DEVELOP AND IMPLEMENT A SCREENING PROTOCOL

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The notion that U.S. employers would engage in broad-scale temperature screening of employees would have once been essentially unthinkable. But the realities of COVID-19 are changing the workplace, at least for the time-being. With the encouragement of the Centers for Disease Control and Prevention (“CDC”) and some state and local governments, and in light of the blessing of the Equal Employment Opportunity Commission (“EEOC”), more employers are now considering the implementation of daily temperature screening^[1] before employees enter the workplace.

In [Part 1](#) of our two-part series on temperature screening, we addressed the question of *whether* employers may (or must) implement a temperature screening protocol. Here, in Part 2, we address the question of *how* to implement such a protocol, i.e. what procedures for temperature screening in the workplace should employers implement? Below are a number of issues for employers to consider:

1. **Decide who will be screened.** Some employers are screening only critical infrastructure workers who were or may have been exposed to a person suspected or confirmed to have COVID-19. Other employers are screening all employees, and often are also screening any contract workers and visitors who enter the workplace, unless doing so would be virtually impossible (e.g., a grocery store screening all customers). Although deciding who will be screened is essentially a business decision, at all times, employers must ensure that employees are selected for screening on a nondiscriminatory basis.
2. **Decide who will do the screening.** The options for who will do the screening range from the employee taking their own temperature and showing the thermometer’s results to a screener, to having one or more designated employees assigned this task, to using third party contractors with healthcare backgrounds. Where employers designate employees to perform screenings, such employees should be carefully selected (e.g., ideally personnel with a medical background such as a company nurse; otherwise, human resources personnel are preferred over supervisors) and carefully trained regarding confidentiality (e.g., how to handle the temperature information),

safety (e.g., wearing proper personal protective equipment (“PPE”); the use of the thermometer), and decision-making (e.g., whether and when employees may be sent home).

3. **Consider safety requirements.** When implementing a screening process, employers must comply with applicable federal, state and local health and safety laws to protect employees from potential workplace hazards. For example, the federal Occupational and Safety Health Administration (“OSHA”) would require an employer to conduct an assessment of potential risk factors and hazards associated with the screening process, and determine the appropriate PPE to issue to employees conducting temperature screenings. OSHA’s recently promulgated Guidance on Preparing Workplaces for COVID-19 helps employers classify their workplaces by risk, from “Very high,” to “Low.” The higher the exposure risks, the greater levels of controls and protections OSHA recommends an employer implement. OSHA has additional requirements regarding the use of respirators and masks (e.g., N95 masks), employee training on how to properly implement screenings, and employee communications regarding PPE decisions. Additional OSHA or state or local laws or regulations may apply depending on an employer’s business operations (e.g., healthcare).
4. **Determine which type of thermometer will be used.** There are many thermometer options. When selecting a thermometer, employers should consider the availability of different types of thermometers and how soon they can obtain them, the speed at which the thermometer works (taking into account the number of employees you expect to screen each day and the number of screeners you will use), the accuracy of the thermometer, and the ease of use. A contact forehead thermometer is fast and accurate, but must be cleaned with a new alcohol wipe after each use. A non-contact infrared thermometer with auto-measurement reduces the need for physical contact. Oral thermometers may be more readily available, but should have a plastic tip that detaches and can be discarded after taking each individual’s temperature. Thermal imaging for detecting elevated body temperature may also be an option. Employers should consult any applicable state or local emergency orders, as some recommend certain thermometers: for example, Delaware’s order on temperature screenings states that it is best to use touchless thermometers (forehead/temporal artery thermometers) if possible.
5. **Determine where you will conduct screenings.**

Outside: The CDC recommends that screenings be conducted before entry to a workplace. One option is to use a drive-thru screening process. If using such a process, employers should develop appropriate traffic controls, signs and markings (e.g., parking cones) to direct traffic and provide safe locations for testing. They should also make sure that exits are not blocked with waiting cars. If possible, another option is to set up a trailer or other temporary structure in a parking lot outside the entrance doors.

Inside: Ideally, the screening will occur very close to the entrance and each individual should use hand sanitizer prior to getting in line for screening. Employers should ensure that relevant

employees (and, if screening others, contractors and visitors) all enter where they will be subject to screening. Employers should also ensure that those being screened practice physical distancing when waiting to be screened. Consider using painter's tape or parking cones, setting up "lanes" on the floor or other methods to ensure individuals remain at least six feet apart during the process. Ensure that the screening location does not block building exits in case of an emergency.

