



ORDER OF THE PROVINCIAL HEALTH OFFICER

(Pursuant to Sections 30, 31, 32, 39 (3), 53, 54 (1) (h), 56 and 67 (2), *Public Health Act*, S.B.C. 2008)

WORKPLACE SAFETY – FEBRUARY 16, 2022

The *Public Health Act* is at:

<http://www.bclaws.ca/civix/content/complete/statreg/08028/?xsl=/templates/browse.xsl>

(excerpts enclosed)

TO: EMPLOYERS

TO: WORKERS

WHEREAS:

- A. On March 17, 2020, I provided notice under section 52 (2) of the *Public Health Act* that the transmission of the infectious agent SARS-CoV-2, which has caused cases, clusters and outbreaks of a serious communicable disease known as COVID-19 among the population of the Province of British Columbia, constitutes a regional event, as defined in section 51 of the *Public Health Act*;
- B. A person infected with SARS-CoV-2 can infect other people with whom the infected person is in contact;
- C. Social interactions and close contact in the workplace between people are associated with significant increases in the transmission of SARS-CoV-2, and increases the number of people who develop COVID-19 and become seriously ill;
- D. People spending time together indoors significantly increases the risk of the transmission of SARS-CoV-2 in the population, thereby increasing the number of people who develop COVID-19 and become seriously ill;
- E. Vaccination is safe, highly effective, and the single most important preventive measure a person can take to protect themselves, their families, and other persons with whom they come into contact from infection, severe illness and possible death from COVID-19. In particular:
 - (a) the vaccines available in British Columbia, in company with other protective and preventive measures, provide protection against infection and are highly effective in protecting against severe illness, hospitalization, intensive care unit (ICU) admission and death across all eligible age groups, with illness being mostly milder in vaccinated people who become infected than in unvaccinated people;

- (b) most British Columbians who have received their primary course of vaccine (two doses) have strong and durable protection against severe illness from SARS-CoV-2 resulting from the extended interval between dose one and dose two that is being utilized in British Columbia; in addition, a new vaccine is now being offered which only requires one dose to be effective, and booster doses are being implemented in order to reinforce the protection afforded by vaccination; and
 - (c) a full course of vaccine provides more effective and durable protection against infection and severe illness than natural immunity from prior COVID-19 infection alone, or natural immunity in combination with a single-dose of vaccine;
- F. The ongoing incidence of COVID-19 and serious health consequences that result has been exacerbated over time, first by the arrival of the highly transmissible Delta variant of SARS-CoV-2, which caused significantly more rapid transmission and increased severity of illness, particularly in younger unvaccinated people, than earlier variants, and now by the presence of the even more transmissible Omicron variant, which is responsible for a surge in infections, and is now the dominant strain of SARS-CoV-2 circulating in the province;
- G. Preserving the ability of the public health and health care systems to protect and care for the health needs of the population, including providing care for health needs other than COVID-19, is critical. High incidence of transmission and illness in one or more regions have spill-over effects on health care delivery across the province, including in critical care and surgical services. Our public health and health care systems are currently experiencing severe stress, and are stretched beyond capacity in their efforts to prevent and respond to illness resulting from the transmission of COVID-19 in the population;
- H. Both the public health and the health care systems are using disproportionate amounts of their resources in their efforts to prevent and respond to COVID-19 due to transmission of SARS-CoV-2 across the province, and to provide care for those with COVID-19, who can be quite ill, require high levels of care and be hospitalized for long periods of time, which situation is exacerbated by the care needs of unvaccinated people, who comprise a substantial proportion of those who require hospitalization and ICU admission;
- I. The Omicron variant has introduced uncertainty into the course of the pandemic, and the rapid rise in infection, hospitalization and ICU admission rates in British Columbia have led me to conclude that unless measures are kept in place to temper the extent of transmission, reduce severity of disease and to continue to incentivize vaccination, there is a strong likelihood that the highly-transmissible nature of Omicron will cause serious illness among a sufficient proportion of the public to overwhelm the Province's health care system, which is already operating beyond capacity;
- J. I recognize the societal effects, including the hardships, which the measures which I have and continue to put in place to protect the health of the population have on many aspects of life, and, with this in mind, continually engage in a process of reconsideration of these measures, based upon the information and evidence available to me, including infection rates, sources of transmission, the presence of clusters and outbreaks, the number of people in hospital and in ICU, deaths, the emergence of and risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations and reports from the rest of Canada and other jurisdictions, with a view to balancing the interests of the public, including constitutionally protected interests,

against the risk of harm to public health created by the presence of unvaccinated persons in workplaces;

