

Re-opening your workplace during the pandemic?

What employers need to know.



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The easing of restrictions will present multiple challenges for employers including complying with occupational health and safety guidelines, identifying available government funding options, dealing with workers' fears about returning to the workplace, and finding ways to continue to support workers in remote work.

Following are some common issues and questions we are assisting employers with as they face re-opening their workplaces.

1. What steps do we need to take to prepare our workplace to open?

Your return to work plan should be specific to your workplace and responsive to the needs of your workers. For your workforce you may wish to know:

- Any health considerations or high-risk factors that need to be taken into consideration in returning to the workplace. You may have employees that are at a particularly high risk that need to be accommodated.

- Ongoing caregiving/parenting responsibilities that need to be accommodated.
- Mode of transportation to work.
- What employees require to improve productivity.
- Any elements of the work from home routine that you would like to retain moving forward.

WorkSafeBC guidelines require you to create a carefully prepared plan prior to bringing employees back. The plan should address how your workplace is organized and arranged, how specific tasks will be carried out, how safe physical distancing will be maintained, and what cleaning and hygiene measures will be in place.

Employers are also encouraged to consider the unique challenges and concerns of their employees, including how to ensure safety if employees are required to take public transit to work, require access to particular equipment or spaces like break rooms, or have elder

care obligations at home. WorkSafeBC has developed a **Guide for Employers** to help employers know what they should be asking their employees.

WorkSafeBC requires employers to communicate their plan to everyone at the workplace and be prepared to explain their plan and communications efforts to a compliance inspector. Read the requirements [here](#).

Your workplace reopening plan should also include consideration of any public areas that your workers have to access such as a shared building lobby and elevators and communication to workers about what measures are in place to ensure their safety in the public spaces.

Employees should be reminded of ongoing physical distancing requirements and steps should be put in place in the workplace to ensure that physical distancing is maintained.

2. Our workplace has remained open. Is there anything we need to do as restrictions are lifted?

If your workplace remained open due to being considered an essential service, now is the time to check WorkSafeBC Guidelines to ensure that you have an appropriate Safe workplace plan in place. Make sure that your sick day policies and travel policies are updated to take into consideration the unique concerns related to COVID-19. If you are increasing the number of employees or public in your workplace, ensure that appropriate measures are put in place to allow for social distancing. If you have not already done so, develop communication plans and training to ensure that all employees are trained on the measures that you have put in place to ensure safety in the workplace and the policies that you have implemented to ensure that workers are not attending the workplace when ill.

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3. How do I find out what the public health recommendations are for my workplace? What kind of guidance is available from the provincial government?

There are a few key sources for employers and employees to review to determine the requirements applicable to their workplace.

First, the BC Center for Disease Control website remains the official and most reliable website for health information relating to Covid-19. That website is linked [here](#).

Second, the Provincial Health Officer (Dr. Bonnie Henry) has issued various directives, including Orders, Notices, and Guidance for different types of gatherings and different types of workplaces. Orders must be followed. For example, Dr. Henry made a revised order on May 22, 2020 to continue preventing mass gatherings of more than 50 people (except in workplaces). As another example, Dr. Henry made an updated order on May 22, 2020 allowing restaurants to operate for in-person dining with stringent conditions. Dr. Henry also made an order

on May 14, 2020 requiring employers to post a copy of their Covid-19 safety plan on their website and at their place of business. Dr. Henry has also provided Guidance to various sectors. For example, on May 19, 2020, Dr. Henry provided guidance to elementary schools and high schools, as well as childcare centres, which are both encouraged to re-open or remain open with several protective measures in place.

The orders, notices, and guidance provided by the Provincial Health Officer can be found on the website [here](#).

Third, WorkSafeBC has provided extensive guidance to employers in various sectors. WorkSafeBC has prepared a guide to assessing Covid-19 risks in each workplace, with a view to each business re-opening

or continuing to operate while minimizing risks to employees and customers. Every employer has to prepare a Covid-19 safety plan and it must be available on demand by a WorkSafeBC inspector. WorkSafeBC's website is found [here](#).

4. What do I do if I have employees who are not comfortable returning to the workplace?

Consistent with phase two of BC's restart plan, many businesses are trying to resume or increase operations to ensure that their businesses survive the Covid-19 pandemic. Some businesses may only be recalling some employees for on-site work, and other businesses may be recalling all of their employees for on-site work. Within this context, many employers are asking what to do if some of their employees are not comfortable returning to the workplace. This question involves several different considerations and variables. A few of those are addressed below.

