

How Should a Commercial Office Space Landlord Handle a Tenant Request to Conduct On-Site COVID-19 Testing for Its Employees?

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As commercial offices begin to reopen and employees return to the workplace, many employers want to offer COVID-19 testing to their employees before returning to the workplace. Some employers may even want to take it a step further and require their employees to undergo COVID-19 testing to keep their employees safe and protect themselves from potential employee claims should someone become infected. How should a landlord deal with requests from commercial tenants to perform such testing for their employees on site?

The Real Estate Team at Levenfeld Pearlstein has been working with owners of downtown office buildings across the country to address how to handle these tenant requests to conduct onsite COVID-19 testing. For instance, one tenant wanted the right to have a mobile testing van park in the circular driveway or the parking lot of a building for one day to test employees of the tenant's company as they return to work. Similarly, if such parking is not available, a tenant may be

looking to use a lobby, conference room, or other common areas for such testing.

Although owners of office buildings and employers have been offering flu shots or other immunizations as an amenity to their tenants for years, undertaking COVID-19 testing presents unique challenges. First, flu shot vaccines are offered to a population that is presumably healthy or, at least, not presumed to have a highly infectious illness. Some people attending immunization events may have the common cold, but presumably nothing more dangerous than what employees typically show up with for "a normal day" of work (if we can remember what that was). With the novel coronavirus, it is entirely possible that an employee may show up to the property to return to work with asymptomatic (or possibly, symptomatic) COVID-19.

HOW CAN A LANDLORD MINIMIZE POTENTIAL LIABILITY AND ADDRESS TENANT CONCERNS?

While each situation is unique, we strongly encourage any landlord to require, as a condition of such use, that the tenant enters into a short-term license agreement to use a portion of the property for testing. It is also reasonable to charge such tenants a fee for such licensed use. Some of the critical issues

to be addressed by a license would include:

1. a short-term for the license (such as one day),
2. a specific use for the license (e.g., COVID-19 testing for employees working at the property only),
3. a limited area to be licensed,
4. a requirement that the tenant strictly follows any directives of the property manager, including any COVID-19 specific guidelines,
5. a requirement that the tenant strictly follows any government directives,
6. an indemnity from the tenant to the landlord relating to claims arising as a result of such testing,
7. a requirement that tenant carries specifically-outlined insurance covering the area to be licensed and liability, and
8. a requirement that the use is at no cost to the landlord and that the tenant must pay for any security guards or other additional measures that are necessary at the building as a part of such testing.

The LP **Real Estate Team** has experience advising clients on these issues, including creating a form license for landlords to tailor to their needs, and we would be happy to work with you if you have a this type of situation.

