

BRAUTI THORNING^{LLP}

— BT LEGAL —

Returning to Work: A Guide for Employers

As of June 11, Ontario has moved into “Step 1” of the provincial government’s reopening plan. As we move out of lockdown and toward reopening, employers should be aware of some constraints on whether and how they are allowed to operate their businesses, as well as what they are able to ask of their employees. Ontario Regulations 82/20 and 440/21 (the “Regulations”) mandate some of these restrictions. Below is a brief guide to the Regulations and other legal provisions that may be relevant to employers.

Returning to the Physical Workplace

In “Step 1” of the Ontario government’s reopening plan, certain businesses are permitted to open subject to their compliance with specified conditions, including non-essential retailers, restaurant patios, and vehicle dealerships.¹ Such businesses are obligated to ensure that anyone performing work does so remotely unless their work requires them to be on-site.² Employers should therefore consider which workers are required to be on site in order to perform their work prior to requiring an employee to attend at the workplace.

Employers that are permitted to open are generally entitled to expect that employees will attend work if their work cannot be performed remotely. However, such employers should be mindful of their obligation not to discriminate, as well as the duty to accommodate employees to the point of undue hardship under the Ontario *Human Rights Code* (the “Code”). Employers may be required to accommodate workers who are unable to come into work due to a protected ground under the *Code*, such as disability or family status. If employees cannot be accommodated in the workplace or through a work-from-home arrangement, they may need to be accommodated with a leave of absence.

Safety Precautions

Mask-wearing is more straightforward: employers have an obligation to ensure that any person in an indoor area of the business they operate – including employees and customers – wears a mask or face covering that covers their mouth, nose, and chin.³ Employers also have an obligation to ensure that any employee who temporarily removes their mask indoors to eat or drink is separated from every other person, including other employees, either by at least two metres or a barrier like plexiglass.⁴

¹ They are listed in O Reg 80/20, Schedule 7.

² O Reg 80/20, Schedule 6, s 2.1 (1).

³ O Reg 80/20, Schedule 6, s 2 (5).

⁴ O Reg 80/20, Schedule 6, s 2 (6.1).

The Regulations require employers to take further safety precautions. Employers must operate their business in compliance with the general recommendations of public health officials, especially with regard to physical distancing, cleaning, and disinfecting surfaces.⁵ They must screen their employees for symptoms of COVID-19 and post signs informing them how to self-screen.⁶ Employers are also required to impose capacity limits that ensure physical distancing is possible.⁷ If an employer is open to the public, they must post conspicuous signs displaying their capacity limit.⁸

In addition to the Regulations, employers have a duty under the *Occupational Health and Safety Act* to take every precaution reasonable in the circumstances to protect workers. Accordingly, employers must consider if there are any reasonable steps they can take to protect their workforce against COVID-19 beyond those mandated by the Regulations. Reasonable precautions will vary from workplace to workplace and should be assessed on a case-by-case basis.

Vaccine Policies

Employers may wish to implement a vaccination policy to protect employees and customers. Any such policy should be tailored to the specific workplace. It must balance the employer's obligation to provide a safe workplace with an employee's human rights and privacy interests. For instance, vaccine policies must accommodate workers who are unable to get vaccinated for religious reasons or reasons related to a disability. Privacy considerations may also come into play if the employer retains health information about the employee such as proof of vaccination.

Implementing a mandatory vaccine policy will not necessarily be reasonable in all circumstances. Employers should consider whether a voluntary program, or one that incentivizes employees to get vaccinated is appropriate in lieu of requiring proof of vaccination in order to return to the workplace.

This is an area of the law that is likely to evolve in the coming months. We will keep our readers apprised of any developments.

For further information, please contact a member of our team: [Leslie Dizgun](#), [Allyson Fischer](#), [Mitchell Smith](#), [Paul Schwartzman](#), [Justin Anisman](#), [William McLennan](#), [Alyssa Jagt](#), and [Oscar Moody](#).

⁵ O Reg 80/20, Schedule 6, s 2 (2).

⁶ O Reg 80/20, Schedule 6, s 2 (3).

⁷ O Reg 80/20, Schedule 6, s 3 (1).

⁸ O Reg 80/20, Schedule 6, s 3 (5).