

As Businesses Reopen, They Need to Be Thinking About Their Workplace Safety Plans

Jun 24, 2020

By David S. Reiter

COVID-19 lockdowns have been our collective reality for the past four months. But with summer here and the increased openings across the province, businesses need to be thinking about how they are going to make their workplaces safe, as well as protect the health and safety of their workers.

Under the *Occupational Health and Safety Act (OHSA)*, employers must take all reasonable precautions to protect the health and safety of their workers. Exactly what that means can change depending on the workplace. Recognizing that there may be confusion out there, the Ministry of Labour (Ontario) (**MOL**) has published a guide to help businesses work their way through their particular challenges.

The real value in the guide is that it is up-to-date (published/revised June 16 and 23, 2020), and that it assembles multiple resource and reference materials in a readable format that addresses multiple questions that will be common to most, if not all, workplaces. Each of these points is briefly summarized below.

The Overview

This part of the guide explains how workplace health and safety issues are to be approached. Specifically, employers need to understand the nature of the risk in their operations (hazard assessments) and address those risks (controls). Helpfully, the guide sets out how virus transmission occurs (i.e. contact with infected people or surfaces), and it provides hyperlinks to earlier published provincial webpages that provide detail on transmission and prevention.

Notably, this section of the guide explains that there is a hierarchy of controls that can be used, with different effect, to contain transmission of the virus. It begins with eliminating the hazard (i.e. keeping people at home so the risk of transmission is removed altogether), and works its way down with lessening the impact of the hazard through engineering controls (i.e. installation of plexiglass shields). It then continues down in effect through to administrative controls (i.e. changing processes such as permitting curbside pickups only), all the way through to the use of personal protective equipment (PPE). PPE rests at the bottom of the hierarchy because its effectiveness is largely subject to worker control and convenience, and unfortunately, productivity often trumps safety direction.

The Questions

The guidance document also gives answers to common questions that workplaces have as they move toward reopening. Those questions focus on how businesses can:

- Communicate their safety protocols;
- Screen workers and customers for the virus;
- Minimize the opportunity for exposure in the workplace;
- Deal with potential cases of, or exposure to, the virus at the workplace;
- Help their workers deal with the challenges posed by the pandemic; and
- Ensure their protocols are being followed.

Each answer offers practical advice along with links to resources that list manufacturers of PPE, that assemble collections of directives, memoranda and advisories, and that provide direction for the use of masks, etc.

Communicating Safety Protocols

The importance of communicating businesses' workplace safety plans cannot be overstated. If a plan exists, but people don't know about it, it may as well not exist. Not only is communication of the plan important, it is also mandatory. Section 25(2)(a) of the OHSA requires employers to provide information, instruction and supervision to protect worker health and safety. Recognizing those points, the guide helpfully lists several ways in which plans can be communicated. These include notices, emails, virtual meetings and intercom announcements.

Screening for the Virus

Recalling that elimination of the hazard (i.e. the virus) is the most effective means by which worker protection can be ensured - screening, which can help to keep the virus from entering the workplace in the first place, is one of the, if not the, key tools that businesses can use to protect workers. To that point, the guide explains that employer screening for symptoms on arrival, signage aimed at preventing people with symptoms from entering, and encouragement of self-monitoring can each help to limit the spread of COVID-19 in the workplace.

Minimizing Exposure in the Workplace

Even though hazard elimination is the best defence, businesses have to recognize that some people do not exhibit symptoms and may not know they are carriers. As a result, extra precautions need to be taken to limit the spread of COVID-19. Understanding that, the guide also speaks to, and provides resource links for, reducing airborne and surface-based transmission. These include cleaning, disinfection and respiratory hygiene tips, amongst others.

Potential Exposure in the Workplace

One of the questions that keeps coming up again and again is what does a workplace have to do if and when a worker is diagnosed with COVID-19. Assuming it keeps getting updated, the guide will prove particularly helpful in that regard.

Employers need to contact their local public health unit if there is a diagnosis, and the guide provides links to those units. It also indicates that a report to the MOL may have to be made.

Employers should note that there is a reporting obligation only if the infection resulted from an exposure at work. However, that soon may change. Legislation has been presented (but not yet passed) that will create a WSIB presumption that the virus was contracted at work. If that passes, the obligation to report to the MOL will become mandatory.

As a result, monitoring the guide for updates on legislative obligations under the OHSA becomes particularly important as workplaces begin to reopen.

Helping Workers With Pandemic-Based Challenges

The pandemic has also come with a whole new set of work-related challenges, such as ergonomic concerns related to working from home, mental health and stress-based concerns, and leave and absence requirements. The guide speaks to some of these points and tries to highlight what considerations ought to be kept in mind as employers and workers all contend with the current and post-pandemic changes.

Ensuring Protocols Are Followed

Businesses that are operating during COVID-19 are having to re-think not only their operations, but also how they will monitor those operations and their workers' compliance with existing and new safety protocols. The guide helpfully identifies several key considerations that businesses should be taking into

account as they work through the challenges of reopening, including questions related to ensuring that there is open dialogue and feedback on policies, that review sessions are scheduled, and that Joint Health & Safety Committees are included where appropriate.

Conclusion

Each workplace is different, and each will face its own unique challenges in reopening. Because of that, the guide is just a guide. It is not the be all and end all.

In addition, occupational health and safety decisions are clear that regulations are not the standard, and it is even more so with guidance documents. Instead, all are individual pieces of a broader standard - reasonableness. That is to say - employers need to take all reasonable measures to protect their workers' health and safety.

As a result, the guide should be used to direct employers' attention to issues that they ought to be considering as their operations start up again. In essence, it should be used for two purposes. First, to help businesses think about what is important for their operation(s), and second, to direct them to resources that will help them to develop reasonable policies.

Author



David S. Reiter
Partner
T 416.865.4734
dreiter@airdberlis.com

This communication offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.