

## FTR Now

# Ontario Announces Provincewide Shutdown

**Date:** December 22, 2020

On December 21, 2020, the Ontario [government announced](#) a provincewide shutdown, effective Saturday December 26, 2020. As of that date, all parts of the province will be moved into the Grey Zone and will be subject to modified [Rules for Areas in Stage 1](#) (Stage 1 Rules). Because different areas of the province are under quite different restrictions at this time, the effect of the shutdown will vary significantly for businesses and other organizations depending on which Zone they are currently under. The government has stated that these new restrictions will be evaluated after 14 days for areas in Northern Ontario\*\*, and 28 days for areas in Southern Ontario.

The impact will be biggest for employers and organizations currently under the Green, Yellow or Orange Zone restrictions, and many businesses in those areas will now either need to close or significantly alter how they operate in order to meet the new Grey Zone restrictions. Even for businesses currently in the Grey Zone, the restrictions have been modified and changes may be required.

This is the second time in the past month that the Stage 1 Rules have been amended. The first amendment occurred when the City of Toronto and Peel Region were placed in the Grey Zone-Lockdown of the province's *Keeping Ontario Safe and Open Framework* (see [our prior FTR Now](#) dated November 23, 2020). The just announced [Ontario Regulation 779/20](#) again amends the Stage 1 Rules to give effect to the new provincewide shutdown.

In this *FTR Now*, we highlight some of the key requirements of the Stage 1 Rules that will apply provincewide on December 26. The government has published a more complete summary of all of the rules, which can be found [here](#). We remind readers that under the Stage 1 Rules, businesses are required to close unless they are expressly permitted to open and additionally meet any requirements specified in the regulations.

## General Compliance Obligations

The Stage 1 Rules contain essentially the same general compliance obligations that have applied provincewide, and businesses that are permitted to open must continue to meet those obligations. These include but are not limited to:

- compliance with all applicable laws, now including the *Accessibility for Ontarians with Disabilities Act, 2005* and the *Occupational Health and Safety Act* and their regulations as

- well as with the advice, recommendations and instructions of public health officials
- compliance with the advice, recommendations and instructions issued by the Office of the Chief Medical Officer of Health on screening individuals and working remotely, and
  - requiring persons in any indoor area of the premises or business to wear a face covering or mask, subject to existing exceptions.

The Stage 1 Rules now require that all businesses which are open must prepare and make available a safety plan in accordance with the Stage 1 Rules, or ensure that one is prepared and made available. While many businesses will have already prepared a safety plan, this will be a new obligation for many others. The government [has published guidance on preparing Safety Plans](#). There is no specific timeline for this requirement but businesses should have a plan prepared and available if they are to remain open after the Stage 1 Rules take effect.

Businesses or facilities that are permitted to be open to the public must limit the numbers who enter to that number which permits persons to remain at least two metres apart, with the maximum number not to exceed 50% capacity of the business or facility. This general rule is modified for certain businesses and gatherings in other sections of the Stage 1 Rules – for example, certain retailers cannot exceed a maximum of 25% capacity.

The Stage 1 Rules establish a new formula to be followed to determine the maximum number of persons at 50% and 25% capacity based on the square footage of the premises. Operators of retail businesses must post a sign in a conspicuous location visible to the public that states the maximum capacity they are permitted to operate under.

These capacity limits do not apply to schools and private schools within the meaning of the *Education Act* or to certain First Nations schools.

## Businesses that are Permitted to Remain Open

It is beyond the scope of this *FTR Now* to review each of the businesses that are permitted to remain open under the amended Stage 1 Rules. However, the following is a non-exhaustive sampling of businesses are permitted to open provided that they adhere to all general compliance obligations. Note that some of the restrictions have changed even for businesses currently in the Grey Zone. **All employers should carefully review the Stage 1 Rules to ensure that their operations may remain open.**

### Retail

The following retail operations may open:

- Supermarkets, grocery stores, convenience stores, indoor farmer's markets and stores that sell primarily food (other than restaurants and similar eating establishments).