6. **Develop the screening process.** The screening process should be specific and easy to follow. Employers should define what will be considered a "fever" for purposes of sending the employee home (the CDC defines a fever as a temperature of 100.4° F or higher, Delaware's order defines a fever as a temperature of 99.5° F or higher, and some employers are considering a fever to be a temperature over 100.0 F). Consider whether screening will include asking questions about other COVID-19 symptoms beyond fever and/or recent travel or potential exposure. Employers should also consider whether they need to stagger start times due to a large number of employees arriving to be screened at one time, how many screeners will be necessary, and what they will do if a screener is late/does not show up for the screening. Employers should define what will cause an employee to either "pass" or "not pass" the screening, and what the result of not passing will be (e.g., individual is restricted from entering the workplace; employee is sent home from work).
7. **Implement Health and Safety Measures.** Employers performing temperature screenings of employees must comply with applicable federal, state and local health and safety laws to protect employees from potential workplace hazards. To develop appropriate protections, employers must assess their selected temperature screening process and the affected workplace to identify hazards that are present or are likely to be present, and then develop and implement appropriate controls to help protect employees from those hazards. Such an assessment is specifically required under federal OSHA regulations with respect to PPE, and is consistent with OSHA's recently promulgated Guidance on Preparing Workplaces for COVID-19.
8. **Maintain privacy.** Regardless of where the screening takes place, employers must ensure that all communications and interactions between the employee and the screener are private and cannot be seen or heard by any other individual. A privacy screen or other barrier may be helpful. Employers should consider having employees who do not pass the screening protocols move to a safe and private area to discuss next steps.
9. **Develop the documentation process.** Employers should determine what information will be documented, how it will be documented, and where such documentation will be (confidentially) stored. Rather than recording all employees' temperatures, consider recording only those persons who did not pass the screening and the reasons (e.g., temperature taken at 7:00 a.m. and again at 7:15 a.m. and at or above 100.4 F both times). For those employees sent home, employers should be sure to document: (1) the person's name, position and, if an employee, the manager's name, (2) the date and time of screening, and (3) the person's best contact information (mobile phone preferred).

10. **Communicate the screening process to employees.** Employers should inform employees (ideally both verbally and in a follow-up written notice) about the screening process in advance of its starting so they will know exactly what to expect and what to do. Any written notice should also be posted on entrances to the workplace and on any internal website or other location where policies are maintained. In addition, employers should keep in mind that state and local laws may dictate what your notice must contain. For example, a notice in California must meet the requirements of a “Notice of Collection” under the California Consumer Protection Act because you will be collecting protected information.
11. **Pay employees for their waiting and screening time.** To ensure compliance with the Fair Labor Standards Act and similar state and local laws, employers must ensure that employees are paid for both screening time and any time they spend waiting to be screened. If it is impractical or impossible to determine the exact amount of time each employee spent in the screening process, employers should consider paying employees based upon an average amount of time and ask employees to notify a supervisor/manager if their actual screening time exceeds the average wait time so they are fully compensated.
12. **Send employees home if they have a fever or if they refuse to be tested.** Anyone refusing required testing should be denied entry into the workplace; employees who refuse testing may be subject to disciplinary action. If a person has a fever upon being screened, consider checking the person one or two more times. If at least two checks show a fever, the person will have to be sent home with instructions (see #13 below). Employees are not permitted to refuse to go home, and similar to an employee refusing a test, an employee generally may be disciplined for insubordination or unprofessional conduct during or as a result of the screening process. After sending the individual home, all areas in the facility the employee may have touched or been present in before being screened should be thoroughly cleaned.
13. **Provide instructions to an employee who is sent home due to fever.** As soon as feasible, employers should inform the employee in writing: (1) when the employee will be permitted to return to work and what procedures will apply for such return (see below) and (2) whether the employee will be allowed to work remotely or, if that is not possible, whether the employee will be placed on some type of paid or unpaid leave while not allowed to work (this will depend on company leave policies and possibly state and/or federal law). Click [here](#) for BCLP’s in-depth discussion of the Families First Coronavirus Response Act (applicable to certain employers, including private employers with fewer than 500 employees) which creates (partially) paid leave entitlements for eligible employees who are unable to work due to certain qualifying conditions relating to COVID-19.
14. **Follow-up with employees who are sent home.** Employers should make sure to follow up to see both how the employee is feeling and also to determine if the employee has either tested positive or has obtained medical advice indicating a likely COVID-19 diagnosis. If so, the employer should determine and notify appropriate individuals with whom the employee had contact in accordance

with CDC guidance, confidentiality considerations under the ADA and analogous state law (e.g., typically other employees should not be given the name of the employee who is or may be positive for COVID-19) and other employer processes.

15. **Establish return to work procedures.** Employees sent home with a fever should not return to work until the following criteria are met:

- The employee certifies in writing that the employee is fever-free and has been completely symptom free (no coughs, no chills, no symptoms consistent with COVID-19) for at least three (3) days; AND
- At least seven (7) days have passed since the later of the onset of symptoms that led to the employee being sent home or a positive COVID-19 test.

OR

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- The employee provides documentation from a medical provider confirming that the employee can return to work, that the employee had a negative test for COVID-19 (if testing is available), and that any lingering symptoms, if applicable, are not the result of a contagious illness.

The COVID-19 pandemic and its impact on the workplace is rapidly evolving. Employers should regularly consult with legal counsel and the CDC website to ensure they have the most up-to-date information and guidance.

BCLP has assembled a COVID-19 HR and Labor & Employment taskforce to assist clients with labor and employment issues across various jurisdictions. You can contact the taskforce at: COVID-19HRLabour&EmploymentIssues@bclplaw.com. You can also view other thought leadership, guidance, and helpful information on our dedicated COVID-19 / Coronavirus resources page at <https://www.bclplaw.com/en-GB/topics/covid-19/coronavirus-covid-19-resources.html>

[1] “Screening” can be used broadly to refer to various efforts to assess an employee’s symptoms of COVID-19. In this blog post, screening is used specifically to refer to the process of taking employees’ temperatures to assess the specific COVID-19 symptom of fever.

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