COVID-19 Update : Reopening of Physical Workplaces and Return to Work – Considerations for the Agri-Food and Manufacturing Sectors



Most Canadian provinces, including British Columbia, Alberta, Ontario and Québec, have now announced frameworks for the reopening of businesses and the return of employees to physical workplaces.

This publication highlights selected considerations most particularly relevant to the agri-food and manufacturing sectors that can assist in informing the decisions of business leaders in those sectors while turning their minds to the reopening of their businesses and physical workplaces.

While we recognize that many businesses in the agri-food and manufacturing sectors have continued to operate as a result of being categorized as essential or priority workplaces, services or activities, the information in this publication remains relevant, as the primary consideration for those businesses that continued to operate and those that plan to reopen is the same – that the focus should be grounded in health and safety considerations with the goal of protecting the workplace from the spread of COVID-19 now and in the future, recognizing the risk of a second wave.

This publication does not purport to discuss all relevant considerations. Employers must notably consider their legal obligations under applicable occupational health and safety legislation, including their duty as employers to take every precaution reasonable in the circumstances to protect workers' health and safety. In accordance with their legal obligations, businesses should be reviewing the requirements, recommendations and guidelines applicable to their workplaces. Such a review should be done in tandem with a review of health and safety policies and practices as businesses will need to assess whether they are meeting both their legitimate objective and legal obligation to provide for a safe workplace.

In that regard, readers are encouraged to consult a recent blog post from our firm's Labour & Employment group, which sets out a more comprehensive series of general considerations for employers as they plan for the reopening of their businesses and the return of their employees to their physical workplaces. These general considerations, which cover topics such as those described below, are not necessarily discussed in this publication, but are likely relevant to the agri-food and manufacturing sectors.

- How should employers plan for reopening?
- When should business reopen?
- What should be considered to ready the physical workplace for reopening?

- Workplace reconfiguration considerations
- Access considerations
- Sanitization considerations
- Signage and notification considerations
- Personal protective equipment (PPE) considerations

- What policy changes may be appropriate?
- How will third-parties be managed?
- How will employees be called back to work?
- What other health and safety protocols should be considered upon reopening?

This publication considers governmental and public health announcements available as of **May 5, 2020**. The information in this publication is a general summary only and does not constitute legal advice. Each workplace has its own particularities, and the considerations governing business decisions will differ. For clarity, this publication is not addressed to restaurants and other food retail outlets, which are in many respects subject to distinct considerations. If you sell food products to retail consumers, please see our guide for retailers re-opening their businesses.

We will be providing updates as reopening plans are announced or updated. Please visit our COVID-19 Recovery Hub for regular updates. For general guidelines applicable to all businesses, please see our COVID-19 recovery and reopening tracker.

General Considerations

Workplaces where products are manufactured or produced, whether food products or other types of products, are often characterized by the fact that significant numbers of people are present in areas where it is sometimes difficult or even impossible to maintain appropriate physical distancing, whether in production or merchandise handling areas, dining or break rooms, restrooms, locker or changing rooms, or in transport.

In many instances, businesses may have to implement major changes in order to be able to follow applicable requirements, recommendations and guidelines, arising from COVID-19-related restrictions, which may notably impact the configuration of production lines and other areas, work methods, or the speed and capacity of production more broadly.

Agri-food and manufacturing businesses sometimes employ temporary foreign workers and/or employment agency workers, which raise a number of specific issues, including in connection with higher employee turnover, arrival of foreign workers in Canada, housing of employees, or the transport of employees to the worksite.

Reopening timetables vary from one province to another. Although they are based on the same overarching principle that the reopening of businesses should prioritize health and safety considerations with the goal of protecting the workplace from the spread of COVID-19 and are in many instances similar, requirements, recommendations and guidelines may vary province-by-province.

We have set out below key requirements, recommendations and guidelines published to date in British Columbia, Alberta, Ontario and Québec in connection with the reopening of agri-food and manufacturing businesses.