- Pharmacies.
- Discount and big box retailers, provided they sell groceries to the public and enforce a 25% capacity limit.
- Safety supply stores, businesses that sell, rent or repair assistive, mobility or medical devices, aids and/or supplies and optical stores may open, but must admit members of the public only by appointment.
- Stores (except restaurants, bars etc.) that sell liquor, including beer, wine and spirits, subject to the number of persons in the facility not exceeding the 25% capacity limit.

All other retail operations must close for in-person shopping but are permitted to open for curbside pick-up or delivery only. For curbside pick-ups, the business must have a public entrance that opens onto a street or exterior sidewalk. There are also special rules for shopping malls and, by extension, retail locations in shopping malls. These rules have changed from the current Grey Zone rules and should be consulted.

## **Manufacturing and Supply Chain Management**

Generally, manufacturing businesses that extract, manufacture, process and distribute goods, products, equipment and materials, and that support and facilitate the movement of goods, may remain open. Businesses that produce food and beverages and agricultural products may also remain open.

Supply chain businesses that provide other businesses with support, products, supplies, systems, or services and maintenance necessary to operate may remain open.

## **Construction**

Construction activities or projects and related services that support construction activities or projects, including demolition services, may remain open.

## **Hotels and Other Accommodations**

Hotels, motels, lodges, cabins, cottages, resorts and other shared rental accommodation, including student residences, may remain open. However, indoor pools, indoor fitness centres, or other indoor recreational facilities that are part of the operation of these businesses must be closed.

## **Designated Financial Services**

Capital markets and related securities trading and advisory services, banks, insurance companies, among others, may remain open.

## **Staffing services including providing temporary help**

These services may remain open.

## Child Care Centres

There are a number of changes to the operation of child care centres and child care provided at a person's dwelling, which may only open if certain conditions are met:

- they must not provide before or after school programs on a school day where the child's school is not permitted to provide in-person teaching or instruction on that day
- they must not provide child care on school days during school hours where the child's school is not permitted to provide in-person teaching or instruction to the child on that day and who, immediately before December 21, 2020, was enrolled in the school and was not registered to attend the centre on those days
- certain child care centers may be designated as emergency child care centres, available to children of individuals designated in the new Schedule 5, Individuals Eligible For Emergency Child Care (e.g. frontline workers).

The [government has stated](#) that the changes to the before and after school programs remain in effect from January 4 to 8, 2021, when the child remains home for virtual learning. Emergency child care will be provided during this time.

## Schools and Private Schools

There are new rules relating to schools and private schools within the meaning of the *Education Act* (Schools). As a general rule, Schools are now closed for in-person learning and instruction. (Certain First Nations schools are excepted from this restriction.)

There are two general exceptions to this rule. Schools may open (1) to the extent necessary to facilitate the operation of a child care centre or authorized recreational and skill building program within the meaning of the *Child Care and Early Years Act, 2014*, or (2) to allow staff of the school or private school to provide remote teaching, instruction or support to pupils, as long as directives and public health guidelines are followed.

Effective January 11, 2021, Schools throughout the province that provide only in-person teaching or instruction to pupils in kindergarten or grades 1 through 8 are permitted to open.\*\*

Also effective January 11, 2021, all Schools that are within the following public health units will be permitted to open:

The District of Algoma Health Unit  
North Bay Parry Sound District Health Unit  
Northwestern Health Unit

Porcupine Health Unit  
Sudbury and District Health Unit  
Thunder Bay District Health Unit  
Timiskaming Health Unit.

Effective January 25, 2021, Schools may open for all students in all public health units across the province.

Schools that are permitted to open must comply with the return to school direction issued by the Ministry of Education and approved by the Office of the Chief Medical Officer of Health, among other restrictions.

