

## Privacy & confidentiality FAQ

### **Q1. If a practice is collecting medical information about its employees upon arrival at work as condition of work (e.g., temperature, symptoms, COVID-19 exposure), where does this information go and who is authorized to see it?**

A1. The Equal Employment Opportunity Commission (EEOC) has issued [guidance](#) for employers on the collection of employee medical information related to COVID-19. Generally, this employee health screening information goes in a file that is an “employee file,” like the separate employee medical file that must be created for employees seeking ADA accommodations. It is kept separate (either physically if it is a paper file or in a different electronic file) from the regular personnel file (which has onboarding paperwork, reviews, W4 forms, etc.). Only a limited number of people in the practice’s administration or human resources personnel can have access to that file. The information in the file should *only* be disclosed to supervisors, managers, first aid and safety personnel, and government officials *if absolutely necessary*.

### **Q2. If a practice’s employee is also a patient of the practice, or a patient of an on-site medical clinic owned by the practice, where does health screening information go and who is authorized to see it?**

A2. For employees who are also patients of the practice, medical information collected to determine whether an employee is fit to work may be disclosed to the employer, provided that the practice has a written, signed HIPAA authorization on file. This information would go in the “employee file.” If medical information is collected as part of the employee’s treatment as a patient, HIPAA privacy protections would apply, and the employer may be authorized to obtain such information *only* if the patient has consented to its disclosure through a written, signed HIPAA authorization.

### **Q3. Where should visitor screening logs be kept and what information should be collected?**

A3. Information collected in a visitor screening log should be limited to only that which is necessary for maintaining the safety of the practice, public health authority reporting, and other purposes articulated in the policies and procedures of the practice. Visitor screening logs should be kept separately from all HIPAA protected health information (PHI); as soon as this information is “comingled” with any HIPAA PHI, it arguably becomes protected by HIPAA, and can be disclosed only as permitted by HIPAA. Note also that state data privacy, security and breach notification requirements would apply, depending on the state of residence of the individual. Consider consulting with legal counsel with expertise in data privacy and security requirements, including the HIPAA laws, to advise on your particular situation.

### **Q4. Can the practice require that its employees be tested for COVID-19 prior to presenting to work and/or disclose a COVID-19 diagnosis or symptoms?**

A4. Practices can require employee testing and disclosure even if it is not addressed in a contract or handbook. Screening and testing measures can be announced in a memo, policy or broader response plan.

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