

# Review of Canada's latest lockdown measures, vaccine mandates and new Ontario employment laws

**WEBINAR SERIES**  
LEGAL UPDATES  
FOR CANADIAN EMPLOYERS

# Your speakers

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# **Employer vaccine mandates: update**

Adrian Miedema

# Vaccine Mandates – Should employers lift?

## Status of provincial / federal vaccine mandates

- Proof of vaccination required to access businesses, events and services
  - Lifted: AB, ON, QC
  - Required: BC
- Federal vaccine mandate – remains in effect
- Lifting of provincial vaccine mandates *does not* require employers to lift their vaccine mandates

# Vaccine Mandates – Should employers lift?

Employers may continue to have vaccine mandates as long as they:

- Accommodate medical and religious exemptions
- Comply with provincial privacy requirements

# Vaccine Mandates – Should employers lift?

## Considerations when considering lifting vaccine mandates:

- OHSA: duty to provide safe workplace
- Efficacy of vaccines in preventing transmission / infection
- Current public health guidance
- Do employees work in teams or at home?
- Risk of employee absences due to self-isolation
- What is your sector / industry doing?
- Ending of provincial COVID leaves
- Just cause for dismissal?

The background of the slide features a dense arrangement of large, vibrant green leaves, likely from a tropical plant like a Philodendron. A semi-transparent purple shape, resembling a large arrow pointing to the right, is overlaid on the left and center of the image. The text is positioned within this purple area.

# **Status of lockdown measures**

Claire Browne

# Lockdown measures across Canada

## Where do the measures stand?

### Provinces that lifted all COVID-19 related public health measures

- Alberta (subject to certain limited exceptions)
- Saskatchewan
- Manitoba
- New Brunswick
- Nova Scotia (subject to certain limited exceptions)
- Newfoundland and Labrador



# Lockdown measures across Canada

## Where do the measures stand?

### British Columbia

- Measures that were lifted:
  - Face covering requirements (subject to certain limited exceptions)
  - Capacity limits on indoor and outdoor personal and organized gatherings
  - Mandatory work from private residence where possible requirements
- Measures that remain in effect:
  - Proof of vaccination requirements for accessing certain businesses, services and events
  - COVID-19 safety plan
- However, it is expected that effective April 8, 2022:
  - Proof of vaccination will no longer be required to access certain businesses, events and services
  - Businesses will no longer need to implement a COVID-19 safety plan

# Lockdown measures across Canada

## Where do the measures stand?

### Ontario

- Measures that were lifted:
  - Mandatory masking requirements (subject to certain limited exceptions)
  - Proof of vaccination to access certain businesses, services and events
  - Capacity limits on social gatherings and in indoor public settings
  - COVID-19 safety plan requirement
- Measures that remain in effect:
  - Businesses or organizations that are open are required to operate in accordance with any advice, recommendations and instructions issued by the Office of the Chief Medical Officer of Health, including:
    - Physical distancing, cleaning or disinfecting
    - Requirements to establish, implement and ensure compliance with a COVID-19 vaccination policy
    - Requirements to set out precautions and procedures to include in its COVID-19 vaccination policy

# Lockdown measures across Canada

## Where do the measures stand?

### Québec

- Measures that were lifted:
  - Gathering restrictions
  - Vaccine passport requirements
- Measures that remain in effect:
  - Masking requirements where physical distancing of 1 metre (or physical barrier) cannot be maintained
  - Physical distancing requirements

# Lockdown measures across Canada

## Where do the measures stand?

### Prince Edward Island

- Measures that were lifted:
  - Proof of vaccination requirements
- Measures that remain in effect:
  - Capacity limits on personal gatherings (20 indoors/ 50 outdoors)
  - Capacity limits on organized gatherings (75% capacity with physical distancing requirements)
  - Capacity limits for certain businesses, services and events
  - Operational plan requirements
  - Masking requirements



# **What you need to know about changes to Ontario's employment laws**

Janice Pereira

# **Bill 88, *Working for Workers Act, 2022***

Royal Assent TBD!

- Proposes to accomplish a number of things, including:
  - Amend the Ontario *Employment Standards Act, 2000*, requiring employers to disclose if and how they electronically monitor employees
  - Amend the Ontario *Occupational Health and Safety Act*, increasing maximum fines for violations
  - Enact the *Digital Platform Workers' Rights Act, 2022*, establishing minimum entitlements and protections for digital platform workers

# Disclosure of electronic monitoring of employees

## Amendment to the *Employment Standards Act, 2000*

- Requirement for written policy on electronic monitoring
- Employers with 25+ employees in Ontario as of Jan 1 of each year
  - Policy in place by March 1 of that same year.
  - This year, six months after the day the *Working for Workers Act, 2022* receives Royal Assent
- “**Electronic monitoring**” likely to encompass GPS, technologies used on corporate networks and devices including laptops, computers and cellphones provided to employees by employers

# Electronic monitoring policies

## Substance

- Information regarding whether the employer electronically monitors its employees;
- If so, a description of how such monitoring is performed, and under what circumstances; and
- The purpose of collecting information through such electronic monitoring.

## Must also be...

- Dated, with any dates of amendment tracked
- Provided to all employees



# Maximum fines increased for *OHSA* violations

## Amendments to the *Occupational Health and Safety Act*

- Dramatic increase to maximum applicable fines for *OHSA* violations
  - Directors and officers: \$1.5M, up from \$100k
  - Other individuals: \$500k, up from \$100k
- “**Aggravating factors**” include:
  - Offences resulting in death, serious injury or illness
  - Disregard of inspector’s order or reckless commission of the offence
  - Lack of remorse
  - Motivated by desire to increase revenue or decrease costs
- Two-year limitation period for instituting prosecution of an offence

# Naloxone kits

## Amendments to the *Occupational Health and Safety Act*

- Response to opioid crisis in Ontario. Public Health Ontario opioid-related morbidity and mortality rates:
  - As of June 2021, 17 deaths per 100,000
  - 120 ED visits per 100,000
- *“Where an employer becomes aware, or ought reasonably to be aware, that there may be a risk of a worker having an opioid overdose at a workplace where that worker performs work for the employer, or where the prescribed circumstances exist”*
- Requirement to provide and maintain naloxone kit in good condition in workplace
- Training to identify opioid overdose and administer naloxone

# ***Digital Platform Workers' Rights Act, 2022***

## Entitlements for workers performing “digital platform work”

- “**Digital platform work**” is defined as the provision of work for payment ride share, delivery, courier or other prescribed services by workers who are offered work assignments by an **operator** through the use of a digital platform
  - e.g., ride-share drivers, food-delivery drivers and couriers, etc.
- “**Operator**” is broadly defined to include “a person that facilitates, through the use of a digital platform, the performance of digital platform work by workers
- Applies to any workers who perform digital platform work, irrespective of whether they are employees at law

# ***Digital Platform Workers' Rights Act, 2022***

## Minimum Entitlements

- Minimum wage rate payable under the *Employment Standards Act, 2000* (currently \$15/hr), not including tips
  - Note: minimum wage only applies during active performance of services,
- Recurring pay period and pay day
- Operators prohibited from withholding or deducting amounts from workers' pay unless authorized
- Information-based rights including how pay is calculated, how a web-based application's algorithm works, particulars of performance rating systems, etc.

# ***Working for Workers Act, 2022***

## Privacy considerations

Some provisions will impact employers' privacy and cybersecurity policies

For more information, please reach out to **Kirsten Thompson**, our National Practice Group Lead for Privacy and Cybersecurity.

# Thank you



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