

**TOOLKIT**

Planning Toolkit for Commercial Buildings  
**INFLUENZA PANDEMIC**



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Building Owners And Managers Association of Canada

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## ***Executive Summary***

The Property Manager's Toolkit ("Toolkit") provides commercial building owners and managers with guidance on Pandemic planning, specifically focused on the elements that will directly impact building operations. It is not intended to be a complete business continuity plan or Pandemic plan. The Toolkit documentation contains key strategies that relate directly to the questions and concerns that will be most important to a building owner or manager in planning for a Pandemic. Further detailed reference is available in the main BOMA Canada Guide document, *Influenza Pandemic: Planning Guide for Commercial Buildings* from which this Toolkit was derived, and from other selected sources as may be appropriate to fully prepare a comprehensive Pandemic plan. The Guide is available for download from BOMA Canada's "Pandemic Planning Site for Canadian Commercial Real Estate": [www.bomacanada-pandemic.ca](http://www.bomacanada-pandemic.ca).

BOMA Canada acknowledges the National Industry Pandemic Planning Task Force for their exceptional work in developing this Pandemic Planning Toolkit, and the Pandemic Planning Guide. The collaboration and expertise of this Task Force, comprised of senior industry representatives of numerous major commercial real estate firms, was crucial to the successful completion of this valuable new resource document, for the benefit of the entire industry.

To further assist property owners and managers in Pandemic planning, we also recommend the BOMA Toronto Workshop Report – *Addressing the Threat to Commercial Buildings of an Avian Flu Pandemic*. This Report is available on the BOMA Canada Pandemic site, [www.bomacanada-pandemic.ca](http://www.bomacanada-pandemic.ca), along with a wealth of useful links to such resources as federal and provincial health and emergency information sites, industry information, and other national and international Pandemic flu resources.

The Building Owners and Managers Association (BOMA) of Canada is the voice of the Canadian commercial real estate industry with over 2,500 members in regional associations across Canada. On behalf of the building owners, managers, developers, facilities managers, asset managers, leasing agents, brokers, and the product and service providers to over 1.9 billion square feet of commercial real estate in Canada. BOMA Canada addresses issues of national concern, and promotes excellence in the industry through information, education advocacy and recognition.

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The National Pandemic Task Force (the Task Force) and the Building Owners and Managers Association of Canada acknowledge the support and groundbreaking work of the Canadian Manufacturers & Exporters (CME) in sharing best practices across Canada's business community. The Taskforce and BOMA Canada also wish to gratefully acknowledge the support and expertise derived from eBRP Solutions. This toolkit contains material drawn from both the CME document titled *Influenza Pandemic: Continuity Planning Guide for Business* and eBRP's *Avian Flu Pandemic: Response Plan Template*. This material is copyrighted and may not be reproduced without permission.

### 4. Pandemic Planning Checklist for Commercial Buildings

It is recommended that you consider the following items and develop policies / processes to address each in advance of a Pandemic influenza situation occurring.

**Pandemic Planning Checklist for Commercial Buildings**

1. Building Infrastructure

Completed	In Progress	Not Started	Not Applicable	<b>Policy / Practice</b>	<b>Recommendation /Action</b>
				Municipal plans reviewed by location	<i>Review existing municipal plans to identify individuals or departments that you will need to contact in the event of a Pandemic. Review the local plans to coordinate actions. What are the planning assumptions in their plans that will impact your ability to continue service? For example: closing of transit, increased availability of police, expected response times for ambulance, underground citizen pathways, etc.</i>
				Critical infrastructure identified	<i>Send a letter requesting assurance of Pandemic preparedness for all critical infrastructure providers such as power, heat, phones, elevators, water/sewage, fire suppression systems, technology, etc. Do your tenants have unique infrastructure requirements such as call centres, cheque processing, internet data centres, trading floors, etc.? Distribute a letter to tenants identifying your Pandemic strategies that may impact the building services. (see template letter in Appendix 1)</i>
				Building Operation Skills Inventory	<i>Determine any internal specialized or critical skills necessary to sustain building operations (see inventory checklist in section 5)</i>
				Transportation requirements	<i>Identify how employees currently get to work and plan for potential situations such as a transit shut-down. Is your building an integral part of the public transit system and if so what minimum access requirements must be accommodated?</i>
				Parking requirements	<i>Determine if existing parking structures, capacity, hours of operation, etc. will be impacted in the event of an increased number of employees driving to work due to public transit shut down or in order to reduce exposure to the virus. Develop a plan to address increased demand or protection requirements of parking attendants.</i>
				Cash /supplies availability	<i>Determine if additional cash /supplies should be maintained in a Pandemic influenza situation due to restricted bank access or if suppliers will only accept cash payment. Document other employee needs if required to remain on-site (food, medication, television, battery-operated radios, cots, etc.)</i>

