



## WEBINAR

---

# RECENT COVID-19 DEVELOPMENTS FOR BUSINESSES IN ONTARIO

Andy Balaura  
Maria Tassou

December 9, 2020

**PALLETT VALO LLP**  
Lawyers & Trade-Mark Agents

**Your Authority For:**

Business Law • Commercial Litigation • Commercial Real Estate  
Construction • Insolvency & Corporate Restructuring  
Employment & Labour • Wills, Estates & Trusts

# Introduction & Overview

---

Occupational Health and Safety Act  
Mandatory Screening of Employees  
Mandatory Masking and Exemptions  
New Framework in Ontario  
Legislative Protection from Liability for COVID-19  
Related Claims  
Employees Working Remotely  
Workplace Safety Obligations  
Vacation Policies  
Prospect of Pay Increases 2021  
Accommodating Employees  
Federal Government Programs

# Occupational Health and Safety Act

---

Employers have an obligation to keep their workers and others safe under the *Occupational Health and Safety Act* (the “OHSA”)

If workers have tested positive for COVID-19 and wish to return to work, they should consult with their local public health office to receive proper guidance

If workers refuse to return to work and/or exercise their right to refuse to unsafe work under the OHSA, employers need to understand the appropriate process and legal rights

# Occupational Health and Safety Act

---

Employers must:

- create workplace health and safety policies and procedures and make sure that everyone follows the policies and procedures
- make sure that supervisors know what is required to protect workers' health and safety at work
- take reasonable precautions to protect workers from being hurt or getting a work-related illness
- ensure workers wear the right protective equipment and are trained on how to use it

# Employer's Obligation to Report

---

If an employer is advised that a worker has COVID-19 due to an exposure at the workplace, the employer must notify the Ministry of Labour, Training and Skills Development in writing **within four days**.

The employer must also advise the:

- workplace joint health and safety committee
- health and safety representative
- trade union, if any

# Health and Safety Tips for Employers

---

To reduce the risk of spreading COVID-19 at work, employers should:

- screen people who enter the workplace
- support self-isolation for workers with symptoms and workers who are close contacts of COVID-19 cases
- ensure people maintain a physical distance of two metres or more
- have workers, clients and visitors wear masks
- disinfect surfaces and objects
- support hand hygiene, particularly handwashing
- remind workers about good cough and sneeze etiquette and to avoid touching their face
- work with the local public health unit if any workers have COVID-19 or are exposed to someone with COVID-19

<https://www.ontario.ca/page/develop-your-covid-19-workplace-safety-plan>

# Mandatory Screening

---

On September 26, 2020, the Ontario government amended regulation O. Reg 364/20 under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* requiring employers to screen workers and essential visitors for COVID-19 symptoms on a daily basis before they are permitted to enter the workplace

The Ministry of Health has published the [COVID-19 Screening Tool for Workplaces](#) for employers to use

# Screening Tool for Workplaces

---

## Required Screening Questions

1. Do you have any of the following new or worsening symptoms or signs? Symptoms should not be chronic or related to other known causes or conditions.

- |   |            |
|---|------------|
| Fever or chills                                   | ▪ Yes ▪ No |
| Difficulty breathing or shortness of breath       | ▪ Yes ▪ No |
| Cough   | ▪ Yes ▪ No |
| Sore throat, trouble swallowing                   | ▪ Yes ▪ No |
| Runny nose/stuffy nose or nasal congestion        | ▪ Yes ▪ No |
| Decrease or loss of smell or taste                | ▪ Yes ▪ No |
| Nausea, vomiting, diarrhea, abdominal pain        | ▪ Yes ▪ No |
| Not feeling well, extreme tiredness, sore muscles | ▪ Yes ▪ No |

2. Have you travelled outside of Canada in the past 14 days? ▪ Yes ▪ No

3. Have you had close contact with a confirmed or probable case of COVID-19? ▪ Yes ▪ No

## Results of Screening Questions:

- If the individual answers NO to all questions from 1 through 3, they have passed and can enter the workplace.
- If the individual answers YES to any questions from 1 through 3, they have not passed and should be advised that they should not enter the workplace (including any outdoor, or partially outdoor, workplaces). They should go home to self-isolate immediately and contact their health care provider or Telehealth Ontario to find out if they need a COVID-19 test



# Mandatory Screening

---

Any workers or essential visitors entering the work environment should be screened

Workers include students, contractors, or volunteers that are working in your office

Examples of essential visitors include delivery, maintenance, and contract workers

Screening is not required for workers working remotely, customers, emergency services, or essential workers who travel outside Canada for work purposes

# Mandatory Screening

---

A worker or essential visitor must be screened before they are permitted to enter the workplace

The screening could be done before a worker or essential visitor shows up at the workplace for the first time each day or at the beginning of each shift, or it could be done when they arrive

# Mandatory Screening

---

There are different methods for screening workers and essential visitors

A business can use:

- online questionnaire
- the Ontario government's online self-assessment tool
- an in-person questionnaire or reporting process at the entrance of a workplace entrance

# Maintaining Records

---

Businesses may be asked to demonstrate compliance with mandatory screening

Records should be maintained to demonstrate compliance

Ensure that privacy laws are adhered to when maintaining these confidential records