- K. I further recognize that constitutionally protected interests include the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*, including specifically freedom of religion and conscience, freedom of thought, belief, opinion and expression, and the right not to be deprived of life, liberty or security of the person, other than in accordance with the principles of fundamental justice. I understand that making decisions about whether to get vaccinated may engage these rights and freedoms. However, these rights and freedoms are not absolute and are subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, which includes proportionate, precautionary and evidence-based measures, including vaccination, to prevent loss of life, serious illness and disruption of our health system and society;
- L. When exercising my powers to protect the health of the public from the risks posed by COVID-19, I am aware of my obligation to choose measures that limit the *Charter* rights and freedoms of British Columbians less intrusively, and to balance these rights and interests in a way that is consistent with the protection of public health. I have concluded that the measures which I am putting in place in this Order are proportionate, rational and tailored to address the risk, and are neither arbitrary, overbroad, nor grossly disproportionate in light of the need to protect public health at this time. In my view, any limits on constitutionally protected rights and freedoms arising from this Order are proportionate and reasonable in the interests of protecting public health, and there are no other reasonable alternatives that would provide the same level of protection for the population;
- M. In addition, I recognize privacy interests and the interests protected by the *Human Rights Code*, and have taken these into consideration when exercising my powers to protect the health interests of workers in workplaces, particularly with the presence of the Omicron variant in the province;
- N. I am also mindful that the volume of requests for reconsideration of my Orders, and the time and expertise which considering them entails, has become beyond my capacity and that of my office and team of medical health officers to manage, and is using resources which are better directed at assessing and responding to the protection of the public as a whole;
- O. It is in the public interest that workplaces are safe for workers and that they continue to operate, in order to ensure this, measures need to be in place to mitigate the risk of the transmission of SARS-CoV2 in workplaces, and plans need to be in place to enable workplaces to continue to operate in the event that significant numbers of workers become ill with COVID-19;
- P. Employers are required by section 21 of the *Workers Compensation Act* to ensure the health of their workers, and this includes ensuring steps are taken to reduce the risk to workers from communicable diseases. During periods of elevated risk employers must implement additional requirements. The surge of infections caused by the Omicron variant creates an elevated risk of communicable disease transmission and, in order to mitigate this risk, employers need to develop a COVID-19 Safety Plan as part of communicable disease prevention, as described at: [WorkSafeBC OHS Guideline G-P2-21](#);
- Q. Preventive measures that follow the hierarchy of controls, such as the elimination of risks (e.g. not working when unwell, diligent hand hygiene and vaccination); engineering controls (e.g. use of physical barriers, maintaining a clean workspace and good ventilation); administrative controls (e.g. adjusting schedules, hybrid work models); and the use of personal protective equipment (e.g.

wearing a properly fitting face covering) can help to reduce the risk of the transmission of SARS-CoV-2 in the workplace;

- R. Detailed and specific COVID-19 protocols have already been developed in close collaboration with my office to address the COVID-19 related risks in certain sectors where it is either necessary or in the public interest that the workforce work in the workplace; accordingly, this Order does not apply to workplaces operated by the following:
- (a) school boards, independent school authorities, post -secondary institutions, regional health authorities and the Provincial Health Services Authority
 - (b) operators of day cares licensed under the *Community Care and Assisted Living Act*;
 - (c) operators of long term care facilities licensed under the *Community Care and Assisted Living Act*;
 - (d) operators of private hospitals licensed under the *Hospital Act*;
 - (e) operators of assisted living residences for seniors registered under the *Community Care and Assisted Living Act*;
 - (f) operators of hospitals designated under the *Hospital Act*; or
 - (g) operators of mental health facilities designated under the *Mental Health Act*;
- S. For further certainty, this Order does not apply to workplaces operated by the First Nations Health Authority, First Nations Health Service Organizations, Treaty First Nations, the Nisga'a Nation or the Métis Nation of BC, or to workplaces where health care, personal care, home support or other services are provided or funded by any of those bodies;

THEREFORE, I have reason to believe and do believe that

- (a) the risk of a cluster or an outbreak of COVID-19 in a workplace constitutes a health hazard under the *Public Health Act*;
- (b) the Omicron variant has introduced uncertainty into the course of the pandemic, and the rapid rise in infection and hospitalization rates in British Columbia and the experience in other places have led me to conclude that measures are necessary in order to protect workers and to keep workplaces open;
- (c) it is in the public interest for me to exercise the powers in sections 30, 31, 32, 39 (3), 53, 54 (1) (h), 56 and 67 (2), of the *Public Health Act* **TO ORDER** as follows:

Definitions in this Order:

“COVID-19 Safety Plan” means a plan based on risk identification which includes a hierarchy of controls intended to ensure that the transmission of COVID-19 is minimized at workplaces to the extent practicable;

“employer” has the same meaning as in the *Workers Compensation Act*;

"face covering" means either of the following that covers the nose and mouth of a person:

- (a) a medical or non-medical mask;

(b) a tightly woven fabric;

“indoor common area” means an indoor area of a workplace that is in common use by workers including:

- (a) elevators, lobbies, hallways, stairwells, bathrooms, break rooms, kitchens, cafeterias, fitness facilities;
- (b) a workplace vehicle when being used to transport more than one worker for work-related purposes;

but does not include an indoor area in which a worker works, including an area where a worker meets with or provides goods or services to clients, customers, patients, passengers or the like, or an area in a building under construction;

“industry” has the same meaning as in the *Workers Compensation Act*;

“physical barrier” means a barrier which is designed, installed and maintained in accordance with WorkSafeBC guidance at <https://www.worksafebc.com/en/resources/health-safety/information-sheets/covid-19-health-safety-designing-effective-barriers?lang=en>;

“worker” has the same meaning as in the *Workers Compensation Act*;

“workplace” means a place where a worker engages in work in or about an industry, but does not include a worker’s private residence.

1. An employer must have a COVID-19 Safety Plan for each workplace in accordance with the WorkSafeBC guidance on developing COVID-19 safety plans at [COVID-19 Safety Plan - WorkSafeBC](#);
2. An employer must include the following in the COVID-19 Safety Plan:
 - (a) measures to prevent workers from crowding together or congregating in indoor common areas;
 - (b) a requirement that a worker in an indoor common area must wear a face covering over their nose and mouth, as provided for in section 12;
 - (c) policies to support workers who have symptoms of a communicable disease (for example, fever and/or chills, recent onset of coughing, diarrhea), so that workers can avoid being at the workplace when sick;
 - (d) measures to promote hand hygiene;
 - (e) measures to ensure a clean workplace environment through routine cleaning processes;
 - (f) measures to ensure the proper maintenance and functioning of workplace ventilation as required by the *Workers Compensation Act*, Occupational Health and Safety Regulation;
 - (g) measures to support workers in receiving vaccinations for COVID-19.

3. An employer must
 - (a) post a copy of the COVID-19 Safety Plan on the employer's website, if the employer has one, and at the workplace so that it is readily available for review by workers, other persons who may attend at the workplace to provide services, and members of the public who have reason to be in the workplace;
 - (b) provide a copy of the COVID-19 Safety Plan to a health officer or a WorkSafeBC officer, on request;
 - (c) review the COVID-19 Safety Plan to ensure that the plan adequately protects workers from the transmission of SARS-CoV-2 in the workplace to the extent practicable and is consistent with WorkSafeBC requirements.
4. A worker must self-monitor for symptoms of illness and must not come into the workplace if the worker has new or worsening of pre-existing symptoms of COVID-19 described at <http://www.bccdc.ca/health-info/diseases-conditions/covid-19/about-covid-19/symptoms>.
5. An employer must not permit a worker who is displaying new or worsening of pre-existing and symptoms of COVID-19 to remain in a workplace.
6. An employer must
 - (a) provide hand hygiene facilities in a workplace with appropriate supplies, and
 - (b) remind workers through policies and signage to wash their hands regularly and to use appropriate hygiene practices.
7. An employer must maintain a clean environment in a workplace by instituting routine cleaning processes.
8. An employer must ensure that workplace ventilation is properly maintained and functioning as required by the *Workers Compensation Act*, Occupational Health and Safety Regulation.
9. An employer must support workers in receiving COVID-19 vaccinations.
10. An employer must make available the guidance on isolation and self-management at <http://www.bccdc.ca/health-info/diseases-conditions/covid-19/if-you-have-covid-19> .
11. Subject to section 12, a worker must wear a face covering over the worker's nose and mouth in an indoor common area of a workplace, and in other areas of the workplace as required by the employer's COVID-19 Safety Plan.
12. Despite section 11, a worker is not required to wear a face covering over the worker's nose and mouth in an indoor common area of a workplace, if
 - (a) the worker is unable to put on or remove a face covering without the assistance of another person;

