

Government of Ontario Declares Provincial Emergency

January 14, 2021

In response to the COVID-19 pandemic, the Government of Ontario [declared a second provincial emergency](#) under the *Emergency Management and Civil Protection Act (EMCPA)*, effective **January 12, 2021**. This declaration of emergency will automatically terminate in 14 days unless terminated earlier or extended. The declaration of a provincial emergency allows the Government to make new emergency orders under the *EMCPA*, including the enactment of a [new enforcement order](#).

Within this declaration of emergency, the Government introduced a [stay-at-home order](#) under the *EMCPA* and a [regulation](#) amending the [existing “shutdown” order](#) in place under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020 (ROA)*. The order and regulation are both aimed at limiting people's mobility and reducing the number of daily contacts with those outside an immediate household, and take effect **January 14, 2021**.

Where the language of the order or regulation differs from what is in this Briefing Note, the order or regulation prevails.

This Briefing Note has two parts:

Part 1: Identifies key changes introduced by the Government’s stay-at-home order and amendments to the existing “shutdown” order.

Part 2: Provides an update on the amended screening requirements in Ontario workplaces.

If you have questions about how this Declaration of Emergency may impact you as an employer, contact your Sherrard Kuzz LLP lawyer or, if you are not yet a client of our firm, contact us at info@sherrardkuzz.com with the re line: COVID-19.

PART 1

New Enforcement Measures

Requirement to Comply: A police officer or other provincial offences officer who has reasonable and probable grounds to believe an individual has committed an offence under the *EMCPA* may require the individual to provide the officer with their correct name, date of birth and address, and the individual is required to promptly comply.

Temporary Closure: A police officer or other provincial offences officer may order a premises be temporarily closed if they believe an organized public event or other gathering is occurring and the number

of people in attendance exceeds the number permitted under the *ROA*. Each individual on the premises is required to promptly vacate after being informed of the order.

Order to Cease Attendance or Disperse: A police officer or other provincial offences officer may order an individual attending an organized public event or other gathering prohibited under the *ROA* to cease attending the event or gathering and disperse. An individual is required to promptly comply.

New Stay-At-Home Order

Requirement to Remain in Residence: Every individual is required to remain in their place of residence unless leaving their place of residence is necessary for a permitted purpose or activity, such as work. The order sets out the permissible reasons for an individual to leave their residence.

Work: The order permits an individual to leave their place of residence to attend work where the nature of the work requires the individual to leave their residence. This includes where the individual's employer has determined that the nature of the work requires the individual to attend at the workplace.

New Social Gathering Limit

Outdoor Events Limited to Five People: No person is permitted to attend an outdoor organized public event or social gathering of more than five people.

New Public Health Measures Applicable to all Businesses and Organizations

Work from Home Except Where Necessary: Each person responsible for a business or organization that is open shall ensure that any person who performs work for the business or organization conducts their work remotely, unless the nature of the work requires them to be on-site at the workplace. This does not apply to a government or any person or publicly-funded organization that delivers or supports government operations and services, including operations and services of the health care sector.

New Public Health Measures Applicable to Individuals

Physical Distancing: Every person in a place of business or facility that is open to the public shall maintain a physical distance of at least two metres from every other person except from their caregiver or other members of the person's household, with limited exceptions.

Face Coverings: This amendment does not change the existing face covering obligations and exemptions applicable to a business or organization. Rather, it places a corresponding obligation on the individual who attends at the business or organization to ensure that they comply with the face covering requirements. The amended regulation provides that every person in the premises of a business or organization that is open shall ensure that they wear a mask or face covering that covers their mouth, nose and chin, when they are in indoor areas of the premises, with limited exemptions.

Accessing Closed Indoor and Outdoor Recreational Amenities: No person shall use an indoor or outdoor recreational amenity that is required to be closed.

Sector-Specific Updates (Excluding Construction)

Discount and Big Box Stores Selling Groceries: Curbside pick-up and delivery remain permitted. In addition, in person retail is permitted provided each member of the public is able to maintain two meters physical distance from every other person in the business or facility. The number of persons occupying any room open to the public must not exceed 25% of the room capacity.

General Retail (includes hardware, pet food, computer, etc.), Garden Centres and Cannabis Stores: An item may only be provided for curbside pickup if the patron ordered the item before arriving at the business. Operating hours are limited to 7 a.m. to 8 p.m.