# Mandatory Masking

---

As of October 2, 2020, all businesses and organizations in Ontario must require that all persons (employees as well as non-employees on the premises) wear a mask when indoors or inside of a vehicle that operates as part of the business

The mask or face covering must cover their mouth, nose and chin

There are certain strict exemptions for this masking rule

# Masking Exemptions

---

The person responsible for a business or organization that is open shall ensure that any person in the indoor area of the premises of the business or organization, or in a vehicle that is operating as part of the business or organization, wears a mask or face covering in a manner that covers their mouth, nose and chin during any period when they are in the indoor area **unless the person in the indoor area:**

- (a) is a child who is younger than two years of age;
- (b) is attending a school or private school within the meaning of the *Education Act* that is operated in accordance with a return to school direction issued by the Ministry of Education and approved by the Office of the Chief Medical Officer of Health;
- (c) is attending a childcare program at a place that is in compliance with the childcare re-opening guidance issued by the Ministry of Education;
- (d) is receiving residential services and supports in a residence listed in the definition of “residential services and supports” in subsection 4 (2) of the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*;
- (e) is in a correctional institution or in a custody and detention program for young persons in conflict with the law;
- (f) is performing or rehearsing in a film or television production or in a concert, artistic event, theatrical performance or other performance;

# Masking Exemptions (cont..)

---

- (g) has a medical condition that inhibits their ability to wear a mask or face covering;
- (h) is unable to put on or remove their mask or face covering without the assistance of another person;
- (i) needs to temporarily remove their mask or face covering while in the indoor area,
  - (i) to receive services that require the removal of their mask or face covering,
  - (ii) to engage in an athletic or fitness activity,
  - (iii) to consume food or drink, or
  - (iv) as may be necessary for the purposes of health and safety;
- (j) is being accommodated in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*;
- (k) is being reasonably accommodated in accordance with the *Human Rights Code*; or
- (l) performs work for the business or organization, is in an area that is not accessible to members of the public and is able to maintain a physical distance of at least two metres from every other person while in the indoor area

# Masking Exemptions (cont..)

---

It is not necessary for a person to present evidence to the person responsible for a business that they are entitled to any of the exemptions

e.g. no medical note required



# New Framework in Ontario

---

On November 13, 2020, the Government of Ontario updated its new [COVID-19 Response Framework: Keeping Ontario Safe and Open](#) (“New Framework”)

These updates modify the restrictions on businesses and organizations due to increased COVID-19 infections in Ontario

Ontario describes the New Framework as “an early warning system allowing us to scale up and scale back public health restrictions on a regional or community basis in response to surges and waves of COVID-19”

# New Framework in Ontario

---

The New Framework avoids closures across the province in favour of “targeted, incremental and responsive” graduated public health measures informed by regional circumstances

It categorizes public health unit regions into the following five levels:

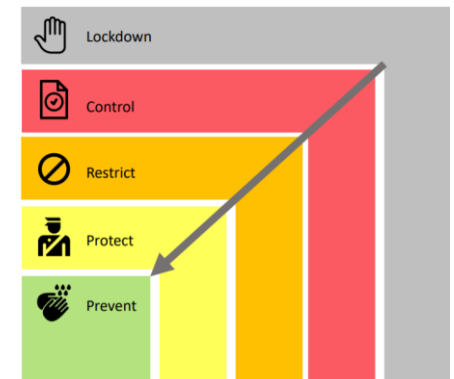
**Green – Prevent (Standard Measures)**

**Yellow – Protect (Strengthened Measures)**

**Orange – Restrict (Intermediate Measures)**

**Red – Control (Stringent Measures)**

**Lockdown – (Maximum Measures)**



<https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-08.pdf>

# New Framework in Ontario

## Organized Public Events, Social Gatherings, and Religious Services, Rites and Ceremonies

<b>PREVENT</b> (Standard Measures)	<b>PROTECT</b> (Strengthened Measures)	<b>RESTRICT</b> (Intermediate Measures)	<b>CONTROL</b> (Stringent Measures)	<b>LOCKDOWN</b> (Maximum Measures)
<p><b>Limits for certain organized public events and social gatherings</b> where physical distancing can be maintained:</p> <ul style="list-style-type: none"> <li>• 10 people indoors</li> <li>• 25 people outdoors</li> </ul> <p>This includes functions, parties, dinners, gatherings BBQs or wedding receptions held in private residences, backyards, or parks.</p>	<p>Same as previous level</p>	<p>Same as previous level</p>	<p><b>Limit for all organized public events and social gatherings</b>, where physical distancing can be maintained:</p> <ul style="list-style-type: none"> <li>• 5 people indoors</li> <li>• 25 people outdoors</li> </ul>	<p><b>No indoor organized public events and social gatherings</b>, except with members of the same household.</p> <p><b>Limit for outdoor organized public events and social gatherings</b>, physical distancing can be maintained:</p> <ul style="list-style-type: none"> <li>• 10 people outdoors</li> </ul> <p>Virtual and drive-in gatherings and events permitted.</p>
<p><b>Limits for organized public events and social gatherings</b> where physical distancing can be maintained:</p> <ul style="list-style-type: none"> <li>• 50 people indoors</li> <li>• 100 people outdoors</li> </ul> <p>This includes events and gatherings in staffed businesses and facilities.</p>	<p>Same as previous level</p>	<p>Same as previous level</p>	<p>Same as previous level</p>	<p><b>Wedding services, funeral services, and other religious services, rites or ceremonies</b> where physical distancing can be maintained:</p> <ul style="list-style-type: none"> <li>• 10 people indoors</li> <li>• 10 people outdoors</li> </ul> <p>Virtual and drive-in wedding services, funeral services and religious services, rites or ceremonies encouraged</p>
<p><b>Limits for wedding services, funeral services and other religious services, rites or ceremonies</b>, where physical distancing can be maintained:</p> <ul style="list-style-type: none"> <li>• 30% capacity of the room indoors</li> <li>• 100 people outdoors</li> </ul>	<p>Same as previous level</p>	<p>Same as previous level</p>	<p>Same as previous level</p>	<p><b>Wedding services, funeral services, and other religious services, rites or ceremonies</b> where physical distancing can be maintained:</p> <ul style="list-style-type: none"> <li>• 10 people indoors</li> <li>• 10 people outdoors</li> </ul> <p>Virtual and drive-in wedding services, funeral services and religious services, rites or ceremonies encouraged</p>