Federal

Generally-Applicable Guidelines

The Federal Government has issued a detailed risk assessment tool intended to guide businesses and workplaces in their efforts to prevent and reduce the spread of COVID-19 while maintaining or reopening their operations (the "Guidelines"). While the Guidelines apply across industries, a number are of particular relevance for agri-food and manufacturing facilities.

The Guidelines identify risk considerations and mitigation strategies associated with various workplace characteristics, including the physical working environment and the demographics of the employee and other populations interacting at a given facility. We underscore the fact that the Guidelines are not mandatory, but rather set out recommended measures that may be instituted in workplaces as industry members balance the prospect of reopening (to varying degrees) while continuing to work to prevent and contain the spread of COVID-19.

The Guidelines are structured to allow businesses to assess those features of their workplaces and the nature of the work performed there that introduce or heighten risk of transmission, and identify and implement viable mitigation strategies. At a high level, those recommendations that are most relevant to the agri-food and manufacturing businesses include:

- Implementing staggered start times where a shift structure is a feasible option;
- Modifying infrastructure to enhance spatial distancing by 2 meters;
- Where workers are required to touch common objects (such as hand rails or equipment), reinforce the importance of frequent hand hygiene;
- Preparing to institute flexible workplace and leave policies for employees who are sick, are in self-isolation, or are caring for family members;
- Introducing additional hand cleaning stations within the workplace;
- Implementing enhanced environmental cleaning procedures and protocols, particularly with respect to high-touch surfaces; and
- Preparing for rapid isolation of symptomatic employees.

In all, the themes running throughout the Guidelines are grounded in the principles of maintaining concerted efforts to permit physical distancing (and where this is not possible, permitting the use of non-medical masks and face coverings), and ensuring that those who are experiencing symptoms or ought to be in self-isolation do not enter the workplace.

Businesses employing Temporary Foreign Workers

Employment and Social Development Canada ("ESDC") has released guidance that should be considered by those agri-food and manufacturing businesses that employ temporary foreign workers ("TFWs"). Pursuant to Emergency Order 2020-0175, issued under the authority of the *Quarantine Act*, all TFWs are required to self-isolate for two weeks upon arrival in Canada. ESDC's guidance enumerates a number of criteria with which employers must comply. Most fundamentally, employers are required to:

- Continue to comply with all laws and policies governing the employer-employee relationship, including during the mandatory self-isolation period;
- Pay TFWs regular pay and benefits during the mandatory self-isolation period; and
- Ensure TFWs do not perform any work during the mandatory self-isolation period.

Agri-food and manufacturing businesses who rely on TFWs should review ESDC's guidance in detail to fully understand their obligations in relation to TFWs as COVID-19 response measures remain in place.

Canadian Food Inspection Agency

The Canadian Food Inspection Agency ("CFIA") has also issued a number of guidance documents outlining the exceptional measures and temporary procedures it has put in place in response to the COVID-19 outbreak, which can be reviewed here.

With respect to the prospective reopening of those agri-food and manufacturing operations that did not continue to operate as essential services, the CFIA recognizes that physical distancing of 2 meters may not be possible in many facilities. Echoing the Guidelines referred to above, the CFIA emphasizes the need to institute enhanced hygiene practices in those facilities where the recommended spatial distancing cannot be fully achieved. The CFIA also refers to the Guidelines as a source of alternate recommended measures for facilitating physical distancing as industry members consider how to safely return workers to their facilities.

British Columbia

On May 4, 2020, BC Minister of Health Adrian Dix announced that the provincial government will outline its plans to reopen the economy post-COVID-19 on May 6, 2020.

The BC government has declared agriculture, fishing, food processing and businesses that support the food supply chain essential services. In BC, essential services are services that should and are encouraged to remain open, provided they follow the orders, notices and guidance issued by the Provincial Health Office to ensure safe operations and reduce the risk of transmission of COVID-19.

