



# Alden J. Parker

Sacramento Regional Managing Partner

- Co-chair of Fisher Phillips hospitality industry group and member of COVID-19 taskforce.
- Counsels employers to assist them in avoiding litigation.
- Advises clients on a variety of issues, including leaves, harassment, retaliation, discrimination, workplace violence, employee discipline and termination, and wage & hour issues.

VIRTUAL



OCTOBER 7, 2020

# A Grand Reopening

Litigation Risks for Hospitality Employers  
Due to COVID-19

**RELIEF**

**RESTART**

**RECOVER**

**RISK**



# Litigation Risk Areas: Reopening Hotels, Restaurants, and Retail Establishments

- **Face Coverings Employee Screening**
- Employee temperature check
- Customer Health Screening
- Sanitation
- Permitted Occupancy Limits
- Wage & Hour
- Rehiring
- **FFCRA Retaliation**
- **ADA**



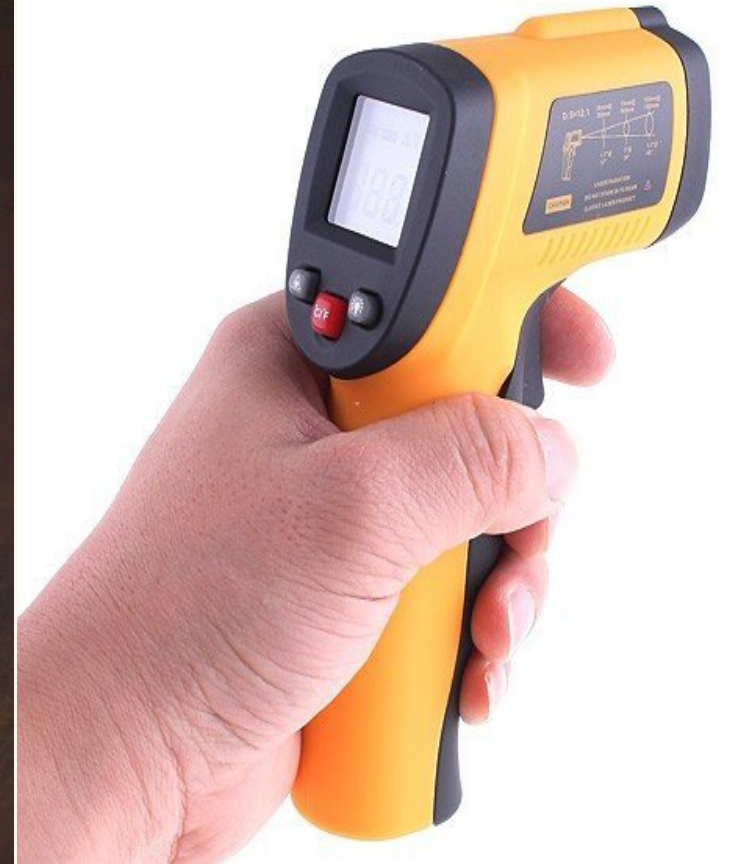
# Emerging Litigation Trend?

- Recent lawsuits filed across the United States are starting to show a particular trend of litigation regarding employees with preexisting health care conditions.
  - Lawsuit filed in federal court in Florida at the end of May alleges that an employer failed to provide FMLA leave for an immune-compromised employee during the COVID-19 quarantine. In that case, the employee alleged that he was terminated shortly after inquiring about FMLA leave due to his own risk factors.
  - A recent similar case filed in Pennsylvania also claims an employee with an elevated risk for COVID-19 was terminated after he attempted to inquire about the option of using leave under the FMLA.
  - On the same day, a separate action was filed in New Jersey alleging that yet another employer terminated an employee with a preexisting heart condition rather than provide him with requested leave under the Family and Medical Leave Act (FMLA), or as an accommodation under the Americans with Disabilities Act (ADA).
- Be diligent in quickly responding to employees requesting time off due to a COVID-19 related issue, or otherwise requesting an accommodation due to COVID-19 or another underlying health condition.
- Where more and more employees are returning physically to work, inquiries to continue to remain on leave (if furloughed) should be treated as a possible request for a reasonable accommodation under the ADA.



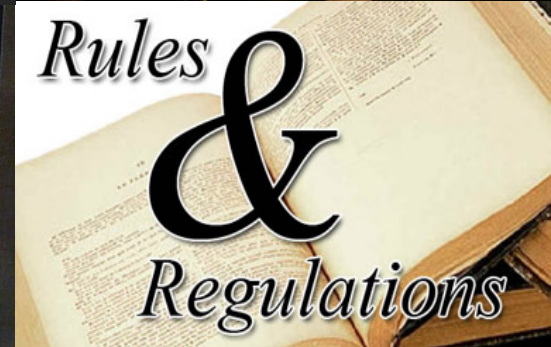
# Masks

# Temperature Checks

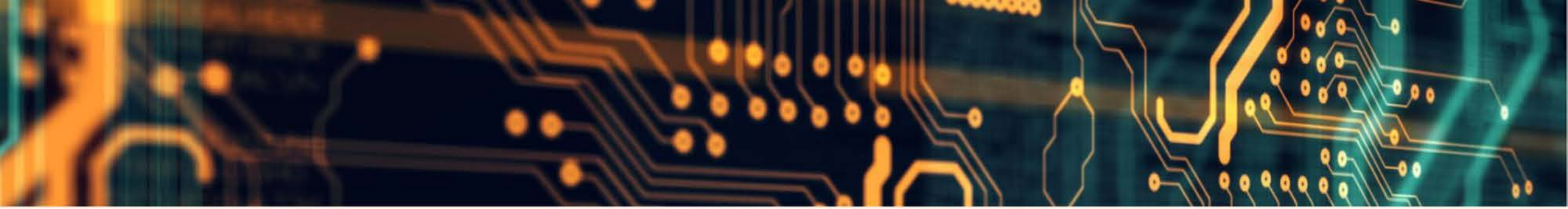


# Hospitality Workplace Safety

- Workers Compensation
- State Guidelines
- City Ordinances
- CDC Guidance
- OSHA Compliance







- Customer Health Screening
  - Lawsuits by customers
  - Liability Waivers/ Assumption of the Risk Agreements

# Families First Response Act for Your Employees

- Emergency Paid Sick Leave
- Emergency Family And Medical Leave Act
- Retaliation



# Wage and Hour Issues for the Hospitality Industry During a Time of Recovery

## Compliance

- State laws
- Bonuses
- Pay adjustments
- Meal & Rest
- Maintaining exempt status
- Off the clock work
- Reimbursement for business expenses related to app based time & attendance platforms



**RELIEF**

**RESTART**

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**RELIEF**

**RESTART**

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**RISK**



# Final Questions

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