# New Framework in Ontario

## Schools, Childcare, and Post-Secondary Institutions

PREVENT (Standard Measures)	PROTECT (Strengthened Measures)	RESTRICT (Intermediate Measures)	CONTROL (Stringent Measures)	LOCKDOWN (Maximum Measures)
Schools open*				
Child care open*				
Post-secondary institutions open				Post-secondary institutions open for virtual instruction. In-person instruction limited (e.g. clinical training, trades) and for examinations. In-person cannot exceed 10 persons.

\*Subject to school/children care reopening plans and epidemiology of the virus.

<https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf>

# New Framework in Ontario

## Measures for Restaurants, Bars and Food or Drink Establishments

<b>PREVENT</b> (Standard Measures)	<b>PROTECT</b> (Strengthened Measures)	<b>RESTRICT</b> (Intermediate Measures)	<b>CONTROL</b> (Stringent Measures)	<b>LOCKDOWN</b> (Maximum Measures)
<ul style="list-style-type: none"> <li>Require patrons to be seated; 2m minimum or impermeable barrier required between tables</li> <li>Dancing, singing and performing music is permitted, with restrictions</li> <li>Karaoke permitted, with restrictions (including no private rooms)</li> <li>Require contact information for one patron per seated party</li> <li>No buffet style service</li> <li>Line-ups/patrons congregating outside venues managed by venue; 2m distance and face covering required</li> <li>Face coverings except when eating or drinking only</li> <li>Personal protective equipment, including eye protection required when a worker must come within 2 metres of another person who is not wearing a face covering</li> <li>Night clubs only permitted to operate as restaurant or bar</li> </ul>	<p>Measures from previous levels and:</p> <ul style="list-style-type: none"> <li>Establishments must be closed from 12 a.m. to 5 a.m.</li> <li>Liquor sold or served only between 9 a.m. to 11 p.m.</li> <li>No consumption of liquor permitted between 12 a.m. to 9 a.m.</li> <li>Require contact information for all seated patrons</li> <li>Limit of 6 people may be seated together</li> <li>Limit volume of music to be low enough that a normal conversation is possible</li> <li><a href="#">Safety plan</a> is required to be prepared and made available upon request</li> </ul>	<p>Measures from previous levels and:</p> <ul style="list-style-type: none"> <li>Maximum number of patrons permitted to be seated indoors is 50</li> <li>Establishments must be closed from 10 p.m. to 5 a.m.</li> <li>Liquor sold or served only between 9 a.m. to 9 p.m.</li> <li>No consumption of liquor between 10 p.m. and 9 a.m.</li> <li>Screening of patrons is required, in accordance with instructions issued by the Office of the Chief Medical Officer of Health.</li> <li>Limit of 4 people may be seated together</li> <li>Strip clubs closed or permitted to operate as a restaurant or bar</li> </ul>	<p>Measures from previous levels and:</p> <ul style="list-style-type: none"> <li>Maximum number of patrons permitted to be seated indoors is 10</li> <li>Outdoor dining, take out, drive through, and delivery permitted, including alcohol</li> <li>Dancing, singing and the live performance of music are prohibited</li> </ul>	<ul style="list-style-type: none"> <li>Indoor and outdoor service closed</li> <li>Take out, drive through, and delivery permitted, including alcohol</li> </ul>

