



# Employment Law in the Equestrian Industry During COVID-19

April 15, 2021

Berry Hykin, Lawyer

[berry@woodwardandcompany.com](mailto:berry@woodwardandcompany.com)

**WOODWARD & COMPANY**

**LAWYERS LLP**

# Outline

**Legal Context**

**COVID-19 Specific Health and Safety  
Obligations**

**COVID-19 Leave**

**Privacy**

**Human Rights**

# Applicable Laws & Policies

## Federal

- *Charter*
- *Public Health Act*
- *Quarantine Act*
- *Employment Insurance*

## Provincial

- *Provincial Health Act*
- *Employment Standards Act*
- *Workers Compensation Act*
- *Human Rights*
- *Personal Information Protection*

## Sports Organizations

- *EC Return to Business Operations Framework*
- *HCBC Return to Sport*
- *ViaSport BC*

# Public Health Orders Affecting Equine Sport

## Workplace COVID-19 Safety Plans

- All employers must develop and post a safety plan to prevent risk of transmission

**29 May 2020**

## Agricultural Temporary Foreign Workers

- Quarantine requirements for foreign workers entering BC for agriculture

**31 Mar. 2021**

Workplace Outbreak/Cluster  
Workplaces with declared outbreaks can be closed by PHO

**14 May 2020**

## Overnight Camps for Children and Youth

- Overnight camps for children are prohibited

**14 Mar. 2021**

## Gatherings and Events

- Sets out, among other things, restrictions affecting sports.

**April 11, 2021**

# Current Sports Restrictions – April 13, 2021

No Competitions at this time

No travel except to “home club”

No spectators

High performance athletes can travel for specialized training

Youth indoor & outdoor sports are in ViaSport Phase 2 (training, drills, no games)

Adult group sports training & drills (indoors max. 2 participants; outdoors 10)

# Return to Sport Guidelines

- **VIASPORT**

- BC's main amateur sports organization has been instrumental in developing return to sport guidelines throughout the pandemic. Equestrian specific guidelines are here and all coaches should be familiar with them:

<https://www.viasport.ca/sites/default/files/A%20Safe%20Return%20to%20Equestrian%20Sport%20%26%20Recreation%20v2.pdf>

- **HORSE COUNCIL OF BRITISH COLUMBIA**

- HCBC has created a comprehensive resource page that is kept well up to date and, among other things, includes, updates on the Viasport guidelines including explanations of changes arising from PHO orders, as well as waivers and numerous other resources:

<https://hcbc.ca/news-events/return-to-sport/>

# Legal Implications for Failing to Comply with Public Health Orders

Significant penalties and fines under the *Emergency Program Act* (starting at \$230 individuals; \$2,300 for persons or businesses operating non-compliant businesses or events) and under the *Public Health Act*.

Possible civil liability for personal injury if negligence can be shown

Possible criminal liability for intentionally and knowingly engaging in behaviour that spreads COVID-19 (criminal negligence)



# *Employment Standards*

The BC *Employment Standards Act* applies to most employment relationships.

The pandemic does not erase the usual statutory and common law requirements on employers

Things are changing constantly, you'll want to stay up-to-date

The BC Employment Standards Act has been amended to address Covid-19 issues, including new vaccine leave added April 1, 2021

Heightened responsibilities around health, safety and privacy, especially on return to sport and changing guidance from public health.



# Employment Standards Non-compliance

Employees can file complaints with the Employment Standards Branch at any time up to 6 months after the last day of their employment.

The branch will review, investigate and attempt to help the parties reach a settlement.

Employers may be subject to fines for contraventions of the Act.

May also result in civil claims in court (e.g. wrongful dismissal) up to 2 years after dismissal and/or human rights complaints up to 12 months after the event.

# Occupational Health and Safety Requirements

Employers have a statutory and common law duty to maintain a safe workplace.

The BC *Workers Compensation Act* sets out OH&S requirements; WorkSafeBC is the responsible regulator

Employers are required to immediately report certain serious incidents to WorkPlace BC, including if a worker is seriously injured or killed on the job.