First, the below answers explain the applicable legal principles and the legal positions that employers could take in response to work refusals by their employees. This does not mean that employers have to take these positions. Employers can, where applicable, work collaboratively with their employees to address their Covid-19 concerns while still maintaining a mutually beneficial employment relationship and resuming business operations. As we have seen at the start of the Covid-19 pandemic, a collaborative approach with employees has been successful in addressing many issues.

Second, employers have a general obligation to provide a safe workplace for their employees. Workers in BC have the right to refuse a task or job if they believe it presents an undue hazard. For the purposes of WorkSafeBC, an undue hazard is an "unwarranted, inappropriate, excessive, or disproportionate" risk, above and beyond the potential exposure a general member of the public would face through regular, day to day activity. However, this must be assessed in the context of the current pandemic where BC is trying to restart the economy with approval from the Public Health Officer, and workplaces are allowed to resume operations with various protocols in place. WorkSafeBC has issued extensive guidelines for industries to follow to ensure their workplaces are safe.

Within this context, if an employer is following the guidelines and recommendations from WorkSafeBC, and an employee is simply reluctant to return because they are nervous about being infected with COVID-19, that is not a refusal to work based on an undue hazard. Refusing to return to work in such circumstances could warrant discipline and/or it could constitute a resignation from their position.

If an employee expresses a specific concern about performing a specific task or working in a particular location, the employer has to review it to determine if there is an undue hazard or not. If the employer and employee cannot agree on how to address an undue hazard, WorkSafeBC can be contacted to make a determination.

Third, some employees may not be comfortable with returning to work because they have a particular medical condition or medical vulnerability that puts them at a higher risk of harm from Covid-19. This may include pregnant employees, employees over the age of 60, or employees with a compromised immune system. This type of work refusal may engage the protections of the BC Human Rights Code. For some of these situations, the employee is requesting an accommodation based on their particular medical circumstances and, as usual, the employer may require additional information to properly assess what kind of accommodation is required and available (e.g. altered duties or remote work, etc.).

Fourth, some employees may suggest that they cannot return to the workplace due to childcare obligations. This raises the question of whether it is impossible for the employee to find alternate childcare arrangements or whether it is just their preference to keep their children at home. Again, context is important. BC's restart plan contemplates the resumption of school and daycare. The Provincial Health Officer has issued guidelines for elementary schools and childcare centres to reopen. Employers may require proof that an exhaustive search for childcare has been performed by the employee before a duty to accommodate is engaged. Employees who choose to remain at home for childcare reasons may be eligible to take the COVID-19-related unpaid leave, pursuant to the **BC Employment Standards Act** (the "Act").

Further, it is important to keep in mind that many employers initiated temporary layoffs for their employees in the last half of March when many

businesses started to close down. The Act allows for temporary layoffs for up to 16 weeks due to Covid-19. For employees laid off in mid-March, they will need to do be recalled by mid-July or their layoff will become permanent (unless the Act is amended again before July to extend that period).

The return to work questions above are highly dependent on the circumstances and this is summary information. Employers are encouraged to seek legal advice before deciding how to address any contentious situations with their employees in this context.

5. I have employees who rely on public transit. Will they be able to safely get to work?

First, you can look at the website for the applicable transit operator to determine whether and how the relevant transit system is operating. See, for example, the following:

- [Translink website](#) for Metro Vancouver area.
- [BC Transit website](#) can help you determine which transit network is applicable.

Transit authorities have enhanced cleaning protocols and are requiring lower ridership to increase the space between transit riders and allow for sufficient physical distance. For skytrain this will be accomplished by restricting access through the faregates. Transit authorities are also requiring or encouraging all passengers to wear non-medical masks while waiting at transit stations and while on board transit (e.g. buses, skytrains, etc.).

Based on the protocols put in place, it is currently expected that your employees should be able to safely travel to and from work using transit. However, they may want to travel outside of peak times and/or they will have to allow more time to get to and from work.

6. What do I do if an employee arrives at the workplace with symptoms?

Ensure that you have a clear policy that no employee is to attend the workplace if they have any symptoms of cold or flu and ensure that the policy is clearly communicated to all employees. Provide assurance to

all employees that their job is not at risk for avoiding the workplace while exhibiting symptoms and facilitate remote working where possible.

If an employee arrives at the workplace with symptoms, they should be immediately sent home. If they have to travel by public transit, provide them with a mask and gloves. Close off the area that the symptomatic worker was working in and ensure that it is fully cleaned. Take a contact history from the worker and determine the level of risk for all others that the worker was in contact with at the workplace.