<https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf>



# New Framework in Ontario

## Measures for Sports and Recreational Fitness

<b>PREVENT</b> (Standard Measures)	<b>PROTECT</b> (Strengthened Measures)	<b>RESTRICT</b> (Intermediate Measures)	<b>CONTROL</b> (Stringent Measures)	<b>LOCKDOWN</b> (Maximum Measures)
<ul style="list-style-type: none"> <li>• Maintain 2m physical distancing, unless engaged in a sport</li> <li>• Maximum of 50 people indoors or 100 people outdoors in classes</li> <li>• Maximum of 50 people indoors in area with weights or fitness or exercise equipment</li> <li>• Maximum of 50 spectators indoors or 100 spectators outdoors</li> <li>• Capacity limits applied on a per room basis if operating in compliance with a plan approved by the Office of the Chief Medical Officer of Health (<a href="#">Guidance for Facilities for Sport and Recreational Fitness Activities During COVID-19</a>)</li> <li>• Team or individual sports must be modified to avoid physical contact; 50 people per league</li> <li>• Exemption for high performance athletes and parasports</li> <li>• Limit volume of music to be low enough that a normal conversation is possible; measures to prevent shouting by both instructors and members of the public</li> <li>• Face coverings required except when exercising</li> </ul>	<p>Measures from previous levels and:</p> <ul style="list-style-type: none"> <li>• Increase spacing between patrons to 3m in areas with weights or exercise equipment and in exercise and fitness classes</li> <li>• Maximum of 10 people per room indoors and 25 outdoors in fitness or exercise classes</li> <li>• Require contact information for all members of the public that enter the facility</li> <li>• Require reservation for entry; one reservation for teams</li> <li>• <a href="#">Safety plan</a> is required to the prepared and made available upon request</li> </ul>	<p>Measures from previous levels and:</p> <ul style="list-style-type: none"> <li>• Maximum of 50 people total in areas with weights and exercise machines and all classes (revoke OCMOH approved plan)</li> <li>• Screening of patrons is required, in accordance with instructions issued by the Office of the Chief Medical Officer of Health</li> <li>• Patrons may only be in the facility for 90 minutes except if engaged in a sport</li> <li>• No spectators permitted (exemption for parent/guardian supervision of children)</li> </ul>	<p>Measures from previous levels and:</p> <ul style="list-style-type: none"> <li>• Gyms and fitness studios permitted to be open:               <ul style="list-style-type: none"> <li>○ Maximum of 10 people indoors or 25 people outdoors in classes</li> <li>○ 10 people indoors in areas with weights or exercise equipment</li> </ul> </li> <li>• Team sports must not be practiced or played except for training (no games or scrimmage)</li> <li>• Activities that are likely to result in individuals coming within 2m of each other are not permitted</li> </ul>	<ul style="list-style-type: none"> <li>• Facilities for indoor or outdoor sports and recreational fitness activities are closed except for:               <ul style="list-style-type: none"> <li>○ The sole use of high performance athletes including parasport athletes, and specified professional leagues (e.g., NHL, CFL, MLS, NBA)</li> <li>○ Specified purposes (e.g. day camps, child care)</li> </ul> </li> <li>• Outdoor recreational amenities (e.g., ice rinks, ski hills, snow trails) open with restrictions (e.g., no team sports)</li> <li>• Community centres and multi-purpose facilities (e.g., YMCA) allowed to be open for permitted activities (e.g., child care services, day camps, social services)</li> </ul>

<https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf>

# New Framework in Ontario

## Measures for Meeting and Event Spaces

<b>PREVENT</b> (Standard Measures)	<b>PROTECT</b> (Strengthened Measures)	<b>RESTRICT</b> (Intermediate Measures)	<b>CONTROL</b> (Stringent Measures)	<b>LOCKDOWN</b> (Maximum Measures)
Limits: <ul style="list-style-type: none"> <li>• Maximum of 50 people indoors or 100 people outdoors; exceptions for wedding, funeral and religious services, rites or ceremonies</li> <li>• Booking multiple rooms for the same event not permitted</li> <li>• Maximum of 50 people per room indoors if venue operates in accordance with the approved plan from the Office of the Chief Medical Officer of Health (<a href="#">Guidance for Meeting and Event Facilities During COVID-19</a>)</li> <li>• Exceptions for court services and government services</li> </ul>	Measures from previous levels and: <ul style="list-style-type: none"> <li>• Establishments must be closed from 12 a.m. to 5 a.m.</li> <li>• Liquor sold or served only between 9 a.m. to 11 p.m.</li> <li>• No consumption of liquor permitted between 12 a.m. to 9 a.m.</li> <li>• Require contact information for all seated patrons</li> <li>• Limit of 6 people may be seated together</li> <li>• Limit volume of music to be low enough that a normal conversation is possible</li> <li>• <a href="#">Safety plan</a> is required to be prepared and made available upon request</li> </ul>	Measures from previous levels and: <ul style="list-style-type: none"> <li>• Maximum of 50 people indoors per facility (revoke OCMOH approved plan)</li> <li>• Establishments must be closed from 10 p.m. to 5 a.m..</li> <li>• Liquor sold or served only between 9 a.m. to 9 p.m.</li> <li>• No consumption of liquor between 10 p.m. and 9 a.m.</li> <li>• Limit of 4 people may be seated together</li> <li>• Screening of patrons is required, in accordance with instructions issued by the Office of the Chief Medical Officer of Health</li> </ul>	Measures from previous levels and: <ul style="list-style-type: none"> <li>• Maximum of 10 people per facility indoors or 25 people outdoors</li> </ul>	Closed with limited exceptions for: <ul style="list-style-type: none"> <li>• Child care and day camps</li> <li>• Court services</li> <li>• Government services</li> <li>• Mental health and addictions support services (e.g., Alcoholics Anonymous) permitted to a maximum of 10 people</li> <li>• Provision of social services</li> </ul>

