



Novel Coronavirus (COVID-19)

Business Law

June 2020

Creating a Plan to Reopen Your Physical Workplace

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On June 8, 2020, the Ontario government announced its plan to progress to Stage 2 of reopening the province of Ontario amid the coronavirus pandemic (“COVID-19”). The result of this announcement is that more workplaces can open their doors, more customers can access those workplaces and more employees can physically return to their workplace.

Reopening a business after a ten-week lockdown is a new phenomenon and not a simple undertaking. As such, prior to reopening its physical workplace or as employees begin to return to the physical workplace, businesses may wish to prepare a comprehensive and well-documented plan that ensures the health and safety of its employees while, at the same time, allowing the business to operate efficiently and effectively.

In creating this plan, businesses must consider all facets of their operations and develop procedures that are tailored to their own needs. Nevertheless, in developing a plan, businesses should consider the following: (1) the applicable legislative framework; (2) creating a “reopening the workplace” committee; (3) conducting research and gathering feedback from employees; and (4) developing a written plan, policies or protocol to re-open the physical workplace, consistent with industry best practices.

1. Understand the Legislative Framework

Before a business can reopen its physical workplace, such business must confirm that it is included on the Ontario government’s evolving list of essential businesses, and therefore is legally permitted to reopen its doors to the public.

Once the Ontario government gives a business the green light to reopen its physical workplace, the business must consider its obligations under the *Occupational Health and Safety Act*, RSO 1990, c. O.1 (the “OHSA”). Pursuant to the OHSA, employers have an ongoing legal duty to protect the health and safety of employees at work and maintain a safe workplace. Accordingly, in order to fulfill this duty while

COVID-19 is present in Ontario, businesses must identify the risks that COVID-19 causes in the workplace and implement protocols and controls to address those risks.

It should be noted that, under the OHSA, certain employees have the statutory right to refuse unsafe work. Businesses should have a strategy in place to respond to these work refusals in accordance with the processes set out in the OHSA.

Failure to ensure a safe workplace for employees can lead to significant penalties and sanctions for an employer under the OHSA, including potential criminal liability.

In addition to the list of considerations outlined in this article, the Ontario government created a series of health and safety resources to assist employers and employees in addressing sector-specific workplace issues that may arise from COVID-19, such as issues specific to construction, hospitality or retail workplaces.

2. Create a “Reopening the Workplace” Committee

Given the complexity and multi-faceted nature of reopening a physical workplace following a lockdown, certain businesses may wish to create a “reopening the workplace” committee (the “**RTWCommittee**”) to assist with planning, managing and overseeing the reopening of its workplace. The RTW Committee should be made up of employees from various groups, departments and positions within the business, to ensure that all areas of the business are properly represented and considered. The RTW Committee should hold regular, virtual meetings to stay up-to-date on COVID-19 related issues, regulations and guidelines.

The RTW Committee can assist with such tasks as creating surveys, gathering feedback, communicating with employees, conducting research, drafting policies, completing trials and test runs, monitoring compliance and addressing challenges that arise after reopening a physical workplace. The RTW Committee should also confer with the business’s Joint Health and Safety Committee, if required under the OHSA.

While a RTW Committee may be a valuable resource for management, businesses should classify the RTW Committee as an advisory body, and not a committee that necessarily implements decisions regarding re-opening the workplace.

3. Conduct Research and Gather Feedback

It is important to conduct research and gather feedback from employees prior to drafting a reopening plan or any policies. Conducting research will allow businesses to understand the main issues at play, as well as gather feedback on, and suggestions for, how to address such issues.

The business or the RTW Committee may conduct such research undertakings as:

- staying apprised of the Ontario government’s evolving guidelines and regulations;
- preparing a survey for employees to complete that, amongst other things, allows employees to identify any unique circumstances that may require accommodation before returning to the workplace;
- following up with employees through supplemental surveys and questionnaires to address new issues that arise;
- reaching out to industry associations and similar businesses to learn about best practices and what other employers in a similar line of business are doing to ensure a safe workplace; and
- consulting legal counsel to ensure that the business is meeting its legal duties as an employer and that the business’s reopening plan is legally compliant.

