# NORTON ROSE FULBRIGHT

# Reopening the workplace while mitigating pandemic risks: a roadmap for Canadian employers

**Employment and labour**
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**As non-essential workplaces look forward to re-opening and essential workplaces continue operations, employers in Canada are forced to deal with the new-normal of COVID-19. As part of this new reality, employers will be required to consider what measures will be needed to reduce and/or prevent the spread of the illness in the workplace, instill confidence in employees that it is safe to attend work, minimize and/or prevent operational interruptions that could be caused by workplace infections. Safe workplaces will be essential for the Canadian economy to get back on its feet.**

## 1. What do employers need to know? The situation in Canada today

In general, Canadian employers have a legal obligation to take every precaution reasonable in the circumstances to protect employee health and safety. This obligation also extends to protecting employees from communicable illnesses such as COVID-19 and includes any industry-specific and jurisdictional requirements that have been put in place due to the pandemic.

In addition to health and safety requirements, employers also have several other legal considerations and obligations that have been heightened as a result of COVID-19, including in the areas of:

- privacy;
- human rights;
- employment standards; and
- other areas of the law that affect the workplace, depending on the industry and jurisdiction.

This roadmap has been created to provide employers with some best practices, which include:

- properly identifying COVID-19 health risks in the workplace;
- ensuring compliance with all legal requirements that apply depending on the jurisdiction and industry; and
- preparing effective risk mitigation strategies.

When considering these strategies, employers are advised to consult with employment counsel, as legal obligations may vary between jurisdictions.

## 2. Where does an employer start? Preparing a plan for mitigating and managing risk in the workplace

| 1 | 2 | 3 |
|---|---|---|
| **Step One:** Identify workplace risks and hazards | **Step Two:** Evaluate and prioritize risk mitigation | **Step Three:** Develop risk mitigation strategies |

To identify and implement appropriate measures to prevent the spread of COVID-19 in the workplace or any other areas an employer controls, a mitigation plan should be prepared. One method of preparing a mitigation plan is outlined in the three steps below.

## Step One: Identifying workplace risks and hazards

Risk assessment begins with identifying how workers might be exposed to COVID-19 during their work but also at home and in the community. The following four risk categories include addressing heightened sources of COVID-19 exposure at this time:

- **Personal contact risks**: includes personal interactions required while performing job functions or through their proximity to others in communal areas such as bathrooms and lunchrooms.

- **Equipment contact risks**: includes any interaction with equipment necessary to perform one's job function, such as electronic devices, stationery supplies, and any industry-specific equipment.

- **Surface contact risks**: includes interactions with workplace surfaces, including doorknobs, light switches, railings, elevator buttons, shared workstations and shared tools, among other high-contact surfaces.

- **Non-occupational risks and external vectors**: includes community spread, contact with infected persons, recent travel from abroad.

## The walkthrough: Practical tips

The first step for identifying personal, equipment, and surface contact risks is to perform a physical walkthrough of the workplace. The walkthrough's purpose is to create a detailed map or list of how workers and others interact in the various parts of the workplace.

Fully understanding the interactions between workers, co-workers, third parties in the workplace, and the physical set-up of the workplace enables the employer to create a detailed list of all identified risks, including those arising from surface and personal contact, and any outstanding questions that need to be addressed.

Before the walkthrough, it is important to consider which stakeholders should be included in the risk identification process.

These stakeholders may include: the joint occupational health and safety committee; a union representative; a supervisor or manager from each department; or any other party who may be helpful in understanding how employees interact with each other and physical surfaces in the workplace.

As part of the walkthrough, employers should consider what policies or practices will be required to deal with non-occupational risks and external vectors. These may include self-isolation policies for employees who have recently traveled or who have sick family members.

Employers should also consider occupational risks to workers that are external, but related to, the workplace, such as those that may result from travel. For example, what are the risks associated with local travel (e.g., deliveries) or more distant travel (e.g., sales calls in another province)?