<https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf>

# New Framework in Ontario

## Measures for Retail

<b>PREVENT</b> (Standard Measures)	<b>PROTECT</b> (Strengthened Measures)	<b>RESTRICT</b> (Intermediate Measures)	<b>CONTROL</b> (Stringent Measures)	<b>LOCKDOWN</b> (Maximum Measures)
<ul style="list-style-type: none"> <li>Fitting rooms must be limited to non-adjacent stalls</li> <li>Line-ups/patrons congregating outside venues managed by venue; 2m distance and face covering required</li> </ul>	Measure from previous level and: <ul style="list-style-type: none"> <li>Limit volume of music to be low enough that a normal conversation is possible</li> <li>Shopping malls: <a href="#">Safety plan</a> is required to be prepared and made available upon request</li> </ul>	Measures from previous level and: <ul style="list-style-type: none"> <li>Screening of patrons is required, in accordance with instructions issued by the Office of the Chief Medical Officer of Health</li> </ul>	Measures from previous levels and: <ul style="list-style-type: none"> <li>Maximum number of patrons permitted to be seated indoors in mall food court is 10</li> <li>Requirement to maintain 2m while standing in line (inside and outside)</li> </ul>	<ul style="list-style-type: none"> <li>Retail generally permitted to be open for curbside pick-up or delivery only (in-person retail shopping not permitted) with some exceptions:                             <ul style="list-style-type: none"> <li>Supermarkets, grocery stores, convenience stores, hardware stores, other retailers selling groceries, beer and wine and liquor stores, pharmacies and safety supply stores permitted to be open for in-person shopping</li> <li>50% capacity limits where in-person shopping is permitted</li> <li>Motor/recreational vehicle sales permitted to be open for in-person shopping by appointment only and other restrictions</li> <li>Garden centres, plant nurseries: indoor by appointment. Permitted if public remains outdoors or by curbside pick-up or delivery</li> <li>Outdoor markets, including farmer's markets and holiday markets, permitted with restrictions</li> </ul> </li> <li>Retail outlets in malls permitted to be open for pick-up or delivery (in-person retail shopping not permitted)</li> <li>Access to shopping malls for limited purposes, including access to businesses and organizations permitted to be open (e.g., pharmacy, dentist); food court open for take-away; malls may also establish designated pick-up points inside or adjacent to the mall</li> <li>Subject to general rule for businesses that are open must maintain 2m while standing in line inside and outside</li> </ul>

<https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf>



# New Framework in Ontario

## Measures for Personal Care Services

PREVENT (Standard Measures)	PROTECT (Strengthened Measures)	RESTRICT (Intermediate Measures)	CONTROL (Stringent Measures)	LOCKDOWN (Maximum Measures)
<ul style="list-style-type: none"><li>Oxygen bars, steam rooms, and saunas closed</li></ul>	<p>Measures from previous level and:</p> <ul style="list-style-type: none"><li>Require contact information from all patrons</li><li><a href="#">Safety plan</a> is required to be prepared and made available upon request</li></ul>	<p>Measures from previous level and:</p> <ul style="list-style-type: none"><li>Services requiring removal of face coverings prohibited</li><li>Bath houses, other adult venues, and sensory deprivation pods closed (some exceptions)</li><li>Screening of patrons is required, in accordance with instructions issued by the Office of the Chief Medical Officer of Health</li></ul>	Measures from previous level	Closed

<https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf>

# New Framework in Ontario

## Measures for Casinos, Bingo Halls and Gaming Establishments

<b>PREVENT</b> (Standard Measures)	<b>PROTECT</b> (Strengthened Measures)	<b>RESTRICT</b> (Intermediate Measures)	<b>CONTROL</b> (Stringent Measures)	<b>LOCKDOWN</b>
<ul style="list-style-type: none"> <li>• Maximum of 50 people</li> <li>• Table games are prohibited</li> <li>• Casinos, bingo halls, and gaming establishments can operate in accordance with a plan approved by the Office of the Chief Medical Officer of Health</li> </ul>	Measures from previous level and: <ul style="list-style-type: none"> <li>• Liquor sold or served only between 9 a.m. to 11 p.m.</li> <li>• No consumption of liquor permitted between 12 a.m. to 9 a.m.</li> <li>• Require contact information from all patrons</li> <li>• <a href="#">Safety plan</a> is required to be prepared and made available upon request</li> </ul>	Measures from previous levels, and: <ul style="list-style-type: none"> <li>• Liquor sold or served only between 9 a.m. to 9 p.m.</li> <li>• No consumption of liquor between 10 p.m. and 9 a.m.</li> <li>• Screening of patrons is required, in accordance with instructions issued by the Office of the Chief Medical Officer of Health</li> </ul>	Measures from previous levels and: <ul style="list-style-type: none"> <li>• Maximum of 10 people indoors or 25 people outdoors</li> </ul>	Closed

