



What's New in HR Law

Ontario Government Announces Second Provincial Emergency and New Restrictions

January 14, 2021

Bottom Line

With COVID-19 cases rising across the province, the Ontario Government [declared](#) a second state of emergency under the *Emergency Management and Civil Protection Act*. The state of emergency is expected to last until at least February 11, 2021. In conjunction with this declaration, the Government has also announced additional restrictions, including a [Stay-At-Home Order](#) (the “SAH Order”), and new [amendments](#) to the [Rules for Areas in Stage 1 regulation](#) (the “Stage 1 Order”). Details of some of the key new measures imposed by the SAH Order and Stage 1 Order are set out below.

Stay-At-Home Order

The SAH Order comes into effect at 12:01 a.m. on January 14, 2021 and mandates that every individual remain in their place of residence at all times unless leaving their place of residence is necessary for one or more of the prescribed purposes.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

[Filion Wakely Thorup Angeletti LLP](#) www.filion.on.ca

Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2
tel 416.408.3221 | fax 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel 519.433.7270 | fax 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201, Box
57030
Hamilton, Ontario L8P 4W9
tel 905.526.8904 | fax 905.577.0805
hamilton@filion.on.ca

The SAH Order identifies the purposes for which individuals are permitted to leave their personal residences. These include, but are not limited to the following:

- Working or volunteering, including where the individual's employer has determined that the nature of the individual's work requires attendance at the workplace
- Attending school
- Attending, obtaining, or providing childcare
- Obtaining permitted goods and services
- Providing assistance to others (*e.g.* delivering goods, providing care, support or assistance, *etc.*)
- Avoiding imminent risk to the health or safety of an individual
- Exercising
- Attending a place as required by law.

Stage 1 Order

Most of the requirements under the Rules for Areas in Stage 1 regulation that existed prior to the declaration of emergency remain in place. However, the Stage 1 Order has implemented a number of additional and amended rules. We provide an overview of some of the key changes in the sections that follow.

Remote Work

In addition to the SAH Order, the Stage 1 Order, requires that each person responsible for a business or organization that is open ensure that any person who performs work for the business or organization conducts their work remotely, unless the nature of their work requires them to be on-site at the workplace.

This remote work requirement does not apply to any government, or to any person or publicly-funded agency or organization that delivers or supports government operations and services, including operations and services of the health care sector.

Despite requiring remote work wherever possible (leaving aside the above-noted exceptions), the Stage 1 Order does **not** define who can or should work from home. When asked why such a definition was not provided, the Ontario Government indicated that it would be “relying on the best judgment and common sense of employers to determine who can do so.”

While this approach provides employers with considerable discretion as to how to implement the new remote work requirement, employers should undertake careful and accurate assessments to determine which workers are genuinely required to remain working on-site. If an employee believes they should be working from home, they can contact the Ministry of Labour to file a health and safety complaint. As such, where on-site work is deemed necessary, employers should be prepared to defend that decision in the event they are called upon to do so.

In addition, where workers are required to perform their work on-site, employers may consider issuing letters of authorization which identify the worker as essential to the operation of a business that is permitted to remain open. Authorization letters of this sort may be useful in the event that the worker is questioned by a law enforcement officer.

Requirements that Apply to Individuals

While the existing Rules for Areas in Stage 1 regulation establishes various compliance obligations for businesses and organizations, the Stage 1 Order explicitly imposes “requirements that apply to individuals”.

Under the Stage 1 Order, it is now the case that every person in the premises of a business or organization that is open must wear a mask or face covering in a manner that covers their mouth, nose and chin during any period in which they are in an indoor area of the premises.

While businesses and organizations still have an obligation to ensure that anyone on their indoor premises wears a mask or face covering, this new public health measure now also places an onus on individuals who frequent the premises of businesses and organizations to ensure they abide by the establishment’s masking protocols.

For the sake of clarity, employers’ obligations with respect to implementing and enforcing masking policies and protocols remain unchanged following the issuance of the Stage 1 Order. The exceptions to the masking requirements likewise remain the same. Specifically, individuals will not be required to wear a mask or face covering indoors where they qualify for one of the recognized exemptions, which include, among others:

- having a medical condition that inhibits the person’s ability to wear a mask or face covering
- being unable to put on or remove their mask or face covering without the assistance of another person
- being accommodated under applicable legislation
- performing work for the business or organization in an area that is not accessible to members of the public and being able to maintain a distance of at least two metres from every other person

The Stage 1 Order also places a requirement on individuals who frequent a place of business or facility that is open to the public to maintain a physical distance of at least two metres from every person, except from their caregiver or members of their household. Physical distancing is not required where necessary to complete a transaction or receive services, when passing another individual in a confined space, or in other situations as prescribed, provided that masks or face coverings are worn.

