

Leasing Bulletin:

Active Screening Requirements for Indoor Malls – Landlords Be Aware!

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On February 8, 2021, the Government of Ontario released its framework for the gradual re-opening of the province. It indicated that as local infection rates improved, each of the 34 public health regions would be transitioned to a revised colour-coded framework with new and modified measures. As of the date of writing, in-store shopping at non-essential retail stores is once again permitted, with restrictions, in all regions except Toronto, Peel, and North Bay-Parry Sound.

Where in-store shopping at non-essential retail is permitted, there are many restrictions, capacity limits, and other obligations in place, depending on the applicable colour zone. Businesses are required to screen all individuals and be in compliance with any advice, recommendations, and instructions issued by the Office of the Chief Medical Officer of Health or other public health official by, among other things:

- Posting signs at all entrances to the premises, in a location visible to the public, that informs individuals on how to screen themselves for COVID-19 prior to entering the premises;
- Actively screening every person who works at the business or organization before they enter the premises; and
- Actively screening patrons entering indoor malls.

The obligation to actively screen patrons entering indoor malls currently applies to the Orange, Red, and Grey zones. Malls can use the Ontario Government's "patron screening tool" to help meet this requirement (visit <https://covid-19.ontario.ca/screening/customer/>). This screening tool can be completed online or downloaded as a PDF and can be used in advance or on-site before the patron enters the mall.

Each public health region can issue its own specific set of screening measures in addition to the Ontario Government's general screening measures. As of the date of writing, Hamilton is the only public health region to have done so. These screening measures, specific only to indoor malls in Hamilton, require mall owners/operators to do the following:

- Implement active screening measures, including having a person stationed at each mall entrance asking screening questions in-person before permitting entry to those customers who meet the criteria for entry. Customers who do not pass screening should be advised that they cannot enter the mall and that they should self-isolate and seek assessment and testing. Note that screening is not required for emergency personnel, inspectors, or enforcement officers.
- The screening questions must be as found in the Province’s “patron screening tool” or be substantially similar in content. Records of screening do not need to be maintained.
- To support safe screening:
 - ◆ Limit points of entry into the mall to help facilitate screening. Points of egress need to be maintained in case of fire or emergency.
 - ◆ Space and lay out the entrance so physical distancing of two metres can be maintained during screenings.
 - ◆ If physical distancing of two metres cannot be maintained, place an appropriate physical barrier (e.g., acrylic or Plexiglas) at the entrance to separate the screener from customers to be screened and provide appropriate personal protective equipment for the screener, including medical masks and eye protection.
 - ◆ Encourage all customers to use alcohol-based hand rub/sanitizer before entering the mall.

As in-store shopping at non-essential retail continues to re-open, commercial landlords of indoor shopping malls should carefully consider their existing pandemic plans with respect to the operation of their indoor malls and, if necessary, revise those plans in order to conform to these new, stringent measures. The Provincial Government has imposed a positive obligation on owners/operators of indoor malls to “actively screen” patrons before entering the mall, an obligation that appears to require more than just posting signage at the premises.

We will continue to provide updates on the measures affecting landlords and tenants during COVID-19. If you have any questions or would like to obtain legal advice on any leasing issues or commercial leasing litigation, please contact any lawyer in our Commercial Leasing Group.

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