



**Is there liability under the HIPAA Privacy Rule for Restaurants requiring employees to have their temperatures checked every time they show up to work?**

When a restaurant is functioning as an employer, it is neither a HIPAA-covered entity nor a business associate of a covered entity, although it may sponsor a covered health plan subject to the HIPAA privacy and security rules. Thus, when an employer collects employee temperature functioning as an employer, such as in connection with protecting its workforce and the community during the COVID-19 pandemic, that information is not subject to the HIPAA Privacy Rule. Regardless, the employer should still consider where to conduct the temperature screening and do it in an area preferably separated with at least a screen, if possible.