

# Creating a Safe Environment

## What to Consider

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By Christine Dunlop

COVID-19 continues to affect normal living and business operations. However, workplaces have started to re-open and there are several new factors for businesses to consider in order to keep employees and the public safe.

### Considerations for Employers

The COVID-19 pandemic has changed what a 'normal' work environment looks like. These changes have affected the physical workspace and have brought about additional considerations for employers when deciding how to set up a work environment, and how to manage relationships with employees. Some of these considerations include:

- **Creating policies:** Having policies in place to monitor COVID-19 symptoms, reporting COVID-19 symptoms, isolation policies, and vaccination policies have become a common practice since the start of the pandemic. However, employers should also consider putting a confidentiality policy in place to offer employees who have contracted COVID-19 or who have disclosed vaccination status, privacy rights. When creating policies, be mindful of any privacy protections that are required when collecting an individual's personal information. In Ontario, the [Personal Information Protection and Electronic Documents Act](#) (PIPEDA) currently governs private-sector organizations that collect personal information in the course of commercial activity. Generally speaking, under PIPEDA, an organization may collect, use, or disclose personal information if it is reasonable to do so. Collecting this information for COVID-19 screening purposes is reasonable but should be limited to what information is necessary and should be retained just long enough for the purpose of the collection, use, or disclosure to be completed. Businesses need to make sure that the methods used for collection, use, and disclosure are reasonable and proportionate to the goal of such use. For example, as employee health information is considered extremely sensitive, employers should first decide if it is necessary to disclose the personal information of an employee with a positive COVID-19 test, and then disclose as little information as possible to achieve that objective. It may be possible instead to e-mail the remaining employees a notice that a co-worker has tested positive for COVID-19 and that necessary precautions should be taken.

- **Legislative Changes:** During the COVID-19 pandemic, Ontario's Bill 27, [Working for Workers Act, 2021](#) came into force on December 2, 2021. This Act amends the [Employment Standards Act](#), and requires an employer with at least 25 employees at the start of any calendar year to implement a policy regarding an employee's right to disconnect from work. This policy must be in place before March 1 of that year, and employers have until June 2, 2022, to have their initial policy in place. Currently, there are no specifics for what needs to be included in the policy, but as an example, a policy may include times during which employees are not required to answer e-mails.
- **Hybrid work model:** Many workplaces have fully operated remotely for the last several years. While some employers may wish workers to return to the office full time, workers' preferences may have shifted. In a tight labour market, this may require offering some form of a hybrid work arrangement. While a hybrid work arrangement may be a popular decision for your team, it raises certain legal issues, and such an arrangement should be accompanied by a policy addressing the following items:
  - *Location of Work:* Employees may opt to work "from home", but in fact are working in a different country (on an extended vacation) or have moved out of Province. Expectations should be clear that working from home, means working at the employee's home in the province in which the employment agreement specifies. Employees who move out of the province or out of the country may be subject to the employment laws in the jurisdiction in which they reside.
  - *Commutable Distances:* Similar to the above, employees opting to work from home, may still choose to move farther away from the office. The policy should make clear if there is an expectation that an employee be able to commute to the office on relatively short notice, such as for emergency client meetings or projects.
  - *Safe Working Environment:* Employees working from home should confirm to the employer that they have a comfortable, safe, and ergonomically acceptable working environment. While the law is not clear on this issue, incidents at home during working hours could impact WSIB coverage.
- **Be mindful of any human rights concerns and the employer's duty to accommodate:** The Ontario Human Rights Commission previously issued a policy statement that treating an employee who has or is thought to have COVID-19 is discriminatory under the Code. Keep in mind that under [Ontario's Human Rights Code](#) ("Code"), an employer has a duty to accommodate an employee to the point of undue hardship. Employers should be mindful of any disability or vulnerability that an employee may have that makes them more susceptible to COVID-19, and create accommodations where necessary, including continuing work from home arrangements. Employers should also be aware of accommodating employees who may have care-giving responsibilities, including caring for a family member who is ill with COVID-19 or who is in self-isolation, or a child whose school is closed due to COVID-19.

## Creating a Safe Environment for Employees and Customers

By now, everyone is familiar with the recommended COVID-19 prevention measures. While some of these measures are being lifted, an employer is required to ensure a safe workplace under the

[Occupational Health and Safety Act](#) (“OHS”). Implementing some routine requirements can help decrease the spread of COVID-19 and increase the safety of customers and staff:

- First and foremost, keep up to date with all government-required safety measures
- Promote hand hygiene and respiratory etiquette
- Implement disinfection protocols for commonly used surfaces and areas
- Provide personal protective equipment (PPE)
- Take social distancing practices into consideration for the number of customers, suppliers, employees, and contractors allowed into your workplace. If social distancing isn’t possible, encourage those within your workplace to wear masks.
- If necessary, make modifications to your delivery services to minimize unnecessary contact
- Create and use a system to monitor and report COVID symptoms for employees and others entering your work premises. Use this system to alert those who may have been exposed to COVID-19 so that they may properly isolate and be cognizant of your reporting duties under OHS for actual and alleged cases.

## Conclusion

Returning to a workplace after having gone through over 2 years of COVID-19 may seem daunting for both employees and employers. There are new factors to consider in navigating the best way forward. Implementing these measures will assist you in creating a safe work environment, managing your employment relationships, and re-opening your workspace with confidence.

Houser, Henry & Syron LLP is happy to assist with any employment or workplace policies. If you have any questions, please do not hesitate to contact us.

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