<https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf>

# New Framework in Ontario

## Measures for Cinemas

<b>PREVENT</b> (Standard Measures)	<b>PROTECT</b> (Strengthened Measures)	<b>RESTRICT</b> (Intermediate Measures)	<b>CONTROL</b> (Stringent Measures)	<b>LOCKDOWN</b>
<ul style="list-style-type: none"> <li>• Maximum of 50 people indoors or 100 people outdoors</li> <li>• 50 people per indoor auditorium if cinema operates in accordance with the approved plan from the Office of the Chief Medical Officer of Health (<a href="#">Guidance for Movie Theatres During COVID-19</a>)</li> <li>• Face coverings except when eating or drinking only</li> <li>• Drive-in cinemas permitted to operate, subject to restrictions</li> </ul>	Measures from previous level and: <ul style="list-style-type: none"> <li>• Liquor sold or served only between 9 a.m. to 11 p.m.</li> <li>• No consumption of liquor permitted between 12 a.m. to 9 a.m.</li> <li>• Require contact information from all patrons</li> <li>• <a href="#">Safety plan</a> is required to be prepared and made available upon request</li> </ul>	Measures from previous levels and: <ul style="list-style-type: none"> <li>• Maximum of 50 people indoors per facility (revoke OCMOH approved plan)</li> <li>• Liquor sold or served only between 9 a.m. to 9 p.m.</li> <li>• No consumption of liquor between 10 p.m. and 9 a.m.</li> <li>• Screening of patrons is required, in accordance with instructions issued by the Office of the Chief Medical Officer of Health</li> </ul>	Closed, except for: <ul style="list-style-type: none"> <li>• Drive-in cinemas</li> <li>• Rehearsal or performing a recorded or broadcasted event remains permitted</li> <li>• Singers and players of brass or wind instruments must be separated from any other performers by plexiglass or other impermeable barrier</li> </ul>	Same as previous level

<https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf>

# New Framework in Ontario

## Measures for Performing Arts Facilities

<b>PREVENT</b> (Standard Measures)	<b>PROTECT</b> (Strengthened Measures)	<b>RESTRICT</b> (Intermediate Measures)	<b>CONTROL</b> (Stringent Measures)	<b>LOCKDOWN</b>
<ul style="list-style-type: none"> <li>• Maximum of 50 spectators indoors and 100 spectators outdoors</li> <li>• Singers and players of wind or brass instruments must be separated from spectators by plexiglass or some other impermeable barrier</li> <li>• Rehearsal or performing a recorded or broadcasted event permitted</li> <li>• Performers and employees must maintain 2m physical distance except for purposes of the performance</li> <li>• Drive-in performances permitted</li> </ul>	Measures from previous level and: <ul style="list-style-type: none"> <li>• Liquor sold or served only between 9 a.m. to 11 p.m.</li> <li>• No consumption of liquor permitted between 12 a.m. to 9 a.m.</li> <li>• Require contact information from all patrons</li> <li>• <u>Safety plan</u> is required to be prepared and made available upon request</li> </ul>	Measures from previous levels and: <ul style="list-style-type: none"> <li>• Liquor sold or served only between 9 a.m. to 9 p.m.</li> <li>• No consumption of liquor between 10 p.m. and 9 a.m.</li> <li>• Screening of patrons is required, in accordance with instructions issued by the Office of the Chief Medical Officer of Health</li> </ul>	Measures from previous levels and: <ul style="list-style-type: none"> <li>• Closed to spectators</li> <li>• Rehearsal or performing a recorded or broadcasted event remains permitted</li> <li>• Singers and players of brass or wind instruments must be separated from any other performers by plexiglass or other impermeable barrier</li> </ul>	Same as previous level

<https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf>

# Legislative Protection from Liability for Covid-19 Related Claims

---

On November 17, 2020, the Ontario government passed a law providing liability protection for businesses for COVID-19 issues

The new [Supporting Ontario's Recovery and Municipal Elections Act, 2020](#) protects businesses from liability if a customer or client is exposed or contracts COVID-19

However, employers are not protected from claims from employees



# Legislative Protection from Liability for Covid-19 Related Claims

---

## Protection from liability

2 (1) No cause of action arises against any person as a direct or indirect result of an individual being or potentially being infected with or exposed to coronavirus (COVID-19) on or after March 17, 2020 as a direct or indirect result of an act or omission of the person if,

(a) at the relevant time, the person acted or made a good faith effort to act in accordance with,

(i) public health guidance relating to coronavirus (COVID-19) that applied to the person, and

(ii) any federal, provincial or municipal law relating to coronavirus (COVID-19) that applied to the person; and

(b) the act or omission of the person does not constitute gross negligence

# Legislative Protection from Liability for Covid-19 Related Claims

---

Non-application, employment and performance of work

4 (1) In this section,

“occupational disease”, “Schedule 1 employer”, “Schedule 2 employer”, “survivor” and “worker” have the same meaning as in the *Workplace Safety and Insurance Act, 1997*.

(2) Section 2 does not apply with respect to any of the following:

1. A cause of action of a worker who is or was employed by a Schedule 1 employer or Schedule 2 employer, or of the worker’s survivor, in respect of a personal injury by accident arising out of and in the course of the worker’s employment or an occupational disease.
2. A cause of action of a worker who is or was employed by a Schedule 1 employer or Schedule 2 employer, or of the worker’s survivor, to which the Workplace Safety and Insurance Board or Schedule 2 employer, as the case may be, is subrogated under section 30 of the *Workplace Safety and Insurance Act, 1997*.
3. A cause of action of an individual in respect of an actual or potential exposure to or infection with coronavirus (COVID-19) that occurred in the course, or as a result, of employment with a person or in the performance of work for or supply of services to a person.
4. A proceeding arising from a cause of action referred to in paragraph 1, 2 or 3.

