

2019 BOMA Canada  
**Guide to Pandemic Planning**

This Guide is Sponsored by:



# Acknowledgement

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- (i) Any governmental health authority;
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## DSC Global and BOMA Canada are proud to present the BOMA Canada Pandemic Guide—an important tool for property owners and managers.

Following the SARS outbreak in Canada, industry visionaries, led by BOMA Canada, took a bold initiative and published the first pandemic guide. This valuable publication was widely embraced by the commercial real estate industry across Canada.

Today, more than ever, building owners and managers need to be ready for pandemics. The number of people entering our properties is expanding, the population is aging and the world is globalizing. Together, these factors mean that pandemics can spread more quickly than in the past.

The 2019 edition of our Pandemic Guide has been released with the most up to date preparedness recommendations and we encourage you to review it. Pandemics are unpredictable, both in their timing and their severity, however, there are steps building owners and managers can take to both prepare for and address a pandemic when the next one happens. This Guide will assist our members in developing strategies to protect tenants, visitors and staff.

Some strategies outlined in this Guide may also help members manage seasonal influenza in years when it is more severe. Like a pandemic, and as last year's flu season demonstrated, seasonal influenza can be described as "predictably unpredictable" with respect to severity and outcome.

With the recent outbreak of coronavirus in China, and cases now spreading closer to home, the need to be prepared for a pandemic has never been stronger. Sponsored by DCS Global, BOMA Canada prepared this Pandemic Guide as a way to help you meet the challenge of such outbreaks. We wish you, your employees, your tenants, your vendors and your guests safety, health and security throughout all your buildings.



**Benjamin Shinewald**  
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## Contents

Acknowledgement & Copyright	<b>2</b>
Disclaimer of Any Legal Liability	<b>3</b>
Welcome Letter	<b>4</b>
Introduction	<b>6</b>
Your Property's Pandemic Plan	<b>7</b>
Employee Health & Safety Considerations	<b>8</b>
Physical Environment	<b>9</b>
Communicating in a Pandemic	<b>10</b>
Supplies and Suppliers	<b>11</b>
Information Technology Considerations	<b>13</b>
Security	<b>13</b>
Legal Considerations for Property Owners and Managers	<b>14</b>
Conclusion	<b>19</b>

# Introduction

*“For too long, we have allowed a cycle of panic and neglect when it comes to pandemics: we ramp up efforts when there is a serious threat, then quickly forget about them when the threat subsides. It is well past time to act....the world is not prepared.”*

– from A World at Risk: Annual report on global preparedness for health emergencies.

Geneva: World Health Organization, 2019.

Over a decade has past since the 2009 influenza pandemic. Since then, while progress has been made in the fields of influenza surveillance, prevention, and treatment, there remains serious concerns that all sectors of society remain under-prepared for the challenges of a significant pandemic.

According to the World Health Organization, “... pandemics are unpredictable, but recurring events that can cause severe social, economic, and political stress. Advanced planning and preparedness are critical in helping to mitigate their impact.”

Does your business have an up-to-date Pandemic Plan? Have your employees received training on the Plan and exercised it? Do they understand how your property will operate during a pandemic, how their roles and responsibilities may change during a pandemic, and how their health and safety will be protected in the workplace?

If you need to develop a Pandemic Plan for your business, or if you simply need to review and update an existing plan, this Guide outlines eight important

categories for your consideration. These categories are not an exhaustive list of every pandemic-related business deliberation. However, we hope that this Guide will provide you with helpful ideas and suggestions to assist in your pandemic planning efforts.

Content is based upon public health expertise and planning guidance, lessons observed from the 2009 pandemic, best-practice emergency management approaches, and the collective wisdom and advice from a team of expert BOMA Canada members. We hope you'll find this Guide helpful in your own preparations.

Sincerely,  
BOMA Canada

# Your Property's Pandemic Plan

Pandemics require unique planning because of the specific challenges they pose to continuity of operations, including increased staff absenteeism, changes to the way services are delivered to customers, and interruptions in supply and delivery chains.

The following general planning recommendations are based upon guidance from public health authorities, including the Public Health Agency of Canada, and the Canadian Centre for Occupational Health and Safety:

- Create a Pandemic Planning Committee, chaired by a designated Pandemic Coordinator. Membership in your company's Pandemic Planning Committee should include representation from every department to ensure your plan considers business impacts from all angles.
- Integrate your Pandemic Plan with an all-hazards emergency plan, e.g., as one of several hazard-specific appendices in your property's all-hazards emergency plan.
- Reference guidance from your provincial/territorial pandemic plan and be in alignment with the most current planning assumptions such as infection and fatality rates, possible worker absenteeism levels, expected duration of the pandemic, and expected waves of illness.
- Ensure your Plan clearly outlines pandemic response actions so that your property is ready to respond quickly if a pandemic is declared. The Pandemic Planning Committee overseeing the development of the Plan should identify preparedness activities, templates and tools needed to enable a nimble and effective pandemic response.
- Consider various scenarios, ranging from a mild pandemic to a severe one, and specify the actions to be taken in different scenarios.
- Include the following information in your Property

