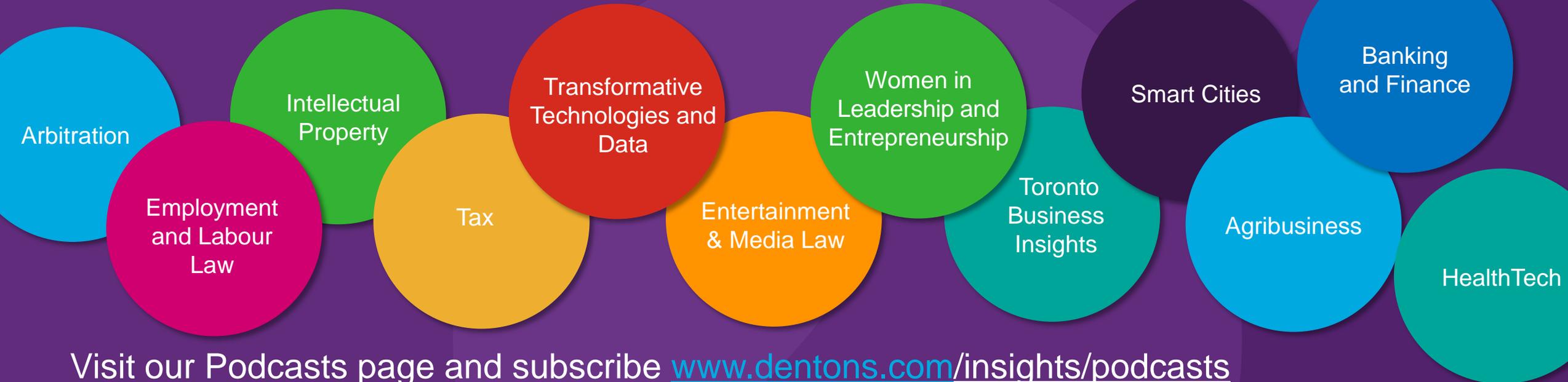


# Covid-19 in the workplace: Top 5 return to workplace considerations for insurers and brokers

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# Panelists



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# Agenda

- Introduction
  - How close are we to a return to work?
- Mandatory vaccination policies
- Masking refusals
- Employee refusals to return to the office
- Considerations for reopening physical workplaces
- Quick refresher on COVID-19 paid sick time

# Roadmap to reopening - Ontario

- Province-wide stay-at-home order expired June 2, 2021
- Phase 1 (June 14):
  - Outdoor gatherings of up to 10 people, outdoor dining of up to 4 people per table and non-essential retail at 15% capacity
- Phase 2 (+21 days):
  - Outdoor gatherings of up to 25 people, outdoor sports and leagues, personal care services where face coverings can be worn and with capacity limited, indoor religious services, rites or ceremony gatherings at 15% capacity
- Phase 3 (+21 days):
  - Indoor sports and recreational facilities, indoor dining, museums, art galleries and libraries, casino and bingo halls, with capacity limits

# Vaccination policies – Can an employer mandate?

- No legislation mandating vaccinations
  - ON Ministry of Health direction this past Monday
- COVID-19 vaccination policies are untested in Canadian law
- Consider vaccine supply issues
- Companies implementing vaccination policies will have to balance interests of workplace health and safety with an employee's right to privacy and equal/non-discriminatory treatment

# Vaccination policies – Can an employer mandate?

- Employers considering implementing vaccination policies should evaluate:
  - Is there evidence of serious health and safety risks in the workplace?
  - Is there evidence that vaccinations will minimize health and safety risks?
  - Are current masking, social distancing and other measures sufficient?
  - Does the seriousness of the risk and introduction of a vaccination policy outweigh the harm to employee privacy?
  - Discrimination risks?
- Vaccination incentives

# Vaccination policies – Can an employer mandate?

- Asking for proof of vaccination: may be permissible depending on the employer's circumstances and conditional on the employer complying with privacy law principles:
  - Limited purpose
  - Collecting the least amount of information possible
  - Limited disclosure
  - Security of information
  - Destruction of information

# Masking refusals

- Can employees be required to wear a mask/face shield at work?
  - See provincial government/public health orders and guidance
  - Human Rights complaints
    - Safety issue v. a “rights” issue (infringement on charter rights or human rights)
    - Asserting a right or preference to be “mask free” is not a protected ground
    - Health and safety as a general rule does not create a human rights concern
    - Exemptions – if someone can’t put a mask on themselves, accommodation under a protected legal ground, etc.

# Masking refusals

*Sharma v. Toronto (City)*, 2020 HRTO 949 (CanLII)

- Applicant denied service at a number of businesses for not wearing a mask/face covering.
- Claimed could not wear a mask due to disability and creed.
- Applicant brought action against City for its bylaw which requires businesses to adopt a policy to ensure that no member of the public is permitted entry to, or can otherwise remain within, any enclosed space unless they are wearing a mask or face covering.
  - Bylaw also included exemptions.
  - Applicant did not sue the businesses that denied him access.

