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Ontario's Second State of Emergency – Permitted Businesses

January 12, 2021

In light of the rapid growth of COVID-19 cases in Ontario, [the provincial government has issued a province-wide declaration of emergency](#) under s.7.01(1) of the *Emergency Management and Civil Protection Act*, orders under that Act, and amendments to [regulations](#) under the *Reopening Ontario (A Flexible Response to COVID 19) Act, 2020*. A combination of measures has been issued, coming into effect on Wednesday, January 13, 2021, for at least the next 28 days. [A stay-at-home order](#) is effective Thursday, January 14. However, there are exemptions to the stay-at-home order which are relevant to businesses:

- Individuals in Ontario may be permitted to leave their residence if their employer has determined that the nature of an individual's work requires them be present at their workplace
- Receiving or providing training or educational services
- Obtaining goods, obtaining services, or performing such activities as are necessary for the safe operation, maintenance and sanitation of businesses
- Attending an appointment at a business or place that is permitted to be open by appointment under the [Stage 1 Order](#)
- Purchasing or picking up goods through an alternative method of sale, such as curbside pickup, from a business or place that is permitted to provide curbside pickup under the Stage 1 Order
- Attending an appointment at a business or place that is permitted to be open by appointment under the Stage 1 Order
- Obtaining services from a financial institution or cheque cashing service
- Attending a place as required by law or in relation to the administration of justice
- Travelling to an airport, bus station or train station for the purpose of travelling to a destination that is outside of the province

These measures (seen here in this [Government of Ontario document](#)) will impact workplaces across Ontario. Businesses or organizations are required to comply with the advice, recommendations, and instructions of public health officials – including any advice concerning social or physical distancing, cleaning or disinfecting, and working remotely. It is advisable to [check with your local public health unit](#) for additional recommendations and instructions.

Cassels has outlined measures which are relevant to businesses below.

Emergency Measures for Businesses, Organizations and Facilities

Work From Home Except Where Necessary

Individuals responsible for a business or organization that is open must make sure that any person who performs work for their business or organization conducts their work remotely, with limited exceptions, for example, where the nature of their work requires them to be on site at the workplace.

Screening

Businesses must comply with the advice and instructions of the Office of the Chief Medical Officer of Health with respect to screening individuals. Additionally, workplaces must screen any workers or visitors entering the work environment (see the [COVID-19 Screening Tool for Workplaces](#) for more information).

Face Coverings

Businesses must ensure that masks or face coverings (that cover the mouth, nose and chin) are worn by any person (including members of the public and workers) in the indoor areas of the business, with limited exceptions.

Capacity Limits

All businesses or facilities must limit capacity so that every member of the public is able to maintain two metres of physical

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distancing from every other person and limit the number of people occupying a room that is open to the public to 50% capacity of the particular room. Some businesses or facilities have restrictions that apply beyond the general capacity requirements.

Additionally, businesses or facilities that engage in retail sales to the public must post a sign visible to the public that states the maximum capacity they are permitted to operate under.

Safety Plans

There is a requirement for all open businesses to prepare and make available a COVID-19 safety plan. A copy of the plan shall be made available to any person for review upon request, and be posted where it would come to the attention of individuals working in or attending the business (see more information on [how to develop your COVID-19 Safety Plan](#)).

Businesses Permitted to Open (Exemptions)

The province of Ontario has identified businesses which are permitted to stay open during the state of emergency. It is a large comprehensive list and Cassels has highlighted a number of businesses that are relevant to the majority of our client base. For a full list of businesses that are permitted to stay open, please [click here](#).

Supply Chain

Businesses that supply businesses or places that are permitted to open within Ontario, or that supply businesses or services that have been declared essential in a jurisdiction outside of Ontario, with the support, products, supplies, systems, or services, including processing, packaging, warehousing, distribution, delivery, and maintenance necessary to operate.

Restaurants, Bars and Other Food and Drink Establishments

Only take-out, drive-through and delivery are permitted. This includes the sale of alcohol.

Retailers

Supermarkets, convenience stores, indoor farmer's markets and other establishments which sell primarily food

- Members of the public being able to maintain two metres physical distance from every other person in the business or facility and complying with face covering rules
- The number of persons occupying any room that is open to the public does not exceed 50% capacity of the particular room
- Curbside pick-up and delivery are permitted

Pharmacies

- Members of the public being able to maintain two metres physical distance from every other person in the business or facility and complying with face covering rules
- The number of persons occupying any room that is open to the public does not exceed 50% capacity of the particular room
- Curbside pick-up and delivery are also permitted

Discount Retailers and Big Box Stores that Sell Groceries

- Members of the public being able to maintain two metres physical distance from every other person in the business or facility
- The number of persons occupying any room that is open to the public does not exceed 25% capacity of the particular room
- Curbside pick-up and delivery are permitted

For **other retailers**, distancing and face covering rules apply. Furthermore, operating hours are only between 7am and 8pm.