Pandemic Plan:

- > Plan activation triggers
  - > Essential/critical functions which need to be maintained during a pandemic
  - > Staffing required to maintain these functions
  - > Cross-training required to ensure critical functions are maintained
  - > Equipment, supplies and suppliers required to enable the continuity of essential functions
  - > Critical interdependencies
  - > Protecting employee health and safety
  - > Protecting tenant and visitor health and safety
  - > Crisis communications
- Coordinate your Plan with the plans of key stakeholders including suppliers, business and community partners, tenants, and local/regional governments. This will encourage coordination, clarify expectations, reveal gaps and faulty assumptions, and promote consistency.

Once your Plan has been finalized and approved, it is important to develop and execute a training strategy which includes one or more tabletop exercises to ensure stakeholders understand the Plan and its protocols and procedures. To promote multisector coordination, community partnerships, and foster a "whole-of-society" approach, invite community partners and tenants to your training and exercise events and attend theirs.

## **For further information**

More pandemic planning guidance and advice can be found at:

- [World Health Organization, Whole of Society Pandemic Readiness.](#)
- <https://www.canada.ca/en/public-health/services/flu-influenza/canadian-pandemic-influenza-preparedness-planning-guidance-health-sector.html>
- <https://www.ccohs.ca/publications/PDF/businesscontinuity.pdf>

# Employee Health & Safety Considerations

The health and safety of employees in a pandemic is a crucial concern for your Pandemic Planning Committee. Here are a few considerations adapted from the United States Occupational Health and Safety Administration's Guidance on Preparing Workplaces for an Influenza Pandemic:

- Identify exposure and health risks to your employees. Which personnel have a lot of contact with the general public?
- Some staff, including those who are immune-compromised and pregnant employees may have additional individual risk factors which need to be addressed.
- Think about how to adapt services and processes using social distancing. Social distancing means minimizing human-to-human contact. Some adaptations for consideration include: avoiding face-to-face meetings whenever possible; if an in-person meeting is required keep the meeting short and select a large meeting room; choosing communication and network technologies/devices to communicate with others; avoiding unnecessary business travel; cancelling or postponing workshops and training sessions; leaving gaps between shifts; and ventilating workspaces between shifts.

## **HR Policies**

- Develop policies and practices that distance employees from each other, customers and the public. For example, consider and develop pandemic work-from-home and flexible policies for work hours.
- Develop a sick leave policy which does not penalize sick employees, and encourages employees with pandemic-related symptoms to stay home. Recognize that employees with ill family members may need to stay home to care for them.
- Develop vacation and leave policies applicable in a pandemic situation.
- Develop a policy which addresses what to do when an employee falls ill at work, including how to ascertain when the employee is well enough to return to work.

## **Education**

- Consider using a web-based employee forum to answer employees' questions and address concerns about pay, leave, and health and safety. Informed employees who feel safe at work are less likely to be absent.
- Provide training, education and informational material about business-essential job functions and employee health and safety, including proper hygiene practices and the use of personal protective equipment (PPE) to be used in the workplace, based upon current advice from public health authorities. Be sure that information is available in formats for individuals with sensory disabilities and/or limited English/French proficiency.
- Provide information and/or training to assist employees in managing pandemic stress, including distress related to personal or family illness, life disruption, grief related to loss of family, friends or coworkers, and loss of routine support systems. Provide options for support and counselling.
- Engage with your Employee Assistance Program to arrange counselling, training and resources on mental health and resiliency in a pandemic.

## **SEASONAL FLU: Predictably Unpredictable**

Seasonal influenza is a major cause of morbidity and mortality in Canada, accounting for an estimated 12,000 hospitalizations and 3,500 deaths every year. According to the Public Health Agency of Canada, there are a few simple strategies which have been shown to be effective in reducing your chances, as well as your tenants', staff's, and visitors' chances, of contracting seasonal influenza:

1. Get your flu shot
2. Wash your hands frequently
3. Cough and sneeze into the bend of your arm, not into your hand
4. Clean and disinfect objects and surfaces, such as doorknobs, phones and work surfaces
5. If you do get sick, stay home until symptoms are gone

For more information, see <https://www.canada.ca/en/public-health/services/diseases/flu-influenza/flu-influenza-awareness-resources.html>



# Physical Environment

## **Hand Hygiene**

Hand hygiene is a critical measure used to prevent the spread of infectious diseases. Transmission of influenza can occur by indirect contact from hands and articles freshly soiled with discharges of the nose and throat of an acutely ill individual. By frequently washing your hands you wash away germs that you have picked up from other people, or from contaminated surfaces. Make sure your employees have access to information, including posters, videos, etc. from public health authorities about how to maintain good hand hygiene.