Completed	In Progress	Not Started	Not Applicable	Policy / Practice	Recommendation /Action
				Public access by location (transportation, parking, residential access, medical clinic access, etc.)	<i>Does the general public have normal unrestricted access? How difficult would it be to restrict public access in the event of a Pandemic?</i>
				Shelter in place capabilities	<i>Do you anticipate sheltering any or all of your employees within the building for an extended period time in order to continue building operations? Document requirements, assumptions, and plans to meet the needs.</i>
				Security support requirements by location	<i>Has there been a review of the expected security requirements during a Pandemic? Will the number of security personnel be adequate? Do they expect Personal Protective Equipment to be provided? Document the plan to provide additional protection such as masks, gloves, glass screens, etc. (see supplier template letter in Appendix 1)</i>
				Janitorial services requirements by location	<i>Has there been a review of anticipated cleaning requirements during a Pandemic? Will the number of janitorial personnel be adequate? Do they expect Personal Protective Equipment to be provided? Document the plan to provide additional protection such as masks, gloves, glass screens, etc. (see supplier template letter in Appendix 1)</i>
				Quarantine requirements	<i>Determine if a quarantine that adheres to local laws could be supported. What additional requirements would be required to support a building lock down? Document the procedure to verify quarantine orders, implement them and return to normal operations.</i>
				Critical suppliers identified with particular focus on those that represent a potential single point-of-failure	<i>Critical suppliers (external /internal) should be contacted and an assessment of their ability to support the business during a Pandemic should be conducted. Any gaps should be documented and an action plan developed. Minimum levels of supplies should be documented and maintained. Attention should be paid to those suppliers required to support unique tenant needs such as 24/ 7 access, call centres, high security clearances, etc. (see template letter in Appendix 1)</i>
				Identification of alternate providers	<i>Identify critical single source suppliers and determine alternate providers if company is unable to meet supply.</i>
				Casualties	<i>Are current emergency response procedures able to support casualties due to a Pandemic (potentially multiple occurrences)? Plan for increased sanitation after a death, decreased medical response times, and the need to potentially cordon off areas for medical investigation.</i>
				Building Staff Preparedness	<i>Ensure building staff receive appropriate Pandemic preparedness training and Personal Protective Equipment in accordance with corporate or regulatory requirements.</i>

## 5. Building Operations Skills Inventory

The following chart is a suggested inventory of required skills that are assessed relative to their importance at a property. A column has also been included to assist the property manager in determining if a function can be performed offsite (i.e. remote operation of Building Automation Systems or security systems).

### Building Operations Skills Inventory

<b>Building Operations Skills Inventory</b>								
<b>Date:</b>								
<b>Building:</b>								
<b>Completed By:</b>								
Specialized Activity or Equipment Description	Essential to operations of Facility over expected term of Pandemic Yes/No	Remote Operation Through BAS? Yes/No	Critical? Yes/No	Experience Required? None/Limited/ Proficient or Expert?	No Registered Heating or Cooling Plants Licensing or Certification Required? Yes/No	If Registered Heating /Cooling Plant Exists Licensing or Certification Required? Yes/No	Special Needs i.e. Security Clearance	Comments
Daily Rounds								
Water Treatment								
Equipment Operating Logs								
Building Automation System								
Attendance to Non-Emergency Tenant Service Calls i.e. hot/cold complaints								
Attendance to Emergency Tenant Service Calls i.e. water leaks, power outage								
General Building Cooling Systems								
Preventative Maintenance of Equipment								

