



Handling COVID-19 Positives in the Workplace

October 2021 Employer Alert

With COVID-19 numbers rising again, more and more workplaces are experiencing workers who test positive. As an employer, you must take steps to prevent COVID-19 in the workplace and properly address any worker testing positive. This includes ensuring that you have in place a COVID-19 safe work policy and that you know how to properly report COVID-19 in the workplace. Failure to properly address and report COVID-19 in the workplace may result in substantial fines and/or a prosecution. Indeed, last week the Ministry of Labour laid multiple charges against a local farm and its President, further to multiple workers testing positive last spring and summer. If convicted, the farm could be sentenced to pay millions of dollars in fines and its President could be sentenced to pay fines and serve jail time.

A written COVID-19 safe work policy is required, further to both the recommendations and laws established by the Ontario Government and local Public Health Units. This policy should make it clear what steps the company is taking to protect the workers (e.g. masking requirements, daily screening, etc.) and how positive instances will be responded to. **This policy may also need to address worker vaccination**, depending on the sector and location of the workplace. For example, for workplaces in Toronto, their COVID-19 safe work policy must address vaccinations. As an employer, you should also ensure that the policy is being followed and that your workers receive training to understand how to follow the policy.

When a worker informs the company that they have tested

Authors

Christine Ashton
905-940-0526
cashton@wvllp.ca

Shaliney Malhotra
905-940-8005
smalhotra@wvllp.ca

Our Employment/Labour Lawyers



Christine Ashton



Daniel Condon



Doug Langley



Shaliney Malhotra

positive, the first step is to look at the COVID-19 safe work policy. As should be confirmed in the policy, when a worker advises they have tested positive, you will need to gather necessary information. In particular, you will need to gather the information needed to address the worker's absence from the workplace (e.g. are they well enough to work remotely). In addition, you will need to gather the information necessary to determine potential risks to others in the workplace. This includes determining when the worker was last in the workplace and who they were in close contact with. Generally, close contact occurs when a worker is within two meters of another worker, without a mask on, for more than a few minutes.

All workers who were in close contact with the positive worker, in the last 10 days, should be told of the positive instances and required to take a self-assessment questionnaire: <https://covid-19.ontario.ca/self-assessment/>. Currently, any close contact worker that is unvaccinated will be required to self-isolate and get tested.

Depending on when the positive worker was last in the workplace, all or part of the workplace may need to be cleaned. In addition, depending on the number of potentially infected coworkers, the workplace or areas of the workplace may need to be closed.

As part of gathering information to address the positive in the workplace, the company should also determine if COVID-19 may have been transmitted in the workplace. If it was transmitted in the workplace, then there will be a requirement to report the transmission to the Ministry of Labour and to the WSIB (if you are registered with them). A positive transmission in the workplace must be reported to the Ministry of Labour within 4 days. For further details on how to report to the Ministry of Labour, please see: www.ontario.ca/page/reporting-workplace-incidents-and-illnesses. Similarly, for employers insured with the WSIB, a positive transmission in the workplace must be reported within 3 days. For further details on how to report to the WSIB, please see: www.wsib.ca/en/businesses/claims/report-injury-or-illness.

Of course, if there is no reason to believe that the transmission occurred in the workplace, then a worker testing positive does not need to be reported to the Ministry of Labour or the WSIB.

In addition to potentially reporting to the Ministry of Labour and the WSIB, there is also potential local Public Health Unit reporting obligations. For example, employers in Toronto, Ottawa, and the Peel Region, must notify their local Public Health Unit if two or more workers have contracted COVID-19 in the workplace. Employers in the Durham Region must notify their local Public Health Unit if any worker has contracted COVID-19 in the workplace. In contrast, in some other regions, such as York Region, there is currently no public health reporting requirement. For further details, please see:

- The City of Toronto: <https://www.toronto.ca/wp-content/uploads/2021/01/95fd-Medical-Officer-of-Health-Letter-of-Instruction-to-Workplaces-Jan-4-21.pdf>
- The City of Ottawa: <https://www.ottawapublichealth.ca/en/public-health-topics/resources/Documents/Update-LOI-for-employers.pdf>
- Peel Region: https://peelregion.ca/coronavirus/_media/class-order-section-22.pdf
- Durham Region: <https://www.durham.ca/en/health-and-wellness/resources/Documents/Novel-Coronavirus/COVID-19-Class-Order-March25-2020-Workplaces.pdf>

Based on the number and timing of positive cases in a workplace, the local Public Health Unit may require either a full or partial closure of your workplace for a specified duration of time. For example, workplaces in **Peel Region** and **Toronto** may be ordered to close for at least 10 days where there are 5 or more confirmed positive cases in a 14 day period.

In review of the above, employers must ensure they have a properly drafted COVID-19 safe work policy that confirms how the company will prevent and address COVID-19 in the workplace. For more information or assistance with drafting your COVID-19 safe work policy, please contact **our firm**.

As the options, obligations, and impact of COVID-19 on the workplace continue to change, we are ready to strategically support you and your business. Further to this, we are regularly hosting complimentary webinars. For more details or to register for our upcoming webinars, please visit [our website](#).

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