

Coronavirus (COVID-19): Legal update for Canadian employers – Key considerations for reopening physical workplaces

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Meet our presenters



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Re-opening considerations

May 29, 2020

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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

- Con't:
 - 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.
 - Hold meetings in outdoor spaces.
- Ontario factsheet with information for employers and others about cleaning and disinfecting public places:
<https://www.publichealthontario.ca/-/media/documents/ncov/factsheet-covid-19-environmental-cleaning.pdf?la=en>

Re-opening considerations

- Ontario sector-specific guidelines, for employers in sectors such as construction, food processing, restaurants, manufacturing, agriculture and long term care: <https://www.ontario.ca/page/resources-prevent-covid-19-workplace>
- Creation of workplace specific plans or protocols, using the guidelines and factsheet to guide same
- Contact your Dentons Ontario employment team member for a copy of the COVID-19 Ontario 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?

Re-opening considerations

- (viii) Will screening be required in the workplace (other than a form of logbook screening)? Will home-based self-screening be required and if so, how will it be monitored?
- (ix) How will you document your plan? How will you document the work that you've done to arrive at your plan?

Other considerations

- Do your employees have all of the tools that they need to continue to do their jobs remotely?
- How is mentoring and supervision of employees continuing from a distance?
- How is the company monitoring what may be unauthorized overtime?
- Is the company going to get itself involved in work transit issues? If so, how, and to what degree?
- Is the workplace prepared for a possible increase in mental health issues, both in terms of employees working from home and employees returning to the workplace? Does your workplace have the resources it may need (eg. an Employee Assistance Program)?

Health and safety duties and liability in return to the workplace

May 29, 2020

Adrian Miedema, Partner, Toronto

OHS legislation

- General duty to take all precautions reasonable in circumstances
- Public health guidance likely “reasonable precaution”
- Charges and fines / administrative penalties under OHS legislation

Emergency legislation / orders

- For example, Ontario “Closure of Places of Non-Essential Business” regulation under EMCPA
- Imposes legal obligation on **“person responsible for a place of business that is open”** to:
 - Ensure that business complies with OHSA and regulations
 - “operate the business in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting”

Emergency legislation / orders

- Ontario also imposes specific legal obligations on “the person responsible for” certain places of business:
 - Retail sales
 - Golf courses
 - Short-term rentals
 - Seasonal campgrounds
 - Marinas
 - Sports team training facilities
 - Indoor or outdoor sports facilities
 - Facilities for athletic training or competitions
 - Horse racing tracks

Emergency legislation / orders

- Provincial legislation
- Specific obligations re COVID-19
- Legal duties – charges and fines
 - (Ontario: max. \$10 million against corporation)

Privacy update – Temperature screening for return to work

May 29, 2020

Kelly Osaka, Partner, Calgary

Privacy issues to consider with temperature checks

Can my business engage in temperature checking?

- Temperature screening may be considered reasonably necessary from a privacy perspective in the context of COVID-19 for reopening businesses
- Employers should be aware of current guidance and recommendations from public health bodies to assess reasonableness
- Identify the purpose for collecting the personal information and consider using it in conjunction with other screening methods
 - **Privacy Impact Assessment**: engage in a systematic evaluation of the proposed initiative to analyze risks to privacy and how to manage those risks

Privacy issues to consider with temperature checks

How should my business implement temperature checking?

- Post clear signage indicating that temperatures will be taken and provide employees with advance notice of the screening process and why it is being implemented
- Ensure that the privacy of the individual employee is reasonably protected by checking temperature in a private or semi-private area
- Anyone tasked with conducting temperature checks should be properly trained and provided with necessary personal protective equipment
- Any employees sent home due to the screening process should be advised of the workplace policy for returning to work

Privacy issues to consider with temperature checks

Should my business document temperature screening?

- The purpose of temperature screening is to allow or deny entry into the premises
- It is likely unnecessary to record personal information during the screening process
- Records may be kept in aggregate of individuals screened and the number denied entry
- Any records created concerning an employee denied entry should be protected against unauthorized disclosure including by limiting the number of individuals with access to the information

Privacy issues to consider with temperature checks

Are there human rights implications to be concerned about?

- Rights preserved under Human Rights legislation continue to apply despite the COVID-19 pandemic
- Provincial Human Rights Commission have confirmed:
 - Medical assessments to verify or determine an employee's fitness to perform on the job may be permissible (Ontario)
 - Employers should ensure that any restrictions are consistent with the most recent advice from medical and Public Health officials and are justified for health and safety reasons (Alberta)
- Temperature checks conducted in accordance with recommended practices are unlikely to give rise to human rights concerns

Thank you



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