- (b) the worker is unable to wear a face covering because of
 - (i) a psychological, behavioural or health condition, or
 - (ii) a physical, cognitive or mental impairment;
- (c) the face covering is removed temporarily for the purpose of identifying the worker wearing it;
- (d) the face covering is removed temporarily to communicate with a person with a disability or diverse ability, where visual cues, facial expressions or lip reading or lip movements are important;
- (e) the worker is consuming food or a beverage in an area designated by the employer, for that purpose, and the worker is seated;
- (f) the worker is carrying out personal hygiene;
- (g) the worker is on their own in a workplace vehicle;
- (h) the worker is working on their own in a workplace;
- (i) the worker is playing a musical instrument in the course of the worker's work and is unable to play the instrument while wearing a mask;
- (j) there is a physical barrier between the worker and other workers which blocks the transmission of droplets.

13. An employer must not permit a worker who does not wear a face covering as required by section 12 to be in an indoor common area of a workplace.

14. A worker who is not wearing a face covering as required by section 12 must not be in an indoor common area of a workplace.

This Order does not have an expiration date.

After taking into consideration the interest of workers in working in an environment in which the risk of infection or becoming seriously ill is as low as possible, and taking into account the stress under which the public health and health care systems are currently operating, and the impact this is having on the provision of health care to the population, the burden which responding to more clusters and outbreaks of COVID-19 would put on the public health system, the burden which responding to more patients with serious illness would place upon an already overburdened health care system, the increased risk to the population arising from the presence of the Omicron variant in the Province, I have decided, pursuant to section 54 (1) (h) of the *Public Health Act*, and in accordance with the emergency powers set out in Part 5 of the *Act*, not to accept requests for a reconsideration of this Order.

You are required under section 42 of the *Public Health Act* to comply with this Order. Failure to comply with this Order is an offence under section 99 (1) (k) of the *Public Health Act*.

If you fail to comply with this Order, I have the authority to take enforcement action against you under Part 4, Division 6 of the *Public Health Act*.

You may contact me at:

Dr. Bonnie Henry, Provincial Health Officer
4th Floor, 1515 Blanshard Street
PO Box 9648 STN PROV GOVT, Victoria BC V8W 9P4
Fax: (250) 952-1570
Email: ProvHlthOffice@gov.bc.ca

DATED THIS: 16th day of February 2022

SIGNED: 
Bonnie Henry
MD, MPH, FRCPC
Provincial Health Officer

DELIVERY BY: Posting to the BC Government the BC Centre for Disease Control websites.

Enclosure: Excerpts of the *Public Health*

ENCLOSURE**Excerpts of the Public Health Act [SBC 2008] c. 28****Definitions*****1 In this Act:***

"health hazard" means

- (a) a condition, a thing or an activity that
 - (i) endangers, or is likely to endanger, public health, or
 - (ii) interferes, or is likely to interfere, with the suppression of infectious agents or hazardous agents, or
- (b) a prescribed condition, thing or activity, including a prescribed condition, thing or activity that
 - (i) is associated with injury or illness, or
 - (ii) fails to meet a prescribed standard in relation to health, injury or illness;

When orders respecting health hazards and contraventions may be made

30 (1) A health officer may issue an order under this Division only if the health officer reasonably believes that

- (a) a health hazard exists,
- (b) a condition, a thing or an activity presents a significant risk of causing a health hazard,
- (c) a person has contravened a provision of the Act or a regulation made under it, or
- (d) a person has contravened a term or condition of a licence or permit held by the person under this Act.

(2) For greater certainty, subsection (1) (a) to (c) applies even if the person subject to the order is complying with all terms and conditions of a licence, a permit, an approval or another authorization issued under this or any other enactment.

General powers respecting health hazards and contraventions

31 (1) If the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, a health officer may order a person to do anything that the health officer reasonably believes is necessary for any of the following purposes:

- (a) to determine whether a health hazard exists;
- (b) to prevent or stop a health hazard, or mitigate the harm or prevent further harm from a health hazard;
- (c) to bring the person into compliance with the Act or a regulation made under it;
- (d) to bring the person into compliance with a term or condition of a licence or permit held by that person under this Act.

(2) A health officer may issue an order under subsection (1) to any of the following persons:

- (a) a person whose action or omission
 - (i) is causing or has caused a health hazard, or
 - (ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;
- (b) a person who has custody or control of a thing, or control of a condition, that
 - (i) is a health hazard or is causing or has caused a health hazard, or
 - (ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;

- (c) the owner or occupier of a place where
 - (i) a health hazard is located, or
 - (ii) an activity is occurring that is not in compliance with the Act or a regulation made under it, or a term or condition of the licence or permit of the person doing the activity.