# Non-compliance with OH&S obligations

- An employer's failure to meet their OH&S obligations under statute and common law can result in significant legal and financial liability.
- Failure to immediately notify WorkSafeBC when a serious incident occurs can lead to enforcement and penalties under statute and civil liability in courts.
- Employers must stay up to date to ensure compliance with WorkSafeBC requirements and orders/recommendations of PHO.

# Preventing Liability

*A legal or financial penalty is less likely to be imposed if the employer can demonstrate they have taken all reasonable steps to protect workers from harm.*



Identify all workplace hazards

Stay up to date on WorkSafeBC and PHO orders/recommendations

Implement all necessary preventive measures and training

Communicate appropriately to all employees/clients

Implement written health and safety policies, procedures, and practices and maintain written proof of enforcement.

# COVID-19 OH&S Employer Obligations

- 1) **COVID-19 Safety Plan** - Employers are required to have a Safety Plan that is consistent with WorkSafe BC guidelines.
- 2) **Daily Health Checks** - Employees must perform these and must not work if they did not pass or properly perform the daily health check.
- 3) **Work From Home** - Employers must encourage workers to work from home if that is possible, and provide supports for this.
- 4) **No Hanging Out** - Employers must prevent employees and customers from congregating at the workplace.

# Safety Plan: Steps to Develop

**Assess the risk at your workplace**

**Implement measures to reduce the risk**

**Develop policies**

**Develop communication plans and training**

**Monitor your workplace and update your plans as needed**

**Assess and address risks from resuming operations**

# Safety Plan: General Risk Reduction Protocols

Implement measures that reduce  
“contact intensity” and “number of contacts”

Maintain physical distance, wear a mask, physical barriers, PPE where appropriate;

Cleaning and disinfection; encourage hand hygiene

Identify and isolate: no one with symptoms comes to the facility

Keep records for contact tracing

Limit people in the same spaces (especially indoors); staggered shifts/schedules

Provide training for employees in health and safety measures



# Safety Plan: Equestrian Canada COVID-19 Return to Business Operations Framework

This guide from Equestrian Canada is generally consistent with WorkSafeBC requirements. It provides practical guidance to mitigate the exposure of employees, customers and riders in every aspect of the industry. Coaches should review it frequently and pay attention to any notice of changes. It is available here:

- [https://www.equestrian.ca/cdn/storage/resources\\_v2/cRSrWCZPbutzEN8Qg/original/cRSrWCZPbutzEN8Qg.pdf](https://www.equestrian.ca/cdn/storage/resources_v2/cRSrWCZPbutzEN8Qg/original/cRSrWCZPbutzEN8Qg.pdf)

# Safety Plan: Equestrian Canada Framework for Equine and Equestrian Facilities



## Common Themes From EC's Guidelines

- Keep common tools sanitized
- Install disinfectant and hygiene stations as needed
- Educate about the areas that act as a vector for Covid
- Limit the amount of people in a facility at once
- Consistent scheduling of lessons and visitors for ease of contact tracing if needed
- Please review the Framework for detailed risk mitigation guidance

# Health Checks – Mandatory Employee Self-Assessment

- **Employers:**

- Must ensure every worker performs a daily health check before entering the workplace.
- Can accept written, online, verbal (in person, by phone, virtually)

- **Employees:**

- Must complete the health check every day and do not enter the workplace if:
  - Have travelled outside of Canada within the last 14 days
  - Have been identified by Public Health as a close contact of someone with COVID-19
  - Have been told to isolate by Public Health
  - Are displaying any of the following new or worsening symptoms:
    - - Fever or chills
    - - Cough or tiredness
    - - Headache
    - - Extreme fatigue
    - - Loss of sense of smell or taste
    - - Difficulty breathing
    - - Nausea or vomiting
    - - Sore throat
    - - Diarrhea
    - - Loss of appetite

# Understanding Responsibilities

## Employers or Owners

### **Are responsible for:**

- Completing and posting COVID-19 Safety Plans;
- Training and educating everyone at the workplace of the contents of that plan;
- Having a system in place to identify the hazards of COVID-19;
- Controlling the risk; and monitoring the effectiveness of the controls.

