

# Finding Fevers: Considerations Before Using Temperature-Detecting Cameras

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April 22, 2020

Last week, the FDA approved the use of telethermographic systems (essentially, heat-sensitive cameras) to detect human temperature during the COVID-19 public health emergency. The cameras can measure individuals' temperatures in comparison to their surroundings to help identify fevers.

Companies considering using these devices should review the article, [Finding Fevers: FDA Relaxes Rules On Temperature-Detecting Cameras](#), written by Kelley Drye partner, Kristi Wolff and consider the associated employment and privacy issues.

Temperature-taking, according to a pre-COVID-19 Equal Employment Opportunity Commission (EEOC), was once the province of "medical testing" that raised tricky issues for employers under the Americans with Disabilities Act and similar state laws. With the nation and world now in a pandemic crisis, the EEOC has adopted a more permissive enforcement stance. However, employers must still be aware of, and navigate, the legal issues despite the obvious utility and even necessity of temperature tests:

- **Privacy:** the EEOC permits employers to take employee's temperatures to identify a fever, which is one of the primary symptoms of COVID-19. However, the EEOC has advised that all medical information regarding an employee must be kept confidential and separate from the employee's personnel file to ensure compliance with the Americans with Disabilities Act.
- **Federal and state disability statutes:** while the EEOC permits temperature taking in light of the global pandemic, employers must exercise caution regarding the information they collect from employees who have fevers. Employers may inquire about COVID-19 symptoms and travel history; however, they should not delve into questions about other medical conditions, medications, or medical history unrelated to COVID-19. The EEOC advises to send the employee home if he or she has a fever, as the employee can pose a direct threat to others.
- **FFCRA or other state or employer based leave:** if an employee does have a fever and is sent home, employers must remember leave statutes that offer employees paid leave. If an employee does not qualify for paid leave under federal or state laws, employees can utilize any employer personal or paid time off.