

# BC GOVERNMENT PUBLISHED WORKPLACE SAFETY ORDER MANDATING COVID-19 SAFETY PLANS

Posted on January 25, 2022

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In our article dated January 7, 2022, we provided an update that the BC Government would be introducing a new Public Health Order reinstating COVID-19 Safety Plans in BC workplaces as a result of increasing infection rates due to the Omicron variant (the “**Workplace Safety Order**”). The [Workplace Safety Order](#) was published on January 20, 2022.

Below are the pertinent provisions of the Workplace Safety Order that employers should take note of.

## The Workplace Safety Order

### Workplaces Excluded from the Workplace Safety Order

The Workplace Safety Order does not apply to workplaces operated by the following:

- School boards, independent school authorities, post -secondary institutions, regional health authorities and the Provincial Health Services Authority;
- Operators of day cares licensed under the *Community Care and Assisted Living Act*;
- Operators of long term care facilities licensed under the *Community Care and Assisted Living Act*;
- Operators of private hospitals licensed under the *Hospital Act*;
- Operators of assisted living residences for seniors registered under the *Community Care and Assisted Living Act*;
- Operators of hospitals designated under the *Hospital Act*; or
- Operators of mental health facilities designated under the *Mental Health Act*.

### Work From Home

The Workplace Safety Order provides that, unless an employer has an operational requirement to have a worker perform their work from the workplace, an employer must allow workers to work from their private residence if possible, depending on the nature of the work involved.

This is a fairly significant provision as it appears that an employer would need to demonstrate that an

employee's work can only be performed from the workplace to mandate a return to the office. Outside of industries such as hospitality and personal services, employers may find it difficult to justify a return to the office unless it can be operationally justified.

### **COVID-19 Safety Plans**

The Workplace Safety Order requires that employers to whom it applies have a COVID-19 Safety Plan for each workplace that complies with WorkSafeBC's [guidance on developing COVID-19 Safety Plans](#). A "workplace" is defined in the Workplace Safety Order as "a place where a worker engages in work in or about an industry, but does not include a worker's private residence".

A COVID-19 Safety Plan must include the following information:

- Measures to prevent workers from crowding together or congregating in "indoor common areas". The Workplace Safety Order defines an "indoor common area" as an "indoor area of a workplace that is in common use by workers, including (a) elevators, lobbies, hallways, stairwells, bathrooms, break rooms, kitchens, cafeterias, fitness facilities, and (b) a workplace vehicle when being used to transport more than one worker for work-related purposes", but not including "an indoor area in which a worker works, including an area where a worker meets with or provides goods or services to clients, customers, patients, passengers or the like, or an area in a building under construction";
- Subject to the exceptions listed below, a requirement that a worker must wear a face covering over the worker's nose and mouth in an indoor common area of a workplace, and in other areas of the workplace as required by the employer's COVID-19 Safety Plan;
- Policies to support workers who have symptoms of a communicable disease (for example, fever and/or chills, recent onset of coughing, diarrhea), so that workers can avoid being at the workplace when sick;
- Measures to promote hand hygiene;
- Measures to ensure a clean workplace environment through routine cleaning processes;
- Measures to ensure the proper maintenance and functioning of workplace ventilation as required by the *BC Workers Compensation Act* (the "**Act**") and the *Occupational Health and Safety Regulation* (the "**Regulation**"); and
- Measures to support workers in receiving vaccinations for COVID-19.

An employer is required to post a copy of its COVID-19 Safety Plan on the employer's website, if the employer has one; and at the workplace so that it is readily available for review by workers, other persons who may attend at the workplace to provide services, and members of the public who have reason to be in the workplace.

## Face Coverings – Exceptions

If a worker is in an “indoor common area” of a workplace, the worker must wear a face covering, unless one of the following exceptions apply:

- The worker is unable to put on or remove a face covering without the assistance of another person;
- The worker is unable to wear a face covering because of:
  - a psychological, behavioural or health condition; or
  - a physical, cognitive or mental impairment;
- The face covering is removed temporarily for the purpose of identifying the worker wearing it;
- The face covering is removed temporarily to communicate with a person with a disability or diverse ability, where visual cues, facial expressions or lip reading or lip movements are important;
- The worker is consuming food or a beverage in an area designated by the employer, for that purpose, and the worker is seated;
- The worker is carrying out personal hygiene;
- The worker is on their own in a workplace vehicle;
- The worker is working on their own in a workplace;
- The worker is playing a musical instrument in the course of the worker’s work and is unable to play the instrument while wearing a mask;
- There is a physical barrier between the worker and other workers which blocks the transmission of droplets.

## Other COVID-19 Safety Precautions

In addition to the above, an employer must also:

- provide hand hygiene facilities in a workplace with appropriate supplies;
- maintain a clean environment in a workplace by instituting routine cleaning processes;
- ensure that workplace ventilation is properly maintained and functioning as required by the Act and the Regulation; and
- remind workers through policies and signage to wash their hands regularly and to use appropriate hygiene practices.

## COVID-19 Symptoms

Workers are required to self-monitor for symptoms of illness and must not attend at the workplace if the worker has new or worsening of pre-existing symptoms of COVID-19. A worker that displays COVID-19 symptoms must not be allowed to remain in the workplace.

An employer must make available to workers the BC Centre for Disease Control's [guidance on isolation and self-management](#).

### **Conclusion**

Employers are advised to review their COVID-19 Safety Plans to ensure it complies with the Workplace Safety Order. Employers are also advised to review their return to work mandates to determine whether a return can be operationally justified for all workers. Please do not hesitate to contact us if you have any questions regarding the Workplace Safety Order.

by [Dianne Rideout](#) and [Michelle McKinnon](#)

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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