

# Guidance in Implementing San Francisco Department of Public Health COVID-19 Health Screening Forms

By [John Epperson](#) and [Manuel Fishman](#)

San Francisco's Department of Public Health ("SFPDH") issued yet-another update to its Shelter-in-Place Order, C19-07, on September 14, 2020 (now up to version "i"). This order has been frequently modified to reflect changes in other state and local directives, as more is learned about the disease and as more businesses are allowed to re-open. In addition to C19-07, SFPDH has issued directives applicable to specific business sectors and a number of state and federal agencies have issued orders and guidance related to COVID-19. This has led to a confusing whirl of requirements and guidance for office building owners, managers, and tenants to try to follow.

Compounding this, when the September 14 update was posted to SFPDH's website, two forms for Health Screening for COVID-19 symptoms were posted as separate documents from the order itself. These forms have circulated among the San Francisco Commercial Real Estate community as stand-alone documents, leading to confusion as to whether these are new requirements and how they are to be implemented. This client alert explains how these health screening requirements fit into the overall COVID-19 response protocols applicable to San Francisco office building owners and managers.

SFPDH Order C19-07 includes an "Appendix A: Social Distancing Protocol," both in the latest revision and prior versions. This Appendix A included a checklist of best practices that businesses must complete and post onsite, as well as instructions for implementation. In general, the protocol imposes obligations on businesses (including office facilities) to develop a plan for COVID-19 social distancing covering topics such as signage to maintain appropriate physical distances, separating desks, plexiglas barriers, and limiting occupancy. Some of the obligations are guidelines, some are mandatory. As we have previously advised, building owners and managers need to review Appendix A to determine individual implementation.

One of the requirements is ensuring that all people (employees, contractors, guests, etc.) entering an office building are screened for COVID-19 symptoms. The instructions detail use of Attachment A-1 for Personnel and A-2 for guests and visitors to perform this health screening to confirm they do not have COVID-19 symptoms and have not been exposed to others diagnosed with COVID-19. Importantly, the forms are not intended to be filled in by the screener or employee nor are they retained for recordkeeping. Instead, the questions on the forms need to be answered either to a screener or by self-screening prior to entry. Employees can take a copy of the form home and do self-screening before coming to the office. These are not new requirements, although not all businesses were aware of them. The forms leading to confusion are updates to Attachments A-1 and A-2.

Questions have arisen as to whether this obligation for screening falls on the building owner/manager or is it to be performed by the tenants. Unfortunately, the Order does not specify. It does say that anyone answering yes to

any question on the screening form should not enter the building or facility, which would suggest that it needs to be done at the building entrance or lobby or prior to employees coming to work. However, there is no guidance beyond that. Arguably, a building can elect to inform tenants to comply with the SFDPH screening requirements as a condition to the Building allowing a tenant's employees and guests access to the Building as it does appear clear that the screening obligation applies to individual businesses that are tenants in an office building.

There is a separate directive, SFDPH Directive 2020-18, which applies specifically to office facilities. This directive makes it clear that it applies to both businesses that own and manage office buildings as well as businesses that work within those office buildings. It repeats the obligation to develop a plan for COVID-19 symptom screening or self-verification and references the Social Distancing Protocol in Appendix A to C19-07. However, it does not help sort out allocating responsibilities among tenants and building owners and managers.

Building owners and managers will need to work with their tenants to allocate responsibility. Daily screening of tenants' employees can more easily be handled by tenants, as many will ask employees to self-screen before leaving home. Screening of guests, visitors, and contractors may depend on the layout of the office building and in some cases, the building owner and manager may be better positioned to handle some aspects as part of regular security procedures (e.g. – a security or reception attendant asking guests the health screening questions). However, there is no requirement that a form be filled out as a condition to entry into a building – self-screening is permitted and absent facts that would reasonably require a building owner to assume this obligation, screening of tenant employees and guests can be allocated to individual tenants. The key take away is that the parties communicate and agree on how this will be handled. If an outbreak of COVID-19 cases in an office building can arguably be tied to failure to perform screening of employees, contractors or visitors, the risk of litigation liability outweighs any potential cost of administrative enforcement that could be taken.

Buchalter has experienced real estate and environmental, health and safety attorneys who can assist clients with the complex world of COVID-19 orders and directives. Please feel free to contact any of the Buchalter attorneys below.



### **John Epperson**

Environmental, Health and  
Safety, San Francisco  
(415) 227-3549  
[jepperson@buchalter.com](mailto:jepperson@buchalter.com)



### **Manuel Fishman**

Real Estate, San Francisco  
(415) 227-3504  
[mfishman@buchalter.com](mailto:mfishman@buchalter.com)

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