## Employees

### **Are responsible for:**

- Taking reasonable care to protect their health and safety and their co-workers' health and safety.
- In the context of COVID-19:
  - Responsible for their own personal self-care;
  - Frequent hand washing and staying at home when sick;
  - Reporting unsafe conditions to their employer;
  - Following the procedures of the Safety Plan.

# Understanding Responsibilities – Masks

**Masks are  
mandatory  
in all indoor  
public  
spaces**

- People who *choose* not to wear a mask are not exempt and can be fined
- Business owners cannot require proof of medical exemption, but can accommodate
- Is a barn an indoor public space? When in doubt, play it safe.
- Exemptions: under 12, medically exempt or unable to use mask without help.

# Understanding Responsibilities – First Aid

## Employers responsible for First Aid

- Make sure first aid providers are up to date on COVID-19 safety protocols.
- Provide COVID-19 safety supplies (disposable masks, gloves)

# Understanding Responsibilities – Vaccines

Can  
Employers  
make  
vaccines  
mandatory?

- The answer is a qualified yes.
- What is the justification? A nexus is needed between the requirement and the nature of the work
- Exemptions need to be available.
- Privacy and human rights considerations apply



# Understanding Responsibilities – Post Vaccination

**Once employees get vaccinated will they still have to follow COVID protocols in the workplace?**

The safety protocols ordered by the PHO, and the safety plans put in place by employers need to be followed after vaccination.

All British Columbians will be required to follow the PHO's orders until they are rescinded or change. This will likely not happen until community (or "herd") immunity is achieved, and community transmission decreases.

# Employee Rights – Refusing Work

- Employees can refuse to work if they believe it presents undue hazard
- Employer cannot force an employee to work, or discipline or dismiss an employee for refusing to participate in work they deem unsafe.
- Disputes may be resolved through WorkSafeBC and employers can be subject to administrative penalties for OH&S contraventions.
- Employers should take transparent and collaborative approach with employees
  - Work with employees to identify risks specific to their job duties/work environment and accommodate where possible, including granting COVID-19 leave where applicable
  - Establish operating procedures to minimize risk of exposure and infection


# COVID-19 In the Workplace

If an employee is diagnosed with COVID-19:

- Employee must self-isolate at home
- Public health authorities undertake contact tracing
- Consider contact with coworkers/clients and whether others may need to self-isolate

Take reasonable measures to protect identity of affected employee

- In smaller workplaces, it can be hard to protect identity of employee
- Focus on infection containment protocols



# COVID-19 Leave

Employees are entitled to *unpaid* job-protected leave:

- To get vaccinated or assist a dependent to be vaccinated against Covid-19
- If diagnosed with Covid-19
- If self-isolating or quarantining pursuant to an order or guidance from public health
- Their employer has directed them not to work due to concern about exposure to others
- If providing care to an eligible person for a reason related to Covid-19
- If outside BC and unable to return to work due to travel restrictions
- If they are a vulnerable person more susceptible to Covid-19

# COVID-19 Leave - Details

- **Duration of the Leave**

- When one of the above circumstances applies, the employee is entitled to leave for as long as that situation applies to the employee.

- **Proof of Entitlement to Leave**

- The employer can request proof of entitlement and the employee must provide it as soon as possible, except that the employer must not request a medical certificate and the employee does not have to provide one.



# What “job protected” means

- Employees should tell their employers when they are planning to come back to work and they are entitled to their same position (or one like it).
- Employers cannot fire, lay off or change an employee’s job conditions while the employee is on leave without the employee’s consent.
- If the employer cannot reinstate the employee to the same or similar position, the employer may dismiss the employee but will have to pay compensation for length of service based on their last day of employment.



British Columbia's  
**Office of the Human Rights  
Commissioner**



# Human Rights & Privacy

---



# Privacy

Employees maintain their privacy rights during COVID-19 pandemic.



