



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 – JANUARY 20, 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 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 direct contact, through droplets in the air, or from fluid containing SARS-CoV-2 left on surfaces;
- 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, including in the workplace, 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, are highly effective and provide protection across all eligible age groups against infection and strong protection against severe illness and death;

- (b) most British Columbians have strong and durable protection 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;
 - (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; and
 - (d) a full course of vaccine provides highly effective and durable protection from severe illness resulting in hospitalization or death due to COVID-19, with illness being mostly milder in vaccinated people who become infected than in unvaccinated people.
- F. Vaccines, which prevent or reduce the risk of infection with SARS-CoV-2, have been and continue to be readily available in British Columbia and while substantial progress has been made in vaccinating the population of British Columbia 12 years of age and older, and the vaccination of children aged 5 to 11 years of age is underway, a portion of the public remains unvaccinated and there are communities where vaccination rates are low;
- G. Communities with low vaccination rates have experienced serious illness and increases in hospitalizations and intensive care admissions, primarily in unvaccinated people. By contrast, communities with high vaccination rates have seen corresponding less serious illness and hospitalizations;
- H. Unvaccinated people are at greater risk than vaccinated people of being infected with SARS-CoV-2, and those who are infected experience significantly higher rates of hospitalization, ICU-level care and invasive mechanical ventilation, complications and death when compared with vaccinated people. Unvaccinated people are also at higher risk of transmitting SARS-CoV-2 to other people, including vaccinated people;
- I. People who are vaccinated can be infected with SARS-CoV-2, but experience decreased severity of illness than unvaccinated people, especially in younger populations. Vaccinated persons who contract COVID-19 are also generally contagious for shorter periods of time, are less symptomatic, and are less likely to transmit SARS-CoV-2 when compared to unvaccinated infected persons;
- J. This situation 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 arrival of the even more transmissible Omicron variant, which is responsible for a surge in infections in the province, and is now the dominant strain of SARS-CoV-2 circulating in the province;
- K. Absent vaccination, British Columbia would be in a far more challenging situation than the fragile balance our current immunization rates have provided, but transmissibility of the Delta and Omicron variants means that higher vaccination rates than previously expected are now required to maintain this balance, control transmission, reduce case numbers and serious outcomes, and reduce the burden on the healthcare system, particularly hospital and intensive care admissions going forward;
- L. The recent appearance of the Omicron variant, which is leading to significant surges in infection in other provinces and other parts of the world in addition to British Columbia, underlines the

importance of vaccination in protecting the population and in removing the conditions which foster the development of variants which pose ever greater threats to public health;

- M. 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;
- N. 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, and to provide care for those who become ill with COVID-19, primarily unvaccinated people who comprise the majority of hospitalizations and ICU admissions. Preserving the ability of the public health and health care systems to protect and care for the health needs of the population is critical;
- O. It is in the public interest that workplaces are safe for workers and that they continue to operate, and in order to ensure these, 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, 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. working from home when possible); 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. I 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. 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 include proportionate, precautionary and evidence-based measures, including workplace safety measures, to prevent loss of life, serious illness and disruption of our health system and society. When exercising my powers to protect the health of workers 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 balance these rights and interests in a way that is consistent with the protection of the health of workers. 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 worker health. In my view, any limits on constitutionally protected rights and freedoms arising from this Order, are proportionate and reasonable in the interests of protecting worker health and there are no other reasonable alternatives that would provide the same level of protection for workers;

- S. In addition, I recognize 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 from the risk of infection in the workplace and to support the interest of the public in workplaces remaining open;
- T. 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*;
- U. 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 rising 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 allow workers to work from their private residence, if possible, given the nature of the work involved, unless the employer has an operational requirement to have the worker work at the workplace.
 7. 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.
 8. An employer must maintain a clean environment in a workplace by instituting routine cleaning processes.
 9. An employer must ensure that workplace ventilation is properly maintained and functioning as required by the *Workers Compensation Act*, Occupational Health and Safety Regulation.
 10. An employer must support workers in receiving COVID-19 vaccinations.
 11. 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>.

12. Subject to section 13, 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.
13. Despite section 12, 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.
14. 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.
15. 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.

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 *Public Health Act*, I will not be accepting requests for 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: 20th day of January 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*];