

EEOC: Employers Can Take Temperature of Workers

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In a surprise piece of news this week, the U.S. Equal Opportunity Employment Commission said it will allow employers to take the temperature of employees exhibiting symptoms of the coronavirus.

Recently, members of our [Employment Practice Group](#) and [COVID-19 Response Service Team](#) were relying on prior guidance from the EEOC from a publication entitled [Pandemic Preparedness in the Workplace and the Americans with Disabilities Act](#) to help employers understand their workplace obligations.

However, the EEOC has now provided updated guidance on acceptable employment practices in light of the COVID-19 pandemic.

The statement clarifies what Barley Snyder's coronavirus response team has been telling you: That employers are allowed to ask employees if they are exhibiting symptoms of COVID-19 and may require employees who are exhibiting those symptoms to stay home from work. For COVID-19, symptoms include fever, chills, cough, shortness of breath and a sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

The most notable piece of information from the guidance is the EEOC's position that given the warnings regarding the dangers of COVID-19 and its spread through the community, employers may take employees' body temperature. Generally, taking an employee's temperature is considered by the EEOC to be a medical examination and is prohibited, absent specific circumstances. However, given the current pandemic, employers are now permitted to take employees' temperature. However, employers should be aware that some people with COVID-19 do not have a fever.

The EEOC's guidance also clarifies that the ADA allows employers to require doctors' notes certifying fitness for duty before an employee returns to work from a pandemic-related absence. As a practical matter, however, doctors and other health care professionals may be too busy during and immediately after a pandemic outbreak to provide fitness-for-duty documentation. Therefore, new approaches may be necessary, such as reliance on local clinics to provide a form, stamp or e-mail to certify that an individual does not have the pandemic virus.

Additional guidance from yesterday's release states that employers may also delay the start date of or withdraw a job offer from a future employee who has or is exhibiting symptoms of COVID-19. It also may screen job applicants for symptoms of COVID-19 and can screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability. An employer may also delay the start date of an applicant who has COVID-19 or its symptoms, because according to current CDC guidance, an individual who has COVID-19 or its symptoms should not be in the workplace. Similarly, an employer may withdraw a job offer when it needs the applicant to start immediately

but the individual has COVID-19 or symptoms.

The ADA and Rehabilitation Act rules continue to apply, but they do not interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps employers should take regarding COVID-19. Employers should remember that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to follow the most current information on maintaining workplace safety.

If you have any questions about the recent guidance, please [contact me](#) or any member of the [Barley Snyder Employment Practice Group](#) or the [COVID-19 Response Service Team](#).