



Ohio Governor Requests Employers Take Worker Temps During COVID-19 Crisis

Insights

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Ohio Governor Mike DeWine has requested that any Ohio employer that remains open during the current public health crisis take the temperatures of its employees daily before beginning work. According to DeWine, employees who show an elevated temperature (100.4 degrees or higher, or 99.6 for the elderly) should be sent home to help prevent the spread of COVID-19, the disease caused by the new coronavirus.

Governor DeWine said the state government may have to take more drastic measures if companies and employees do not take the request to take employee temperatures seriously: "If we're finding we can't get people to do this, we're going to have to go to the next stage, which is absolutely close everything down unless it's essential," DeWine said. "And we're not there yet. We may get there. But look, we have to have everybody. I just plead with employers, I plead with employees, if you're sick, stay home. Every employer in this state should take the temperature of everybody who comes in. Literally every single day. We have to take these actions. We can't do all of this. Everybody has to do this."

Legal Issues Behind Taking Employee Temperatures

In ordinary times, taking the temperatures of employees would be a risky proposition. Generally, measuring an employee's body temperature is considered a medical examination under the Americans with Disabilities Act (ADA), which prohibits medical examinations unless they are job-related and consistent with business necessity. However, these are not ordinary times.

According to [guidance released yesterday](#) by the Equal Employment Opportunity Commission (EEOC), employers may measure employees' body temperature because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions. In [yesterday's updated guidance](#), the EEOC also confirmed that employers may screen applicants for COVID-19, including by taking applicant temperatures.

Aside from the practical issue of obtaining no-contact thermometers, Ohio employers should take steps to maintain social distancing (six feet apart) while employees wait in line for their temperatures to be taken. Someone who has the knowledge to properly read and disinfect thermometers should take the temperatures. Ideally, this would be a company nurse. However, if this is not possible, a Human Resources professional who has been trained on the appropriate protocol would also be appropriate.

Employee temperatures should be handled discretely and not announced in front of other employees. Any records related to employee temperatures should be treated as confidential medical records. For non-exempt (overtime eligible) employees, time spent waiting in line to have their temperatures taken should be recorded and treated as compensable time.

To protect the individual who is taking the temperature, you should first conduct an evaluation of reasonably anticipated hazards and assess the risk to which the individual may be exposed. The safest thing to do would be to assume the testers are going to potentially be exposed to someone who is infected who may cough or sneeze during their interaction. Based on that anticipated exposure, you must then determine what mitigation efforts can be taken to protect the employee by eliminating or minimizing the hazard, including personal protective equipment (PPE). Different types of devices can take temperature without exposure to bodily fluids. Further, the tester could have a face shield in case someone sneezes or coughs. Further information can be found at [OSHA's website](#), examining the guidance it provides for healthcare employees (which includes recommendations on gowns, gloves, approved N95 respirators, and eye/face protection).

If an employee refuses to have their temperature taken, employers should try to understand the reason why. For example, is the employee in a high-risk group and there is a concern regarding how the temperature is being taken? If a resolution cannot be reached that will help protect the health of all employees, employers may send the protesting employee home. Employees with an elevated temperature should also be sent home immediately, in which case such employees may apply for extended unemployment compensation benefits. Depending on the size of the employer, employees may also be eligible for paid sick leave under [the recently passed Families First Coronavirus Response Act](#).

Employers, however, should remember that some people with COVID-19 do not have a fever. While Ohio employers should comply with the governor's request, they should also continue to monitor employees for other signs of the COVID-19 virus. Employers should remember that guidance from public health authorities such as the CDC and the Ohio Department of Health is likely to change as the COVID-19 pandemic evolves. Therefore, employers should continue to monitor the most current information on maintaining a safe workplace.

Conclusion

We will continue to monitor this rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For further information, contact your Fisher Phillips attorney or any attorney in our [Cleveland](#) or [Columbus](#) offices, or any member of [our COVID-19 Taskforce](#). You can also review our [Comprehensive And Updated FAQs For Employers On The COVID-19 Coronavirus](#).

This Legal Alert provides an overview of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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