Specialized Activity or Equipment Description	Essential to operations of Facility over expected term of Pandemic Yes/No	Remote Operation Through BAS? Yes/No	Critical? Yes/No	Experience Required? None/Limited/ Proficient or Expert?	No Registered Heating or Cooling Plants Licensing or Certification Required? Yes/No	If Registered Heating /Cooling Plant Exists Licensing or Certification Required? Yes/No	Special Needs i.e. Security Clearance	Comments
Inspection and Testing of Life Safety Equipment								
Fire Panel								
Critical Systems Cooling Systems								
Uninterruptible Power Systems								
General Building Humidification Systems								
Critical Applications Humidification Systems								
Air Compressors								

*The Task Force acknowledges the assistance of Angus Consulting Management Limited with this table.*

## **6. Six Phase Framework**

The Task Force developed a standard six phase framework of potential impacts on building services and operations at varying levels of absenteeism. The framework should be used as a guide when evaluating the impact on internal staff as well as service providers and contractors to the property.

In order to ascertain some understanding of the potential impact on critical service areas, the Task Force held meetings with a number of national service firms in the following categories, using the six phase framework as a guide for those discussions:

- Security
- Life Safety
- Parking
- Janitorial

Please refer to Appendix 1 of the *Pandemic Planning Guide for Commercial Buildings* for the Six Phase response charts completed for each of the above-mentioned categories. The generic Six Phase Framework chart follows on the next page.

**PANDEMIC INFLUENZA – EMERGENCY RESPONSE LEVELS (Generic Six Phase Framework)**

PANDEMIC - EMERGENCY RESPONSE LEVEL (ERL)	DESCRIPTION OF EMERGENCY RESPONSE LEVEL	ANTICIPATED CONDITIONS	WHAT SERVICE DELAYS OR SERVICE CUTS DO YOU ANTICIPATE? (List Them Below)	WHAT MITIGATION MEASURES WILL YOU IMPLEMENT TO MINIMIZE IMPACTS OF SERVICE DELAYS/SERVICE CUTS?	FOLLOWING MITIGATION - WHAT RESIDUAL IMPACTS DO YOU ANTICIPATE ON BASIC LEVELS OF SERVICE?
<b>ERL - 1</b>	Business as Usual  'STATUS QUO'  Full Staff Complement	No Declared Emergency  Normal Operating Conditions	N.A.	<ul style="list-style-type: none"> <li>• Business Continuity Plans</li> <li>• Cross-training of staff</li> <li>• Mutual aid work agreements with neighbouring properties Etc. Etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Increased resiliency in operations</li> <li>• More clearly defined roles and responsibilities</li> <li>• Heightened state of emergency preparedness</li> <li>• Better service</li> </ul>
<b>ERL - 2</b>	Staff Absenteeism (1)  15%	Potential Exists for Some Delays in Service	List anticipated service delays	List proposed mitigation measures that you intend to implement to reduce the impacts of service delays	List anticipated residual impacts with 15 % staff absenteeism
<b>ERL - 3</b>	Staff Absenteeism (1)  30 %	Anticipate Service Delays & Some Service Cutbacks	List anticipated service delays  List anticipated service cuts	List proposed mitigation measures that you intend to implement to reduce the impacts of anticipated service delays and/or service cuts (e.g. suspend non-essential preventative maintenance)	List anticipated residual impacts with 30 % staff absenteeism  (e.g. clean offices every two days; garbage pick-up nightly)
<b>ERL - 4</b>	Staff Absenteeism (1)  50 %	Expect Service Cutbacks	List expected service delays  List expected service cuts	List proposed mitigation measures that you intend to implement to reduce the impacts of anticipated service delays and/or service cuts	List anticipated residual impacts with 50 % staff absenteeism  (e.g. clean offices every 3 day; garbage pick-up nightly)