# Legislative Protection from Liability for Covid-19 Related Claims

---

In order to be protected from liability, the employer must have acted in “good faith” and not done something or fail to do something that amounts to “gross negligence”

An employer is *not* protected from claims by employees related to “occupational disease” in the course of the worker’s employment or related to an occupational disease

The specific workplaces impacted are those that are [Schedule 1 and Schedule 2 employers](#) under the Ontario workers’ compensation regime

It is important to always act in good faith, stay informed about the changing rules and laws, and try to protect your employees’ and customers’ health as much as possible



# Employees Expenses When Working Remotely

---

If an employee is working from home due to COVID-19 and incurs home office expenses as a condition of their employment, it is reasonable for employers to provide them with an allowance or reimburse them for reasonable expenses (e.g. office supplies, internet or telephone charges)

# Employees Claiming Home Office Deductions during COVID-19

---

In certain cases, an employee may be able to claim employment expenses on their income tax and benefit return if, under their contract of employment, the employee was required to pay for the office expenses when working from home

In such cases, the employee must have their employer sign a Form T2200, Declaration of Conditions of Employment, before they can deduct the expense from their personal income taxes

Employees should seek the guidance of a professional accountant regarding eligible expenses that are deductible when working from home during COVID-19

<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/line-229-other-employment-expenses/salaried-employees/work-space-home-expenses.html>

[https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4044/employment-expenses.html#P212\\_9467](https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4044/employment-expenses.html#P212_9467)

# Vacation Policies

---

The employer has the right to determine the dates when an employee will take accrued vacation, subject to the terms of the employer's vacation policies, the minimum standards legislation and the terms of a collective agreement

In deciding whether to require employees to use their accrued vacation time and vacation pay, the employer should consider what the implications of doing so are for employees for the remainder of the vacation year

# Vacation Policies

---

If employees are required to use their vacation now, they will be unable to take time off at typical vacation times (e.g. the holiday season or summer)

The employer may consider offering unpaid leaves later on if employees want time off for travel or family gatherings that are not possible under COVID-19 restrictions

# Prospect of Pay Increases in 2021

---

Morneau Shepell recently released the results of its 38th annual survey on salary projections for 2021 (input from 889 organizations employing non-unionized employees)

Base salaries in Canada are expected to increase by an average of 2.5% in 2021 (if salary freezes are excluded or 1.9% if salary freezes are included)

In 2020, 36% of organizations froze salaries (after only 2% originally planned to do so)

In 2021, 13% of organizations plan to freeze salaries (46% of organizations remain undecided)

<https://www.morneaushepell.com/ca-en/insights/2021-salary-projection-survey-report>

# Prospect of Pay Increases in 2021

---

The Survey also reports on the financial impacts of the COVID-19 pandemic on Canadian employers

- 22% of organizations indicated they suffered a severe decline in revenues (i.e., a reduction of over 30%)
- 34% of organizations indicated a decline in revenues of 10–30%
- 20% indicated a decline of less than 10%
- The rest reported no impact or growth in revenues

<https://www.morneaushepell.com/ca-en/insights/2021-salary-projection-survey-report>

# Infectious Disease Emergency Leave

---

The Ontario government amended the Ontario *Employment Standards Act, 2000* (ESA)

During the COVID-19 period (March 1, 2020 to January 2, 2021) non-unionized employees are deemed to be a job-protected leave if their hours were reduced or if they lost their job due to COVID-19

These employees are not considered laid off, nor are they considered to be constructively dismissed under the ESA

# Infectious Disease Emergency Leave

---

What happens on January 3, 2021 when the COVID-19 period comes to an end if the ESA remains unchanged?

The regular rules regarding constructive dismissal and temporary layoffs will resume

These employees will no longer be deemed to be on a job-protected leave



# Working Remotely – vs. Working from Home

---

If employees are required to work from home in response to COVID-19, an employer may choose to prohibit their employees from working at other remote locations other than home

In order to protect the safety of its workforce, employers can make reasonable requests of their employees

Employers can prohibit employees from coming into the workplace, and can recommend that employees self-quarantine in their homes if they are sick or have travelled abroad

# Working Remotely – Health & Safety

---

Treat remote working environments as an extension of the workplace

Employers are required to keep their employees safe while they are working

A remote workspace may have ergonomic, electrical, fire or other hazards

Employers should take steps to minimize hazards in their remote workspace

# Working Remotely – Tips

---

Maintain a sense of professionalism

Remind employees they are expected to maintain the same standards of behaviour in working remotely that they would be expected to meet in the physical workplace. For example:

- when teleconferencing employees should minimize background noise
- employees should dress appropriately for video calls

# Working Remotely – Risks

---

Any accident, illness or injury that an employee suffers in the course of remote work must be investigated and reported to the WSIB

The fact that the incident occurs in an employee's home or other remote location does not change the employer's obligations

# Working Remotely – Risks

---

Employees must protect sensitive information when working remotely

Most businesses control some amount of sensitive information that is accessible to employees, including:

- confidential business information
- private personal information of employees, clients or the public
- employees should be trained to identify this information and to use it or store it with a degree of care proportional to its sensitivity

# Human Rights

---

All employees have the right to equal treatment in employment

Discrimination in employment on the basis of ethnicity, race, ancestry, place of origin, and disability is prohibited

Employers should refrain from treating employees that have COVID-19 differently, apart from taking recommended health and safety measures to reduce or prevent the spread of the virus

# Human Rights

---

Under the Ontario *Human Rights Code*, employers are required to take steps to accommodate disabled employees. Someone who is infected with COVID-19 may be considered disabled within the meaning of the *Code*