Shopping Malls: Operating hours are limited to 7 a.m. to 8 p.m., except to provide access to grocery stores/supermarkets, pharmacies, and health care providers that only have public entrances that face the interior of the mall.

Reduced Hours for Select Retailers: Safety supply stores, businesses that sell, rent or repair assistive/mobility/medical devices, optical stores that sell prescription eyewear to the public, outdoor markets, and motor vehicle sales are limited to operating hours of 7 a.m. to 8 p.m. Stores that sell liquor (including beer, wine and spirits) are limited to operating hours of 9 a.m. to 8 p.m.

Hotels, motels, lodges, cabins, cottages, resorts and other shared rental accommodation, including student residences: Pre-arranged booking for short-term rentals prohibited with exceptions for housing requirements.

Concert venues, theatres and cinemas: Closed, including drive-in or drive-through events.

Construction- Specific Updates

Construction activities or projects and related services, including land surveying and demolition services, are permitted, if they:

- are associated with the health care sector or long-term care, including new facilities, expansions, renovations and conversion of spaces that could be repurposed for health care space,
- ensure safe and reliable operations of, or provide new capacity in, provincial infrastructure, including the transit, transportation, resource, energy and justice sectors beyond day-to-day maintenance,
- support the operations of, or provide new capacity in, electricity generation, transmission, distribution and storage, natural gas distribution, transmission and storage or in the supply of resources,
- support the operations of, or provide new capacity in, schools, colleges, universities, municipal infrastructure or child care centres within the meaning of the *Child Care and Early Years Act, 2014*,
- are required for,
 - the maintenance and operations of petrochemical plants and refineries,

- significant industrial petrochemical projects where preliminary work commenced before January 12, 2021, or
- industrial construction and modifications to existing industrial structures limited solely to work necessary for the production, maintenance or enhancement of personal protective equipment, medical devices such as ventilators and other identified products directly related to combatting the COVID-19 pandemic
- would provide additional capacity in the production, processing, manufacturing or distribution of food, beverages or agricultural products,
- were commenced before January 12, 2021 and would,
 - provide additional capacity for businesses that provide logistical support, distribution services, warehousing, storage or shipping and delivery services, or
 - provide additional capacity in the operation and delivery of Information Technology (IT) services or telecommunications services,
- support the operations of broadband internet and cellular technologies and services,
- are related to residential construction projects where,
 - a building permit has been granted for a single family, semi-detached and townhomes,
 - the project is a condominium, mixed-use or other residential building, or
 - the project involves renovations to residential properties and construction work that was started before January 12, 2021
- prepare a site for an institutional, commercial, industrial or residential development, including any necessary excavation, grading, roads or utilities infrastructure,
- are necessary to temporarily close construction sites that have paused, or that are not active, to ensure ongoing public safety,
- are funded in whole or in part by the Investing in Canada Infrastructure Program,
- are,
 - intended to provide shelter or supports for vulnerable persons or affordable housing; and
 - being funded in whole or in part by, or are being undertaken by,
 - the Crown in right of Canada or in right of Ontario,
 - an agency of the Crown in right of Canada or in right of Ontario,
 - a municipality,
 - a service manager as defined the *Housing Services Act, 2011*, or
 - a registered charity within the meaning of the *Income Tax Act (Canada)*, or
 - a not-for-profit corporation.

Schools

Schools in Windsor-Essex, Toronto, Peel, York and Hamilton region will remain closed until February 10, 2021, with limited exceptions. An announcement on return to in-person learning in all other Public Health Units will be made on January 20, 2021.

PART 2

Updated Workplace Screening Requirements

In our [September 26, 2020 Briefing Note](#), we summarized the daily screening requirements introduced for Ontario workplaces. On January 7, 2021 the Ministry of Health and Long-Term Care updated its [COVID-19 Screening Tool for Businesses and Organizations](#). Every business or organization must ensure its screening tool for workers complies with the updated requirements.

In addition:

- Every business or organization is required to keep a record of the screening results. Records must comply with any applicable retention and privacy requirements and may be requested by the local public health unit to support case and contact tracing in the event of an outbreak.
- If a worker travels to multiple locations as part of their work day or shift (e.g., a delivery driver), the screening responsibility rests with the worker's employer, not the receiving business or individual. However, this may not exempt a worker from being screened by another business or organization the worker may seek to enter (e.g., a long-term care home).

To learn more and for assistance, contact your Sherrard Kuzz LLP lawyer or, if you are not yet a client of our firm, contact us at info@sherrardkuzz.com with the re line: COVID-19.



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