

Bloomberg Law Gives Insight on How to Minimize Risk While Conducting Temperature Screening – 04/29/20

Today, Bloomberg Law published an Insight piece entitled, “Companies Face a Fevered Pitch for Temperature Screening,” where the author reviews the risks of employers conducting temperature screening. As part of President Trump’s “Opening up America Again” program, the administration recommends that employers will need to implement certain precautions to minimize the spread of COVID-19.

The article lists 5 steps that an employer may want to take to minimize the risks of temperature screens. These steps are:

1. Screening for Symptom, Not Condition. *A temperature screen likely is a medical examination under the ADA. In non-binding guidance, the EEOC has taken the position that, at least during a pandemic, temperature screening is job-related and justified by business necessity. To increase the likelihood that federal, state, and local courts will follow this guidance in construing their laws, employers should make clear that the screening is not diagnostic; that is, the purpose is **not** to determine whether the individual has Covid-19 or any other medical condition. The employer seeks only to determine if the individual has a symptom that **may** indicate Covid-19.*

2. Significance of Test. *A fever does not necessarily mean an individual has Covid-19. Conversely, the fact that someone does not have a fever does not mean that he or she does not have Covid-19. These realities need to be communicated. An employer does not want to give someone a false sense of security that they do not have Covid-19. Conversely, some support should be made available immediately to an individual who is told that he or she has a fever.*

3. Not Practice of Medicine. *If there is a patient/health-care provider relationship, then the health-care provider has certain obligations to the individual that go beyond the taking of the temperature and communicating the results. For this reason, it is recommended that the employer make clear that temperature screening does not create a patient/health-care provider relationship. This is true even if health-care providers perform the screen.*

4. Confidentiality of Information. *The notification given to or authorization signed by the individual should state to whom the results will be disclosed. Be careful not to suggest 'absolute confidentiality' because that is neither possible nor required. The roster of test results should be labeled as confidential and secured as same. Nothing should go into the personnel files of employees. Reasonable efforts also should be made to prevent individuals other than the person being screened from hearing the results of the screen. There are multiple ways to configure temperature screening to increase privacy.*

5. Waiting Time. *There is a question whether an employer needs to pay for an employee's waiting time to be screened (and all time thereafter under the continuous day rule). At least under federal law, the answer to this question turns on whether the temperature screen would be integral to the employees' primary duties. There is no 'per se' rule.*

The article goes on to detail other implementation issues that employers should consider including screening anyone who may enter the workplace.

To view the article, go to:

<https://news.bloomberglaw.com/daily-labor-report/insight-companies-face-a-fevered-pitch-for-temperature-screening>