PANDEMIC - EMERGENCY RESPONSE LEVEL (ERL)	DESCRIPTION OF EMERGENCY RESPONSE LEVEL	ANTICIPATED CONDITIONS	WHAT SERVICE DELAYS OR SERVICE CUTS DO YOU ANTICIPATE? (List Them Below)	WHAT MITIGATION MEASURES WILL YOU IMPLEMENT TO MINIMIZE IMPACTS OF SERVICE DELAYS/SERVICE CUTS?	FOLLOWING MITIGATION - WHAT RESIDUAL IMPACTS DO YOU ANTICIPATE ON BASIC LEVELS OF SERVICE?
<b>ERL – 5</b>	Voluntary Closure of Property for Health, Safety, Security or Other Reasons (Skeleton Staff)	Phased Transition to Full Lockdown Down Over 5 – 10 Business Days - Transition to Skeleton Staff - Provide Essential Services Only	List essential services to be provided here: <ul style="list-style-type: none"> <li>• Administration</li> <li>• Fire and Life Safety</li> <li>• Building Security</li> <li>• HVAC, etc.</li> </ul>	List proposed mitigation measures that you intend to implement under full lockdown conditions to reduce the impacts of service delays and/or service cuts	List residual impacts that you anticipate under full lockdown conditions
<b>ERL - 6</b>	Forced Closure of Property Under “Orders” Issued by Public Health Officials (Skeleton Staff)	Full Lockdown Within 48 Hours - Skeleton Staff - Provide Essential Services Only	Who will provide these essential services? List their names here:		

Note 1 – Levels of staff absenteeism would affect regular staff, contract staff, contractors and other external service providers

## **7. Critical Elements of Pandemic Continuity Planning for Commercial Buildings**

### **7.1 Commercial Building Planning for Absences**

#### **Critical Suppliers**

Considerations for the property operations or major projects:

- Who are your most critical (Mission Critical) suppliers or vendors?
- Who “owns” each of them (which person, function or process is their primary contact)?
- What aspects of the customer/supplier relationship are subject to negotiation - with the goal of assuring more reliable access to supplier resources in a Pandemic?
- Can contracts be changed?
- Can new language be added?
- Can new contracts or agreements be initiated?

In every case - identify alternate suppliers for every Mission Critical Supplier.

#### **Single Points of Failure**

Once you have identified critical suppliers:

- Identify “single points of failure” - those vendors (whether on the “mission critical” list or not) who, if they fail to deliver their goods or services, could effectively cripple or shut down your business;
- Identify backup or alternate vendors/suppliers (if possible). Initiate relationships with alternates; and
- Make certain existing “single point” vendors are aware of your strategy – and that they understand it will only be implemented IF they are unable to meet minimum performance standards

#### **Utilities and Public Services**

Utilities and other public services (garbage collection, snow removal, etc.) may be de facto single-points-of-failure. Consider the following:

- What alternatives exist? (phone/network providers, water supply, backup electrical supply, gas or other fuel supply etc.)
- What relationships with alternates can be initiated?
- What “guarantees” can be derived from Utilities and Public Services?
- What “guarantees” can alternate providers offer?
- What will it cost to mitigate potential loss of service(s) with backup vendors?

The objective is to be prepared. If government fails to maintain public services - will you be prepared?

#### **Supplier Contracts and Communication**

- Review any relevant supplier contracts. Understand contractual service level agreements
- Consider assigning “owners” for each key supplier (if not already standard operating procedure) to monitor their status.
- Make sure suppliers know you have a plan. Find out if key suppliers have a plan of their own. Ask how suppliers expect to meet your needs in a Pandemic
- Keep key suppliers advised of your status during the event. Monitor supplier capability and compliance
- Maintain contact with “backup” suppliers who have been identified.

Some vendors will be bound by government contracts that guarantee priority for public demand; some will be bound by commercial contracts guaranteeing minimum quantities or priority delivery. Find out where your vendors/suppliers are in the pecking order and don't just take their word for it – try to get any “promises” in writing. In certain sensitive cases, it may be worthwhile to negotiate the cost of preferential treatment in advance to guarantee vital supplies.

**Building Staff**

- Consider their impact and role as first responders in a Pandemic situation to building emergencies and events;
- Determine ability to operate under split shift scenarios; and
- Develop cross training programs to mitigate gaps in manpower.

