

Blog Post

Screening Employees for Symptoms: Perils and Pointers

September 1, 2020

Screening employees for symptoms of COVID-19 is critical to limiting both the spread of the virus and a company's exposure to claims that it did not do enough to protect its employees. But screening itself can create other liabilities, so you will want to be sure your process follows recommended federal, state and local regulations and guidance. Both the U.S. Centers for Disease Control and the Occupational Safety and Health Administration recommend that employers consider screening employees for symptoms. In addition, some state and local orders mandate temperature screening in some industries or across the board; some require such screening at the worksite; some set a different threshold temperature than the one used by the CDC or different thresholds that vary by industry. So when you implement a screening program, be sure to check state and local law.

Should You Screen And If So, For What?

Even if you are not operating in a location that requires temperature screening, employers should consider screening employees for fever and other symptoms in order to protect the workforce on site. Right now, COVID-19 symptoms may include:

- Fever or chills
- Cough
- Shortness of breath or difficulty breathing

Related Work

Employment Training
and Compliance
Labor and Employment

Related Offices

Tampa

HR Defense

Akerman Perspectives
on the Latest
Developments in Labor
and Employment Law

[Visit this Akerman blog](#)

Coronavirus Resource Center

[Visit the Resource
Center](#)



- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

Note that the list of symptoms keeps changing and the above list may not include all possible symptoms. Also keep in mind that some individuals may be asymptomatic.

In addition, wise employers are screening for other risk factors, by asking employees a series of questions designed to determine their potential for spreading COVID-19 to others at work. Some state and local emergency orders mandate particular questions; others leave it up to the employer.

The CDC general business guidance for non-health employers recommends asking employees:

1. Do you have a fever of 100.4* degrees [**or applicable threshold*] or higher or any of the following symptoms (excluding those due to a known medical reason other than COVID-19):
 - Fever or chills
 - Cough
 - Shortness of breath or difficulty breathing
 - Fatigue
 - Muscle or body aches
 - Headache
 - New loss of taste or smell
 - Sore throat
 - Congestion or runny nose

- Nausea or vomiting
- Diarrhea

2. Are you currently awaiting the results of a test to determine if you have COVID-19?

3. Are you under instructions from a healthcare provider to self-isolate or quarantine due to COVID-19?

Employees who answer “yes” to any of the foregoing questions should generally not be permitted to enter the workplace.

Where Are You Screening?

If you elect to screen employees upon arrival to work, there are a number of issues to address. First, who will conduct the screening? The individual who conducts the screening must be trained, not only in how to conduct the screening, but also in the vital importance of maintaining the confidentiality of the information.

If social distancing cannot be maintained, the individual conducting the screening should be provided with adequate Personal Protective Equipment. The CDC notes that upon arrival, the screener should wash his/her hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60 percent alcohol, put on a face mask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), and a pair of disposable gloves. A gown should be considered if extensive contact with an employee is anticipated. The screener should then visually inspect the employee for signs of illness, confirm the employee is not experiencing coughing or shortness of breath and then take the employee’s temperature. If the screener is performing a temperature check on multiple individuals, the CDC recommends that the screener use a clean pair of gloves for each employee and that the thermometer be thoroughly cleaned in between each check. If disposable or non-

contact thermometers are used and the screener does not have physical contact with the employee, the screener need not change gloves before the next check. If non-contact thermometers are used, the screener should clean and disinfect them according to manufacturer's instructions. The CDC further advises that after each screening or after several screenings, even where the screener did not have physical contact with the person being screened, the screener should remove and discard PPE and wash hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60 percent alcohol.

If conducted at the worksite, ideally the screening should also be conducted outside of or at the entrance to the site — before the employee is in close physical proximity to other workers. If the employee is already in a fully staffed worksite before he/she is tested, then others already have been exposed. The screening should be conducted in a private space so that if an employee is sent home, the employee's departure will not result in other employees speculating about the departing employee's health condition.

If the company elects to conduct the screening itself, it needs to train the screener and anyone who can see the screening entrance, exit or process, in the importance of maintaining the confidentiality of the information obtained.

If employees must wait to be screened, employers should remember that time may be compensable, depending on the wait time involved and the location of the employees.

Because on-site screening presents so many issues and requires so many precautions, the CDC recommends that employers consider having employees conduct a self-assessment before reporting to work, rather than screening at work. Presumably, an employee taking his/her own temperature at home would take only a minute or two, which should be *de minimis* and therefore not

compensable under the federal Fair Labor Standards Act. However, many state laws are more stringent and the time could be considered compensable.

If you elect to have employees self-screen at home, consider providing everyone a thermometer of the same make, to ensure that all employees have access to a thermometer, and that there will be consistency in the readings. You'll also need to establish a way for employees to confirm they have self-screened before reporting to work. Some employers have employed technology, in the form of phone apps or websites, that employees must complete in order to clock or log into work. Technology continues to evolve in this area so it is worth researching the options available.

What Information Are You Gathering?

While screening for symptoms is acceptable during a pandemic, employers must still be mindful that they are gathering medical information. Under the Americans with Disabilities Act, medical information gathered in connection with such screenings must be maintained as confidential medical information, separate from an employee's personnel file. The EEOC updated its guidance in June 2020, to make clear that employers may maintain such information in an employee's existing medical file, but access should be limited to ensure confidentiality is preserved.

If you are using technology beyond just a thermometer that reads temperatures, be mindful of exactly what data that technology is gathering. Some screening technology gathers biometric data, triggering privacy laws beyond the ADA. Regardless of what technology you are using, be sure you are complying with federal, state and local privacy laws.

What Data Are You Retaining?

Hopefully, as little as possible. Some state and local emergency orders require that an employer retain medical information; many others do not. Some

require that employers maintain a record that employees have been screened, but not the screening results themselves. Absent a state or local mandate, there is no reason to keep a record of an employee's actual temperature on any given day. Instead it should be enough to retain a record that the employee responded "no" to the inquiry as to whether he or she exceeded the applicable threshold for that location and industry.

Conclusion

Screening for COVID-19 symptoms is recommended, and in many places and industries, required. If you need assistance implementing a screening program for your workforce, contact your Akerman attorney.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.