Follow public health guidelines with respect to the length of time that the worker should remain away from the workplace. Support the worker with regular communication, checking in regularly to determine whether any ongoing issues with COVID-19 or ways that you can support the worker while they are absent from the workplace.

If an employee reports that they have been exposed to COVID-19 outside of the workplace, they also should be excluded from the workplace for a period of time. The worker should not return to work until cleared by public health or their physician.

7. What measures can I implement to ensure social distancing when workers return to work?

Social distancing in the workplace involves consideration of the physical workspace to ensure adequate distance between workers and workers and clients/customers and consideration of continued use of remote working and/or virtual meetings.

The physical space will have to be analyzed to ensure that there is sufficient distance between all workers, which may involve a reduction of the number of workers in the workspace at any particular time. Careful consideration also must be had to managing social distance in common areas such as kitchens, breakrooms and washrooms, including staggering of breaks. Occupancy limits should be imposed on areas such as elevators, washrooms and other small spaces.

The overall number of workers at the workplace at one time can be reduced by implementing work from home schedules, staggering shifts or rescheduling of some work tasks. Consider creating pods of workers who work together exclusively to minimize the risk

of broad transmission throughout the workplace. Discourage in person meetings unless absolutely necessary.

If physical distance cannot be maintained in certain areas of the workplace, consider separating people with partitions or plexiglass barriers. If this is not possible, consider the use of non-medical masks.

8. What sort of policies should we be putting in place as we re-open?

COVID-19 creates new challenges for workplaces working to prevent the spread of the disease. A clear policy must be put in place to ensure that workers exhibiting any symptoms are not present in the workplace. That policy can require remote working for any individual displaying symptoms and should ensure that workers are not penalized for not attending the workplace while exhibiting symptoms.

Workplaces should implement a travel policy including a requirement of self-isolation and exclusion from the workplace upon return. Requirements for self-isolation should be compliant with the recommendations of the public health officer.

If remote working is part of the workplace social distancing planning, a policy should be put in place, keeping in mind that WorkSafeBC health and safety roles, rights and responsibilities are as applicable for at home workers as they are for traditional workplaces. Check in procedures are required if the worker is working alone or in isolation. Not only should the workers health and safety be part of the policy but as well any confidentiality requirements or other requirements particular to the workplace to ensure client/customer information is maintained in a way consistent with what would be required in the physical workspace. WorkSafeBC health and safety responsibilities when working from home can be found [here](#).

An enhanced cleaning/disinfection policy should be put in place for the workplace, including ensuring that all high touch points are frequently cleaned. Adequate cleaning facilities need to be put in place to enable frequent handwashing and adequate self-care actions. Consider how you can support and accommodate higher risk populations of your employees. Considerations for higher risk populations include



ensuring that their workspace allows for adequate social distancing which may require you to consider flexible hours and/or remote working

9. What measures can I put in place to protect my staff from the public?

Put in place measures to ensure that social distancing is maintained between workers and the public. That may include continued use of virtual meetings or discouraging in person meetings. Where this is not possible, measures should be put in place to ensure social distancing. Where social distancing is not possible, consider the use of physical barriers such as plexi-glass or the requirement for the use of masks.

10. What measures do I need to put in place in the workplace to make sure that my employees stay healthy?

Employee safety considerations are primarily social distancing and maintaining the cleanliness of the work environment. Actively promote and monitor self-care actions. Ensuring social distancing in communal spaces such as elevators, break rooms and washrooms requires careful planning and communication of the plan.

It is more important than ever to ensure the cleanliness of the workplace. High touch areas should be frequently cleaned and/or sanitized throughout the day. Adequate facilities need to be maintained to ensure that workers are able to frequently handwash or sanitize.

11. What will we do if there is a resurgence?

Public health authorities warn that a resurgence of COVID-19 in the fall is a possibility. If such occurs, follow all public health guidelines with respect to your workplace operations. The measures that you put in place now to ensure social distancing, enhanced cleaning and excluding symptomatic people from the workplace will help prevent the spread of COVID-19 if there is a resurgence.

If you would like more information on issues discussed in this article or advice about how to safely return your workers to the workplace, please contact **Scott Marcinkow** or **Rose Keith, QC**.

Our Workplace Law Contacts



Scott is a partner with Harper Grey and is the Chair of our Workplace Law Group. He is also a member of our Health Law, Professional Regulation and Insurance Groups. Scott works with employers and employees on a wide variety of workplace issues and is one of our in-house authorities on human rights law.

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