4. Draft a Plan to Reopen Your Physical Workplace and any Related Policies

Upon completion of the information gathering process, businesses can begin to draft a plan, and any related policies, regarding the reopening of their physical workplaces. Such plan and policies should address the various issues raised in the RTW Committee's research findings and survey results. In drafting a plan to reopen a physical workplace, consider how the business can address the questions and issues listed below.

Adjusting Work Hours and Shifts

- Will all employees return to the physical workplace immediately, or can employees return to the workplace in several phases?
- Which employees does the business need at the workplace urgently, and which employees can return slowly over the next few months?
- Alternatively, is it feasible to have employees return to the physical workplace on a staggered basis? For example, half of all employees can attend at the workplace for one week, and the other half of the employees can attend at the workplace the following week.
- Can the business adjust hours of work and/or scheduling to decrease the number of people in the workplace during peak business hours?
- How will the business ensure that lunch breaks and other breaks are not all taken at one time?
- Are there employees who, or teams of employees that, are able to work remotely with limited issues? Can such employees continue to work from home even after the business reopens its physical workplace? On the other hand, are there employees who cannot work remotely, or struggle to do so?
- How will the business determine who can continue to work remotely, and who cannot?

Rearranging the Physical Space

- Does the layout of the physical workplace require rearranging so as to comply with Ontario's social distancing requirements? Measure the distance between work stations and offices and ensure that there is at least six feet of separation between each person.
- Are there any areas at the workplace where there is not six feet of separation between each person, but where the business can install acrylic sheets or acrylic resin as a protective barrier? If so, is it feasible to install a protective barrier, or should these areas be temporarily closed off?
- Do the business's communal areas (such as boardrooms, copy rooms, lunchrooms, kitchens and reception areas) require rearranging so as to comply with Ontario's social distancing requirements? Consider reducing the capacity and foot traffic in such communal areas with signage, red tape or internal policies.
- Can employees use all communal areas safely, or will some areas be temporarily closed off?
- Are there adequate points of entry and exit in the workplace? Are there points of entry or exit in the workplace where congestion occurs? Can the business re-direct foot traffic through alternative doorways?
- Will the business require keys or key passes to access certain areas of the workplace, thereby reducing the number of people who can enter such areas?
- Does the workplace contain communal items or equipment that the business cannot adequately sanitize after each use, such as newspapers, magazines, coffee, milk containers, sugar bowls or snack bowls? Consider whether the use of such items can be restricted, or whether such items should be removed.

- Can the business install automatic or sensor-activated equipment in certain areas of the workplace? For example, can the business install automatic lights and doors to reduce the number of people touching light switches and door handles?
- Consider whether the business can prop open doors in high-traffic areas during business hours. If not, what sanitization process will the business employ to address same?
- Will the business provide disinfectant for employees to use at their desks and in communal areas? Does the business have a sufficient supply of disinfectant?
- How can the business limit the number of people in the bathrooms at one time? Consider blocking-off middle stalls and sinks to ensure only every other stall or sink is utilized. Consider also placing magnets or signs on the outside of public bathroom doors to indicate if other people are occupying the bathroom.
- Does the business require signage to highlight any COVID-19 related modifications to the workplace? How will the business otherwise inform employees and non-employees of the reconfigurations made to the workplace as a result of COVID-19?

Building Considerations

- Reach out to the landlord, superintendent or management of the building, if applicable, to obtain their plan for reopening the building. Consider how to inform employees of such plan.
- Can the building restrict or otherwise reduce capacity in the lobby areas or other communal building spaces? Consider removing tables, benches, couches and other seating from the lobby areas to avoid congregation. Add floor markers to ensure employees stand at least six feet apart while waiting in line for elevators or escalators.
- Address any required changes to security to restrict access to the physical workplace.
- Address, or ensure the landlord or building management addresses, small spaces such as stairwells and elevators. How will the business ensure social distancing in such spaces? Determine how many people can safely be in the elevators and stairwells at one time, and consider having security personnel monitor elevator and stairwell use to ensure that such spaces are never over-capacity.
- Consider adding floor markers in the elevators to indicate where people may stand.
- Consider commuting hurdles, and whether it is safe to require employees to use public transit. If not, how will the business address this? Can the business provide alternative methods of transportation to employees? Can the business provide parking for employees?

