

Comply or Beware: Toronto to Begin Naming Employers With COVID-19 Outbreaks

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As COVID-19 cases in the City of Toronto continue to rise, local health officials are imposing additional requirements on employers to combat the spread. On Monday, January 4, 2021, Toronto Public Health (“TPH”) announced that it would begin publicly naming workplaces at which COVID-19 outbreaks had occurred.^[1] According to Toronto’s medical officer of health Dr. Eileen de Villa, in deciding whether to name a particular employer, the City will consider specific criteria such as whether there has been sustained transmission, the number of employees impacted, the duration of the outbreak, and the risk to worker privacy if the employer is identified. Consistent with this new approach, TPH identified three Toronto businesses by name as having experienced recent COVID-19 outbreaks that “pose a significant public health risk.”^[2] While other jurisdictions have also publicly named workplaces with COVID-19 outbreaks, the TPH announcement is having much greater news media impact and is relevant to Toronto employers. For Toronto employers that experience a COVID-19 outbreak, not only are there reporting requirements to TPH as noted below but also potential concerns regarding privacy, impact to business operations and negative impact to reputation.

TPH’s new approach coincides with the Toronto Medical Officer of Health issuing a Letter of Instruction^[3] to all Toronto employers that have remained open under the *Reopening Ontario Act* other than those that are subject to other sector-specific legislation (specifically, licensed childcare programs, schools, and health care providers). The Letter of Instruction imposes additional requirements on affected businesses, including the following:

- as soon as employers become aware of two or more people who test positive for COVID-19 within a 14-day interval in connection with the employer’s premises, they are required to:
 1. immediately notify TPH;
 2. provide TPH with contact information for a designated contact person at the workplace to communicate with TPH;
 3. provide accurate and updated contact information for all workers to TPH within 24 hours of a request for same;
 4. notify the Ministry of Labour, Training and Skills Development and other applicable government authorities; and
 5. cooperate with infection prevention and control personnel from TPH, including allowing entry into the workplace premise for inspection.
- employers must implement adequate infection prevention measures, including access to hand sanitizer and hand-washing facilities, rigorous and frequent environmental cleaning, regular reviews of HVAC systems, minimizing instances of more than one individual in a vehicle for driving associated with work, ensuring physical distancing throughout the workplace, and implementing physical barriers where physical distancing is not possible; and
- employers must ensure that all employees are aware of the income replacement and workplace-related benefits to which they are entitled if they must isolate due to covid-19 systems, being test for COVID-19 or being a close contact with someone with COVID-19

In addition to the notification requirements, employers, regardless of location, should also consider the applicable privacy implications when disclosing information about a COVID-19 outbreak, including the disclosure of employee personal information. It is a good time

for employers to review its privacy policy and procedures to ensure that they are up to date, and remind employees of their confidentiality obligations as well as what information employees may disclose about the employer externally and on social media platforms. Employers should also consider designating a key contact person who is responsible for all internal and external communications regarding COVID-19, including responding to media requests for information that are bound to follow if the employer is named publicly as a workplace with a COVID-19 outbreak.

From a due diligence perspective, it is important for employers to have in place policies and procedures to ensure that the required reporting requirements can be clearly met on a timely basis, and to document the proactive preventative measures it has implemented. These steps will also assist employers in managing their reputations and maintaining the confidence of their employees that the employer is taking all reasonable precautions in the circumstances to protect employees from exposure to COVID-19 in the workplace and that the employer will respond to any instances of COVID-19 in the workplace in a prompt and appropriate manner.

Employers that remain open at this time are encouraged to review TPA's Letter of Instruction or the comparable guidance and requirements in the applicable jurisdiction and consult legal counsel for assistance in complying with all applicable health and safety requirements.

WeirFoulds' employment law group is monitoring these developments and will be providing updates as the COVID-19 situation progresses. For more information on how to respond to COVID-19 in your workplace or organization, please contact Daniel Wong, Max Skrow or Janet Bobechko.

[1] TPH defines an "outbreak"

[2] See: <https://www.toronto.ca/home/covid-19/covid-19-latest-city-of-toronto-news/covid-19-status-of-cases-in-toronto/> under "Active Outbreaks" > "Community and Workplace Settings".

[3] <https://www.toronto.ca/wp-content/uploads/2021/01/95fd-Medical-Officer-of-Health-Letter-of-Instruction-to-Workplaces-Jan-4-21.pdf>

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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