Practically speaking, these new requirements mean that enforcement measures may be taken and penalties imposed upon **individuals** who act in breach thereof. For example, an individual who frequents a business or organization without a mask or face covering (and who does not qualify for one of the recognized exemptions) may now be subject to fines or other penalties as a result.

Schools

Schools and private schools within the meaning of the *Education Act* located in the health units listed below will be closed for in-person teaching or instruction until at least February 10, 2021:

- City of Hamilton Health Unit
- City of Toronto Health Unit
- Peel Region Health Unit
- Windsor-Essex Health Unit
- York Region Health Unit

All other schools in Southern Ontario public health units will be advised by January 20, 2021 if they will be permitted to resume in-person teaching on January 25, 2021, or if in-person instruction will be further delayed. Schools in Northern Ontario public health units may continue to remain open for in-person teaching.

When in-person learning resumes, and for those schools which are currently open, the following additional health and safety measures will be implemented:

- Masking for Grades 1-3 and requirements for mask-wearing outdoors;
- Enhanced screening protocols; and
- Expanded targeted testing.

Schools, as well as any child care facilities operated within such schools, are encouraged to carefully review the Stage 1 Order for further information regarding additional requirements and measures which may apply.

The above information, while important for schools, will also be relevant to employers across all sectors, as school and child care facility closures are likely to impact workers' availability and may trigger their entitlement to Infectious Disease Emergency Leave under the *Employment Standards Act, 2000*.

Retailers

All non-essential retail stores, including but not limited to, hardware stores, alcohol retailers, car and motorized vehicle dealerships, outdoor markets, and stores offering curbside pickup or delivery, must open no earlier than 7 a.m. and close no later than 8 p.m., and cannot deliver goods to patrons outside of these hours.

Stores that sell liquor, beer, wine or spirits (other than restaurants, and other food and drink establishments) must now also limit the number of persons on premises to ensure no more than 25% occupancy at any given time.

The above-mentioned restrictions do not apply to stores that primarily sell food, pharmacies, gas stations, convenience stores, and restaurants that are operating for takeout or delivery.

Construction

Under the Stage 1 Order, non-essential construction is restricted such that only certain categories of projects, activities and related services (including land surveying and demolition) are permitted to remain open. The full listing of permitted construction activities is beyond the scope of this particular update. However, we encourage all employers operating in the construction sector to review the Stage 1 Order, and seek professional advice as appropriate, to determine whether their business operations may continue at the present time.

Entertainment Venues

Concert venues, theatres, and cinemas must now all close under the Stage 1 Order.

Golf Courses and Driving Ranges

Golf courses and driving ranges have been removed from the list of outdoor recreational amenities that are permitted to remain open.

Outdoor Gatherings Limit

Outdoor organized public gatherings and social gatherings are now restricted to a maximum of five people, with limited exceptions such as wedding or funeral services:

Enforcement Measures

Under the renewed declaration of emergency, the Government has granted enforcement and provincial offences officers, including the Ontario Provincial Police, local police forces, bylaw officers, and provincial workplace inspectors, authority to issue tickets to individuals, retail operators, and companies who do not abide by the Province's revised orders and restrictions. Specifically, police officers and provincial offences officers can:

- compel individuals to provide identifying information on reasonable and probable grounds;
- order that premises be temporarily closed if they have reasonable grounds; and
- order an individual attending an organized public event or gathering to cease attending or disperse.

Individuals, operators, and companies may also be subject to fines or prosecution under both the *Reopening Ontario (A Flexible Response to COVID-19) Act* and the *Emergency Management and Civil Protection Act*.

We encourage employers to review our earlier update on the province's powers under the *Emergency Management and Civil Protection Act*, available [here](#).

Check the Box

As has been the case throughout the COVID-19 pandemic, employers continue to face an onslaught of regulatory change, and the imposition of additional workplace requirements. We are closely monitoring all regulatory and legislative changes, along with public health officials' recommendations, and will continue to keep our readers informed of these key developments as they arise.

Need more information?

For more information on workplace management amidst the COVID-19 pandemic, please contact [Cassandra da Costa](#) at 519-435-6009, [Ashley Brown](#) at 416-408-3221, or your regular lawyer at the firm.



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
PO Box 44
Toronto, Ontario M5H 2R2
tel: 416.408.3221
fax: 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel: 519.433.7270
fax: 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201
Box 57030
Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
hamilton@filion.on.ca