

# *Occupational Health & Safety in the Time of COVID-19*

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# Overview

- **Issues for reopening and operating your workplace during the pandemic**
  - responsibility for ensuring a safe and healthy workplace
  - how to reopen your workplace
  - issues with workers wishing to continue working remotely
  - mandatory vaccination policies
  - how to deal with complaints of workplace harassment

# Overview

- Going to focus on the Occupational Health & Safety Act (OHSA)
- There are other acts that may apply to certain situations (such as the Employment Standards Act or the Human Rights Code), but review of OHSA will touch on most of those issues too

# Overview

- If you have a unionized workplace, there are other issues that you need to consider
  - complying with the collective agreement
  - complying with the Ontario Labour Relations Act – in particular, ensuring that you do not commit an unfair labour practice



# Legal information?



**Legal advice?**

# Responsibility for a Safe and Healthy Workplace

- An employer has an obligation under the Occupational Health and Safety Act to take reasonable steps to ensure that the workplace is safe and healthy for **workers**
- So what does it mean to provide a safe and healthy workplace?
- Among the duties of an employer is
  - take every precaution **reasonable in the circumstances** for the protection of a worker

# Responsibility for a Safe and Healthy Workplace

- Further, the OSHA gives most workers a right to refuse work if they have a reasonable belief that there is something unsafe about the work, and there is a process for resolving disputes about whether or not the workplace is safe



# What Steps to Take in Reopening

- Back to what an employer has to do – take all steps that are “**reasonable in the circumstances**” – but what does that mean?
- At a minimum, ensure that you are complying with any legal obligations
  - Some obligations found in the regulations under the Reopening Ontario (A Flexible Response to COVID-19) Act, 2020
  - May be additional sector specific matters – for example, organizations that are licensed may have additional requirements imposed by the Ministry or legislation under which the license is granted

# What Steps to Take in Reopening

- But taking all steps that are “**reasonable in the circumstances**” often requires more than simply meeting minimum standards required by legislation or regulations
- There are public health guidelines that may or may not be legal requirements, as well as best practices in your sector that also may not be legal requirements

# What Steps to Take in Reopening

- Should you implement such measures? – Can you do so?
- One thing you should do is to have a formal policy in place as to what is required of your workers in respect to COVID-19
- Because legal requirements and public health guidance can evolve quickly, your policy should have a provision that indicates that it is subject to change on short notice to incorporate legal requirements and best practices

# Workers Wishing to Continue Working Remotely

- Earlier in the pandemic, employers were required to close their places of business, so they had to have workers work from home if they wished to continue operations
- Other employers were encouraged to have workers work from home if possible, even if they did not have to close their places of business
- Now, as many employers are trying to have workers return to the workplace, new issues are arising

# Workers Wishing to Continue Working Remotely

- **Can you require an employee to return to the workplace?**
- As a general rule, you are entitled to have an employee work out of the designated workplace
- But if their employment contract or a collective agreement provides differently, you may be bound by that contract or agreement
- Similarly, if there is a practice or policy in place, that may be determined to have become a term of their employment

# Workers Wishing to Continue Working Remotely

- **Can you require an employee to return to the workplace?**
- Another reason that you might have to permit an employee to work remotely would be for human rights considerations
- Lastly, the workplace has to be safe – in most cases, a worker who has reason to believe that there is an unsafe condition in the workplace can refuse to work, pending an investigation
- If a worker refuses to work for that reason, then pending the investigation you cannot have others work in that area or with that equipment unless you have disclosed the first worker's refusal to work and the reasons for that refusal

# Workers Wishing to Continue Working Remotely

- **What obligations do you have if you permit or require employees to work remotely, either all of the time or as part of a hybrid model?**
- Again, you need to consider what any employment contract or collective agreement provides – are there any provisions about providing the appropriate supplies and equipment to work remotely?
- Should have agreement or policy that specifies where the remote workplace is (should be the worker's home because OSHA has exception for workers working from their private residence), and that working from any alternate remote workplace requires prior approval

# Mandatory Vaccination Policies

- Can your workplace implement one?



# Mandatory Vaccination Policies

- **Can your workplace implement one?**
  - That depends

# Mandatory Vaccination Policies

- **Can your workplace implement one?**
  - Remember that employment contracts and collective agreements are contracts, and as a general rule, one party cannot change the terms of the contract without the other party's agreement.
  - If you unilaterally make minor changes, that may not invalidate the whole contract – but it is still a breach and you may be required to compensate the innocent party with damages
  - If you unilaterally make major changes, that may “break” the contract so that the other party does not have to perform the contract any more and can seek damages for losing the benefit of the contract

# Mandatory Vaccination Policies

- **Can our workplace implement one?**
  - Assuming your contract or collective agreement does not provide for such a policy, various factors will be considered
    - Is there a legal requirement to have a vaccination policy?
    - If there is not a legal requirement, does some responsible government agency indicate that it is a best practice?
    - Does the nature of the work done require frequent close contact with others, particularly those who may be particularly vulnerable to COVID-19?

# Mandatory Vaccination Policies

- **Can our workplace implement one?**
  - Assuming your contract or collective agreement does not provide for such a policy, various factors will be considered
    - Is the nature of your workplace such that there will be frequent close contact with others?
    - How does your policy deal with people who cannot be vaccinated due to a reason that is protected under the Ontario Human Rights Code?

# Mandatory Vaccination Policies

- **Can our workplace implement one?**
  - Assuming your contract or collective agreement does not provide for such a policy, various factors will be considered
    - What are the consequences under your policy for an employee who does not get vaccinated?

# How to Deal With Complaints of Workplace Harassment

- Generally, there is no difference in how to deal with complaints of workplace harassment compared to pre-pandemic requirements:
  - You need a policy to address harassment, and a program to implement the policy
  - You need to ensure that there is an investigation of any complaints of workplace harassment “that is appropriate in the circumstances” – the investigation should be conducted promptly

# How to Deal With Complaints of Workplace Harassment

- Generally, there is no difference in how to deal with complaints of workplace harassment compared to pre-pandemic requirements:
  - You need to take steps to protect the complainant until the investigation is complete and any corrective steps are implemented
  - You need to communicate (in writing) the results of the investigation to the alleged victim and the alleged harasser (if the latter is a worker of the employer)

# How to Deal With Complaints of Workplace Harassment

- What is different under COVID-19?
  - You need to be aware of the pressures that individuals may be under due to changes in work environment and other factors – people may be more sensitive to acts or comments that they might otherwise simply brush off – that does not make their complaints any less serious and you cannot ignore them



# How to Deal With Complaints of Workplace Harassment

- What is different under COVID-19?
  - While an employer working out of their home is not subject to the OHSA, they are still entitled to protection from harassment on certain grounds under the Human Rights Code
  - Further, just because there is no legal obligation to investigate a complaint of harassment due to a legal technicality, that does not mean that you should not investigate the complaint anyway

# Resources

- O. Reg. 364/20: **RULES FOR AREAS IN STAGE 3** under *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c. 17  
<https://www.ontario.ca/laws/regulation/200364>
- Provincial Government webpage on Resources to prevent COVID-19 in the workplace  
<https://www.ontario.ca/page/resources-prevent-covid-19-workplace>
- Provincial Government “Roadmap to Reopen”  
<https://www.ontario.ca/page/reopening-ontario>
- Code of practice to address workplace harassment  
<https://www.ontario.ca/page/code-practice-address-workplace-harassment#section-3>

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*Questions?*