

# Returning Employees To Work During COVID-19 – Best Practices For Employers

written by Rory Lodge | June 11, 2021



The employment landscape during COVID-19 continues to evolve. As employers and employees alike begin to adjust and adapt to these circumstances, employers will need to determine the safe and efficient way to return employees to work.

Employers have a duty to protect employees from work-related injury and illness. All employers have a duty to:

- Take reasonable precautions to protect health and safety of employees that are tailored to the nature of the employee's work and the likelihood of the hazard in the workplace;
- Communicate workplace hazards to employees; and
- Train employees on how to deal with workplace hazards.

Some jurisdictions require employers to develop a COVID-19 safety plan<sup>1</sup> to mitigate the risk of COVID-19 transmission in the workplace. Each workplace is unique so employers are required to conduct COVID-19 hazard risk assessments in their workplaces to determine what precautions are required. Employers are required to reassess their safety plans periodically, taking into account changes in circumstances. Reopening is one example of having to reassess a safety plan. Failure to have a COVID-19 safety plan can result in an order to close.

In jurisdictions where a COVID-19 safety plan is not required, employers may still wish to develop a similar plan as a best practice or in the event their jurisdiction later adopts this requirement.

Employers are also required to stay abreast of the ever-changing Provincial Health Officer (PHO) orders and to update their COVID-19 safety plans to reflect the latest guidance.

## **Best Practices for Employers:**

**Follow guidance from public health authorities.** If an order is in place requiring or recommending a safety measure, it must be adopted in the safety plan, which will make it more defensible if challenged.

**Consider the level of risk of transmission in your workplace.** This is the strongest factor for mandating more intrusive safety measures (such as mandatory testing or, possibly, vaccination). However, if a workplace does not have high-risk populations and operations have continued throughout the pandemic without much interruption by use of alternative measures, it may be difficult to justify new, more intrusive

safety measures.

**Consider the standards applicable to non-employees.** If you allow, for example, unvaccinated members of the public to access your workplace, it may be unreasonable to suspend, reassign, or otherwise treat an employee differently if they are not vaccinated.

**Update your overtime and remote work/work from home policies.** As the COVID-19 Pandemic evolves, so too will vaccine availability, the level of transmission, and other effects of COVID-19 in all workplaces. Plans must be periodically reviewed to determine whether they are still adequate for the circumstances, and revised and updated as necessary. Remote work – particularly from another jurisdiction – raises a number of complicated employment, tax and other issues for employers. Consider seeking legal advice when allowing employees to work remotely outside the jurisdiction during the pandemic.

**Protect the privacy of your employees.** Employers should not collect employee medical information (such as whether they have been vaccinated) unless it is reasonably necessary. All medical information that is collected should be limited, protected, and only disclosed to those who need to know. Any policy that collects employee information should spell out the information that will be collected, how it will be used, and how it will be protected.

In general, regularly assessing your COVID safety plan and taking a conservative approach to relaxing restrictions will help preserve your operations, reduce the risk to employees and customers, and reduce the risk of closure and fines.

## Footnote

1. See for example:

British Columbia's required [COVID-19 Safety Plan](#).

New Brunswick's required [COVID-19 Operational Plan Guide](#).

The Northwest Territories' required [Exposure Control Planning Guide](#).

Ontario's required [COVID-19 Workplace Safety Plan](#).

Prince Edward Island's required [COVID-19 Operational Plan Template](#).

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