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Yes, you can take your employee's temperature: Experts

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After weeks of stay-at-home mandates shuttered businesses around the country, states are starting to reopen and employers are preparing to reopen workplaces that will look substantially different than they did in early March.

Employers want to know if they can take employee's temperatures or make customers wear masks and are seeking answers to myriad other questions about safely bringing employees back to the workplace.



Experts answered those questions — yes, employers can check their workers' temperatures and, yes, establishments can require customers to wear masks — and more Thursday during *Business Insurance's* COVID-19 webinar “Getting Back to Work: Change, Change and More Change.”

Employers should take “a giant pause right now and reassess” their workplaces to identify the distinctive health and safety issues they face, said Carolyn Richmond, New York-based chair of the hospitality practice at Fox Rothschild LLP. “The question is going to be ... are we doing enough? I think it's just a brave new world right now. I don't know exactly where the law is going to come down. We don't have an analogous past experience to look at.”

With the many legal ambiguities surrounding COVID-19, employers need to have a comprehensive safety management plan that addresses infection control protocols, said Eric Conn, Washington-based founding partner of Conn Maciel Carey LLP.

The U.S. Occupational Safety and Health Administration has been steadily issuing guidance to help industries develop these plans, and employers are embracing the implementation of these safety and health systems, he said. “It forces the employer to engage in a thoughtful process every step of the way” and consider the workplace-specific engineering and administrative changes that may need to be made.

A written plan also can help employers communicate the measures they are taking to protect workers and allay fears of employees, and the plan can also be used to stave off regulatory and personal injury liability in the event of a safety complaint or lawsuit, Mr. Conn said.

“OSHA does not have a COVID-19 standard, but there is a general duty clause,” he said. “If you don't meet that reasonable, feasible standard, liability is waiting for you.”

A safety management system can also help identify who is an essential worker in the workplace and needs to be in the office and identify potential risks, said Larry Pearlman, senior vice president of the workforce strategies practice at Marsh Risk Consulting.

“Don't forget what a day in the life looks like for your employee,” he said. “Make sure you're looking at those risk factors” where employees may be less than six feet from one another, such as the break room, smoking areas, time clocks, entrances and elevators, Mr. Pearlman said.

A top concern for employers attending the webinar is the legality of assessing workers' health upon arrival to the workplace and performing temperature checks.

The U.S. Equal Employment Opportunity Commission released guidance in April that gave employers the OK to check temperatures and ask symptom questions within certain parameters, Ms. Richmond said.

"You still can't keep medical records," she said. "And make sure you're applying the policy across the board."

For employers with customer-facing workers, the bigger question is how to protect those workers from guests.

"Anecdotally, upwards of 75% of guests who went into restaurants last week were not wearing any type of mask or gloves," Ms. Richmond said. "We're seeing that employees are particularly nervous. They want protections in place. You have the right to say (to customers), 'You can't come in unless you are wearing X, Y or Z.'"

Employers should also make sure they are effectively communicating these safety policies and procedures.

"I think there is an incredible amount of anxiety out there," Mr. Conn said. "Don't dismiss your employee's concerns. Take them seriously, because if you don't, you're going to go down that rabbit hole of complaints to OSHA and lawsuits."

Louise Esola, assistant editor of Business Insurance, moderated the webinar.

A recording of the full webinar is available [here](#).

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