## **Personal Protective Equipment and Protective Barriers**

Personal protective equipment (PPE) refers to specialized clothing or equipment worn to protect someone against a hazard. In a pandemic, PPE can be a mask or a pair of gloves and/or a combination of gear that covers most or all of the body. Employees who require PPE will first need to be trained on its use, care, and safe disposal. Refer to the Public Health Agency of Canada and your provincial/territorial Ministry of Health web sites for current information on appropriate PPE.

Protective barriers (i.e., glass or plastic) may provide useful protection for people such as front-counter staff who have frequent face-to-face contact with the public and in environments where social distancing is neither possible nor practical.

It is important to note that not all masks work the same way, i.e. a disposable surgical mask does not function in the same way as a respirator. At this time, it is thought that in most workplaces, PPE will likely not be effective or practical in containing the spread of a virus. During a pandemic, it is critically important for workplaces to regularly check public health, and local ministries or departments of labour. Recommendations about the use of PPE will likely depend on the virus itself – how fast it spreads, the actual size of the agent, and how much a person would need to inhale before becoming ill. If public health agencies or other governments departments recommend PPE, or if your workplace chooses to use PPE, it will be important to use the right kinds of PPE in the right way.

Finally, establish a policy on who should use PPE, what they require, and when they should wear PPE. Consider how you will train staff on PPE, including how to fit, wear, remove and dispose of used PPE. Remember to base your policy on expert advice from the Public Health Agency of Canada, provincial/territorial ministries of health, and regional medical officers of health.

## **Cleaning**

Virus transmission can be reduced by thoroughly cleaning the environment and hard surfaces, such as sinks, handles, railings, objects, and counters, with detergents and disinfectant solutions. Refer to your Provincial/Territorial Ministry of Health's pandemic guidance for the most up-to-date information on effective cleaning protocols. Consider cleaning frequency requirements, for example, will elevator buttons and door pulls require cleaning more frequently than other surfaces?

## **Air Quality**

Heating, ventilation, and air conditioning (HVAC) systems in commercial buildings provide indoor air quality to maintain comfort, dilute and remove contaminants from indoor air, and provide proper building pressurization.

The American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE) has published a position document which is relevant to pandemic planning. ASHRAE notes that many infectious diseases are transmitted through inhalation of airborne infectious particles termed "droplet nuclei" which can be disseminated through building ventilation systems. It recommends considering dilution ventilation, specific in-room flow regimes, room pressure differentials, personalized and source capture ventilation, filtration and ultraviolet germicidal irradiation (UVGI) in a pandemic emergency.

BOMA members are encouraged to ensure operation and maintenance schedules for HVAC systems are in place, performed and monitored before a pandemic. During a pandemic, air control strategies may need to be altered and or isolated depending on any building area that may be impacted by infectious particles. An example of a pandemic air control would be utilizing 100% outdoor air, highly filtered in these infectious areas.

## For further information

See [ASHRAE revised Position Document on “Airborne Infectious Diseases.”](#)

<https://www.ccohs.ca/outbreaks/workplace/>

[Government of Canada](#)

# Communicating in a Pandemic

A communication strategy is an essential and significant component in a pandemic plan. Properties are encouraged to plan for their internal communication requirements, including determining what to communicate, how to communicate, and when to communicate with their employees; how, what and when they communicate with various external audiences, including customers, suppliers, the media, and the general public. Be sure to engage your Corporate Communications department in the pandemic planning process from the very beginning.

## Internal Communication

### What to communicate

Here are some key messages you may wish to communicate to your employees. This is not an exhaustive list.

- Information about the pandemic, e.g. “What you need to know”
- [Individual and family pandemic planning](#)
- Revisions to your company’s sick policy; include criteria for return to work following absence due to the pandemic virus.
- Vacation and leave policies in a pandemic.
- Flexible work policies, e.g. telecommuting, flex hours, etc., to minimize the spread of the virus

- Employee resources, including EAP information, health hotlines, web pages, intranet information, etc.
- Because communication is a two-way process, you may also want to enable your employees to communicate directly with you so that you can monitor and address employee concerns and issues. Provide a mechanism for employee feedback and questions, e.g. set up a hotline (with a way to respond in a timely manner), an intranet portal for staff, etc.

## How to communicate

There are many considerations about how to communicate in a pandemic, including:

- Does your pandemic communications plan include methods for communicating changes to business operations as the pandemic unfolds, with clear information about how these changes will affect staff? Will you use telephone hotlines, social media, a dedicated intranet page, or other mechanisms? Post changes and updates quickly and consistently.
- Have you provided ways for employees with sensory disabilities to receive information, e.g. how will you communicate with employees with limited or no vision? How will employees whose first language is not English/French receive your messaging?
- It is important to craft messages with sensitivity. If the pandemic is severe, some employees may lose family members or friends to the illness. Provide ways for your staff to access counselling and support.
- Remember that best-practice crisis communication is: timely, accurate, honest, credible, consistent, appropriate, regular, and relevant.

