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COVID-19: Read This Before You Take the Temperatures of Your Customers, Visitors or Employees

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Please *note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Task Force page for updates.*

You want to reopen your place of business, and certainly do not want to harm your customers or employees in doing so. Safety from COVID-19 in your establishment is simply not something you can offer, however. No organization will have enough COVID-19 (diagnostic and antibody) tests in the foreseeable future to prevent people with COVID-19 from entering the premises. At this time, and for the next several months, only a surrogate test such as taking the temperatures of your customers and employees on their way in the door is available. While this may provide comfort to some employees and visitors, that comfort poses dangers to them and to you, so you need to read this and then proceed carefully in implementing temperature checks and other COVID-19 health and safety measures. Because COVID-19 spreads without any detectable symptoms, you should consider providing painfully clear communications with employees, customers, and visitors that entering the premises may expose them to COVID-19 health risks, notwithstanding the high-tech device pointed at their foreheads.

You may seek comfort from government guidelines to reopen your business. The guidelines may recommend or even require that you check the temperature of employees, customers and other visitors to your premises in lieu of requiring COVID-19 testing, as public health officials are encouraging. You cannot find comfort there. Where there is disparity between the universal guidance of the public health community and the political decisions of a governor, are you certain a court will validate the latter as acceptable? And how much of the risk did the politician shoulder in adopting those guidelines, compared to the risks imposed on you and your customers, employees and visitors? Finally, recent numbers on prison populations showing 96% of those with a positive COVID-19 test to be asymptomatic leave little room for faith in the political recommendation of temperature testing.

For your employees, customers and visitors, and for the protection of your business, you need a document provided to people entering the premises that communicates the risks and their acknowledgement – as a condition of entry for your customers and visitors – that they will enter anyway. You may want to include a disclaimer of liability for your customers and visitors. For you, this notice and consent may be a disclaimer, but for your customers, employees and visitors it constitutes informed consent. It describes clearly the risks being

assumed, and describes the limits of the method of temperature checking you are using, particularly given asymptomatic spread of COVID-19.

Even if a "liability shield" is enacted by the U.S. Congress, purporting to extend to you some of the protections enjoyed by the politicians, you still need that document. First, read the fine print of the shield law. Second, you still owe employees, customers and visitors the opportunity to know the risks when life and health are so threatened. Will your business survive in the long term if you do not provide it? Or might it end in a way you would never want to end anything, with the loss of customers after even a single, publicized tragic event?