

New Department of Health Regulation Creates More Legal Obligations for Employers

The Puerto Rico’s Department of Health’s Regulation 9210 of August 21, 2020 (the “Regulation”), provides new obligations that individuals and legal entities must meet. As to legal entities, the Regulation provides that, in addition to complying with the percentage of maximum capacity in their establishments indicated in the applicable Executive Order, they must require all persons entering their facilities, regardless of whether it is in an open air or indoor setting, to:

1. Use masks that cover the nose and mouth;
2. Disinfect their hands;
3. Take their temperature; and
4. Maintain social distancing (6 feet between people who are not part of the same family unit).

What does this mean for employers?

Previous Executive Orders and guidance issued by the Department of Labor mentioned employee *screening* as one of the measures to ward off coronavirus spread. This term was undefined and allowed for employers to choose the screening option suitable for their operation. Accordingly, for some employers *screening* meant, e.g., taking an employee’s temperature or having them answer a health questionnaire. The Regulation now *expressly requires from all legal entities to require the taking of the temperature* to allow entry and remain in their establishment, which, presumably, includes their employees. **Employers who have not included taking temperature in their safety protocols need to be particularly mindful of the new requirement and update their procedures.**

The Regulation, however, *does not* provide the procedures related to temperature checks. Yet, the Equal Employment Opportunity Commission had already allowed employers to take employees’ temperatures to prevent coronavirus spread. The following are some practical considerations for employers when implementing the new requirements of the Regulation:

1. If the employer is not requesting employees to self-check their temperature, the person administering the temperature check should wear appropriate Personal Protective Equipment and be trained in the procedure. It does not have to be a healthcare professional.
2. Preferably, use infrared digital thermometers as they are less invasive.
3. The temperature reading should be kept confidential.
4. Document irregularities such as higher than “normal” temperatures or other incidents and keep those documents in a confidential file separate from the employee’s personnel file.
5. Ensure that there is social distancing when the employees are standing in line to have their temperatures taken.
6. Use Centers for Disease Control and Prevention COVID-19 guidance and recommendations to complement the Regulation’s provisions.

What happens if the employer does not comply with the Regulation?

Legal entities that fail to comply with the Regulation will be sanctioned with a \$500 fine, payable within 3 working days from the date it was issued, subject to double penalty if not timely paid. A judicial review procedure is available, but the filing of an appeal does not exempt the offender from paying the fine within the allotted time.

Although the Regulation is not clear in many areas, entities must comply with its provisions to avoid fines. Our COVID-19 multidisciplinary taskforce comprised of practitioners in our different departments, including Labor and Employment, is available to assist you address the legal and practical considerations pertaining to this evolving topic.

This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us at your convenience.

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