## When to communicate

Effective communication is timely. “Timely” can mean at regularly scheduled intervals, or in relation to the stage of the crisis: i.e., pre-pandemic, at the beginning of the pandemic, during the pandemic, and post-pandemic.

## External Communications

Who are your external stakeholders? Your list may include tenants, retailers, vendors/suppliers, the media, and the public in general, among others.

- Plan what, when and how you will communicate with these audiences.
- Many templates can be prepared in advance so that you are ready to communicate quickly when needed.
- Ensure you have identified a key pandemic spokesperson, with several backups.

## For further information

Further information and guidance about communicating in a pandemic see:

[Public Safety Canada](#) and the [Public Health Agency of Canada](#) provide posters, videos and other communication tools to help employees know how to protect their health during a pandemic.

The Pan-Canadian Public Health Network offers pandemic planning guidance which, although intended primarily for the health sector, provides helpful guidance for private sector planning as well. See <https://www.canada.ca/en/public-health/services/flu-influenza/canadian-pandemic-influenza-preparedness-planning-guidance-health-sector.html>

The “Communications and Stakeholder Liaison Annex” has been recently updated and added to the Canadian Pandemic Influenza Preparedness: Planning Guidance for the Health Sector (CPIP). Although its primary audience is federal, provincial and territorial (FPT) agencies as they communicate with the public, this resource may also be helpful to BOMA members. The Annex has been updated based on lessons learned during the 2009 H1N1 pandemic. That pandemic demonstrated the importance of clear, frequent and coordinated communication and the need to plan for pandemics of varying impact. See <https://www.canada.ca/en/public-health/services/flu-influenza/canadian-pandemic-influenza-preparedness-planning-guidance-health-sector/communications-stakeholder-liaison-annex.html>

# Supplies and Suppliers

Although handwashing is frequently referred to as the most effective step an individual can take to reduce the chance of infection in a pandemic, there are additional measures which public health authorities may advise to augment soap and water. For example, hand sanitizer and personal protective equipment will be in high demand leading up to and during a pandemic. Without careful planning, access to these critical items may become extremely difficult because of exceptional demand and interruptions in manufacturing and distribution systems.

## Hand Sanitizer

- Hand sanitizer is an important addition to the infection control line of defense. Ensure the product has at least 60% alcohol content for effective virus control.
- Expiry dates should be considered when making the decision to stockpile hand sanitizer. Shelf life can range between one and three years, depending on the product and storage methods.
- Because of its alcohol content, the World Health Organization recommends that hand sanitizer should be stored away from high temperatures and flames to reduce fire hazard.
- Position hand sanitizing dispensers at building entrances and exits including service entrances and exits. When choosing a dispenser, preference should be given to those with sufficient capacity so that the sanitizing agent does not run out frequently during the day. Larger buildings may also wish to store a few extra dispensers to be used when necessary.
- Don't forget to place hand sanitizing dispensers in mechanical and electrical penthouse rooms, elevator machine rooms, main janitor service rooms, etc. Third party contractors move from building to building, and can therefore spread illness easily.

**Personal Protective Equipment (PPE) – see “Physical Environment” section.**

## Other Pandemic Supplies

In addition to PPE and hand sanitizer, noted below are additional pandemic supplies you may wish to keep on-hand:

- Tissues
- Garbage containers for used tissues
- Disposable disinfectant wipes
- Additional cleaning supplies
- Additional washroom waste receptacles

## Supplier Considerations

1. Identify your critical suppliers.
2. Identify “single points of failure”, i.e., those vendors who, if they fail to deliver their goods or services, could negatively affect your business
3. Review current service provider agreements to assess your ability to use alternate suppliers if there is a supply disruption.
4. Identify backup suppliers and initiate agreements with them, if possible.
5. Ensure that “single point” vendors are aware of your strategy and that they understand it will only be implemented IF they are unable to meet minimum performance standards.
6. Ensure your critical suppliers have pandemic plans of their own. Ask for details about their planning, for example:
  7. What does their plan include?
  8. Have they identified their critical suppliers? Have they identified backup suppliers?
  9. How will they handle diminished workforce?
  10. How have they trained staff?
  11. How will they handle restricted transportation?
  12. How will they communicate with you and how frequently?