*\*Editor's Note: The provision of O. Reg. 789/20 relating to schools and private schools as set out above was amended late Wednesday, December 23 by [O. Reg. 779/20](#). Generally, schools may also open: 1) to the extent necessary to facilitate the operation of an extended day program for pupils beginning on December 28 and ending on December 31 and, if approved by the MOE, for the provision of emergency child care for the children of the prescribed during the period when schools are not permitted to provide in-person teaching or instruction; and 2) to the extent necessary to provide for in-person instruction to pupils with special education needs who cannot be accommodated through remote learning.*

*\*\* Editor's Note on January 7, 2021: The [Ontario government](#) extended the lockdown for regions in Northern Ontario an additional 14 days; on-line learning for elementary students in Southern Ontario has been extended to January 25, 2021.*

## **Businesses that are Permitted to Remain Open with Additional Conditions**

There is a large range of businesses that are permitted to open provided that they comply with all general compliance obligations (discussed above), and also comply with additional specified conditions set out in the new Stage 1 Rules. Examples of businesses that fall within this category include:

- Universities and colleges, among other post-secondary institutions, may open provided that in-person teaching is conducted only where required by the subject matter and the institution complies with the specified capacity limits for in-person teaching and the conducting of in-person examinations. For post-secondary institutions located outside the current Grey Zone, the Stage 1 Rules restrictions may require significant changes to their operations and should be carefully reviewed.
- Meeting or event spaces may only be rented out for a narrow range of prescribed purposes.
- Restaurants, bars and food or drink establishments may only operate to provide take out, drive-through or delivery; indoor and outdoor service is prohibited. There are very limited

exceptions to this rule including, for example, establishments located in hospitals and airports.

- Public libraries are closed except for curbside pick-up and return of circulating materials. They may, however, provide space for a child care centre or authorized recreational and skill building program within the meaning of the *Child Care and Early Years Act, 2014*, mental health support services or addictions support services (so long as no more than 10 people are permitted to occupy the space), or the provision of social services. There are additional obligations to record and maintain records of members of the public who attend the library space for these limited permitted purposes.

As noted above, all employers should carefully review the Stage 1 Rules to ensure that their operations may remain open and that they are compliant with all general obligations and specified conditions.

## What businesses or operations must close?

Businesses or operations that must close to the public include, but are not limited to:

- Personal care services
- Casinos, bingo halls and gaming establishments
- Museums, galleries, aquariums, zoos, science centres, landmarks, historic sites, botanical gardens and similar attractions must be closed to members of the public (note that the current exception in the Stage 1 Rules allowing the public to have drive-in or drive-through access has been removed)
- Tour and guide services
- Concert venues, theatres and cinemas are closed to the public. They may only open for the purpose of rehearsing or performing a recorded or broadcasted concert, artistic event, theatrical performance or other performance, subject to conditions. There is a new cap of 10 performers permitted to be on stage or on the set.

## Organized Public Events, Certain Gatherings

Under the Stage 1 Rules, attending indoor organized public events or social gatherings is prohibited. No more than 10 people are permitted to attend an organized public event or social gathering held outdoors. These prohibitions do not apply to a gathering of members of a single household (note that a single household may include one additional person if that person lives alone).

A gathering of not more than 10 people for the purposes of a wedding, a funeral or a religious service, rite or ceremony is permitted, subject to public health guidelines on physical distancing. These apply even if the event is held in a private dwelling. This restriction does not apply to persons in attendance who are in motor vehicles (but other restrictions would be engaged). Note

that this applies to the service only and any receptions or other social gatherings associated with the service would be subject to the more restrictive rules summarized in the preceding paragraph.

## Ontario Small Business Support Grant

The government has [also announced](#) a new Ontario Small Business Support Grant which will provide a minimum of \$10,000 and up to \$20,000 to eligible small business owners as a result of this shutdown. Those eligible for the grant include those that:

- are required to close, or significantly restrict services as a result of the provincewide shutdown on December 26
- have fewer than 100 employees, and
- have experienced a minimum of 20 per cent revenue decline in April 2020 compared to April 2019.

We encourage employers to carefully review the text of these shutdown restrictions as they may apply to your operations.

Should you require assistance in doing this review or have questions about these new requirements, please contact your regular Hicks Morley lawyer.