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TAKING TEMPERATURES - AND 10 OTHER STEPS YOU CAN TAKE TO KEEP YOUR EMPLOYEES SAFE DURING THE COVID-19 PANDEMIC

Section 5(a)(1) of the Occupational Safety and Health Act of 1970 is often referred to as the "general duty clause" and requires that employers provide their employees with a place of employment that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm." There are already reported instances of employees filing claims with the Occupational Safety and Health Administration ("OSHA") asserting that their employers failed to provide them with a safe workplace because the employer failed to take steps to mitigate the spread of COVID-19 in the workplace.

Employers can and should adapt their practices and policies to maintain a workplace that is free from recognized hazards. These steps include taking an employee's temperatures as well as the ten other steps we identify below. Recognizing that there are instances where an individual may have the coronavirus without exhibiting a fever, we recommend that you not rely exclusively upon taking employees temperatures as your sole means of protecting your workplace. Instead, in addition to taking your employees temperatures, we recommend that you implement as many of the 10 other steps identified below as possible.

YOU MAY TAKE YOUR EMPLOYEES' TEMPERATURE

The federal guidance on this subject has changed since the coronavirus outbreak reached the status of a pandemic. Initially, the Department of Labor was discouraging employers from taking employees temperatures. Upon authoring this article in mid-April, the Department of Labor's position changed. The Department now advises that taking temperatures is permissible, but that (1) it should be treated as a medical exam; and (2) cautioning that not all COVID-19 cases manifest with a fever.

Accordingly, current Department guidance permits an employer to take an employee's temperature before entering the work-place and may make offers of employment contingent on the employee not having a fever. Additionally, employers may refuse to admit persons who have a fever from entering the workplace and send home employees who have a fever. Employers who choose to take employees temperatures should adhere to the following protocols:

- (1) Treat each temperature check as a medical exam;
- (2) Use a reliable and non-intrusive thermometer;
- (3) Take all employees temperatures at the start of the shift;

- (4) Do not allow any employee who has a fever (100.4 or greater) to enter into the workplace;
- (5) Record each employee's temperature in a log;
- (6) Do not store the results of the temperature check with the employees' personnel records; and
- (7) Maintain strict confidentiality of the temperature checks, results, and logs.

10 OTHER STEPS YOU CAN TAKE TO KEEP YOUR EMPLOYEES SAFE

1. Maintain and encourage social distancing. This includes the following:

- a. Preclude employees from congregating in break rooms and common spaces;
- b. Eliminate/reduce in person meetings in your workplace;
- c. Permitting work from home if circumstances allow;
- d. Separate workstations by 6 feet;
- e. Encourage employees to self-quarantine when not at work so that they minimize their potential exposure to COVID-19; and
- f. Eliminate/reduce ancillary duties of your flight crew (have passengers carry and load their own baggage).

Recognizing that you may not be able to physically separate members of your flight crew by 6 feet during the flight, we encourage you to take as many other steps as both possible and practicable to minimize the spread of the virus in your workplace and among your workforce.

2. Encourage healthy behaviors. This includes: frequent hand washing, covering one's mouth with his or her elbow when coughing or sneezing, and avoid touching eyes, nose or mouth with unwashed hands. Post signs and reminders in conspicuous places throughout your workplace describing the healthy behaviors. Recognizing that it may be difficult for your flight crew to frequently wash their hands, you should make hand sanitizer and disinfecting wipes available in the cockpit of all your aircraft.

3. Prohibit sharing of equipment. This includes prohibiting the sharing of headsets or objects used near one's face, and prohibiting changing workstations during one's shift.

4. Provide face masks and require their use.

5. **Increase air exchange and ventilation.**
6. **Frequently clean and disinfect high touch surfaces.** This includes, but is not limited to: tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, sinks, etc. In short, the entire aircraft including the cockpit should be cleaned and disinfected between trips.
7. **Instruct sick employees to stay home and call in sick.** If you don't already have a policy requiring sick employees to stay home and call in sick, implement one. Additionally, if you are not required to have a paid leave policy and do not have one, consider implementing one so that sick employees are encouraged to stay home sick without financial consequence.
8. **Screen sick employees for COVID-19 symptoms.** When sick employees call in, inquire as to whether they are experiencing symptoms of COVID-19. This includes: fever, cough, and shortness of breath. Additionally, ask if they have been exposed to a person who has tested positive for COVID-19. Make notes relating to the screening. Treat your notes as confidential medical records and do not store with the employee's other personnel records.
9. **Follow up with sick employees to determine whether they have tested positive for COVID-19.**
10. **Make appropriate notifications if you determine that an employee has COVID-19 or is suspected of having COVID-19.** If an employee notifies you that they have tested positive and/or are suffering from COVID-19 symptoms:
 - a. If they are in the workplace, send them home, restrict access to their work area for 24 hours and then clean and disinfect;
 - b. If they have been in the workplace within the last 7 days, clean and disinfect their workspace and all areas where they were likely present. See CDC guidelines for cleaning and disinfecting at:
https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fdisinfecting-building-facility.html;
 - c. Notify employees who have come in contact with the employee who exhibited symptoms or tested positive. Do not reveal the positive employee's identity. Instead, simply tell those that work in close proximity

- that a co-worker is reporting symptoms or has tested positive and encourage them to self-monitor and follow CDC guidance; and
- d. If you learn of multiple employees who work closely together, like a flight crew, all of whom are reporting symptoms, you should consider whether you have an obligation to report an occupational illness pursuant to 29 CFR Part 1904. In enforcement guidance issued by OSHA, OSHA acknowledged that contracting COVID-19 could be a reportable incident but has relaxed the reporting requirements as they relate to transmission of COVID-19 within the workplace. Notwithstanding that, if you have an outbreak in your workplace you have an obligation to report it.

Stay safe. Stay healthy. And implement as many of these measures as possible to mitigate regulatory risks in addition to the already existing health risks.

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