# Step Two: Evaluating and prioritizing risk mitigation

The second step of the process is to evaluate the level of danger posed by each risk that has been identified in Step 1 so the employer's mitigation efforts can be prioritized.

## The evaluation: Practical tips

While the impact of a COVID-19 infection on a person's health appears to be highly variable, for the purpose of this evaluation, it would generally be safe to assume any risk or hazard related to the transmission/infection of COVID-19 could have severe consequences.

Determining the level of risk will therefore largely depend on the likelihood of infection, including through surface, personal and external contact. For example, if many employees use the same door to enter the workplace, the risk would be high due to frequent surface contact.

Properly measuring risk in the workplace enables the employer to effectively prioritize and develop informed and objective risk mitigation efforts.

# Step Three: Developing risk mitigation strategies

The third step of risk mitigation involves determining how to minimize or eliminate the identified transmission risks. Focus should initially be on high-risk sources of infection. It is important to consider secondary or tertiary strategies when primary or preferred methods of risk mitigation are not possible. Strategies for addressing risks identified in the workplace will necessarily depend on the nature of the identified risk. Below, we have provided some key preliminary considerations that should be considered when developing these strategies.

## Strategy development: Practical tips

**For identified risks related to personal contact**: First consider whether the activity that requires the personal interaction is necessary or can be eliminated; followed by considering if the activity can be performed online or by email or telephone; and then finally when other measures are not possible, ensure physical distancing is respected while performing the activity by adopting public health recommendations, which currently include keeping a physical distance of six feet (two meters) between individuals.

**For identified risks related to surface or equipment contact**: First consider eliminating the use of the surface or the equipment; when that is not possible, employers should ensure equipment is sanitized between different users and employees are engaging in proper hand washing practices and/or have appropriate personal protective equipment.

**For non-occupational risks or external vectors**: First consider screening employees, which can include testing or questioning, at the beginning of the shift or at a scheduled frequency, looking out for any COVID-19-related symptoms or risk factors; where that is not possible consider introducing a self-reporting system, promoting employee disclosure of COVID-19 infection, symptoms or risk factors.

The key considerations discussed above are not exhaustive, and will vary by jurisdiction, industry and ultimately by employer.

# Risk mitigation charts

A good tip when crafting a mitigation strategy is to develop a risk mitigation chart, identifying:

- risk factors;
- the likelihood the risk factor will cause transmission or infection;
- whether the risk factor can be eliminated; and
- how the risk factor will be mitigated.

We have included an example of what a risk mitigation chart can look like. When creating these charts, it is important to be as detailed as possible and consider practicable ways to ensure health and safety for all employees.

In all cases, strategies should be carefully developed in consultation with affected stakeholders.

As mentioned above, in unionized workplaces, this may include the trade union or bargaining unit representative. Moreover, depending on the complexity of the risk and the circumstances, legal counsel should also be sought before giving new direction or rolling out updated policies in the workplace.

Once finalized, these strategies are most commonly implemented by workplace policy or direction given by management. In implementing newly drafted or updated policies, it is important to keep in mind that health and safety legislation is not the only set of obligations that should be on an employer's radar.

There may be further legal considerations that should be addressed before deciding to implement a strategy by policy, which may vary depending on the nature of the workplace.

## Example: Risk mitigation chart sample

| Risk factor | Likelihood of transmission/infection | Can the risk factor be eliminated? | Risk mitigation |
|---|---|---|---|
| Personal contact through weekly employee check-in meetings | High | Yes | • Switch to on-line or telephone meetings<br>• Distribute important information through email or postings. |
| Personal contact through use of communal lunch area | High | No | • Request that employees monitor congestion levels and adjust their behavior accordingly.<br>• Implement staggered lunch or rest breaks to reduce the number of employees in a communal lunch area. |
| Equipment contact through shared photocopier | High | No | • Ensure that shared computers, print stations or office supply rooms are frequently cleaned.<br>• Leave hand sanitizer or disinfectant wipes close to communal equipment. |
| Equipment contact through opening washroom door | High | Yes | • Prop open washroom door with a door stop if possible or consider installing motion sensing/non-touch mechanical door opener.<br>• In the alternative, frequently clean high-touch door surfaces. |

## 3. What else do employers need to know? Best practices for managing COVID-19 risk mitigation in the workplace

In addition to developing a workplace-specific risk mitigation strategy, employers may also consider adopting some or all of the following best practices to reduce workplace transmission and ensure compliance with any legal issues that may arise in the course of this objective.

