



## Introduction

COVID-19 has changed the world in a heartbeat. The Ontario government, like other provinces, has used emergency management legislation to shut down a great deal of the private sector. The courts, deemed an "essential" workplace, shut themselves down, so there will likely be no new Occupational Health Safety (OHS) case law in the near term. However, we have tackled the COVID-19 workplace hazard head on with our newsletter. Hopefully this edition of "Do Diligence" will inform and equip employers in protecting its workers and workplaces from the deadly virus during the pandemic.

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## Featured Articles

### Return to Work After COVID-19 Shutdown: OHS Law Compliance, Best Practices and Due Diligence

[Norm Keith](#), Toronto | [Carla Oliver](#), Toronto

The coronavirus, that results in the infection known as COVID-19, has resulted in a pandemic. The worldwide effects have been catastrophic; senior citizens, those with underlying medical conditions, respiratory diseases, and other co-morbidity illnesses are at the greatest risk. COVID-19 has also resulted in an unprecedented non-wartime exercise of emergency powers by governments around the world to reorder supply chains, authorize expenditures and shut down "non-essential" businesses and workplaces.

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## Events

June 16, 2020 | Toronto

### [What to do When the OHS Inspector Arrives during the COVID-19 Pandemic](#)

When an OHS Inspector arrives at the workplace or calls on the phone, many employers do not know what to do and what are their legal rights. This has been made more important during the COVID-19 pandemic. The Occupational Health & Safety Act ("OHS Act") both authorizes and provides limits on the authority of OHS inspectors. This seminar was updated to deal with the quickly evolving COVID-19 pandemic and its effect on workplace safety and to answer questions about their rights and responsibilities during an OHS inspectors investigation. Whether an OHS Inspector arrives for a routine inspection, whistleblower complaint, work refusal, a COVID-19 related complaint or an accident investigation, know your rights and responsibilities.

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The symptoms of COVID-19 are often indistinguishable from other respiratory infections. They include fever, cough, sore throat, headache, fatigue, myalgia, breathlessness and conjunctivitis. Fever is not present in all cases. Within one week of experiencing symptoms, those infected may contract pneumonia, experience respiratory failure, or die. Other medical complications displayed by those with the disease include acute lung injury, shock, and acute kidney injury. Nausea, vomiting, and diarrhea are not frequently present in COVID-19 patients. The World Health Organization (WHO) has identified aches and pains, nasal congestion, loss of taste or smell, rash, and discoloration of fingers or toes as additional symptoms.

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## Contact Tracing as a Control Measure

**Carla Oliver**, Toronto

Businesses are slowly beginning to reopen across Canada and employers are planning their return to work strategies. This may include implementing new controls in order to prevent the transmission of COVID-19 at the workplace. Controls may range from installation of physical barriers at workplace locations to staggering work hours and/or recommendations for personal protective equipment to be worn.

One control that employers should also be considering is contact tracing. But what is contact tracing and how might that be implemented in a workplace?

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## Workers' Compensation Claims and COVID-19

**David Marchione**, Toronto

Employers have a number of questions regarding workers' compensation claims reporting and management coming out of the COVID-19 pandemic, including whether claims for COVID-19 should be reported to the compensation board and whether workers would be entitled to workers' compensation benefits for COVID-19 and lost time for workers who are required to self-isolate when suspected of

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having it. Each provincial compensation board has published information surrounding these issues.

## Can a Worker get Entitlement to WCB Benefits for COVID-19?

While most compensation boards have taken the position that most cases of COVID-19 will not be work-related, workers may be entitled to benefits under certain circumstances. Generally, workers can have entitlement under the provincial workers' compensation regime for COVID-19 if they contracted it as a direct result of their employment. The compensation boards in the majority of provinces have set out criteria for entitlement including:

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## Terminations for Health & Safety Violations: Just Cause or Just Because

**Cathy Chandler**, Toronto

When it comes to employee performance management, can health and safety violations justify the "for cause" termination of an employee? The short answer to this question is yes *and* no.

Ultimately, there is no fixed rule as to the degree of misconduct required to justify a dismissal for just cause. So, where does that leave employers when it comes to understanding whether a just cause termination is appropriate for a health and safety violation?

Let's start with the fact that just cause for employee misconduct is very difficult to establish. Essentially, the misconduct must be so grievous as to breach the "fundamental terms and conditions" of the employment relationship. The employee's employment history, remorse and planned course of action in response to the misconduct are relevant to the determination of discipline. In other words, not every instance of employee misconduct will amount to just cause.

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