Temperature Check Requirements for the New Phase of Reopening in San Diego

[**Littler Mendelson PC**](https://www.lexology.com/contributors/littler-mendelson-pc)

[](https://www.lexology.com/2208/author/Evelyn_R_Wiggins/)[](https://www.lexology.com/2208/author/Deidra_A_Nguyen/)[](https://www.lexology.com/2208/author/Mishell_Parreno_Taylor/)

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As San Diego County, California employers scrambled to find thermometers to comply with the county health order temperature check requirement, the county did an about-face on its employee health screening directives. On June 9, 2020, the County of San Diego amended its [Health Order](https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID19.pdf) to do away with its previous requirement that employers conduct temperature screening at the worksite unless thermometers were unavailable. The new version instead requires employers to screen employees for [COVID-19 symptoms](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html) as described by the Centers for Disease Control and Prevention. Employers must prohibit employees with such symptoms or a temperature of 100 degrees or more from entering the workplace.

The amendment brings the San Diego County Health Order in line with other California state, county and local directives which recommend, but do not require, temperature checks as part of any employee health screening protocol. The change also appears to provide San Diego County employers with alternative screening options, including at-home temperature checks by employees.

Notably, the Health Order continues to require that most reopened businesses prepare and post in the workplace a Safe Reopening Plan using the county’s form, which has not been updated since May 5, 2020. As of the date of this publication, the template [Safe Reopening Plan](https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/Community_Sector_Support/BusinessesandEmployers/SafeReopeningPlanTemplate.pdf) requires that employees undergo a temperature screen upon reporting to work. Restaurants, bars, wineries, and breweries that are reopening operations beyond take-out or delivery services are excluded from the Safe Reopening Plan requirement and are, instead, required to prepare and post a [COVID-19 Restaurant Operating Protocol](https://www.sandiegocounty.gov/content/dam/sdc/deh/fhd/food/pdf/covid19sdrestaurantoperatingprotocol_en.pdf) that requires a temperature or thermal scan prior to the beginning of each work shift without an explicit requirement that the scan be conducted at the worksite.

San Diego employers wrestling with whether to conduct temperature screening at the worksite in light of the apparent conflict between the Health Order and the Safe Reopening Plan should consider the relative benefits and drawbacks. Conducting temperature screening at the workplace equips the employer with the data needed to carry out the Health Order’s mandate to exclude employees with temperatures of 100 degrees or more from the workplace. Relying on employees to self-report that they have a fever may be less reliable. On the other hand, having potentially-feverish employees report to work only to then be excluded from the workplace due to their temperature screen may risk exposure for others with whom the employee comes into contact during and prior to the temperature screen.

While businesses may face practical difficulties in securing thermometers to conduct temperature screens, requiring employees to take their own temperatures may trigger expense reimbursement requirements under California Labor Code 2802, which requires employers to reimburse employees for all necessary expenditures or losses employees incur as a direct consequence of their duties.

In addition, the time employees spend having their temperature screened, whether at work or at home, may constitute compensable work time that many employers may have difficulty capturing with their current timekeeping practices. Employers must also be mindful of potential reporting time pay obligations under California Wage Orders Nos. 1-15, § 5(A), (B) for employees who report to work and are furnished with less than their usual or scheduled day's work.

On-site temperature screening may also implicate employee privacy and safety concerns. Employers that conduct temperature screening should adopt a temperature check protocol with measures to ensure that temperature checks are reliable, effective, and performed consistently; respect employee privacy; and adhere to social distancing and sanitation guidelines.

Having a plan that complies with Health Orders and also makes practical sense for the employer’s particular organization is key. Additionally, it is important that messaging around return to work and the procedures that require temperature checks and safety protocols are effectively communicated to teams in advance of their implementation. During times of uncertainty, consistent messaging about procedures and the logistics around return to work, including temperature checks and health screening protocols, are critical to ensure that employees feel comfortable with what to expect when they return to work and know whom to contact if they have any questions.

As we continue down the path of reopening, it is important to recognize that county health officials are responding to an ongoing pandemic and that their recommendations may continue to shift in response to the evolution of this public health crisis. With this in mind, businesses should ensure that they have a resilient plan that fits evolving health orders and protocols.