

Temperature Screening At Workplaces: A “HOT” Topic Amid The COVID-19 Pandemic



One of the primary symptoms consistent with COVID-19 is an elevated body temperature of above 38°C (100.4°F). Some workplaces have started screening their employees using touchless temperature scanners in order to determine whether they may enter the employer's workplace.

Temperature testing is somewhat controversial as a method for detecting COVID-19, as it is possible for individuals to have elevated body temperatures even if they are not ill. However, thermal testing is non-invasive, produces objective and instant results, and tests for one of the primary symptoms of COVID-19. Accordingly, an employer's decision to implement temperature screening may be a reasonable method for mitigating risk of an outbreak within a workplace.

Is thermal testing permissible'

Employee privacy in private sector organizations other than those that qualify as “federal works” is governed by privacy laws in three provinces: Quebec, Alberta and British Columbia. There is no private sector privacy legislation applicable to such employees in the other seven provinces.

As such, there is no clear statutory privacy-related concerns with respect to implementing and conducting thermal testing in seven Canadian provinces, including Ontario. Even so, as a best practice, and in order to avoid any potential privacy violations at common law, the information obtained through temperature screening should not be collected, recorded, stored, used or disclosed for any purpose aside from determining whether the employee should be permitted to enter the workplace. Further, as a best practice, any personal information collected should be anonymized prior to recording, if recording is even required. Any personal information collected should also be safeguarded against unauthorized use or disclosure.

In British Columbia, Alberta, and Quebec, privacy laws could *potentially* be implicated in an employer's choice to conduct temperature screening. However, temperature screening is likely acceptable even in these jurisdictions, so long as employees consent to having their temperature checked, the information collected is limited as much as possible to fulfill the purpose of testing, and

test records are not collected, stored, used or disclosed for any purpose outside of the screening context.

The provincial Privacy Commissioners have not yet provided any guidance with respect to thermal testing by employers in the face of a global pandemic. While the Privacy Commissioners have stated that privacy laws continue to apply in these circumstances, they have also made it a point of stating that such laws are not meant to be applied as barriers during the course of public health emergencies. Simply put, privacy laws should not stand in the way of an employer taking reasonable precautions to ensure the health and safety of its employees.

How should temperature screening be implemented'

In order for thermal testing to be conducted safely, effectively, and in accordance with privacy standards, employers should develop a protocol along the following lines:

1. If possible, retain a third party vendor to perform temperature screening on employees. If that is not an option, ensure that the team member who is responsible for performing temperature screenings is properly trained to use the touchless temperature scanner, and understands what factors aside from COVID-19 could influence its readings.
2. The tester must be provided with personal protective equipment, including: surgical gloves, face masks, and a lab coat or disposable coat. Alcohol-based hand sanitizer must be accessible in areas where testing is conducted.
3. The tester must ask employees whether they consent to having their temperatures tested. If an employee refuses to be tested, he or she will not be admitted to the workplace, on the basis that their attendance could jeopardize the health and safety of others.
4. In addition to conducting temperature screening, the tester should ask each employee who enters the workplace whether he or she is exhibiting any flu-like symptoms (coughing, shortness of breath, fever) or is otherwise feeling unwell. The tester should also ask whether the employee has had close contact with someone in the past 14 days who has been diagnosed with, or is presumed to have, COVID-19.
5. If possible, employees should be tested and asked the above screening questions in a private or semi-private area, out of the sight and earshot of their colleagues, contractors or other visitors.
6. Test results must not be collected, recorded, stored, used or disclosed for any purpose aside from determining whether the employee should be permitted to enter the workplace. The additional privacy best practices, identified above, should be followed.
7. Employees with temperatures at or above 38°C (100.4°F), or who answer "yes" to any of the screening questions, should be advised to return home, self-isolate, and call their regular doctor or local public health authority to discuss their symptoms, treatment options, quarantine requirements, and for an assessment regarding the next steps.

Human Rights Considerations

The position of the Ontario Human Rights Commission is that medical assessments (including temperature screening) to verify or determine an employee's fitness to perform on the job duties may be permissible in these circumstances under the

Ontario *Human Rights Code*. However, information on medical tests may have an adverse impact on employees with other disabilities. As such, employers are advised to only obtain information from medical testing that is reasonably necessary to the employee's fitness to perform on the job and any restrictions that may limit this ability, while excluding information that may identify a disability. Generally speaking, a simple temperature scan performed in accordance with the above-noted recommendations should not give rise to any human rights related concerns.

Takeaway

Employers have an obligation to provide a safe workplace for employees. Thermal testing and screening questions are reasonable methods to protect a workplace from a potential outbreak of COVID-19. So long as employees consent to being tested, the test results are not recorded, and the tests are conducted safely and respectfully, any potential privacy concerns are, in our view, minimal and justifiable.

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