Employers can ask questions reasonably required to preserve health and safety; no disclosure without consent or as required by law.



Develop a communicable illness policy so can require employees to:

disclose potential exposure or infection through confidential process

leave work and self-isolate

provide updates on condition



Limited circumstances in which can require testing or temperature screening.

Seek specific advice on whether and how to proceed to minimize intrusion on privacy rights

# Privacy Questions

If you as an organization or business are unsure of your responsibilities or authority to collect and use personal information, contact the OIPC at (250) 387-5629 or [info@oipc.bc.ca](mailto:info@oipc.bc.ca).



# Human Rights Considerations



British Columbia's  
Office of the Human Rights  
Commissioner

- COVID-19 is likely to be treated as a disability under the BC Human Rights Code
- An employer cannot discriminate against, refuse to hire, discipline or terminate an employee because they
  - have been diagnosed with COVID-19 or are perceived to have COVID-19 (because, for example, they are exhibiting certain symptoms);
  - come from a “perceived group with high COVID-19 rates”; or
  - are unable to come to work because they are required to self-isolate or quarantine

# Human Rights Considerations



British Columbia's  
**Office of the Human Rights  
Commissioner**

- Employers must accommodate employees:
  - Who have COVID-19 by taking precautions to stop the spread of the virus, providing flexible remote working arrangements, delaying start times for new employees or providing sick leave;
  - Who are particularly vulnerable (such as the elderly or immune-compromised people); and
  - Who have increased child care obligations due to the pandemic where child care responsibilities cannot be covered by other means. This may also apply to employees who are required to care for sick family members at home.

# Questions



British Columbia's  
**Office of the Human Rights  
Commissioner**

If you have questions you are welcome to call BC's Office of the Human Rights Commissioner at 1-844-922-6472 and leave a message in the voice mailbox. A member of our staff will return your call within 5 business days.

For general inquiries, please email [info@bchumanrights.ca](mailto:info@bchumanrights.ca).

# Additional Resources I

- **Province of BC Business Supports**

- <https://www2.gov.bc.ca/gov/content/covid-19/economic-recovery/business-supports>

- **Provincial Government Provincial Restrictions and Health Orders**

- <https://www2.gov.bc.ca/gov/content/covid-19/info/restrictions#pho-order>

- **BC WorkSafe Covid Webpage**

- <https://www.worksafebc.com/en/covid-19>

- **BC Employment Standards Branch**

- <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards>

# Additional Resources II

- **BC CDC Webpage for Employers and Businesses**
  - <http://www.bccdc.ca/health-info/diseases-conditions/covid-19/employers-businesses>
- **Equestrian Canada Business Operation Guidelines**
  - [https://www.equestrian.ca/cdn/storage/resources\\_v2/cRSrWCZPbutzEN8Qg/original/cRSrWCZPbutzEN8Qg.pdf](https://www.equestrian.ca/cdn/storage/resources_v2/cRSrWCZPbutzEN8Qg/original/cRSrWCZPbutzEN8Qg.pdf)
- **Horse Council of British Columbia Return to Sports Webpage**
  - <https://hcbc.ca/news-events/return-to-sport/>
- **Office of the Human Rights Commissioner Covid Website**
  - <https://bchumanrights.ca/key-issues/covid-19/>
- **Office of the Information & Privacy Commissioner Covid Webpage**
  - <https://www.oipc.bc.ca/news/privacy-awareness-week-2020-covid-concerns-and-protecting-personal-information/>



WOODWARDANDCOMPANY.COM

**VICTORIA OFFICE**

200 - 1022 Government  
Street  
Victoria, BC V8W 1X7  
250 383 2356

**WHITEHORSE OFFICE**

201 - 3059 3rd Avenue  
Whitehorse, YT Y1A 1E2  
867 633 5940

**TSARTLIP OFFICE**

1166-d Stellys Cross  
Road  
Victoria, BC V8M 1H3  
250 383 2356

**WOODWARD & COMPANY**

LAWYERS LLP