**7.2 Commercial Building Supply Chain**

Having identified mission critical and single point of failure vendors and suppliers, what can be done to plan in advance for disruptions to the supply chain – not just with mission critical, but with all suppliers?

- Create sourcing diversity – create a larger pool of vendors;
- Stockpile – keep a longer-lasting supply of essential goods on hand;
- Disperse geographically – diversify to help assure availability;
- Understand where your organization is in each supplier's “pecking order” (how important are you?);
- Make sure your suppliers have their own Pandemic plans in place; and
- Understand transportation alternatives – and be prepared to use them.

As leaders in the real estate industry, we must assess all major manufacturers' “Pandemic Plans” and evaluate the state of readiness within that industry.

**Today's typical washroom supplies:**

1. Paper Towels, Toilet Seat Covers and Toilet Tissue
2. Garbage Bags
3. Soap and Instant Hand Sanitizer
4. Cleaning Products

**Suggested Pandemic supply requirements:**

1. Alcohol Based Hand Sanitizer
2. Disposable Disinfectant Wipes
3. Non-Latex Gloves
4. Surgical Procedure Masks
5. Eye Goggles or Face Shields
6. N95 Masks
7. Increased Cleaning/Janitorial Chemical Supplies

*(Source: Ontario Ministry of Health and Long-Term Care for Personal Protective Equipment)*

## Issues on Retaining Access to Supplies

1. Distributor Issues
  - a) available warehouse space (stocking capabilities)
  - b) safety stock above normal inventory levels (cost associated with this)
  - c) location of warehouses (multiple locations, accessibility/timely delivery)
  - d) access to a variety of manufacturers (scale and dominance)
  - e) size and scope of your distributor to draw priority from specific manufacturers (helps to be a big market player with leverage)
  - f) market segments your distributor provides to (i.e. Healthcare etc., ranking priority)
  - g) ability of your distributor to outsource outbound freight to third party
  - h) union issues related to working conditions and/or outsourcing
2. Your Distributor's Manufacturers
  - a) location of production (cross border issues, multiple productions sites best)
  - b) offsite inventory capabilities (may manufacture in US but inventory in Canada - stockpiling capabilities in Canada)
  - c) manufacturers' contingency planning
  - d) markets manufacturers sell their products into (i.e. Healthcare etc.) may mean they suddenly cannot provide to you

## Key Considerations

1. Current product flexibility
  - If your paper products are **proprietary** this limits your ability to divert to alternate manufacturers if there is a supply disruption.
2. Governmental controls
  - Government may/will direct 'critical' items to prioritized service providers (i.e. hospitals). Where are you on the **priority** list?
3. Distributor's ability to divert product to alternate warehouses
  - In having multiple warehouses, if the Pandemic is regionalized, the distributors with **diverse locations and capacity** have the best ability to ensure the best flow of product to customers. (multiple partnerships and relationships).
4. Distributor's vendor base
  - a large vendor base on critical items gives the distributor a better ability to **secure supply**, divert product to the best source domestically regionally.
5. Your ability to **inventory** excess supplies of critical items on site at the property level.
6. Each property must **know its current inventory** and establish a new (higher) minimum inventory and pre-stock.

In general, and once all critical supplies (raw materials, forms, parts, office supplies etc.) have been identified in an impact analysis, decisions should be made regarding the stockpiling of "critical" supplies (those without which the property cannot function) in case suppliers cannot continue to provide the quantities needed during the Pandemic.

(Remember, while your suppliers may be able to function, THEIR suppliers may not. In most cases, your suppliers will have commitments to others – in particular governments – that may supersede yours, or at least compete with you for materials in a short-supply market.)

Ask your critical service providers/vendors if they have Pandemic plans of their own. If you don't get a response – ask again in writing. Do not accept a simple “yes” answer – ask for details:

- What does the plan entail?
- Does it include an impact analysis?
- When was the analysis performed?
- What were the criteria used in the analysis?
- Have critical suppliers been identified? Additional suppliers identified?
- How will they handle diminished workforce requirements?
- How will they handle restricted transportation?
- How will they communicate with you?
- Have they tested the plan?

