



Novel Coronavirus (COVID-19)

Employment & Labour

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Government Mandates Staying Home: Notes for Employers

By Daniel Pugen

On January 13, 2021 the Ontario Government issued an Emergency Order under the *Emergency Management and Civil Protection Act*, which includes a directive to 'stay home' (the "Order"). The Government has also updated various restrictions that have been in place throughout the pandemic. The Order comes into effect January 14th, 2021 and is set for 28 days.

For purposes of this Article, we have listed below notable points for employers as they navigate the constantly changing regulatory landscape:

- The Order is in effect for all of Ontario. The policy goal is for individuals to stay home in order to limit gatherings and outings to what is truly necessary to curb community spread of the virus.
- While there are 29 exceptions, the key exceptions are that an individual can leave home for food, health care, exercise or work. With respect to attending work, the language of the Order states that an individual may leave home for the purposes of "*working or volunteering where the nature of the work or volunteering requires the individual to leave their residence, including when the individual's employer has determined that the nature of the individual's work requires attendance at the workplace*". In other words, if the job requires physical attendance (as determined by the employer) an individual may leave home to go to work.
- There are no legislative factors to be considered in exercising the employer's discretion on mandating "in person" attendance. Employers will have to act reasonably and consider whether the job can be done remotely considering the nature of the position. The Government has stressed in its messaging that businesses must ensure that employees work remotely if the job can be performed from home except where the nature of their work requires them to be on-site at the workplace. Without further guidance from the Government it will be up to health and safety inspectors to interpret whether someone physically needs to be present at the worksite. For many office environments, proving to an inspector that "in person" work is required may be difficult depending on the employer's industry. An

employee who believes that they should not be physically mandated to attend work can file a health and safety complaint with the Ministry of Labour.

- Schools in Ontario will remain closed in Toronto, York Region and Peel Region until at least February 10, 2021. This will have a significant impact on employers as employees may need to stay home to supervise their school-aged children, thus limiting employee attendance at work (both virtually, and physically if required). It is important to remember that employees are entitled to a job-protected leave under the *Employment Standards Act, 2000* (“ESA”) on account of the parent having to provide care/support to a child because of a school closure.
- The Government has re-iterated that masks or face coverings must be worn inside all businesses. However, it appears at present that existing exceptions continue to apply. This includes, most notably, if an employee is physically segregated from others (e.g. a private enclosed office), not accessible to the public and at least 2 metres away from co-workers. As a best practice, if an employee leaves that segregated area (e.g. to travel about the workplace or attend the bathroom) a mask must be worn. As there has been some confusion in the business community about indoor masking, expect further clarification from the Government.
- Construction employers need to be mindful of the restrictions that have been placed by the Government, which can be found here.
- The Government has strengthened enforcement measures by ensuring that police and by-law officers have the legislative authority to question individuals, obtain contact information, issue tickets/fines and engage in other enforcement actions, including initiating prosecutions.
- Certain non-essential retailers can only be open between 7am and 8pm.

Employers within the City of Toronto and Peel Region have further obligations as set out by local public health. This includes: (a) notifying public health immediately and the Ministry of Labour thereafter if two or more employees test positive for COVID-19 within a 14 day interval; (b) ensuring accurate worker contact information is available for public health for contact tracing; and (c) ensuring employees are aware of Government income replacement programs. Further details of the specific City of Toronto requirements can be found here.

While many employers have already initiated work from home practices, it is important to review those practices to determine whether individuals physically attending the workplace is truly necessary. Further, employers can consider issuing standard form letters to “essential” employees who need to be away from home and at work in case they are questioned by authorities. Finally, employers need to continue to be flexible and reasonable in managing employees, including accommodating those employees who may be struggling with child care, home schooling and the juggling of personal and professional obligations.

Please get in contact with anyone from our Labour & Employment Group for more specific advice. We will continue to monitor how the Government’s enactments impact the workplace.

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