13. Have they tested their pandemic plan?
14. When was it last updated?
15. Where does your company rank on your supplier’s priority list?
16. Government may direct critical items to prioritized service providers (e.g. hospitals)
17. Other commercial agreements may supersede your agreement
18. Do your suppliers have the ability to divert product to alternate warehouses?
19. Distributors with diverse locations and capacity often have greater ability to ensure flow of product to customers.
20. What is your distributor’s vendor base?
21. The larger the vendor base the better ability a distributor has to secure supply

## Utilities and Public Services

Public services, including utilities, may become single-points-of-failure. Here are some considerations:

- What alternatives exist for critical utilities? Consider water supply, backup electrical supply, gas or other fuel supply, garbage collection, snow removal, public transportation, etc.
- What relationships with alternates can be initiated?
- What guarantees can be derived from utilities and public services?
- What service guarantees can alternate providers offer?
- What will it cost to mitigate potential loss of service(s) with backup vendors?

## For more information

See <https://www.bdc.ca/en/articles-tools/entrepreneur-toolkit/templates-business-guides/pages/business-continuity-guide-templates-entrepreneurs.aspx>

# Information Technology

## Considerations

In a pandemic, information technology will be critical for supporting an increase in telecommuting and remote employee and customer access.

- You may wish to create platforms such as an employee telephone hotline, an employee pandemic intranet portal, a page or section on your company website telling your customers what you are doing to keep them safe, and noting service changes.
- There will be a high demand for virtual meetings, rather than in-person meetings. Negotiate preferential terms with web conferencing providers.

The U.S. Centers for Disease Control (CDC) provides these additional pandemic IT considerations:

- Local Area Network (LANs) and Computer Systems
  - > Identify current remote access capabilities.
  - > Determine capacity required during pandemic event.
  - > Enhance resources to meet needs.
  - > Provide remote access procedures to staff.
  - > Provide information/URL to employees on how to access e-mail via Internet.
  - > Require employees with laptop computers to bring them home nightly, so they are prepared to work from home at any given time.
- Phone Systems
  - > Provide voice mail remote access instructions to employees.
  - > Provide instructions to employees for transferring work telephone line to telephone at alternate location (home or cell phone).
- Computer Systems Support
  - > Determine required computer systems support. Can systems be maintained remotely or is on-site staff required?

- > Document procedures for remote monitoring (if applicable).
- > Identify required level of on-site support required.

## Security

In a severe pandemic, all sectors of society will be impacted by staff absenteeism, including law enforcement. Businesses should assume a decrease in availability of both their own security staff as well as community first responders, and then devise scalable plans, assuming various pandemic severity scenarios, to augment security personnel and resources. Here are a few considerations to get started:

### **Suggestions and Considerations**

- Make sure your company's security department is represented on your Pandemic Planning Committee.
- Refer to current provincial/territorial ministry of health pandemic assumptions to determine how many security staff you could expect to lose due to absenteeism. Use this information to identify security staffing requirements in all phases of a pandemic, and assuming various severity scenarios.
- If your company has a contract with a third-party vendor, determine if the vendor has a pandemic plan and ask how they plan to address staff absenteeism, and how they will have capacity to service your company's additional personnel requirements?
- Develop pandemic agreements with third-party service providers, including priority access to personnel, to ensure your business can access additional security staff as required during a pandemic. Make sure these agreements are formalized in writing. • Consider adding other third-party vendors to augment your access to personnel in a pandemic.
- Plan for additional equipment and uniform requirements when taking on additional staff.
- Consider training requirements and who will ensure new, on-boarded staff are adequately trained?

- Consider developing a prioritized ranking system for responding to security service calls in a pandemic (e.g. 1 – Highest Priority, 2 – Moderate Priority and 3 – Lowest Priority)
- Where will you securely store critical pandemic supplies? Who will be able to access supplies? How?

## Legal Considerations for Property Owners and Managers

Is there a legal obligation for owners and managers to have a pandemic plan?

Currently, there is no express legislation in Canada which requires owners or managers of properties to have a specific health emergency plan in place. However, there are some provinces which do require employers to perform risk assessments and this of course may imply an obligation to prepare such a plan if in fact a risk is identified.

A legal obligation to prepare for a potential pandemic event may exist for reasons which include:

- (i) As an employer in Canada, applicable legislation requires employers to create and maintain a safe workplace for its employees.
- (ii) The possibility of a pandemic or health emergency is a significant possibility or likelihood. Government agencies are suggesting businesses should have plans in place. Many businesses and industries are preparing and publishing plans. The possibility that a claim may be made against an owner or manager of a property in negligence for not having a pandemic plan or health emergency plan in place given the above, is an open question.

### **Relevant Federal Legislation – Pandemics and Other Emergencies**

Listed below is some of the legislation which may be of particular importance in a pandemic.

#### **Canada Emergencies Act**

The Emergencies Act is a tool of last resort that covers four classes of emergency: public welfare, public order, international affairs and war. It is intended to respond to an emergency at the national level and can only be invoked after it has been determined that a critical situation cannot be dealt with effectively under any other law in Canada and that the situation is either: (a) of such proportions as to exceed the capacity or authority of a province to deal with it (such as during a pandemic); or (b) a serious threat to the Government of Canada's ability to preserve sovereignty, security or territorial integrity.

