

Hot Take: Mandatory Temperature Screenings are a Reasonable Imposition

April 27, 2020

By , Megan Mah,

Drastic times do, occasionally, call for drastic measures. Although there is no debate that these are drastic times, that alone does not necessarily give employers free reign to impose any precautionary measures that they can dream up. Employers who are operating or preparing for the re-opening of their businesses need to walk a fine line between instituting policies which protect the health and safety of their employees, while also avoiding infringements of privacy and human rights legislation in doing so.

One option that employers may consider adopting is the imposition of thermal screening and mandatory medical questionnaires for any person seeking to enter the workplace. At first glance, such requirements may seem like an unreasonable infringement on the privacy of employees but, when properly implemented, such measures may actually be permissible (or even recommended) given the unique circumstances created by COVID-19.

Temperature screening involves taking the temperature of employees (and others) as they enter the workplace and denying entry to anyone who presents with a temperature above 38 degrees Celsius. Temperature screening may be combined with the use of a medical questionnaire—such as [this document](#) prepared by the Government of Ontario—to assess for likely carriers of the virus. On a construction site, for example, these measures may be applied to any person seeking to enter the worksite—including suppliers making deliveries and consultants—and need not be limited to just employees.

Although these screening mechanisms are not entirely effective,^[1] in the current absence of widely available testing, these protocols can function as non-invasive and accessible tools to provide some protection against the admittance of symptomatic carriers of the virus into the workplace. As more businesses begin the process of figuring out how to safely re-open, now may be the appropriate time to determine what measures your specific workplace will need to take once the emergency shutdown orders for non-essential services are lifted.

Notwithstanding the imperfections of temperature screening, such tests generally fall in line with the Canadian Government's [current guidance](#) that every person with a fever should self-isolate out of an abundance of caution that the fever may be attributable to COVID-19. The [Ontario Human Rights Commission](#) has also taken the position that medical assessments to verify or assess for COVID-19 (including temperature screening) may be permissible during the current epidemic. However, such assessments should be reasonable and consistent with the most recent advice from medical and public health officials.

Employers must weigh the benefits to workplace health and safety against potential privacy concerns when developing an assessment protocol and should take every reasonable step to ensure that employee privacy is protected as much as possible. For example, temperature screening can (and should) be performed without recording the data obtained. The results of temperature screening tests should not be linked to the personal information of anyone who undergoes testing and every effort should be taken to safeguard results.

Determining best practices for respecting the privacy of employees requires the development of a proper protocol tailored to the unique requirements of each workplace. As a general rule, however, all employees must be asked whether they consent to being tested prior to starting the screening process. Depending on the specific context, it may be reasonable to deny access to the workplace to those refusing screening measures to protect the health and safety of other employees. Screening should also take place in a private location to the extent available to further protect the privacy of employees being tested. The use of a private location for screening may be necessary where a medical questionnaire accompanies temperature screening.

Above all else, employers must not allow any medical information obtained from the screening process to have adverse effects on employees. To meet this requirement, employers should strive to only obtain the bare-minimum level of medical information reasonably required to assess the employee's fitness to perform the job in question and to determine whether or not that employee poses a health and safety risk to others at the workplace.

In addition to these privacy concerns, a screening protocol should also incorporate the following health and safety considerations:

- Proper technology must be employed and those administering screenings must be properly trained. This may require bringing in a third party to administer screenings or having designated employees trained in the use of temperature screening technology.
- Both the tester and the employees being tested should be provided with proper PPE and the technology used should be contactless, ideally allowing tester and employee to maintain 2 metres of distance between them for the duration of the screening.
- The screening area should be frequently disinfected and alcohol-based hand sanitizer should be provided once the screening has concluded.
- To maximize effectiveness of the screening process, anyone presenting with a temperature of 38 Celsius or above should be denied access to the worksite and advised to return home to self-isolate.

For more factually specific questions or inquiries regarding the use of medical screening protocols at workplaces, and for any questions regarding how to implement proper return to work policies, please contact [Faren Bogach](#), [Megan Mah](#) or [Paul Conrod](#).

[1] Some individuals may display elevated body temperatures due to causes outside of COVID-19. Temperature screening is also not effective at detecting asymptomatic or early carriers of the virus and so should not be relied on in place of social distancing measures and proper PPE.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:

Toronto

Email:



Megan Mah

Toronto

416.947.5098

Email:

mmah@weirfoulds.com

Megan Mah has a diverse practice that focuses on human rights, employment, civil litigation, administrative and constitutional law.

Toronto

Email:

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035