- Create a procedure for what steps are required if an employee reports COVID-19 symptoms or possible COVID-19 exposure.

- Create a reporting and/or screening procedure to ensure employees do not attend work if they:

  — Are displaying COVID-19 symptoms;

  — Have been in close contact with an individual who has been diagnosed with COVID-19;

  — Have been diagnosed with COVID-19 or are waiting for COVID-19 test results; and/or

  — Are otherwise required to be in self-isolation or quarantine.

- In implementing all procedures, ensure employee personal information, is lawfully collected and is properly managed and used in accordance with any applicable privacy laws or best practices. Personal information should only be disclosed with the express consent of the employee or if lawfully required.

- Maintain and require social distancing in the workplace, including by:

  — Increasing the distance between desks, tables, or workstations;

  — Mandating a six-foot distance to be kept between coworkers, or employees and customers using physical distancing markers on the floor where applicable; and/or

  — Install physical barriers where distancing is not possible.

- Post signs regarding appropriate hand hygiene, such as effective handwashing procedures, in visible locations in the workplace, including all restrooms and lunchrooms.

- Post signs regarding the symptoms of COVID-19 in visible locations in the workplace, including all entrances, and information regarding what steps employees are required to take if they are experiencing symptoms.

- Perform routine cleanings of the workplace, including high-touch surfaces and/or shared surfaces.

- Provide hand sanitizer dispensers and/or handwashing facilities.

- Provide the appropriate personal protective equipment.

- Suspend all non-necessary business travel, in accordance with applicable direction given by Canadian authorities.

- Limit access to the workplace for non-employees and/or consider how to protect employees from visitors and/or customers.

- Use email, the telephone, or video conference to reduce the need for in-person meetings.

- Stagger start and end times and/or schedules in order to reduce congestion at entrances and exits.

- Ensure employees and managers are properly trained to follow all procedures implemented by the employer, including compliance with any updated workplace policy or direction.

- If employees are teleworking away from their traditional workplace or otherwise working in potentially isolating or challenging conditions, consider developing strategies to address any possible risks related to employee mental health during and returning from the pandemic.

- Some employees who are affected by COVID-19 may still be able to work. If this is the case, ensure any need related to an employee's confirmed or perceived disability, and family status obligations be reasonably accommodated, up to the point of undue hardship.

# Customizing the approach

**The above-noted list of best practices is not exhaustive and should be adapted to respond to every employer's specific needs and situation.**

Employers should therefore, adapt these practices and procedures to meet the specific needs of their businesses and in compliance with applicable legal requirements in their specific jurisdictions or industries.

Employers should also regularly review and modify their approach as further information and guidelines are published by governments and public health authorities, namely those related to preventative measures and symptom identification.

# 4. Take-aways

Everyone needs to work together to get Canada's economy back up and running safely. To achieve this, employers must consider workplace-specific measures to reduce the risk of transmitting COVID-19, with the following in mind:

- As discussed, these efforts begin with identifying risk factors for viral spread in the workplace and implementing effective mitigation strategies.
- Preparing a risk mitigation chart can be a simple way to assess those risks and develop a tailored approach to creatively implement achievable and effective workplace mitigation strategies.
- The information contained in this publication is intended to provide a starting point for developing risk assessment and mitigation strategies, and is based on information available at the date of its publication.
- To that end, employers should be mindful that best practices and legal obligations may change as the COVID-19 pandemic evolves.

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