

FTR Now

Ontario to Enter Step 1 of Reopening on June 11, 2021

Date: June 10, 2021

The Ontario government [has announced](#) that effective June 11 at 12:01 a.m., [all regions of the province](#) will enter Step 1 of its [Roadmap to Reopen](#) as the COVID-19 cases slowly begin to drop and the vaccination rates increase.

[Ontario Regulation 440/21](#) amends [O. Reg. 82/20](#) (renamed the “Rules For Areas In Shutdown Zone and At Step 1”) to set out the rules for Step 1 and to make some amendments to the Shutdown Zone. The Step 1 rules essentially build on the previous “Grey Zone” rules to give effect to the gradual reopening of the province.

In this *FTR Now*, we highlight the Step 1 amendments to the previous “Grey Zone” which are of interest to employers. Unless otherwise stated, the rules as they previously existed for the Grey Zone (renamed Step 1) will apply.

General Rules

Working from Home

Under the Step 1 amendments, persons responsible for a business or organization that is open shall ensure that any person who performs work for the business or organization conducts their work remotely, unless the nature of their work requires them to be on-site at the workplace. This requirement does not apply to government or any person or publicly-funded organization that delivers or supports government operations and services.

Sale and Service of Liquor

The restrictions on the time limits as to when liquor is sold or served have been removed (under the Grey Zone rules, liquor could not be sold or served between 9:00 a.m. and 9 p.m. nor could it be consumed in a business or place between 10 p.m. to 9 a.m., subject to exceptions).

Businesses that May Open in Step 1

Retail

The list of retailers that may open in Step 1 at 25% capacity is significantly expanded from the previous Grey Zone rules. In addition to pharmacies, supermarkets, grocery stores, convenience stores, indoor farmers’ markets and other stores that primarily sell food, the following retailers may now open at 25% capacity:

- Discount and big box retailers selling groceries
- Safety supply stores
- Businesses that primarily sell, rent or repair assistive devices, aids or supplies, mobility devices, aids or supplies or medical devices, aids or supplies
- Optical stores that sell prescription eyewear to the public
- Retail stores operated by telecommunications providers
- Stores that sell liquor, including beer, wine and spirits, other than restaurants, bars and other specified retailers
- Outdoor garden centres and plant nurseries
- Indoor greenhouses.

The total number of members of the public who enter the above premises must not exceed 25% capacity, as determined in accordance with a specified formula based on square metres of the premises (indoor farmers' markets, as well as certain other retailers must not exceed 15% capacity).

Generally, retailers not mentioned above may open to in-person shopping provided that the capacity limit does not exceed 15%, based on the prescribed formula, among other things.

Rules for shopping malls have changed. Among other things, only those retailers listed above and stores that have a public entrance that opens onto a street or exterior sidewalk may open for in-person shopping. Where the shopping mall is an indoor mall, the mall must actively screen individuals in accordance with the advice, recommendations and instructions of the Office of the Chief Medical Officer of Health before being allowed to enter. Retailers within the mall that are not permitted to open for in-person shopping may use an alternative method of sale (such as curbside pick up or delivery) or by allowing patrons to pick up items at a mall-designated location.

Outdoor Dining

Outdoor dining at restaurants, bars, food trucks, concession stands and other food or drink establishments will be permitted, again subject to a broad range of conditions, including a maximum of four persons per table. Where the number is greater than four, the persons must be members of the same household or include a member of up to one other household who lives alone or a caregiver. Establishments are no longer required to be closed to the public between the hours of 10 p.m. and 5 a.m.

Childcare

A child care centre may open if it meets certain conditions:

- it shall not operate a before or after school program on any school day for a child unless the child's school is permitted under this regulation to provide in-person teaching or instruction to the child on that day
- it shall not provide child care on school days during typical school hours for a child whose school is not permitted under this regulation to provide in-person teaching or instruction to the child on that day and who, immediately before April 12, 2021, was enrolled in school and was not registered to attend the centre on those days and during those hours (this provision does not apply if the Minister of Education designates a child care centre as an emergency child care centre that provides care for children of prescribed individuals, set out below)
- a provider of authorized recreational and skill building programs shall not provide such a program to a child on a school day unless the child is enrolled in a school that is permitted under this regulation to provide in-person teaching or instruction on that day.

Individuals Eligible For Emergency Child Care

The Step 1 rules set out a list of individuals who are eligible for emergency child care. This list includes:

- regulated health professionals or unregulated health care providers working in health care delivery
- individuals who perform work in relation to the administration, manufacturing or distribution of COVID-19 vaccines and whose work cannot be done remotely
- staff and licensees as defined in the *Retirement Homes Act, 2010*, and staff as defined in the *Long-Term Care Homes Act, 2007*
- individuals who work at supermarkets, grocery stores or other stores that primarily sell food, as well as individuals who work for businesses that process, manufacture or distribute food or beverages.

The full list is extensive and should be reviewed for details.

