



EMPLOYMENT ALERT **COVID-19 Safety Measures and Business Patrons**

On October 18, 2021, the Department of Fair Employment and Housing (“DFEH”) issued guidance to businesses that serve the public and are being confronted with vaccination and testing exemption requests. Laid out in terms of addressing patrons with COVID-19 symptoms, COVID-19 vaccinations and tests, face coverings and accommodations, the DFEH provides parameters of when a business can deny a patron entry to the business without violating the Unruh Civil Rights Act (“Unruh”).

Questioning regarding COVID 19 symptoms.

The DFEH has found that businesses are permitted to ask patrons if they are experiencing COVID-19 symptoms and take patron temperatures, because doing so serves legitimate business interests, i.e., protecting employees and customers from COVID-19 transmission. Likewise, a business may deny entry to a patron who has COVID-19 symptoms or refuses to state whether they have COVID-19 symptoms or have their temperature taken.

Although Unruh does not require a business to take any of these precautions, businesses should be cognizant of the legal obligations that they have in protecting the health and safety of their employees when deciding what, if any, precautions they will undertake.

Important to any requirements that a business imposes on its patrons is consistency. Thus, if the business decides that a patron must have their temperature taken before entering, every patron who enters the business must have their temperature taken. Thereafter, all customers that have a temperature above the threshold set by the business must be excluded, if that is the policy; not merely those patrons who have a temperature and appear to be from a foreign country.

Vaccination and Tests.

Similar to requiring patrons to confirm that they do not have COVID-19 symptoms or have their temperature taken, requesting a patron to provide his/her/their vaccination status is permissible as being a legitimate business interest. Again, it may also be necessary in order to protect the businesses employees and other patrons. The same is true for requiring proof of a negative COVID-19 test. A business may deny entry to any patron who fails to present proof of vaccination or a negative COVID-19 test, so long as the business is universally applying this policy.

Face Coverings.

Subject to a request for a reasonable accommodation, discussed below, a business may mandate that a patron wear a face covering before entering the business establishment.

Reasonable Accommodations.

Although a business may require a patron to answer questions regarding COVID-19 symptoms, have their temperature taken, show proof of a negative COVID-19 test or



vaccination, or wear a face covering as a condition to enter the premises, a business must reasonably accommodate individuals who have a disability that prevents them from complying with these requirements.

The question that most businesses have after this statement is “how do I know they have a disability that prevents them from complying versus just not wanting to comply.” Unfortunately, the answer is, you don’t. More importantly, the business may not ask the customer to share personal information about the disability and may not make unnecessary inquiries into the existence of the disability. Instead, the business should accept the statement and determine if a reasonable alternative exists.

What amounts to a reasonable accommodation is determined on a case-by-case basis. The DFEH recommends considering things like business layout, employees on duty, goods or services offered, the needs of the customer, and whether other customers are present at the business. The DFEH provides examples of an employee shopping for a customer if the business is a grocery store or allowing a patron to partake in outdoor service where the business is a restaurant or bar. In some situations, a reasonable accommodation may not be available and the business may not be able to serve the patron without creating a direct threat to the health and safety of others, undue burden for the business or fundamental alteration to the business. In these situations, the business may deny a patron access to the business.

For questions related to managing your business and employees through the ever-changing COVID landscape, please feel free to contact us.



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