## Decision

- HRTO found that the applicant's claim was based on a political opinion (which is not protected by the *Code*) versus a genuine sincerely held religious belief.
- Reminder that in order to engage the protections provided under the *Code*, mere disagreement with political or scientific propositions is not enough.

# Returning to the workplace - refusals

- What will that look like? Can an employee insist on working remotely indefinitely?
- Employers can generally dictate how work is performed and can generally require employees to return to work
- Answer depends on context: what is the reason for the refusal?
  - Childcare or other responsibilities?
  - Fear of COVID-19?
  - Preference for remote working?

# Returning to the workplace: Health and Safety

- Right to refuse work that employees believes is unsafe to himself/herself or another worker.
- Specific procedure that must be followed under the *Occupational Health and Safety Act*.
- COVID-19 context: Ensure that applicable occupational health and safety guidelines and recommendations are followed.

# Returning to the workplace: Human Rights

- Work refusals based on a protected ground – age, disability, family status – should be treated in same manner as request for accommodation
  - Duty to accommodate requires employers to be flexible and accommodate requests up to the point of undue hardship
  - If accommodation intended to be limited to duration of COVID-19, ensure this is clearly conveyed
- COVID-19 context: Infectious Disease Emergency Leave
  - Employee providing care or support to prescribed individuals?

# Returning to the workplace – Practical tips

- Apply the return to work rule uniformly, but be open to requests for accommodation
- Ensure that communications with employees make it clear that the ability to work from home is related to the response to COVID-19 and not a permanent entitlement
- Give employees enough time to return to the office
- Ultimately, once safety, human rights, and job protected leaves of absence are ruled out, be confident in requiring the employee to return to the workplace

# Re-opening considerations

- General guidance which applies to all workplaces, can be found at the following link: <https://www.ontario.ca/page/covid-19-coronavirus-and-workplace-health-and-safety>:
  - Workers should work from home, if possible
  - Ensure all high-touch tools and surfaces are cleaned regularly. For detailed information, refer to the Public Health Ontario guide to environmental cleaning
  - Create greater distance between workers, keeping a distance of at least 2 metres (approximately 2 arms lengths) from others, as much as possible
  - Reduce the number of passengers on elevators and avoid crowding in stairwells and other tight spaces
  - Give workers more opportunities to keep their hands clean, for example by providing soap and water or hand sanitizer if soap is not available
  - Ensure workers are using any required personal protective equipment appropriately

# Re-opening considerations

- Schedule breaks at different times to avoid large groups
- Remind workers returning from aboard, including the United States, they must self-isolate for 14 days and monitor themselves for symptoms, even if mild
- Remind workers to stay home if they are sick

Consider:

- Do you have a workplace plan or protocol in place for the return to work?
- If not, contact your Dentons Ontario employment team for a copy of the COVID-19 Employer Return to Work Checklist.

# Re-opening considerations

- (i) What does your physical workspace look like? Is it an open workspace or are there discrete offices? How large is it? Is there enough space in common areas and hallways for people to physically distance from one another?
- (ii) How many entrances and exits are there to the workplace? How will they be managed? What COVID guidance will be posted at the entrances and exits? Will there be any sort of screening or log-keeping at the entrances and exits? How will things like deliveries and mail be treated?
- (iii) Will customers, suppliers and others be granted access to your workplace? If so, how will you protect them from your employees, and how will you protect your employees from them? How will you deal with meetings? How will you deal with signing documents? How will you deal with deliveries from suppliers? How will you track their access into your workspace?

# Re-opening considerations

- (iv) Are there other spaces which all of your employees will need to use? Elevators? Washrooms? How will you keep them safe – masks/limiting numbers?
- (v) What discussions have you had with your landlord or building owner about common spaces? What is their plan? Is any retrofitting possible? Can you move to some automatic settings? What about things like HVAC and fresh air flow?
- (vi) Who will be cleaning the premises and how often? What are the cleaning protocols and how will they be monitored?
- (vii) Is PPE required in the workplace and if so, what type(s)? What will the PPE rules be within the workplace? Who will supply the PPE? What sort of PPE training plan will you create?
- (viii) How will you document your plan? How will you document the work that you've done to arrive at your plan?

# COVID-19 Paid Sick Leave

- **3 hours of COVID-19 paid leave to get each dose:** British Columbia, Alberta, Saskatchewan, Manitoba
- Note for Saskatchewan: the legislation does not expressly state whether the 3 hour leave applies to one or both doses of the vaccine.
- **3 days of COVID-19 paid sick leave:** British Columbia, Ontario
- **4 days of COVID-19 paid sick leave:** Nova Scotia
- **5 days of COVID-19 paid sick leave:** Manitoba (up to \$600 per employee for up to 5 paid days)
- **6 days of COVID-19 paid sick leave:** Prince Edward Island
- **No paid leave specific to COVID-19:** Quebec, New Brunswick, Newfoundland and Labrador

# Thank you



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