

How to Create a COVID-19 Medical Screening Policy



The 12 privacy, human rights and OHS safeguards to include in COVID screening protocols

While highly problematic in normal times, medically screening workers before letting them enter the workplace has become a justifiable infection control measure during the pandemic. The same is true of requiring employees to provide proof of having received the COVID-19 vaccination. But despite all of this, legal limits still apply. As HR director, you need to recognize and ensure your organization stays within those limits when carrying out COVID-19 screening. Here's how.

The Legal Limits of COVID-19 Screening

There are 3 ways you can get into legal trouble for medical screening or verifying vaccination, even when it's an otherwise justifiable (or, in the case of screening, mandatory) health and safety measure.

1. Privacy Violations

Body temperature and information about an individual's symptoms (or lack thereof) collected during the screening process is protected health information (PHI) subject to privacy law restrictions. So is information about a person's vaccination status. True, the employer's need to maintain social distancing and keep sick people out of the workplace temporarily trumps personal privacy during the pandemic. But the leeway goes only so far. **Rule:** You can only collect the minimum PHI necessary to accomplish this purpose. Example:

- **OK:** Asking workers if they have COVID-19 symptoms;
- **Not OK:** Asking workers about other medical conditions or what medications they use.

2. Discrimination

Medical exams and questions about vaccination raise a red flag under human rights laws because they may reveal a worker's disabilities. During the pandemic, human rights commissions in Ontario, Manitoba and other jurisdictions

have gone out of their way to remind employers that COVID-19—and even just the perception of having it—is considered a disability. In addition, people being asked to provide proof of vaccination may belong to groups protected by human rights laws, like those with religious objections or persons subscribing to the “anti-vax” movement who may be entitled to protection on the basis of creed. But you can avoid trouble by showing that you implement screening and vaccination verification fairly and consistently without regard to race, religion, sex, age, etc.

3. OHS Violations

Temperature-taking as part of medical screening involves the risk of infection to both test takers and persons being tested. Consequently, you need to ensure your screening methods and equipment meet OHS requirements.

The Importance of a Written Policy

The key to sidestepping these legal risks is to implement a policy that clearly explains your medical screening and vaccine verification methods and includes safeguards to ensure compliance with public health, privacy, human rights and OHS requirements. Like our template policy, your COVID-19 screening policy should include 11 provisions. **Note:** These policy guidelines are **not** meant for healthcare settings which may be subject to special and more stringent screening requirements.

1. Policy Statement

Explain that screening and vaccine verification is essential to prevent spread of COVID-19 and that workers and essential visitors (we’ll explain that term below) may not enter the work site or facility without going through it (Policy, Sec. 1).

2. Policy Purpose

State that the purpose of the Policy is to ensure that screening is done fairly, effectively, safely, consistently and in a manner that complies with current government emergency orders, public health guidelines and other applicable laws and regulations (Policy, Sec. 2).

3. Who Must Undergo Screening

Under public health guidelines, screening should be done on 2 groups:

- Workers, which include employees, contractors and volunteers that conduct business or related activities at the site; and
- Essential visitors, which include individuals providing a service at the site and who are not employees or customers of the establishment, such as delivery, maintenance and contract workers.

You don’t have to screen customers or first responders or other workers seeking entrance for an emergency. To avoid potential discrimination claims, make it clear that all workers and essential visitors who are subject to screening must undergo screening each time they seek entry to the facility without exemption. In addition to ensuring consistency, this will provide would-be entrants advance

notice and encourage them to self-monitor before coming to the site (Policy, Sec. 3).

4. Temperature Check Criteria

Explain the actual screening procedures. Note that in Ontario and other jurisdictions where screening is mandatory, temperature taking isn't required. Simply asking about fever is enough. However, if you do include temperature checks beware of inconsistency that can lead to discrimination claims by setting a specific fever threshold, i.e., precise body temperature (or temperature range) that entrants must be below. Our Policy uses the CDC recommended 100.4°F/38°C but you may want to ask a medical professional for help in deciding where to set your own fever threshold (Policy, Sec. 4.1).

5. Other COVID-19 Symptoms

Body temperature alone isn't enough to determine if a person should be admitted. That's because a person can have COVID-19 without having a fever. Accordingly, public health guidelines recommend asking would-be entrants YES/NO questions about whether they're experiencing any of the other COVID-19 symptoms. **Caveat:** The official COVID symptoms constantly change, so make sure your criteria reflect the most recent health guidelines. In addition, to avoid potential disability discrimination, be sure to phrase the question so that entrants know you're asking about "new or worsening" symptoms as opposed to symptoms associated with previous chronic or known conditions, such as difficulty breathing due to asthma (Policy, Sec. 4.2).

6. Other COVID-19 Risk Factors

There are 2 other YES/NO questions you need to ask as part of COVID-19 screening:

- Have you been outside the province within the past 2 weeks?
- Have you had close contact, i.e., within 6 feet/2 meters, of a confirmed or probable COVID-19 case?

(Policy, Sec. 4.2)

7. Proof of Vaccination

Reserve the right to require would-be entrants to furnish proof of vaccination, either instead of or in addition to passing screening (Policy, Sec. 4.3)

8. Criteria for Entry

There must be black-and-white criteria for using screening results to determine who does and doesn't get in. Under current guidelines:

- People who answer NO to all questions pass screening and should be allowed to enter;
- People who furnish proof of vaccination should also be allowed in;
- People who answer YES to any of the questions and/or don't provide proof of vaccination don't pass and should be denied entry.

(Policy, Sec. 4.4)

9. Documentation of Results

Require screening personnel to complete a form or otherwise document the results of each check. Attach a copy of a blank screening form to your Policy. Also retain a copy of proof of vaccination (Policy, Sec. 4.5).

10. Privacy Protections

Include the following privacy protections:

- A promise not to request any PHI other than body temperature, symptoms and vaccination information;
- Assurance that screening and vaccination records will be kept private and secure in a separate file; and
- Assurance that you won't retain the screening records of any person who passes screening or employees who fail it.

(Policy, Sec. 5)

11. Health & Safety Measures

If body temperature checks are part of your screening process, you must include health and safety safeguards. First, perform a hazard assessment and then implement measures to eliminate or minimize the hazards identified, including:

- Reasonably practicable engineering control, e.g., use of infrared non-contact thermometers rather than contact thermometers;
- Safe work procedures, safety training for screening personnel and other work controls;
- Use of appropriate personal protective equipment, including at a minimum, N95 respirator masks and protective gloves, and where necessary, aprons, gowns and/or eye/face protection.

(Policy, Sec. 7)

11. Employee Accommodation Rights

Acknowledge that in requiring proof of vaccination, you'll respect employees' accommodation rights up to the point of undue hardship. Also give yourself leeway to cut employees some slack where external circumstances make it hard to get vaccinated, such as lack of vaccination supply or paid leave to take the vaccination during work hours (Policy, Sec. 7).

12. Policy Duration

Last but not least, indicate that the Policy is only a temporary measure for the pandemic that will end as soon as the threat subsides and public health officials send the all-clear. Also be clear that you have the right to amend the Policy to keep up with changes and ensure compliance with the latest version of the public health guidelines (Policy, Sec. 8).