The following orders, notices and guidance are relevant to BC agri-food and manufacturing businesses:

- On March 25, 2020, the Province issued guidance to BC manufacturers during COVID-19 focused on limiting the risk of COVID-19 transmission and illness to themselves and their employees, including by implementing physical distancing, limiting mass gatherings, increasing sanitation and quarantining sick and symptomatic employees.
- On April 6, 2020, the Provincial Health Officer issued guidance for farms and farm workers, which includes recommendations for all farms as well as mandatory requirements for farms employing temporary foreign workers.
- On April 23, 2020, the Provincial Health Officer promulgated the Industrial Camps Order requiring employers of workers in agriculture and aquaculture who live in employer-provided large industrial camps to, amongst other things, develop COVID-19 infection prevention and control protocols, maintain high levels of accommodation, worksite and worker hygiene, develop rapid responses for workers who develop COVID-19 symptoms and arrange for worksite inspections. Under the order, employees also have obligations. They are required to follow COVID-19 infection prevention and control protocols, to limit non-essential movement and to reduce close contact with other persons, to self-monitor and self-isolate where appropriate. On April 28, 2020, the BC Centre for Disease Control ("BC CDC") published guidance for large industrial camps.

The BC CDC has published answers to common questions for food businesses, including about how the spread of COVID-19 may be reduced in food businesses, what physical distancing measures should be put in place, what sanitation food industries require,

how to manage ill employees and tips for food service workers to reduce their risk of contracting COVID-19. The BC CDC has also published information about food banks and food distribution during COVID-19.

WorkSafeBC has published industry specific guidance for manufacturing and agriculture employers. It has also produced a guide on preventing exposure to COVID-19 in the workplace, COVID-19 health and safety information and COVID-19 frequently asked questions.

Finally, BC's Ministry of Agriculture published its Response to COVID-19 resource, last updated April 29, 2020.

Alberta

In Alberta, many agri-food related manufacturing sectors are permitted to provide essential services throughout the COVID-19 pandemic provided they have proper risk mitigation measures in place, such as sanitation stations and appropriate distancing between customers. The businesses and sectors permitted to continue operating include, for example: supply chain distribution and wholesale businesses; food distribution facilities; food production businesses; food preparation facilities; food delivery services; businesses that support the food supply chain; services or businesses that farm, harvest, process, manufacture, produce or distribute food; businesses supporting the safety of food; industries or services that extract, manufacture, process and distribute goods, products, equipment and materials; manufacturing of necessary materials and products for energy; liquor and cannabis manufacturers; water purification operations; and businesses that provide for the health and welfare of animals.

On April 30, 2020, the Alberta Government released a document entitled "Opening Soon – Alberta's Relaunch Strategy", which set out three stages of relaunch for the Alberta economy generally, including agri-food and manufacturing businesses that do not provide essential services. Enhanced infection prevention and control measures will be in place throughout all stages:

Stage 1 (as early as May 14):

- Physical distancing of 2 meters is maintained, and masks are encouraged where unable to maintain physical distancing.
- Rules and guidance will be provided for the use of masks in crowded spaces.
- Remote working is advised where possible.

Stage 2 (timing to be determined based on health indicators):

- Physical distancing of 2 meters is maintained, and masks are encouraged where unable to maintain physical distancing.
- This stage will allow additional businesses and services to reopen and resume operations with 2 meters physical distancing requirements and other public health guidelines in place.
- Remote working is no longer advised.

Stage 3 (timing to be determined based on health indicators):

- Physical distancing of 2 meters is maintained, and masks are encouraged where unable to maintain physical distancing.
- All businesses and services will be fully reopened, with limited restrictions.
- Larger gatherings are permitted (number of people to be determined).

The relaunch strategy also includes ongoing monitoring of cases to enable the Alberta Government to proactively respond in localized areas of the province, suggesting that there may be some distinction between the restrictions in force in different areas of the province in the future.