#### **Emergency Management Act**

The Emergency Management Act requires every federal minister to identify the risks that are within or related to his or her area of responsibility, and prepare emergency management plans with respect of those risks. This pattern of conducting a risk assessment and creating a management plan is similar to hazard prevention analyses that employers are required to conduct with respect to the workplace under either the relevant provincial or federal legislation.

#### **Owners and Managers as Employers**

Any pandemic or health emergency that involves a biological virus may constitute a hazardous substance that is regulated by Canada Labour Code Part II and its regulations and the Provincial Occupational Health and Safety Acts and their regulations. Reference should be made to the applicable federal and provincial legislation. A hazardous substance is defined as "a hazardous product and a chemical, biological or physical agent that, by reason of a property that the agent possesses, is hazardous to the safety or health of a person". The most relevant sections of the Canada Labour Code Part II Occupational Health & Safety are set out below:

## Canada Labour Code, Part II Occupational Health and Safety

Section 124. Every employer shall ensure that the health and safety at work of every person employed by the employer is protected.

Section 125. (1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity

(p) ensure, in the prescribed manner, that employees have safe entry to, exit from and occupancy of the work place;

(s) ensure that each employee is made aware of every known or foreseeable health or safety hazard in the area where the employee works;

(z.03) develop, implement and monitor...a prescribed program for the prevention of hazards in the work place appropriate to its size and the nature of the hazards in it...

(z.13) when necessary, develop, implement and monitor a program for the provision of personal protective equipment, clothing, devices or materials, in consultation, except in emergencies, with the policy committee...

Section 128. (1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that

(b) a condition exists in the place that constitutes a danger to the employee...

Section 145. (2) If a health and safety officer considers that a condition in a place constitutes a danger to an employee while at work,

a) The officer must notify the employer of the danger and issue directions in writing to the employer directing the employer, immediately or within the period that the officer specifies, to take measures to:

i) correct the hazard or condition or alter the activity that constitutes the danger,

(ii) protect any person from the danger...If the employer

agrees that a danger exists, the employer shall take immediate action to protect employees from the danger.

The full Canada Labour Code Part II – Occupational Health and Safety is available online at: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-l-2/latest/>

Every provincial jurisdiction has the equivalent of an Occupational Health and Safety Act or Workplace Health and Safety Act which contain similar provisions.

WorkSafeBC has initiated changes to the B.C. Occupational Health and Safety Regulation that now require preventative actions for any infectious diseases found in the workplace that pose a risk to workers. The Regulation now provides for Exposure Control Plans in some circumstances. Employers are required to assess risks and implement risk controls to protect workers from infectious diseases.

The Federal Occupational Health and Safety Regulation mirrors this risk assessment procedure in a more general scope. Provisions of the regulation mandate a Hazard Prevention Program – which requires employers to identify hazards, assess those hazards, and put preventative measures in place with respect to those hazards. The prevention program varies depending on the work performed in the workplace. The provisions outline a general prevention process as opposed to a specific program model as a result.

## Three Rights of Employees

Both federal and provincial occupational health and safety legislation provides three rights, described below:

1. Right to Know: Employees have the right to be informed of known or foreseeable hazards such as pandemic influenza. They must be given the information, instruction, training and supervision necessary to protect their health and safety. Effective communication will be crucial in preparing for and controlling pandemic influenza.
2. Right to Participate: Employees have the right and responsibility to identify and correct job-related health and safety issues. They could exercise this right during pandemic influenza. Employees can also participate through a complaint process and may complain if pandemic influenza has not been well handled.

3. Right to Refuse: Employees can refuse work where there is reasonable cause to believe:

- A dangerous condition exists;
- An activity constitutes a danger to one or more employees.

It is possible that employees may refuse work when pandemic influenza poses a danger.

### **Duties of Employers and Employees**

Under both federal and provincial occupational health and safety legislation:

- Employers: must ensure the health and safety of every employee is protected. This may require the implementation of programs, plans and response actions for pandemic influenza, and
- Employees: have obligations to prevent occupational-related injuries and diseases. They must take reasonable and necessary precautions to ensure their own and others' health and safety.

In the event of pandemic influenza, employees could exercise this obligation and would require guidance, training, education, cleaning substances and protective clothing such as protective barriers, gloves and masks.

### **Owners as Landlords**

There are very significant and varied issues that owners as landlords will face in a pandemic. The following issues should be considered and included in pandemic planning efforts.

### **Quiet Enjoyment**

Landlords may wish to limit or restrict access to the property or any part thereof during a health emergency or pandemic. Consider when changing leases:

- Can the landlord require that only employees of the tenant are permitted to enter the building as opposed to visitors or invitees?