Safety supply stores, businesses that sell, rent or repair assistive/mobility/medical devices, and optical stores that sell prescription eyewear to the public

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by appointment only

- Limit the number of persons occupying any room that is open to the public in the business to not exceed 50% capacity of the particular room
- Curbside pick-up and delivery are permitted
- Operating hours of 7am to 8pm

Shopping Malls

- Closed for in-person retail. Members of the public are only permitted to enter the mall to:
 - Access businesses and organizations permitted to be open (e.g., pharmacy, dentist); food court open for take away, or by appointment only to facilitate pick-up as set out below
 - Access court services and government services
- Shopping malls can establish:
 - A single designated location inside the shopping mall for order pick-up by patrons. Pick-up inside the shopping mall must be by appointment only
 - Any number of designated locations outside the shopping mall for curbside pick-up by patrons
- Members of the public not permitted to loiter in any area of the shopping mall that is not related to the purpose of their visit
- Must open no earlier than 7am and close no later than 8pm, except to provide access to grocery stores/supermarkets, pharmacies, and healthcare providers that only have public entrances that face the interior of the mall

Cannabis retail stores operating under the authority of a retail store authorization issued under the Cannabis Licence Act, 2018

- By curbside pick-up or delivery only; operating hours of 7am to 8pm
- An item may only be provided for curbside pick-up if the patron ordered the item before arriving at the business premises

Motor Vehicle Sales

- Includes cars, trucks and motorcycles; recreational vehicles including motor homes; trailers and travel trailers; boats and other watercraft; and other motorized vehicles, including power assisted bicycles, golf carts, scooters, snowmobiles and all terrain vehicles
- By appointment only
- Members of the public must not be permitted where products are neither sold nor displayed for sale
- Subject to certain conditions related to test drives
- Operating hours of 7am to 8pm

General Retail (all other retail, including hardware, pet food, computers, etc.)

- Curbside pick-up or delivery only (in person retail shopping not permitted)
- An item may only be provided for curbside pick-up if the patron ordered the item before arriving at the business premises
- Sales must be exclusively made so patrons are not required to enter the indoor area of the business, including curbside pick-up or delivery
- Operating hours of 7am to 8pm

Services

Rental and Leasing Services (including automobile, commercial and light industrial machinery and equipment rental)

- By appointment only

Domestic Services

- Only to support children, seniors or vulnerable persons, including housekeeping, cooking, indoor and outdoor cleaning and maintenance services

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Vehicle Services (including equipment repair and essential maintenance and vehicle and equipment rental services)

- By appointment only

Staffing services including providing temporary help are permitted to remain open.

Hotels, motels, lodges, cabins, cottages, resorts and other shared rental accommodation, including student residences are permitted to remain open subject to the conditions below:

- Any indoor pools, indoor fitness centres, or other indoor recreational facilities that are part of the operation of these businesses, are closed
- Pre-arranged booking for short term rentals prohibited with exceptions for housing requirements

Financial Services

These following **Financial Services** are permitted to open:

- Capital markets and related securities trading and advisory services
- Banking/credit union activities including credit intermediation
- Insurance
- Land registration services
- Pension and benefits payment services
- Financial services including payroll and payment processing and accounting and tax services

Real Estate Services (including pre-sale construction)

- No open houses showing a property, permitted by appointment only

Telecommunications and IT Infrastructure/Service Providers

Information Technology (IT) services, including online services, software products and the facilities necessary for their operation and delivery are permitted to open.

As are **telecommunications providers and services (phone, internet, radio, cell phones etc.) and facilities necessary for their operation and delivery** are permitted to open with the condition noted below:

- Retail stores operated by a telecommunications provider or service may only permit members of the public to enter the premises by appointment and only for repairs or technical support

Newspapers, radio and television broadcasting are permitted to open.

Maintenance Services

Maintenance, repair and property management services that manage and maintain the safety, security, sanitation and operation of institutional, commercial, industrial and residential properties and buildings are permitted to open.

Transportation Services

The following **transportation services** are permitted to be open in Ontario:

- Transportation services provided by air, water, road, and rail, including taxis and other private transportation providers
- Support services for transportation services, including:
 - logistical support, distribution services, warehousing and storage, truck stops and tow operators, and
 - services that support the operations and safety of transportation systems including maintenance and repairs
- Marinas, boating clubs and other organizations that maintain docking facilities for members or patrons with conditions
- Businesses that provide and support online retail, including by providing warehousing, storage and distribution of goods that are ordered online

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Manufacturing

The following kinds of **manufacturing** businesses are permitted to remain open:

- Businesses that extract, manufacture, process and distribute goods, products, equipment and materials, including businesses that manufacture inputs to other manufacturers (e.g., primary metal/ steel, blow molding, component manufacturers, chemicals, etc. that feed the end product manufacturer), regardless of whether those other manufacturers are inside or outside of Ontario, together with businesses that support and facilitate the movement of goods within integrated North American and global supply chains

Agriculture and Food Production

The following categories of **agriculture and food production** businesses are permitted to remain open in Ontario:

