

April 16, 2020

COVID-19 Daily Briefing Recap

How to Set Up a COVID-19 Screening Process

Please note that the following is a recap of our COVID-19 Daily Briefing from April 16, 2020. Due to the rapidly evolving nature of the pandemic, we recommend that you consult the most up to date materials possible. Visit Jackson Lewis P.C.'s [COVID-19 resource page](#) for updates on workplace impacts and [sign up here](#) to receive invitations to future daily COVID-19 webinar briefings and email updates on ongoing legal and workplace health challenges.

What is COVID-19 Screening?

- Many employers are setting up COVID-19 screening programs at their facilities in order to prevent the spread of the virus in their workplaces (please see our related [client alert](#) for further information). Screening programs involve checking individuals entering a facility for the following:
 - Temperature at or above a specified level (range of 99.5-100.4 degrees).
 - Presence of symptoms such as cough, sore throat, shortness of breath, new loss of smell or taste, and gastrointestinal problems such as diarrhea, nausea, and vomiting.
 - Level of contact with persons that have or are suspected to have COVID-19.
 - Extent of travel to places where there is evidence of community spread.
- Screening is *NOT* the same thing as molecular or serological testing. Those types of testing may be coming soon and we anticipate they will bring their own questions and issues.

Legal Considerations

- **HIPAA privacy:** Generally not implicated because employers doing the screening are not providing healthcare services.
- **GINA:** Generally not implicated (unless family members are screened).

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- **ADA/EEOC pandemic guidance:**
 - A temperature check is considered a medical examination, but it is permitted during a pandemic under EEOC guidelines.
 - Employers may bar employees from the workplace if they refuse to submit to the temperature check.
 - Any medical information collected in the screening is subject to ADA confidentiality requirements.
- **Labor law:** Unionized employers must negotiate with the union prior to implementation.
- **State law:** Be aware of any state-specific laws that may apply. For example:
 - California’s Department of Fair Employment and Housing (DFEH) has modified its guidance to permit temperature taking on grounds similar to the EEOC.
 - Many states and counties have issued orders or recommendations for screening.

Considerations for Setting Up a Screening Program

- Clearly define the purpose of the program – limit it to preventing spread of COVID-19.
- Assign a leader or team to coordinate the design and implementation of the program:
 - Coordinate across jurisdictions and facilities.
 - Track CDC and local guidance.
- Decide what information will be collected:
 - Be sure to take local orders and recommendations into consideration.
 - Develop best practices to distribute across all company locations.
- Who will be screened and who will conduct the screening?
 - Some local orders direct employers to screen employees *and* visitors.
 - If employees will conduct the screening, make sure you provide appropriate protective equipment and training.
 - If you hire a third party, you will need to review the services agreement and make sure that the providers are licensed, have appropriate training and protective equipment, and have appropriate indemnity.
- Develop clear instructions for screening:
 - *How:* There are various options for conducting temperature screenings, including thermometers, thermal imaging cameras, and forehead strips.
 - *When:* Make sure the frequency and timing of your screening meets the requirements of any local orders.
 - *Where:* Make sure there is enough space to maintain distancing and that the testing area can be sanitized effectively.
- Be prepared to give appropriate direction to any employees or visitors who are denied entry to your facility due to a positive screening.
- Make sure your program is set up so that you can maintain confidentiality and retain required records throughout the process.
 - Results of screening cannot be disclosed to managers and supervisors except as necessary to communicate restrictions on the work or duties of an employee and necessary accommodations.

- Results generally should not be disclosed to upper-level management, landlords, or business partners.
- Think about who is conducting the screening and how that impacts confidentiality.
- Consider whether screening is being done in a setting where results could potentially be overheard.
- It may make sense to retain documentation of the program to demonstrate the steps you took to protect your workforce.

What if I have more questions?

As issues and concerns around COVID-19 unfold daily, employers must prepare to address the threat as it relates to the health and safety of their workforce. Keep up to date with [Jackson Lewis' latest available information and resources](#).

If you have any questions, please contact the Jackson Lewis attorneys with whom you regularly work.