Sanitization and Personal Protective Equipment (“PPE”)

- Will the business make PPE mandatory for all employees, at all times? If not, when will the business require employees to wear PPE?
- What PPE will the business require (masks, gloves, eye wear, face shields, etc.)?
- Will the business provide PPE to all employees? If not, how will the business ensure all personal PPE meets the applicable safety regulations and guidelines? If so, how will the business obtain PPE?
- What are the repercussions for employees who decline to wear PPE or wear PPE incorrectly?
- Is there sufficient hand sanitizer and hand soap in the workplace? Should the business install additional dispensers in high traffic areas and bathrooms? How can the business promote handwashing?
- Is the workplace disinfected and sanitized regularly? What cleaning protocols will be put in place when the business reopens its workplace?
- How will the business clean high traffic areas and frequently-touched objects thoroughly, consistently and often?

- Should the business have the workplace cleaned thoroughly prior to reopening?
- Will the business provide cleaning or disinfectant supplies to its employees?

Health and Symptom Reporting

- Will the business require temperature checks for employees and third parties entering the workplace? It is important to note that temperature checks may be viewed as an invasive procedure impacting an individual's privacy. The business should seek legal advice prior to implementing temperature checks.
- Will the business implement a self-reporting system whereby employees report to their employer if they have symptoms of COVID-19 or have come into contact with someone diagnosed with COVID-19? Will the business require self-reporting daily or weekly?
- What are the repercussions if employees or non-employees decline to participate in such self-reporting system?
- What privacy protections will the business implement if it collects health information from employees and non-employees? Consider speaking with legal counsel to ensure that the business complies with all privacy legislation and obligations.

Dealing with Third Parties

- Will third parties have access to the workplace? Should the business implement a "no visitor" policy? Can employees conduct third party meetings online or over the telephone? What technology is available for employees to attend meetings via videoconference or telephone?
- If third parties (such as landlords, suppliers or clients) must access the workplace, what conditions will the business impose on their visiting? For example, will the business require third parties to wear PPE, require third parties to report any recent travel or check their temperatures?
- Address how the business will handle deliveries and shipments. How will the business sanitize packages? Can those delivering packages enter the workplace?

Implementing Policies and Guidelines

- Consider implementing policies in respect of the following issues:
 - limiting non-essential travel;
 - requiring mandatory self-isolation following any essential travel;
 - training for employees on all COVID-19 related matters;
 - addressing an employee's refusal to work;
 - addressing issues with childcare (particularly while schools, camps and daycares are closed);
 - addressing high-risk employees (such as elderly employees or those with respiratory illnesses) or employees living with high-risk individuals;
 - addressing emergency planning and fire safety;
 - reducing or eliminating in-person meetings in the workplace;
 - addressing requests for accommodation;
 - postponing or cancelling work social functions such as summer parties, group lunches and potlucks; and
 - addressing employees who feel anxious, nervous or scared about returning to work during COVID-19, and any mental health issues that may arise as a result of COVID-19.

- Consider whether the business should make any changes to pay, vacation or medical benefits in light of COVID-19.
- Consider whether any training, recruitment, business development, expense reimbursement or other programs require changes in light of COVID-19.
- Have a contingency plan in place to address the possibility of (i) a COVID-19 outbreak in the workplace, (ii) a resurgence of COVID-19 in the coming months and (iii) future government-ordered closures.

The foregoing list is general in nature, and will apply to many businesses in Ontario. However, each business is unique and has varying needs, and therefore a business's reopening plan should address the particularities and specific needs of its workplace.

It is important to effectively communicate a reopening plan and policies to employees. The business should document the plan and policies in writing, circulate the plan and policies to employees, and post such documents to a centralized database for ease of reference. In addition to regular and frequent communication with employees, businesses should communicate with third parties (such as landlord, clients and partners) regularly regarding their reopening plan and policies.

A business's plan to reopen its physical workplace should be flexible and revisited often to ensure that it is (i) compliant with the ever-changing government regulations and guidelines, and (ii) accomplishing the ultimate goal of keeping employees and customers safe while maintaining efficiency. It may be appropriate to task the RTW Committee, or senior management at the business, with monitoring and evaluating the plan and policies on a regular basis, and gathering ongoing feedback from employees. This way, the business will be able to effectively address, and respond to, any issues that may arise.

For further information regarding reopening a workplace in Ontario, or for assistance with creating a plan to reopen a physical workplace, please contact the authors of this article or another **lawyer at Torkin Manes LLP**.

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