



# As Some Employees Return to Offices, Temperature Checks — and Legal Questions — May Await

Lawyers Expect a Rise in Potential Lawsuits and Claims



Employees at an office building in China have their temperatures checked. (Cushman & Wakefield)

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As Texas and other U.S. states prepare to begin reopening office buildings for business, some companies might opt to screen employees prior to entry for fever, a known symptom of the coronavirus pandemic.



Landlords and companies must take reasonable steps, including [short-term](#) and [long-term](#) solutions, to provide a safe working environment for tenants and employees, Chad Ruback, a Dallas appellate lawyer, said in an interview. But what is reasonable during a pandemic? That is unclear, he said.

That definition of reasonable could differ from judge to judge, Ruback said, and there's no historical case law to help guide legal decisions. The last pandemic in the United States happened more than a century ago and workplace trends, such as coworking, tenant lounges and gyms for workers, didn't exist, he said.

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"I wouldn't be surprised if some landlords insisted on taking a measure, like temperatures," Ruback said. "But I also wouldn't be surprised if someone on the premises was so upset by what they perceived to be an overreaching landlord, they sought legal counsel and could potentially file suit."

At Southwest Airlines, executives said on the Dallas-based company's first-quarter earnings call, voluntary temperature checks are available for employees. By making it voluntary, Ruback said this could help a company navigate potential legal pitfalls.

But, he said, nothing is certain in this environment.

"This is a tough situation we are dealing with and there's not well-established law on what should be done here," he said. "The law is not clear."

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The Equal Employment Opportunity Commission revised its "Pandemic Preparedness in the Workplace and the Americans with Disabilities Act" in March with guidelines about COVID-19. The commission said employers are allowed to measure an employee's temperature because it is a symptom of COVID-19.

Normally, the commission prohibits employers from taking an employee's temperature, which is classified as a medical examination, but COVID-19 is an exception because it has been identified as a community spread virus and classified as a "direct threat" of substantial harm to the health or safety of the employee or others, according to the commission's website.

If companies or property owners take temperatures of workers upon entry, Glenn Callison, a shareholder of commercial law firm Munsch Hardt Kopf & Harr PC, said he could see it done as a security measure in a similar fashion to boarding a train or an airplane in a way where the results of the temperature check isn't widely broadcast to the general public.

Regardless of precautions, Callison said he expects lots of potential legal claims to arise with the return to work during and after a pandemic.

"Certainly, each side needs to do their part, but I could see someone who got the virus saying this is someone's fault," Callison said in an interview. "There's a proposal out there to offer some protection to employers from these lawsuits, but it could also be extended to landlords."

Rahila Sultanali, a shareholder and real estate attorney at Roberts Markel Weinberg Butler Hailey PC, said she expects there to be a clear divide between the responsibility of a landlord and the responsibility of an employer when it comes to protecting workers.



Rahila Sultanali is a real estate attorney and shareholder at Roberts Markel Weinberg Butler Hailey PC. (Roberts Markel Weinberg Butler Hailey PC)

For business owners and management teams, Sultanali said she could see companies start to implement taking employee temperatures if it's done in a consistent and uniform procedure. The act of taking a temperature would also have to be done in a way not to expose employees to further contagion, she said.

"Companies need to do what is best for employees and customers," said Sultanali, who works out of the firm's [Sugar Land office](#), about 20 miles outside of downtown Houston. "For their own safety, they will not want to work with coworkers who have a temperature."

Either way, she said, legal issues and complaints will definitely be on the rise moving forward as companies open up for business.

"Everyone is trying to do the best they can to protect the safety and well-being of customers and employees at large," she added. "But you can't please everyone."

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