- Can the landlord require a particular tenant or a particular type of tenant and its staff and invitees to use only one designated entrance, exit or escalator or elevator as the case may be? For example, you may have a medical clinic or doctor's office in the building. In the case of a health emergency, tenants in the building may be concerned about the fact that medical patients may be using the same entrance or elevator. The landlord may wish to have the right to designate a particular entrance or elevator to be utilized solely by a specific tenant or group of tenants in a health emergency.

- Can the landlord enter a tenant's premises to decontaminate any part of the tenant's premises? It is conceivable that an employee or invitee of the tenant may suffer from an illness or disease which may contaminate the leased premises. The landlord may wish to take steps to either require the tenant to decontaminate the premises or failing that, enter the premises to decontaminate at the tenant's expense. It may be that the landlord will wish to do this prior to any possible public health order. The legal basis for the landlord entering the leased premises and taking steps to decontaminate may be questionable without a health emergency article contained in the lease. Of course, the landlord does not want to have the obligation to do this and any health emergency regulation must provide that any steps that the landlord may choose to take or omit to take are in its sole and unfettered discretion and that there is no obligation on the landlord to take any action.

### **Quarantine or Closing All or Part of Building**

- Can the landlord close all or part of the building where it has been determined that there has been a health emergency notwithstanding that there has not been a closure or quarantine order by any governmental authority?
- Can the landlord close all or part of the building where it determines that it is not safe to continue to operate the building, it does not have the available staff, equipment or ability to maintain the operations of the building?



## Force Majeure Clauses

- Most sophisticated leases have a well defined force majeure clause, but it may not include provisions that expressly include a health emergency such as a pandemic.

## Limitation of Liability

- Ensure that lease provisions adequately protect landlord, its officers, directors, property managers and agents from liability in carrying out the terms of any pandemic plan or in dealing with any health emergency situation.
- As an example, consider the situation where the cleaning staff (independent contractors) inadvertently spread a virus or other health emergency biohazard in the building. If there is any suit, it is likely that the “deep pocket” landlord defendant will be included in any negligence claim.

## Tenant Reporting to Landlord

- During a pandemic, the landlord will have an interest in knowing if there have been any incidences of illness experienced in a tenant’s premises or amongst the tenants’ employees. Can the landlord require the tenant to report any incidences of illness amongst its employees to the landlord?
- Are there privacy issues which put the landlord in a position where it cannot communicate the fact of illness in a particular tenant’s premises? Can the landlord generally disclose the fact of illness in the building? Does the landlord have a duty to disclose the fact that there have been any incidences of illness in the building to other tenants?

## Rent Defaults

- In any health emergency, it is possible that there will be tenants that will default in the payment of rent. Landlords may wish to determine in advance what criteria they may utilize to decide whether any tenants may be offered rent relief and on what terms. In some circumstances, landlords may decide to request further security in exchange for any forbearance agreement.

## Services to Leased Premises

- In a health emergency, the landlord may wish or be forced to reduce or cease any particular services to the leased premises or common areas. In particular, the landlord may be in a position where it must reduce cleaning and trash removal services. Cleaning staff will be on the front line of dealing with any health emergency and many may become ill or not report to work. The landlord may wish to have a step-down plan for certain services. It is probably a good strategy to have those discussions with tenants well before any emergency situation arises. Tenants will therefore be in a position to include in their own plans the fact that they may have to take on some of the cleaning or other obligations in the leased premises.
- Can the landlord download some of its obligations pursuant to the lease on the tenant in the case of a public health emergency?
- Social distancing will be a significant strategy employed by many tenants to maintain their business operations, and landlords may find many tenants requesting that the building hours of operation be extended to facilitate employees working in shifts which may include late evening hours. This is especially the case if there is a transit shutdown or limitations placed on public transit given potential staff reductions. In those circumstances, many more employees may find that the only way for them to travel to work is to drive to the office. Evening shifts will allow for tenants to maximize the parking facilities in the building to facilitate evening workers that have to drive to the office. There are a number of significant building operational issues that flow from this concerning building services and the costs relating to those services.

## Existing Leases Versus New Leases

The above-noted issues may be considered by the landlord as a basis for amending their lease forms to include expanded health emergency rights or powers. These lease forms may include a specific definition of a health emergency and include a section on health emergency or general emergency powers that a landlord may invoke.

Insofar as existing leases are concerned, it is unlikely that the landlord can make any amendments to the lease form itself without the consent of the tenant. Having said that, most commercial leases do give the landlord the power to pass regulations relating to the operation of the building on an ongoing basis and landlords may wish to utilize that right to draft and deliver a set of health related regulations that may deal with a number of the issues set out above.

The question as to whether the landlord will wish to make amendments to its lease form to include rights concerning health emergency issues is one that will be of course specific to each landlord's situation and experience.

