



Temperature Checks in the COVID-19 Era

A Practical Checklist from Sheppard, Mullin, Richter & Hampton LLP — April 2020

As we move into the second quarter of 2020, governments around the country are analyzing how to best open up their economies. Part of this will include people returning to work, restaurants, retail establishments, and other public places. Landlords, business owners, and others need to know how to do so safely.

Part of the directives regarding opening includes taking the temperatures of those who come into your establishment. Instructions from governments on temperature checks are often included within Social Distancing Protocol requirements. Other issues arise under [ADA considerations](#), as well as under general privacy and data security law principles.

Drawing from these requirements, how can an organization put together an appropriate policy, especially if it has operations around the country? The following is a checklist of considerations:

- ✔ Do you have clear notice on-premises about your temperature taking activities? Does that notice explain why you are collecting the information, and how you will use the results? Is this information included in your broader Social Distancing Protocol?
- ✔ Have you thought about how to distribute this notice to those who may visit your facilities in the future? Sending to vendor personnel who frequently come on site, for example.
- ✔ If you plan to store the results, have you determined how you will protect and maintain the confidentiality of that information? Have you thought carefully about whether storing the results themselves (rather than simply admitting someone whose temperature check is normal) is needed?
- ✔ If temperature scan results are stored about employees, keep those results separate from the employees' personnel files. (The information can be stored, though, in the employees' existing medical files).
- ✔ For hourly employees, keep in mind that in many jurisdictions employees must be paid for the time taken to conduct the temperature scan. How will you account for employees' time so that you can pay them? Will you have the scan occur post-punching in?
- ✔ What will you do if someone has an elevated temperature? What steps will you take to ensure you treat the person in a manner consistent with your policy, protect their privacy, and treat them with dignity?

Specific requirements for taking temperatures as part of a COVID-19 reopening will vary from location to location. This checklist is intended to give you a head-start in developing your program. This checklist should be used as part of a broader program that you develop, in connection with legal counsel.

This alert is provided for informational purposes only and does not constitute legal advice and is not intended to form an attorney-client relationship. As you are aware, things are changing quickly and the guidance and interpretations described here may change. This article represents our best interpretation and recommendations based on where things currently stand. Please contact your Sheppard Mullin attorney contact for additional information.