

Employer alert: Ontario issues “stay-at-home” order and new restrictions on businesses

January 13, 2021

On January 12, 2021, the Government of Ontario declared a new state of emergency, announced a “stay-at-home” order, and imposed new public health measures and restrictions on businesses. Ontario Regulations **10/21** and **11/21** were filed the next day, specifying the new obligations on employers and the “stay at home” requirement respectively.

Ontario’s stay-at-home requirements and the new restrictions on businesses permitted to be open are summarized below. We continue to monitor the situation and will update this bulletin to the extent necessary.

Executive summary

- Most businesses that were “essential” prior to January 12 continue to be “essential” and may continue to operate, but with new restrictions (see below).
- The “stay-at-home” order is likely to result in some employees being questioned by police as to why they are not at home. As such, essential employers should issue “travel letters” to employees who remain permitted to travel to work.
- Remote working is now the default legal requirement where possible.
- Police, government inspectors and bylaw officers have strong ticketing powers and are expected to become more active inspecting – and possibly ticketing - businesses.

Second state of emergency

The declaration of the new state of emergency, effective January 12, 2021, is intended to give the Cabinet power to implement certain emergency Orders under the Ontario *Emergency Management and Civil Protection Act* to respond to the COVID-19 pandemic. The declaration of emergency is set to automatically terminate after 14 days but will likely be extended.

The Government of Ontario notes that orders issued under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* will continue in effect.

Revisions to list of businesses permitted to open

The changes to the list of essential businesses under Schedule 2 of Ontario Regulation 82/20, and further restrictions on those businesses already permitted to be open, are outlined in Ontario Regulation 10/21. However, most

businesses that were “essential” prior to yesterday continue to be “essential” and may continue to operate, but with new restrictions (see below).

The hours of operation of most **retail stores** which are permitted to remain open are now restricted to 7:00 am to 8:00 pm. Gas stations, grocery stores, pharmacies and discount retailers, and big box stores that sell groceries do not have these restricted hours.

Additionally, general retail stores engaging in curbside pickup may only provide items for curbside pickup if the patron ordered the item before arriving at the business premises.

Retailers that sell **liquor, including beer, wine and spirits**, are permitted to open for in-person retail subject to certain restrictions including ensuring the capacity of any room open to the public is limited to 25% and limiting hours of operation to the period of 7:00 am to 8:00 pm.

All **concert venues**, theatres and cinemas are required to close, including for drive-in and/or drive-through events and all pre-arranged bookings for short-term rentals in the hospitality industry are prohibited, subject to certain exceptions for housing requirements.

Lastly, **non-essential construction** has been restricted to prescribed construction activities or projects, including construction projects and services associated with the healthcare sector and long-term care, construction projects that would provide additional capacity in the production, processing, manufacturing or distribution of food, beverages or agricultural products, and certain residential construction projects.

Stay-at-home order

The Government’s stay-at-home order, Ontario Regulation 11/21, came into effect Thursday, January 14, 2021 at 12:01am. It will require Ontarians to stay at home, leaving only for permitted purposes or activities such as going to a grocery store or pharmacy, accessing health care services, attending at work (if work cannot be done remotely), or exercising.

Employees of essential business are permitted to leave their home to travel to work if their employer has determined that the nature of the individual’s work requires attendance at the workplace.

Remote working is now the legal default where possible

Employers must now ensure that their employees work remotely, except where necessary. Employees will be permitted to leave their homes to go to work under the stay-at-home order, but only if their workplace is permitted to be open and if the nature of their work requires them to be on-site at the workplace. Employers are encouraged to consider their current staffing to confirm which employees are required on-site at the workplace and which employees will need to work remotely once the stay-at-home order comes into effect.

“Travel letter” recommended for employees

We recommend that employers who continue to operate issue “travel / carry letters” to essential employees who work onsite, explaining the essential nature of the business and of the employee’s role. Employees can present these letters to any police officers or other provincial offences officers seeking to verify the employee’s compliance with the

stay-at-home order.

New mask or face covering requirements

Effective January 13, 2021, individuals have a legal obligation to wear a mask or face covering in the indoor areas of businesses or organizations that are open. Businesses permitted to be open must also ensure that every person in an indoor area of their premises is wearing a mask or face covering, and that physical distancing continues to be maintained. However, the exemptions under Ontario Regulation 82/20 remain in effect. Employees are permitted to remove their mask if they are performing work in an area that is not accessible to members of the public and if they are able to maintain a physical distance of at least two metres from every other person while in the indoor area, for example if the employee is working in their own office or at their own workstation.

Additionally, the Government of Ontario is recommending wearing a mask or face covering outdoors when physical distancing cannot be maintained.

Tickets and fines: strengthened enforcement measures

To ensure the above restrictions are enforced, the Government of Ontario has introduced O. Reg. 8/21: Enforcement of COVID-19 Measures. The regulation provides all police officers or other provincial offences officers with the power to require individuals to identify their name, date of birth and address if the officer has reasonable and probable grounds to believe the individual has violated a government order relating to COVID-19.

Under the regulation, police officers or other provincial offences officers also have the authority to:

- Order that a premises be temporarily closed if they have reasonable grounds to believe an illegal organized public event or other gathering is occurring; and
- Order an individual attending at an illegal organized public event or other gathering to cease attending the event or gather, as applicable, or to order individuals at the event or gathering to disperse.

Violation of the new restrictions can result in the following penalties under the *Emergency Management and Civil Protection Act* or the *Re-Opening Ontario Act*.

- In the case of an individual, a fine of up to \$100,000 and a term of imprisonment of up to one year;
- In the case of an individual who is a director or officer of a corporation, a fine of up to \$500,000 and a term of imprisonment of up to one year; and
- In the case of a corporation, a fine of up to \$10,000,000.

Additionally, the minimum fine for a person or corporation that organizes a public event or other gathering at a residential or other prescribed premises where the number of people exceeds five people is \$10,000.

Police, inspectors and by-law officers expected to be active

We expect the Ontario Cabinet to issue more Orders in the days ahead. We also expect police, government inspectors and by-law officers to be more active in the days ahead, inspecting workplaces. It remains critical that all businesses ensure that they are complying with the most current public health and infection control requirements.

If you have any questions, please do not hesitate to contact any member of our Employment and Labor team.

Your Key Contacts



Adrian Miedema

Partner, Toronto

D +1 416 863 4678

M +1 416 388 9837

adrian.miedema@dentons.com



Claire Browne

Associate, Toronto

D +1 416 863 4757

claire.browne@dentons.com



Larysa Workewych

Associate, Toronto

D +1 416 863 4613

larysa.workewych@dentons.com