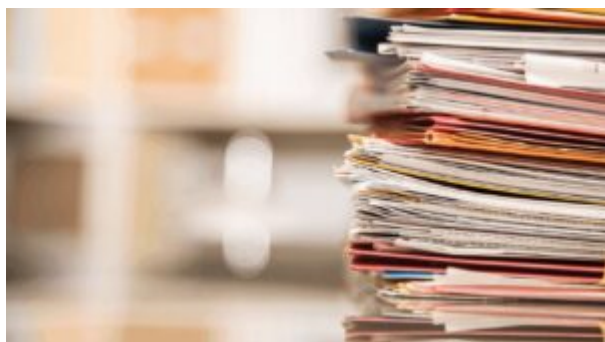


# Ontario Introduces COVID-19 Liability Protection For Workers And Businesses



On October 20, 2020, Ontario introduced Bill 218, *Supporting Ontario's Recovery and Municipal Elections Act, 2020* that, if passed, will prevent lawsuits relating to COVID-19 infections or exposure from being brought against businesses and workers that make an honest effort to follow public health guidelines and laws aimed at preventing exposure to COVID-19.

Subsection 2(1) of the proposed legislation provides that no cause of action arises against any person as a direct or indirect result of an individual being or potentially being infected with or exposed to COVID-19 on or after March 17, 2020, as a direct or indirect result of an act or omission of the person if:

- a. At the relevant time, the person acted or made a good faith effort to act in accordance with, (i) public health guidance relating to COVID-19 that applied to the person, and (ii) any federal, provincial or municipal law relating to COVID-19 that applied to the person; and
- b. The act or omission of the person does not constitute gross negligence

What constitutes 'public health guidance' is defined broadly and includes advice and recommendations from a long list of individuals and government bodies, including the Chief Medical Officer of Health, public health officials in the Government of Canada, ministers or ministries of the Government of Ontario or Canada and its officers or employees, and municipalities and their officers or employees, among others [subsection 1(1)]. The protection from liability applies 'regardless of any conflict or inconsistency in the public health guidance or laws applicable to the person' [subsection 2(2)].

A 'good faith effort' is defined to 'include an honest effort, whether or not that effort is reasonable' [subsection 1(1)]. However, the proposed legislation provides for a number of important exceptions to the liability protection. For example, it carves out legal proceedings against those whose actions constitute gross negligence. It also allows for causes of action stemming from acts or omissions of a person that occurred while a law required the person's operations to close (in whole or in part), and that relate to an aspect of the person's operations that was required to close under the law [section 3]. Lastly, it provides broad exceptions relating to employment and the performance of work [subsection 4(2)], including causes of actions by workers in respect of an exposure to or infection with COVID-19 that occurred in the course of or as a result of employment, regardless of whether or not the employer has workers'

compensation coverage. The Bill does confirm that workers' compensation legislation (to the extent that an employer participates in the provincial scheme) may still cover COVID-19 exposures and infections.

Notably, the proposed legislation is intended to have retrospective effect. No proceedings may be brought or maintained that relate to anything referred to in subsection 2(1), regardless of whether the cause of action arose before, on or after the day the Act comes into force. Moreover, any such proceedings that are commenced before the Act comes into force are deemed to have been dismissed, without costs, on the day the Act comes into force.

With the introduction of this proposed legislation, Ontario follows other provinces, such as British Columbia and Nova Scotia, that have passed legislation limiting certain proceedings arising from the COVID-19 pandemic.

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