### **Landlord/Tenant Cooperation in a Health Emergency**

During a pandemic, medical officers of health, as well as other medical health professionals, are expected to be given expanded powers to protect public health and safety. For instance, if a health care professional identifies a patient as being a suspect, or confirmed case of seasonal influenza or pandemic influenza, then that health care professional will be required to commence contact tracing procedures in accordance with the protocols set by the Medical Officer of Health at that time. This is likely to involve making contacts with the patient's workplace so that those exposed to the infected person can be formally identified, notified and ordered into isolation or quarantine for time periods specified by public health officials.

If employees of a landlord or tenant gets sick at work, strict procedures will be needed to minimize the risk of exposing others in the building to infection. For example, the infected person's workstation and other personal objects may need to be disinfected, whether that responsibility rests with the landlord or tenant employer.

### **Property Managers**

- Property managers and agents managing properties for owners will be charged with managing the building through a pandemic. They may be requested by the owner/landlord to prepare a plan.
- Property managers may wish to ensure that their contracts of engagement with owners properly cover

off and indemnify them for any claims that may be made in relation to their operation of the property on behalf of the owner during a pandemic or other health emergency.

- Property managers may wish to suggest to owners/landlords that they consider preparing or adopting a health emergency or pandemic plan as part of their business continuity planning and address the issues referred to above.

## **Business Continuity**

"A pandemic could severely threaten the large workforce of commercial facilities, compromising facility operations or limiting services. Pandemics can also spread easily through commercial facilities, as large groups of people congregate in them daily. This could have an economic effect on businesses if customers choose to stay home rather than risk infection. Many private businesses lack system-wide business continuity plans for catastrophic health emergencies. Plans must account for extreme health impact assumptions as well as containment."

U.S. Department of Homeland Security, Commercial Facilities Sector-Specific Plan: An Annex to the 2013 NIPP (2015)

There are three main business continuity challenges companies can expect in a pandemic:

**Absenteeism** - A pandemic may affect a large percentage of your workforce during periods of peak illness. Employees could be absent because they are sick, must care for sick family members or for children if schools or day care centers are closed, or are afraid to come to work.

**Change in patterns of commerce** - Items related to infection control will be in high demand, while consumer demand for other items may decline. Consumers may also change how they shop, preferring to shop at off-peak hours to reduce contact with other people, using home delivery services, or seeking out drive-through services to minimize person-to-person contact.

**Interrupted supply/delivery** - Shipments from areas severely affected by a pandemic may be delayed.

### **Developing your Business Continuity Plan**

Your pandemic business continuity plan should be based on the following assumptions:

- > Attack (infection) and fatality rates
- > Population susceptibility (vulnerability)
- > Worker absenteeism levels
- > Duration of the pandemic event
- > Possible multiple waves of illness and pandemic occurrence

It is recommended that your plan addresses the following considerations, according to the World Health Organization's 2013 Pandemic Influenza Risk Management Interim Guidance:

- Critical functions that will need to be sustained and those that can be stopped for a period.
- Personnel, supplies, and equipment vital to maintain essential functions.
- How to deal with the anticipated level of staff absenteeism and minimize its impact on activities,
- Clear command structures, delegations of authority, and orders of succession for workers.
- An assessment of the need to stockpile strategic reserves of supplies, and equipment, including those necessary to protect health of employees.
- Clear identification of who is going to do what.
- Units, departments, or services that could be downsized or closed to reallocate human and material resources.
- Assignments & training of alternates for critical posts.
- Established guidelines for priority of access to essential services.
- Plan for security risks to operations and supply chain.
- Staff training on infection control and communication of essential safety messages.

- Consideration of ways to reduce social mixing (e.g. telecommuting or working from home and reducing meetings and travel) and test these.
- Consideration of the need for family and childcare support for essential workers.
- Consideration of the need for psychosocial support services to help workers remain effective.
- Consideration and planning for the recovery phase.
- Plan to exercise and revise the plan on a regular basis.

## For More Information

[See Canadian Centre for Occupational Health and Safety](#)

[Insurance Bureau of Canada](#)

[Business Development Bank of Canada](#)

## Conclusion

We hope you find this Guide useful. BOMA Canada highly recommends that you develop your own plan specific to your circumstances.

Your feedback is welcome at: [infor@bomacanada.ca](mailto:infor@bomacanada.ca)

### **Check out these recent pandemic publications:**

World Health Organization - [A Checklist for Pandemic Influenza Risk and Impact Management: building capacity for pandemic response, 2018 update](#)

World Health Organization - [Global Influenza Strategy 2019-2030](#)

Pan-Canadian Public Health Network - [Canadian Pandemic Influenza Preparedness: Planning Guidance for the Health Sector, 2018 update](#)

U.S. Centers for Disease Control and Prevention - [Get Your Workplace Ready for Pandemic Flu \(April 2017\)](#)