The Ontario Human Rights Commission released a statement in January urging the public to refrain from stigmatizing, discriminatory, or harassing behaviour against individuals of East Asian descent, following reports of such conduct due to the COVID-19 outbreak

# Human Rights

---

If an employee is required to self-isolate for legitimate reasons, the employer should explore alternative options to allow the employee to continue working (e.g. working from home)

It is not discriminatory to lay off employees if there is no work for them to do due to the impact of COVID-19



# Accommodation

---

If an employee refuses to attend the workplace due to fears about COVID-19 in the workplace, employers should consider the following:

- does the employee have a medical condition that requires accommodation? (e.g. older adults, people with weakened immune systems and people with medical conditions such as cancer, heart problems, lung disease, diabetes)
- can the workplace be modified to address the employee's fears? The employee may be able to work in a room or area that is isolated from others
- will additional safety precautions alleviate the employee's fears?
- can the employee work from home?

# Accommodation re: Childcare Issues

---

Some employees may choose not to send their children back to school

There may be instances which require accommodation (eg. if the child is high-risk or someone else in the home is high-risk)

Employer can ask for medical note to support request for accommodation

# Accommodation re: Childcare Issues

---

There are several options available to accommodate employees. They do not have to work remotely

Employee can be placed on an alternate work schedule, have their hours reduced or placed on an unpaid leave of absence

An employer has to accommodate an employee to the point of undue hardship

# Accommodation re: Childcare Issues

---

It is uncertain how the courts will deal with accommodation issues due to COVID-19

It is likely that they will find that employees cannot refuse to work when there are options available to them for childcare but they wish to care for their children at home and not return to work due to a personal choice

There are two lines of cases that consider the test for accommodation due to “family status”

# *Canada (Attorney General) v. Johnstone, 2014*

## **FCA 110**

---

The employee must establish that:

- a child is under the employee's supervision/care
- the childcare obligation at issue engages the individual's legal responsibility for that child, as opposed to a personal choice
- the employee has made reasonable efforts to meet those childcare obligations through reasonable alternative solutions, and that no such alternative solution is reasonably accessible
- the workplace obligations interferes in a manner that is more than trivial or insubstantial with the fulfillment of the childcare obligations

# *Misetich v. Value Village Stores Inc., 2016*

## **HRTO 1229**

---

The employee must show that:

- the employer's obligation for him/her to return to work results in a “real disadvantage to the parent/child relationship and the responsibilities that flow from that relationship”
- he/she considered what other supports may be available

# CERB Benefits

---

Canada Emergency Response Benefit (“CERB”) has provided payments for individuals who have been without work due to the COVID-19 pandemic for up to 28 weeks between March 14 and September 27, 2020

Even though the CERB has ended, the CRA is continuing to accept retroactive applications until December 2, 2020

After September 27, 2020, CERB is replaced by Employment Insurance benefits or the Canada Recovery Benefit

# Income Replacement Programs

---

**Canada Recovery Benefit (CRB)** will provide \$500 per week for up to 26 weeks, to workers and self-employed workers who are not eligible for EI benefits and who still require income support and who are available and looking for work

**Canada Recovery Sickness Benefit (CRSB)** will provide \$500 per week for up to two weeks, for workers who are sick or must self-isolate for reasons related to COVID-19

**Canada Recovery Caregiving Benefit (CRCB)** will provide \$500 per week for up to 26 weeks per household, for eligible Canadians unable to work because they must care for:

- a child under age 12 due to the closures of schools or daycares because of COVID-19.
- a family member with a disability or a dependent because their day program or care facility is closed due to COVID-19.
- a child, a family member with a disability, or a dependent who is not attending school, daycare, or other care facilities under the advice of a medical professional due to being at high-risk if they contract COVID-19



# Canada Emergency Wage Subsidy

---

A wage subsidy intended to allow employers who have seen a drop in revenue to retain or rehire workers who would otherwise be out of work due to COVID-19

The subsidy covers up to 75% of employee wages on the first \$58,700 (or \$847 per week per employees)

The CEWS is retroactive to March 15, 2020

A proposal has been made to continue the CEWS until June 2021, including possible changes to the rates and top-up calculation

# Questions?

---

Andy Balaura, Partner

Tel: 905-273-3022d ext. 225

Email: [abalaura@pallettvalo.com](mailto:abalaura@pallettvalo.com)

Maria Tassou, Senior Counsel

Tel: 905-273-3022 ext. 295

Email: [mtassou@pallettvalo.com](mailto:mtassou@pallettvalo.com)

Pallett Valo LLP

77 City Centre Drive Suite 300, West Tower

Mississauga, ON L5B 1M5

Fax: 905-273-6920

**PALLETT VALO LLP**  
Lawyers & Trade-Mark Agents

**Your Authority For:**

Business Law • Commercial Litigation • Commercial Real Estate  
Construction • Insolvency & Corporate Restructuring  
Employment & Labour • Wills, Estates & Trusts

---

*The information contained in this presentation is provided for general information purposes only and does not constitute legal or other professional advice. This presentation is current as of **December 2020** and applies only to the province of Ontario. Information about the law is checked for legal accuracy as at the date the presentation is prepared, but may become outdated as laws or policies change.*

*For clarification or for legal or other professional assistance, please contact Pallett Valo LLP.*