Employment Law in the Equestrian Industry During COVID-19

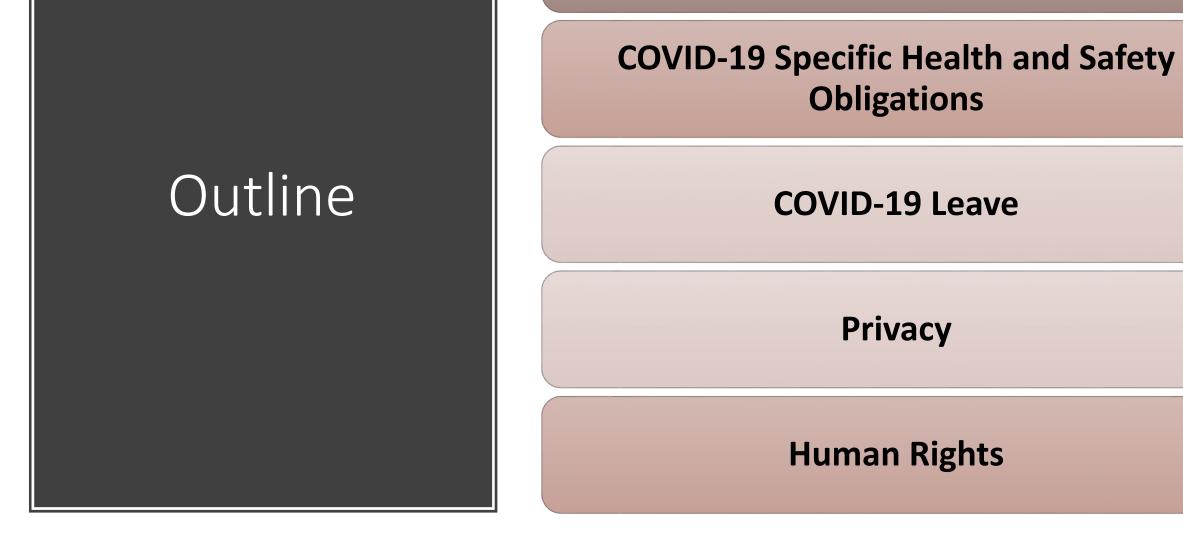
April 15, 2021

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Legal Context

W&C⁰

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 Plans All employers must d and post a safety pla prevent risk of transm 	levelop n to	Agricultural Te Foreign Worke • Quarantine re foreign worke for agriculture	ers equirements for rs entering BC		Workplace Out Workplaces wit outbreaks can l	
29 May		2020	020 31 Mar. 20		2021	
	14 May 2020					
14 May 20)20	14 Ma	r. 2021		April 1	1, 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)

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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%20 Sport%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.

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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 WorksSafeBC 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

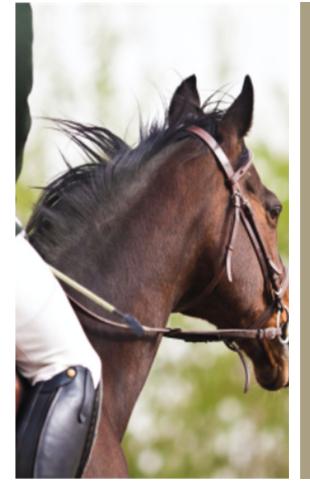


Safety Plan: Equestrian Canada COVID-19 Return to Business Operations Framework

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:

<u>https://www.equestrian.ca/cdn/storage/resources_v2/cRSrWCZPbutz</u>
 <u>EN8Qg/original/cRSrWCZPbutzEN8Qg.pdf</u>

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 <u>Framework</u> 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

- Difficulty breathing Nausea or vomiting
- Sore throat
- Diarrhea
- Loss of appetite
- Loss of sense of smell or taste

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 selfisolate

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 <u>as long as that situation applies</u> 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, <u>except that</u> the employer must not request a medical certificate and the employee does not have to provide one.

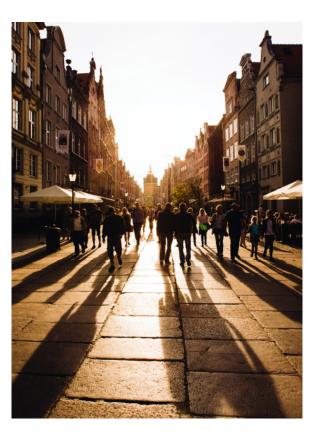
What "job protected" means

- 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.



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.



Human Rights Considerations



- 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 immunecompromised 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

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.

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
- <u>BC WorkSafe Covid Webpage</u>
 - https://www.worksafebc.com/en/covid-19
- <u>BC Employment Standards Branch</u>
 - <u>https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards</u>

Additional Resources II

- <u>BC CDC Webpage for Employers and Businesses</u>
 - <u>http://www.bccdc.ca/health-info/diseases-conditions/covid-19/employers-businesses</u>

• Equestrian Canada Business Operation Guidelines

- <u>https://www.equestrian.ca/cdn/storage/resources_v2/cRSrWCZPbutzEN8Qg/original/cR_SrWCZPbutzEN8Qg.pdf</u>
- 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
 - <u>https://bchumanrights.ca/key-issues/covid-19/</u>
- Office of the Information & Privacy Commissioner Covid Webpage
 - <u>https://www.oipc.bc.ca/news/privacy-awareness-week-2020-covid-concerns-and-protecting-personal-information/</u>

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