



A Guide for Reopening Financial Institutions

May 18, 2020

*All the information contained in this FAQ is advisory in nature and is not intended to offer any legal or tax advice. Because this is a rapidly changing environment, all of the information included in this FAQ is accurate as of **May 18, 2020** so keep in mind information may become inaccurate as more regulatory guidance unfolds. Any definitive guidance must be coming from the Federal, state and local government, your governing regulator, along with other governmental agencies.

Q1: Is the bank required to conduct medical screening?

A1: Always consult with state and/or local requirements, but no, at this time there is no requirement that the bank conduct medical screenings. It is based on the circumstance of your branch reopening, location, demographic, and other considerations.

The EEOC has issued guidance for employers regarding COVID-19 testing. It expressly states that employers can require employees to participate in COVID-19 testing before they are allowed to enter the workplace, even if they do not exhibit symptoms of the virus. Mandatory testing, when done per the requirements of the guidance, will likely not run counter to the ADA. Previously the EEOC had stated that employers could screen for COVID-19 symptoms by taking body temperature of employees but had not addressed mandatory COVID-19 testing.

With certain testing becoming more available, as well as rapid test results, employers must assess whether to require employees to submit actual COVID-19 testing as a condition of entering the workplace, rather than rely on self-reporting or unreliable temperature tests.

Employers that do decide to require testing should ensure that the tests are accurate and reliable. You also need to continue to require employees to adhere to infection control practices (social distancing, frequent handwashing, etc.). Requiring testing also has other implications—you must ensure that any information obtained from testing is kept confidential. Employers also must consider whether time spent by employees taking test is compensable under the Fair Labor Standard Act and state wage payment laws. Also, you have to consider potential liabilities associated with possible false-positives and false-negative test results. You will want to consult with counsel to discuss all issues prior to implementing a mandatory COVID-19 testing protocol.

The ADA requires that the results of employee medical exams be kept confidential—taking of an employee's temperature, or testing for COVID-19 or related antibodies, or even asking an employee about any history of symptoms are considered medical exams. The bank should keep records of this information in a secure location, separate from other employee files, and to disclose only on a strict need-to-know basis.

Q2: If an employee is symptomatic, can we request a test result?

A2: The ADA does permit the employer to require that the employee disclosure health information with respect to whether the employee poses a direct threat to the health and safety of himself or others. If the bank reasonably believes that, based on an individualized assessment, the employee has symptoms of a condition that poses a direct threat to the employee or others (COVID-19), you can require the employee to undergo medical testing to determine whether the employee is infected.



The bank can make it an internal policy that employees must inform an HR representative if they test positive for COVID-19. At a federal level, there is no requirement for employees to inform employers, only health professionals as dictated by the CDC.

Q3: Can you test or take temps of customers?

A3: Currently there is no specific guidance on this. Some businesses are considering taking customers' temperatures before they enter the business. However, this policy does come with challenges—it is an imperfect method and has limitations, especially as some people may have the coronavirus but not exhibit symptoms or fever, and people can take anti-fever medicine to pass through screenings.

Compliance Alliance does have a screening template available here: <https://compliancealliance.com/find-a-tool/tool/covid-19-customer-prescreening-questionnaire>

Q4: Will there be audits conducted to ensure that financial centers or training labs are adhering to proper guidelines?

A4: No indication from banking regulatory agencies has been given regarding audits. If applicable, this would most likely come from CDC or Department of Health.

Q5: Are customer facing staff required to wear a certain type of PPE?

A5: No specific requirements have been issued for customer-facing staff of financial institutions. All personal protective equipment should be safely designed and constructed and should be maintained in a clean and reliable fashion. It should fit comfortably, encouraging use. If the personal protective equipment does not fit properly, it can make the difference between being safely covered or dangerously exposed. Employers are also required to train each worker required to use personal protective equipment to know:

- When it is necessary
- What kind is necessary
- How to properly put it on, adjust, wear and take it off
- The limitations of the equipment
- Proper care, maintenance, useful life, and disposal of the equipment

If PPE is to be used, a PPE program should be implemented. This program should address the hazards present, the selection, maintenance and use of PPEs, the training of employees, and the monitoring of the program to ensure its ongoing effectiveness.