- Businesses that produce food and beverages, and agricultural products including plants, including by farming, harvesting, aquaculture, hunting and fishing
- Businesses that process, manufacture or distribute food, beverages, crops, agricultural products, animal products and by products
- Businesses that support the food or agricultural products supply chains and the health and safety of food, animals and plants

Construction

With respect to **construction**, the following descriptions of business are permitted to remain open:

- Permitted construction activities or projects and related services, including land surveying and demolition services
- Construction projects and services associated with the healthcare sector and long-term care, including new facilities, expansions, renovations and conversion of spaces that could be repurposed for health care space
- Construction projects and services required to ensure safe and reliable operations of, or to provide new capacity in, provincial and municipal infrastructure, including transit, transportation, energy, mining and justice sectors beyond the day-to-day maintenance
- Construction projects and services that support the operations of, and provide new capacity in schools, colleges, universities, municipal infrastructure and child care centres within the meaning of the *Child Care and Early Years Act, 2014*
- Construction projects under the Investing in Canada Infrastructure Program
- Construction projects and services that support the operations of Broadband internet and cellular technologies and services
- Critical industrial construction activities required for
 - the maintenance and operations of petrochemical plants and refineries
 - significant industrial petrochemical projects where preliminary work has already commenced
 - industrial construction and modifications to existing industrial structures limited solely to work necessary for the production, maintenance and/or enhancement of Personal Protective Equipment, medical devices (such as ventilators), and other identified products directly related to combatting the COVID-19 pandemic
- Construction projects that are due to be completed before July 2021 and that would provide additional capacity in the production, processing, manufacturing or distribution of food, beverages or agricultural products
- Construction projects that were commenced before January 12, 2021, and that would
 1. provide additional capacity for businesses that provide logistical support, distribution services, warehousing, storage or shipping and delivery services, or
 2. provide additional capacity in the operation and delivery of Information Technology (IT) services or telecommunications services
- Residential construction projects where
 - a footing permit has been granted for single family, semi-detached and townhomes
 - the project is a condominium, mixed use or other residential building, or

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- the project involves renovations to residential properties and construction work was started **before January 12, 2021**
- Construction to prepare a site for an institutional, commercial, industrial or residential development, including any necessary excavation, grading, roads or utilities infrastructure
- Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure ongoing public safety
- Below-grade multi-unit residential construction projects, such as apartments and condominiums
- Construction on any project intended to provide either, affordable housing, or shelter or supports for vulnerable persons
- If the project is being funded in whole or in part by, or is being undertaken by, any of the following:
 - 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 in the *Housing Services Act, 2011*, or
 - a registered charity and not for profit within the meaning of the *Income Tax Act (Canada)*

The Ontario government also provided that businesses must follow public health measures and should review the workplace safety guidelines. Enhanced with:

- Workplace testing
- Additional enforcement to ensure compliance

Resources and Energy

Resource and energy businesses that are permitted to remain open:

- Businesses that provide and ensure the domestic and global continuity of supply of resources, including, resource exploration, mining, forestry, aggregates, petroleum, petroleum by products and chemicals
- Electricity generation, transmission, distribution and storage and natural gas distribution, transmission and storage

Research

Research-oriented businesses that are permitted to remain open:

- Businesses and organizations that maintain research facilities and engage in research, including medical research and other research and development activities

Health Care and Social Services

Health care and social services businesses that are permitted to remain open in Ontario:

- Organizations and providers that deliver home care services or personal support services to seniors and persons with disabilities
- Organizations that provide health care including retirement homes, hospitals, clinics, long term care facilities, independent health facilities and mental health and addictions counselling supports
- Laboratories and specimen collection centres
- Manufacturers, wholesalers, distributors and retailers of pharmaceutical products and medical supplies, including medications, medical isotopes, vaccines and antivirals, medical devices and medical supplies
- Manufacturers, distributors and businesses that provide logistical support of or for products and/or services that support the delivery of health care in all locations
- Businesses that are primarily engaged in the provision of health and safety training with conditions

Media Industries

The following are **media industries** which are permitted to remain open in Ontario:

- Sound recording, production, publishing and distribution businesses

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- Film and television production, including all supporting activities such as hair, makeup and wardrobe – with the following restrictions below:
 - No studio audiences permitted to be on the film or television set
 - No more than 10 performers may be permitted to be on the film or television set
 - Set must be configured and operated in such a way as to enable persons on the set to maintain a physical distance of at least two metres from other persons, except where necessary for the filming of the film or television production
 - Persons who provide hair or makeup services must wear appropriate personal protective equipment
 - Singers and players of brass or wind instruments must be separated from any other performers by plexiglass or some other impermeable barrier
- Film and television post-production, visual effects and animation studios
- Book and periodical production, publishing and distribution businesses
- Commercial and industrial photography (although this does not allow retail studios to open)
- Interactive digital media businesses, including:
 - Computer system software or application developers and publishers, and
 - Video game developers and publishers

The author appreciates and acknowledges the assistance of [William Onyeaju](#), articling student, in researching and preparing this document.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.