The Alberta Government has published a "Workplace Guidance for Business Owners" to provide guidance to businesses in reducing the risk of transmission of COVID-19 for workers, volunteers, and patrons. Appendix B of this guide provides additional guidance for large production facilities. This guide is meant to provide baseline guidance but does not replace any additional or more stringent guidelines and regulations, and other legal obligations, applicable to each business and industry.

The Alberta Government has also created an "Agriculture Job Connector" tool to help agricultural employers find skilled workers to keep Alberta's food supply safe.

Ontario

On April 27, 2020 the Ontario Government released *A Framework for Reopening our Province*. The framework introduces a three-stage process to be followed in the coming weeks and months. Further information can be found here.

On April 30, 2020, the Ontario Government, in partnership with the Ministry of Labour, Training and Skill Development and four provincial health and safety associations, released a series of more than 50 technical sector guidance documents.

The Ontario Government also prepared guidance notes for five key economic sectors: (i) construction (ii) manufacturing, (iii) food manufacturing and processing, (iv) restaurant and food service, and (v) the agricultural sector. The new guidance notes provide government-recommended actions for employers operating in the province to take as they begin to plan for and adapt to the new reality during the ongoing COVID-19 outbreak:

- Food manufacturing and processing health and safety during COVID-19
- Manufacturing health and safety during COVID-19

Québec

In Québec, priority manufacturing activities allowed from the outset to remain in operation included, among others, food production (agricultural enterprises, including the construction and renovation of agricultural buildings, food processing, drink production, slaughterhouses, market-garden vegetable and horticultural production, fisheries and commercial aquaculture) and the production of inputs necessary for priority sectors.

Until April 27, 2020, the sectors subject to reopening in Québec were added to the list of priority services and activities.

On April 28, 2020, the Québec Government announced the gradual reopening of various sectors and businesses not already included in the list of priority services and activities and indicated that the reopenings, as approved by public health authorities, would occur in phases according to the areas of activity and geographic zones, and would have to be implemented in a way that ensures the health and safety of workers and customers. As regards to manufacturing businesses not already included in the list of priority services and activities, the Québec Government announced the following:

Starting on May 11, 2020, manufacturing companies in all regions of Québec can resume

their activities. However, they must at all times throughout the day limit staff per shift on a given site to a maximum of 50 workers and 50% of the employees exceeding the limit of 50 workers. Some examples:

- a manufacturing site that employs 60 workers on a shift must operate with a maximum of 55 employees;
- a manufacturing site that employs 500 workers on a shift must operate with a maximum of 275 employees.

Starting on May 25, 2020, manufacturing companies throughout Québec will be authorized to resume their operations with no restriction on the number of employees present to ensure such operations. All employees who can engage in teleworking must continue to do so.

Manufacturing companies already in operation to produce priority services and activities or inputs or raw materials required by priority services and activities with a number of employees beyond the limit adopted starting from May 11 can continue at the same pace until May 25.

The Québec Government has prepared a Q&A guide which addresses questions that employers may have with regards to the reopening of plants. As regards to health and safety requirements more specifically, the CNESST has published a series of guidelines and toolkits, including one that is specific to the manufacturing sector. The Québec Public Health Institute has published useful tools (some only available in French) including for the food processing industry, the meat slaughtering sector, fisheries (unavailable in English), transformation of marine produce (unavailable in English), and vegetable and animal production (unavailable in English).

In addition, the Québec Government's instructions regarding mandatory isolation for 14 days of foreign workers and the Quebec Public Health Institute's guidelines (unavailable in English) provide guidance regarding how employers can accommodate foreign workers. On April 26, 2020, the Quebec government allowed biofood producers and processors to rent accommodation units in an accommodation establishment regulated by the *Act respecting tourist accommodation establishments* to house their employees.

To view the original article click here.

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