Additional guidance can be found from OSHA here:

<https://www.osha.gov/SLTC/personalprotectiveequipment/index.html>

Q6: The presenter mentioned several times not to require notes, but if the bank is paying employees any type of pay that can be claimed as a tax credit, the IRS says we must have documentation. Can you elaborate?

A6: The statement urging employers not to require sick employees to provide a COVID-19 test result or a healthcare provider's notice to validate their illness, qualify for sick leave, or to return to work is at the request of the CDC. The healthcare provider offices and medical facilities are extremely busy and may not be able to provide such

documentation in a timely manner. Additional comments can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

Q7: If we have any employee that was exposed to someone with COVID, we can permit them to work as long as they don't show symptoms and wear mask per CDC guidelines?

A7: Yes, that is permissible. Critical infrastructure workers potentially exposed to COVID-19 may continue to work following exposure if they remain symptom-free and the employers use additional precautions to protect the employee and the community. The new guidelines apply to critical infrastructure workers in 16 different sectors of work.

The CDC defines potential exposure as being “a household contact or having close contact within six feet of an individual with confirmed or suspected COVID-19. Essential workers who are or remain asymptomatic are advised to return to work as long as they follow additional CDC-recommended precautions. This includes:

- For Employers:
 - Measuring the employee's temperature and assess symptoms prior to permitting the worker to resume work, or entering the facility
 - Cleaning and disinfecting all areas such as offices, bathrooms, common areas, shared electronic equipment routinely
- For Employees:
 - Self-monitoring under the supervision of the employer's occupational health program
 - Wear a face mask at all times while in the workplace for 14-days after last exposure
 - Maintain a six-foot distance from others and otherwise observe social distancing in the workplace as work duties permit.

The employer is free to determine whether to send a person who it has an actual belief has been exposed to or contracted COVID-19 home to protect the rest of the workforce. It is important to note discrimination claims can arise if an employee is signaled out based on some protected characteristics. Employers must be maintaining the confidentiality of an employee's health information.

Q8: With needing to be respectful of HIPPA, how much should be shared with other employees in regard to letting them know they may have been exposed? They need to know they could have potentially exposed but you also need to protect the employee that could have tested positive.

A8: Employers must take reasonable steps to protect the confidentiality of the positive test result by not identifying the employee by name and avoiding (as feasible) making other references that would permit another employee to guess which employee has been infected. While the employer cannot prevent speculation in the workplace, you must take reasonable steps to not contribute to it. You should, however, be generally informing co-workers who may have had contact with the employee that they may have been exposed and may wish to seek medical care assistance to monitor their health.

A voluntary disclosure by the employee is permissible—but disclosure to the Department of Health in the state/city where the employer is located or the CDC may be mandatory.

If you retain a licensed medical provider to provide your employees with tests, the provider might be a covered entity under HIPPA—but the bank merely hiring such an entity does not automatically make the bank in turn, a covered



entity. HIPPA does permit covered entities to disclose information to employers for the purpose of workplace health monitoring and such information is not regulated by HIPPA once received by an employer. Notice about such disclosures do have to be posted prominently or provided to each patient. Always discuss procedures with bank counsel or a HR professional.

Q9: Do you have anything that you could share regarding business travel in the “New Normal”?

A9: In regard to business travel and the new “norm,” part of travel restrictions are going to be dictated by your state and local officials so always be aware of what “phase” your area is under. You want to be assessing risk within your organizations and safety of your employees. This includes a review of your confidence, the employee’s confidence and government permissions. All need to be aligned—it is important to have a guideline worked out on what matters when travel returns. How quickly or conservatively do you want to return to travel as normal? Compliance Alliance would recommend a travel policy for a COVID and post-COVID-19 world, working with HR, legal, security and other key stakeholders at your institutions. Answering the questions of “Is it safe to travel?” and “Who is allowed to travel, and for what reasons?” is key. Defining what “essential travel only” is will assist in those answers. You may need to review your booking policies and platforms and become informed of insurance policies, rebooking and cancellation policies, and who has the authority to book and initiate travel within your organizations.

Some guidance reference are as follows:

CDC

- Coronavirus and Travel in the U.S.- <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>
- Travel- <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>

WHO

- Travel Advice- <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/travel-advice>

U.S. Department of State—Bureau of Consular Affairs

- COVID-19 Traveler Information- <https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html>

And of course, your state may have additional resources as well.