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Employment Update: Sonoma County Drama with Practical Takeaways for All *Posted May 29, 2020*

There is drama in Sonoma County, but what employers want to know is will they need the SoCo COVID-19 Check App or alternative with similar data reporting functions by June 1 (Monday)? The answer, for now, is probably not. We have heard the County will likely delay implementation, but as of this morning there is nothing definitive. If you are not in Sonoma County and want to skip over the drama scroll to the bottom of this post for some practical takeaways applicable to all employers.

As promised, this is an update on the recent Sonoma County Order, which expanded the opening of some businesses and implemented the June 1, 2020 requirement of self-check data to be transmitted to the county either through the free SoCo COVID-19 Check Application or an alternative method that would enable the same data to be transmitted electronically.

Sonoma County Emergency FAQ Page for May 22 Order

Since last Friday's Order, the County has provided very limited information on its website concerning the implementation of the June 1 deadline and there has been no information about what the employer app would be or when it would be released. The only information is contained on its FAQ section for the May 22 Order, the relevant text of the FAQ provides:

[When do employees/employers need to start using the Sonoma County SoCo COVID-19 Check App or start using an alternative system?](#)

Employers are already required to make sure that all employees are temperature and symptom screened before entry into the workspace. The new requirement in this Amendment is that employers must verify that employees are performing these self-screening through the free Sonoma County SoCo COVID-19 Check Application, or an alternative system may be utilized as long as it meets the same purpose of employee and employer assessments and as long as it allows the electronic reporting of equivalent data to be reported to the County in aggregate form and does not contain any personally identifiable information. The Health Officer is making this requirement effective at 12:01am on June 1, 2020 to give all employers time to come into compliance with this new rule.

Language Matters: Employers are not Required to take Employees' Temperatures

Reading the Order and the FAQ above, it appears at first glance that employers are required to take employees' temperatures and screen them before entry at work. We do not interpret that to be what the Order says or what is required. The Order states: "All businesses . . . shall comply with local and state orders and guidance . . . as well as requiring all employees to perform a self-check for COVID-19 symptoms and temperature check before reporting to work site or other assignment away from their residence." This is an employee action, not an employer action.

Employers are required to make sure that their employees know they are not to report to work with symptoms, including fever. This symptom check does not have to be performed by the employer. Employees should be checking themselves before coming to work and not coming to work if they have symptoms. This does not mean you can't take temperatures of your employees. You can, and there may be a compelling reason to do it, but as a general rule, we do not recommend it. A compelling reason might be that your employees want you to take the temperatures as a safety precaution, or your customers demand this step.

And NOW...

Sheriff Essick Announced his Department Will Not Enforce the Sonoma County Public Health Orders as of June 1

Adding to the drama and confusion, Sheriff Essick issued a statement on the official Sheriff Facebook page yesterday declaring that as of June 1, 2020, his department will not enforce Sonoma County's Public Health Orders, without explanation. Specifically, the Sheriff states, in part:

"As your elected Sheriff, I can no longer in good conscience continue to enforce Sonoma County Public Health Orders, without explanation, that criminalize otherwise lawful business and personal behavior. Effective June 1, 2020 I am directing all Sheriff's Office staff to discontinue the enforcement of the Sonoma County Public Health Orders issued by the Sonoma County Public Health Department and the Public Health Officer. Reports of violations, when brought to our attention, will be evaluated against the California State guidelines on a case-by-case basis. Where appropriate, the Sheriff's Office will use public interactions as an opportunity to educate people on how to mitigate the risk and spread of the COVID-19 infection. Pursuant to this shift in policy, I am directing the Sheriff's Office Detention Division to refuse the booking arrest of individuals whose sole booking charge is for a violation of the Sonoma County Public Health Order. It is important to understand my decision does not affect enforcement policy or enforcement decisions by other law enforcement or regulatory agencies in Sonoma County; it applies to Sheriff's Office operations in the jurisdictions we serve."

https://www.facebook.com/sonoma.sheriff/posts/3336488979708985?_tn_ =K-R

This is an evolving situation. The Press Democrat has written an article about it here: <https://www.pressdemocrat.com/news/local/10995757-181/sonoma-county-sheriff-deputies-will?sba=AAS>

Adding to the confusion is that although the Sheriff does not intend to enforce the Orders, local police have stated they will.

What Should Employers Do?

Employers are on the front lines here trying to figure out what they need to do. Here is some practical (not legal) advice applicable to all employers trying to navigate these uncertain times:

- **Continue to do your best to protect your employees;**
- **Comply with the Social Distancing Protocols that have been in place since April;**
- **Make sure your employees know to self-check for symptoms (we suggest a self-check agreement for this purpose); and,**
- **Monitor the County, State and CDC sites for updates on best practices.**

We will continue to provide you with relevant information, but if you have specific concerns you should contact us or your human resources specialist for assistance.