

COVID-19 CLIENT ALERT

Governor DeWine Suggests That Employers Take Employees' Temperatures Daily

By Ann E. Knuth

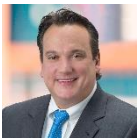
In his March 18 afternoon press briefing, Governor DeWine advised Ohio employers to take the temperatures of all employees every day and went so far as to say that if employers do not do this, the next step will be to close all but essential business. The EEOC released the following updated information on the ability to take the temperatures of applicants and employees, as well as permissible questions related to medical condition of an employee who calls in sick:

- **How much information may an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?**
 - During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.
- **When may an ADA-covered employer take the body temperature of employees during the COVID-19 pandemic?**
 - Generally, measuring an employee's body temperature is a medical examination. Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature. However, employers should be aware that some people with COVID-19 do not have a fever.
- **Does the ADA allow employers to require employees to stay home if they have symptoms of the COVID-19?**
 - Yes. The CDC states that employees who become ill with symptoms of COVID-19 should leave the workplace. The ADA does not interfere with employers following this advice.

- **If an employer is hiring, may it screen applicants for symptoms of COVID-19?**
 - Yes. An employer may 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.
- **May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?**
 - Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.
- **May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?**
 - Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.
- **May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?**
 - Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

While employers are generally prohibited from conducting medical examinations of employees, including taking their temperature, the recent EEOC guidance, coupled with Governor DeWine's directive, now make it possible for employers to take employees' temperatures as part of their efforts to limit the spread of COVID-19. Our Labor and Employment Practice Group is available to address any questions about implementing this practice or any other issues related to management of your workforce during the COVID-19 pandemic.

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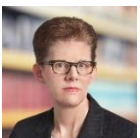
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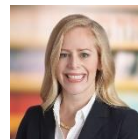
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