



## Webinar #17: Legal Issues Concerning COVID-19 Employee Screening

*Thursday, May 28, 2020*

1. As a subcontractor, are we doing more harm than good if we check our employees for temps and a health screening if the GC or controlling contractor does not?

A contractor should always check with counsel before making a determination with respect to conducting temperature checks or health screenings. As a general matter, that decision should be made irrespective of whether the GC or controlling employer is conducting the checks or screens.

2. It is not (financially) practical to implement the daily health check protocol for our small office of 4-5 employees. We can't afford a nurse to take temperatures or set up an employee to do this task. Can we ask each employee to take their own temperature at home (or at the office with a supplied scanning thermometer) and self-report the results?

Many employers are asking employees to take their temperatures at home and self-report, rather than taking them at work. Contractors should check with counsel, however, regarding potential wage and hour considerations with this practice.

3. Our field service techs drive their service vehicles home each day and are dispatched to calls from home. What is the best way to handle the temperature check for them?

There is likely not a best way, but some employers are having techs do self-checks at home and then reporting those before starting to work. Contractors should check with counsel, however, regarding potential wage and hour considerations with this practice.

4. Do I need to be certified to perform temperature check and screening? If yes, where can one obtain the required training?

There is no certification for conducting temperature checks. Anyone performing these checks, however, must be trained on the safety protocols for conducting

them (e.g., PPE, how to safely take the temperatures) and any other human resources considerations that may be applicable.

5. You mention that the person performing temperature check must be trained. Where can we get trained? Is there an online training site available?

There may be on-line training courses available at this point. However, contractors can also look to the CDC for guidance on this. See [www.cdc.gov](http://www.cdc.gov).

6. Asking employees to take their own temperature before they come to work. Does that satisfy requirements?

Many employers are asking employees to do this. In some jurisdictions, this may satisfy local requirements. Contractors are encouraged to consult with counsel, however, in setting up such a system.

7. Is it okay to not allow employees on site if they are sick and tell them to inform their doctor?

Employees who are experiencing symptoms of COVID-19 should not come on site to work. The employees should also be encouraged to contact a healthcare professional for consultation.

8. During the health screening an employee reads a high temperature and needs to vacate the building, do you have any suggestions as to how an employer discreetly tells an employee they have a high temperature and need to go home?

Employers must take steps to protect privacy of employees. There is not right answer to this. Contractors should consult with human resources of counsel regarding this. One approach may be, however, to have the screening in a private area of the site (not in front of other employees waiting to be screened), which would allow a discrete conversation to occur after the temperature is taken.

9. If a person has been in contact with someone with the virus does the firm have to insist that the person who has been in close contact with a person with COVID 19 be quarantined for 14 days even though they do not have the virus? I understand that we can have that person tested but am concerned about the quarantine side of this question?

The CDC has stated “no,” for critical infrastructure employers/employees, provided the contractor takes certain actions and implements protective measures (e.g., face coverings). Contractors should closely follow CDC guidance in this area, as the guidance continually changes.

10. Will MCAA have example guidelines and policy templates for contractors or for affiliates to distribute to members.

MCAA is providing its members with a model *Return to Work Exposure Control Plan* that can be easily tailored based on critical industries requirement for your state/locality. The plan includes a return to work checklist for mechanical contractors, a pre-return jobsite screening questionnaire, an employee pre-return to work screening questionnaire, a *Return to Work Exposure Control Plan Safety Training PowerPoint* with instructor notes for training your workers, and an accompanying 25-question multiple choice test/test answer key. A final component, which is coming soon, is a Critical Industries Requirements List for all 50 states.

11. San Francisco Bay Area counties require that the contractor in control of the jobsite maintain a daily log of those on site with name, address, email, phone. Can we provide that personal information to GCs without consent of employee?

Contractors should consult with counsel for local requirements and practices in the San Francisco Bar Area.

12. An employee has provided a doctor's letter stating that the employee has a medical condition that puts them at risk for serious complications of COVID-19. How should we respond? Do we need to do a reasonable accommodation interview? Or do we say that per CDC those with risks should not be exposed to our jobsites?

This is a difficult scenario and contractors should seek counsel before taking any particular action. To the extent conditions are covered by the ADA or state and local equivalent laws, there may be a host of obligations a contractor would need to take. These should be carefully considered.

13. General Contractors are typically requiring the pre-access screening / testing and mandating who can go to work. How much liability do subcontractors have for the process that is required by others?

It is difficult to say how much "liability" subcontractors take on in these situations. Contractors should document any requirements placed on them from general contractors and also consult their own counsel. Should a subcontractor be "required" to take an action by a general contractor that concerns them, they should communicate directly with the general contractor and consult counsel.

14. Is there a list of questions we should ask employees prior to entering the job site? In addition to taking temperature. And,

Contractors should consult the CDC website for this information.

15. We are a service company that employees travel from home to separate job sites. Can we have them self-administer temperature testing and reporting to our HR department?

[See responses to Questions 3 and 6 above.](#)