

Provincial Government Introduces Mandatory COVID-19 Screening Requirement for Ontario Workplaces

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On September 26, 2020, amendments to Ontario Regulation 364-20, the “Rules for Areas in Stage 3,” came into effect, making it mandatory for all businesses and organizations in Ontario to screen workers and essential visitors for COVID-19 before entry to the premises.

In June 2020, the Ministry of Labour published a guide that provided businesses with practical advice on how to conduct screening for the virus and how to deal with potential exposure at the workplace. Additional information on this guidance can be found in our prior bulletin. However, with another spike of COVID-19 cases in the province, the government has escalated its efforts and mandated that all workplaces in Ontario proactively screen workers and essential visitors before or upon entering the work environment. The Office of the Chief Medical Officer of Health (“CMOH”) includes delivery, maintenance and contract workers in its definition of “essential visitors”. The requirement does not apply to patrons.

The new provision references a set of guidelines and recommendations released by the CMOH. The Screening Tool sets out three questions that workers or essential visitors must answer before entering the premises: 1) whether the individual is experiencing any of the listed symptoms including, but not limited to: fever, cough, sore throat, nausea or extreme fatigue; 2) whether the individual has travelled outside of Canada in the last 14 days; and 3) whether that individual has been in close contact with a confirmed or probable case of COVID-19. The screening does not include temperature checks.

If the worker or essential visitor answers yes to any of the listed questions, including experiencing any one of the numerous symptoms on the provided list, they should not enter the workplace. Instead, the employer must immediately direct the individual to self-isolate at home and urge them to contact their care provider or Telehealth Ontario to assess their need for a COVID-19 test.

Notwithstanding the above, the practical implications for Ontario workplaces remain somewhat ambiguous, as the guidelines do not provide a recommended method of screening (signage, tracker, etc.). Realistically, the implementation of the screening requirement may look different across workplaces. We suggest that employers consider the following:

- Create an in-person screening point upon entry into the workplace which would ensure the worker is being asked the required questions;
- Create a documentary record of responses. In doing so, advise employees that the information collected will be used only to verify compliance, and for no other reason. Seek consent to collect the information;
- Where this is not possible (i.e. larger workplaces with multiple entrances), put clear signage with screening questions at all entrances. The signs should state that those who answer any of the questions in the affirmative cannot enter. Have documentary evidence of what the signs say, as well as where they were placed;
- Look into technology, which creates what is effectively a sign-in on attendance, to be installed on the employees’ phone or sent to them by email; and
- Co-ordinate with any other party responsible for advising employees of compliance. For example, where the business is in a building under property management, make compliance with the property manager’s rules part of the process.

Despite the fact that many workplaces had previously implemented screening similar to what is now mandatory under the regulation, given the new requirements, it is vital for workplaces to either adjust their current screening protocols to comply with the CMOH guidelines or implement a new screening process altogether. Though it is not codified in the regulations, employers should continue to encourage employees to self-monitor and adhere to social distancing guidelines inside and outside of the workplace, as well as follow any additional guidance from public health officials.

Do not hesitate to contact a member of the Aird & Berlis Workplace Law Group should you have any questions.

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