Schools and Private Schools

The rules from the Grey Zone have been amended such that schools and private schools within the meaning of the *Education Act* shall not provide in-person teaching or instruction, meaning that students will continue with online learning. This is subject to the following exceptions, in which case they may open:

- to the extent necessary to facilitate the operation of a child care centre within the meaning of the *Child Care and Early Years Act, 2014*
- where approved by the Minister of Education, to the extent necessary to facilitate the operation of an extended day program, as defined in the *Education Act*, for the provision of emergency child care for the children of prescribed individuals
- to permit staff of the school or private school to provide remote teaching, instruction or support to pupils, provided certain conditions are met
- to the extent necessary to provide in-person instruction to pupils with special education needs who cannot be accommodated through remote learning and who wish to attend their school or private school for in-person instruction
- to facilitate the operation of a day camp for children.

These rules do not apply to First Nations schools.

Schools may also open for a number of other restricted purposes, including to prepare for end-of-school-year celebration ceremonies.

Other Operations

In-Person Teaching and Instruction

Businesses that provide in-person teaching and instruction may open, subject to a number of conditions. Instructional space must be outdoors, students must maintain a distance of two metres from others (or three metres if the in-person teaching or instruction involves singing or the playing of brass or wind instruments), and the total number of students permitted to be in each instructional space at any one time must be limited to 10 persons. Students must be screened in accordance with the advice of the Office of the Chief Medical Officer of Health before they enter the business and the person responsible for the business must maintain records for contact tracing.

The previous Grey Zone rules for post-secondary institutions have generally not been amended by the new Step 1 changes. Those institutions may open if they meet certain conditions for in-person teaching or instruction (e.g. the subject matter of the teaching or instruction requires that it be taught in-person, physical distancing must be maintained except where the teaching or instruction cannot be adequately provided if distancing is maintained, capacity limits must be followed). Conditions also exist for in-person examinations. The only change under the Step 1 rules for post-secondary institutions relates to maintaining a three-metre distance between persons where in-person teaching or instruction involves singing or the playing of brass or wind instruments (previously it was two metres).

Personal Care Services

Unlike the Grey Zone, establishments that provide personal care services are not permitted to open in Step 1, meaning that establishments that offer personal care services must remain closed. Establishments that provide access to sensory deprivation pods that are being used for a therapeutic purpose prescribed by, or administered by, a regulated health professional may open subject to a range of conditions.

Camping

Campgrounds may open where certain of their facilities are closed (e.g. restaurants, indoor pools, indoor fitness centres) unless otherwise used to provide first aid services, among other things.

Tour and Guide Services

Tour and guide services, including walking tours, tastings and tours for wineries and distilleries, may open in Step 1, subject to certain conditions. These conditions include active screening of every member of the public who intends to participate in a tour, limiting the number of people on the tour to be in compliance with the two-metre physical distancing rule, and in any event, cannot exceed 10 people. Individuals on a tour must remain outdoors at all times, with certain exceptions.

Physical Fitness and Recreation

Personal physical fitness and sports trainers may open, subject to conditions. These conditions include, amongst others, that services must be provided outside, that there be no more than 10 patrons at a time and that activities that are likely to result in individuals coming within three metres of each other must not be practised or played.

A facility for outdoor sports and recreational fitness activities may also open, provided that the business complies with all applicable conditions and the only activities permitted on the premises are outdoor fitness classes, personal training and training for team and individual sports.

Businesses whose primary purpose is to operate an outdoor recreational amenity may also open subject to conditions.

Entertainment

Concert venues, theatres, and cinemas may open for the purpose of rehearsing or performing a recorded or broadcasted concert, artistic event, theatrical performance or other performance on outdoor premises, subject to certain conditions. These conditions include that only those persons who are essential to the rehearsal or performance are permitted anywhere on the premises and that no more than 10 performers are permitted to participate in the rehearsal or performance.

As was the case in the Grey Zone, under the Step 1 rules, movies, concerts, and other performances may open if provided in a drive-in or drive-through format.

Organized Public Events, Certain Gatherings

End-of-School-Year Celebration Ceremonies

Under the Step 1 rules, the general rule that an organized public event or social gathering cannot exceed 10 people outdoors does not apply for end-of-school-year celebration ceremonies held by a school or private school within the meaning of the *Education Act* that is in compliance with a directive issued by the Ministry of Education and approved by the Office of the Chief Medical Officer of Health.

Weddings, Funerals or Religious Services, Rites or Ceremonies

There is a new prohibition on attending an outdoor gathering for the purposes of a wedding, a funeral or a religious service, rite or ceremony where the number of persons attending the gathering exceeds the number that can maintain a physical distance of at least two metres from every other person. This prohibition does not apply where people attend the event in a motor vehicle.

Readers should consult the text of the regulation to determine how these restrictions may impact their organizations. For assistance, please contact your regular [Hicks Morley lawyer](#).



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