Specific powers respecting health hazards and contraventions

- 32** (1) An order may be made under this section only
- (a) if the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, and
 - (b) for the purposes set out in section 31 (1) [*general powers respecting health hazards and contraventions*].
- (2) Without limiting section 31, a health officer may order a person to do one or more of the following:
- (a) have a thing examined, disinfected, decontaminated, altered or destroyed, including
 - (i) by a specified person, or under the supervision or instructions of a specified person,
 - (ii) moving the thing to a specified place, and
 - (iii) taking samples of the thing, or permitting samples of the thing to be taken;
 - (b) in respect of a place,
 - (i) leave the place,
 - (ii) not enter the place,
 - (iii) do specific work, including removing or altering things found in the place, and altering or locking the place to restrict or prevent entry to the place,
 - (iv) neither deal with a thing in or on the place nor dispose of a thing from the place, or deal with or dispose of the thing only in accordance with a specified procedure, and
 - (v) if the person has control of the place, assist in evacuating the place or examining persons found in the place, or taking preventive measures in respect of the place or persons found in the place;
 - (c) stop operating, or not operate, a thing;
 - (d) keep a thing in a specified place or in accordance with a specified procedure;
 - (e) prevent persons from accessing a thing;
 - (f) not dispose of, alter or destroy a thing, or dispose of, alter or destroy a thing only in accordance with a specified procedure;
 - (g) provide to the health officer or a specified person information, records, samples or other matters relevant to a thing's possible infection with an infectious agent or contamination with a hazardous agent, including information respecting persons who may have been exposed to an infectious agent or hazardous agent by the thing;
 - (h) wear a type of clothing or personal protective equipment, or change, remove or alter clothing or personal protective equipment, to protect the health and safety of persons;
 - (i) use a type of equipment or implement a process, or remove equipment or alter equipment or processes, to protect the health and safety of persons;
 - (j) provide evidence of complying with the order, including
 - (i) getting a certificate of compliance from a medical practitioner, nurse practitioner or specified person, and
 - (ii) providing to a health officer any relevant record;
 - (k) take a prescribed action.
- (3) If a health officer orders a thing to be destroyed, the health officer must give the person having custody or control of the thing reasonable time to request reconsideration and review of the order under sections 43 and 44 unless
- (a) the person consents in writing to the destruction of the thing, or

(b) Part 5 [*Emergency Powers*] applies.

Part applies despite other enactments

53 During an emergency, this Part applies despite any provision of this or any other enactment, including

- (a) in respect of the collection, use or disclosure of personal information, the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act*, and
- (b) a provision that would impose a specific duty, limit or procedural requirement in respect of a specific person or thing,

to the extent there is any inconsistency or conflict with the provision or other enactment.

General emergency powers

54 (1) A health officer may, in an emergency, do one or more of the following:

(h) not reconsider an order under section 43 [*reconsideration of orders*], not review an order under section 44 [*review of orders*] or not reassess an order under section 45 [*mandatory reassessment of orders*];

(2) An order that may be made under this Part may be made in respect of a class of persons or things, and may make different requirements for different persons or things or classes of persons or things or for different geographic areas.

Emergency preventive measures

56 (1) The provincial health officer or a medical health officer may, in an emergency, order a person to take preventive measures within the meaning of section 16 [*preventive measures*], including ordering a person to take preventive measures that the person could otherwise avoid by making an objection under that section.

(2) If the provincial health officer or a medical health officer makes an order under this section, a person to whom the order applies must comply with the order unless the person delivers to a person specified by the provincial health officer or medical health officer, in person or by registered mail,

(a) a written notice from a medical practitioner stating that the health of the person who must comply would be seriously jeopardized if the person did comply, and

(b) a copy of each portion of that person's health record relevant to the statement in paragraph (a), signed and dated by the medical practitioner.

(3) If a person delivers a notice under subsection (2), the person must comply with an instruction of the provincial health officer or a medical health officer, or a person designated by either of them, for the purposes of preventing infection with, or transmission of, an infectious agent or a hazardous agent.

Provincial health officer may act as health officer

67 (2) During an emergency under Part 5 [*Emergency Powers*], the provincial health officer may exercise a power or perform a duty of a health officer under this or any other enactment, and, for this purpose, subsection (1) does not apply.

Offences

99 (1) A person who contravenes any of the following provisions commits an offence:

(k) section 42 [*failure to comply with an order of a health officer*], except in respect of an order made under section 29 (2) (e) to (g) [*orders respecting examinations, diagnostic examinations or preventive measures*];