

January 15, 2021

NEW EMERGENCY ORDERS:

WORKING REMOTELY & MASKING/PHYSICAL DISTANCING RULES

Working Remotely is NOT an absolute requirement for health care workers

New government orders were published late in the evening of January 13, 2021 and are effective January 14, 2021.

First, [Ontario Regulation 10/21](#) (which amends [Ontario Regulation 82/20](#) of the [Reopening Ontario \(A Flexible Response to COVID-19\) Act](#)) requires all businesses and organizations that are open (such as health care providers), to have employees working from home unless the nature of the work requires them to be onsite at the workplace. This is referred to as the “default obligation”; employees must work remotely unless the nature of the work requires them to work onsite.

However, the default obligation **does NOT apply** to health care employers and employees because Ontario Reg. 10/21 states the default obligation **does NOT apply** to any person or publicly funded agency or organization that delivers services or operations in the **health care sector**.

Second, the Government issued a [Stay at Home Order](#) which requires people to stay home.

The Stay-at-Home order also permits employees to leave home for work purposes where the *nature of the individual’s work requires the individual to leave their residence, including when the individual’s employer has determined that the nature of the individual’s work requires attendance at the workplace*. This **does apply** to health care employers and employees.

This provision allows all employers to determine if the individual’s work requires their attendance at the workplace. There are no criteria or restrictions on employers’ right to make this determination

Masking Requirements

Ont. Reg. 10/21 also restates the masking requirements for employers who remain open. Healthcare employers have likely implemented these or stricter measures already. But for the sake of informing you, I will set out the requirements in the new regulation.

All persons on the premises must wear a mask or face covering that covers mouth, nose and chin when at work. Exceptions to this are set out in section 2(4) of [Ont. Reg. 82/20](#).

- Children younger than 2 yrs.
- Medical condition that inhibits ability to wear a mask or face covering (no proof needed)
- Needs to temporarily remove mask to receive services
- Is being accommodated in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005* or the *Human Rights Code*. (no proof needed)
- Performs work in an area not accessible to the public and is able to maintain a distance of at least 2 metres from every other person.

Physical Distancing

Ontario Reg. 10/21 introduced physical distancing rules.

Every non-employee must maintain a physical distance of at least 2 metres from every other person, unless:

- a. They are receiving services which require closer proximity
- b. Passing another person in a confined location

BOTTOM LINE:

Although the working remotely rules are not as crystal clear as one would have hoped; in my view the impacts of Ont. Reg. 10/21 and the Stay-at-Home Order are:

- a. Health care employers can require employees to attend at the workplace. There is no default to working remotely for health care employers.
- b. Health care employers must remember their right to require employee attendance onsite is limited by human rights considerations such as disability (including being immune compromised), which may require accommodation.
- c. For morale and other purposes, employers may conduct an individual assessment of an employee's duties and circumstances to determine if working remotely makes sense, especially for a limited time period, such as over the next 28 days.
- d. Masking and physical distancing rules set out in Ont. Reg. 10/21 should be reviewed, along with public health orders on this issue.

It is also recommended that employers provide employees who are working on site with a letter stating they work for your health care organization and are required to attend at work. This will assist employees if they are stopped by enforcement officers seeking to enforce the Stay-At-Home Order.

Please contact me if you have any questions or concerns about employment issues.

Kind Regards

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