*Refer to the Template Supplier Letter and Survey in the Appendix 1*

## 7.3 Building Supplies

Any Pandemic plan must consider the need for stockpiling of essential supplies. It is impossible to predict if and when a Pandemic will strike. When it does, governmental authorities will likely take precedence for sanitizing product inventory on hand, at least at the wholesale level.

Hand washing is the single most effective way to prevent the spread of infections. Using a hand sanitizer is not a replacement for good hand washing, but can be used when it is difficult to get to a sink.

Many suppliers are offering sanitizing products to assist in stopping the spread of illness. It is impractical to endorse one product over another. Building managers and owners must satisfy themselves with regard to sanitizing products provided at their buildings. However, it is recommended that sanitizing products should be introduced into buildings immediately to encourage early adoption of personal hygiene practices.

The following suggestions are made with regard to the provision of sanitizing products:

- The shelf life of sanitizing agents must be borne in mind when making decisions regarding the supply of products. The general shelf life of these products appears to be between one and three years, although at least one manufacturer claims eight years.
- Supplies of hand sanitizing product may be difficult to obtain once a Pandemic starts. Accordingly, building managers and owners should start introducing products to their buildings beforehand, so that sufficient stockpiles exist at the building.
- It is recommended that hand sanitizing stations be introduced at building entrances and exits, before a Pandemic. This will not only promote good health generally, but will also mean that sanitizing liquid is available on-site whenever a Pandemic commences. At least three to six months' supply should be on hand at all times. When choosing a station, preference should be given to those with sufficient capacity so that the liquid or other sanitizing agent does not run out frequently during the day. With fewer on-site staff during a Pandemic, refilling may be a

problem. In addition, larger buildings may keep a few stations in storage, to be used when necessary.

- It is recommended that antibacterial soap be placed in all building washrooms.
- It is recommended that hand sanitizing dispensers be placed in mechanical and electrical rooms, elevator machine rooms, janitorial closets, etc. prior to the start of a Pandemic. Third party contractors move from building to building, and can therefore spread illness easily. Again, refills should be kept on site, ensuring adequate supplies at all times.
- Personal protective equipment should be considered for front-line workers (i.e. building, janitorial and security staff etc.)

## **7.4 Legal Considerations for Property Owners and Managers\***

### **Is there a legal obligation for owners and managers to have a Pandemic plan?**

The first consideration for owners and managers of properties is whether there is a legal requirement for them to have a Pandemic or Health Emergency Plan. At this time, there is no express legislation in Canada or Ontario which requires owners or managers of properties to have a specific Health Emergency Plan in place. Having said that, there are some provinces which do require employers to perform risk assessments and this of course may imply an obligation to prepare such a plan if in fact a risk is identified.

Notwithstanding this, a legal obligation to prepare for a potential Pandemic event may exist for reasons which include:

- (i) As an employer in Canada, applicable legislation requires employers to create and maintain a safe workplace for its employees.
- (ii) The possibility of a Pandemic or health emergency is now well known to be a significant possibility or likelihood. The relevant government agencies are suggesting businesses should have plans in place. Many businesses and industries are preparing and publishing plans. The possibility that a claim may be made against an owner or manager of a property in negligence for not having a Pandemic Plan or Health Emergency Plan in place given the above, is an open question.

### **Relevant Federal Legislation – Pandemics and Other Emergencies**

It is outside the scope of this paper to deal with all of the various legislation, federal and provincial, which may come into play in a health emergency situation but listed below are some of the Acts which may be of importance.

### Canada Emergencies Act

The Emergencies Act (replaces the War Measures Act – 1914) is a tool of last resort that covers four classes of emergency: public welfare, public order, international affairs and war. It is intended to respond to an emergency at the national level and can only be invoked after it has been determined that a critical situation cannot be dealt with effectively under any other law in Canada and that the situation is either:

- of such proportions as to exceed the capacity or authority of a province to deal with it (such as during a Pandemic); or
- a serious threat to the Government of Canada’s ability to preserve sovereignty, security or territorial integrity.

### Emergency Preparedness Act

The Emergency Preparedness Act requires every federal ministry to develop and implement emergency preparedness measures. Since its inception, this Act has led to the development of several federal emergency response plans, including Health Canada’s Canadian Pandemic Influenza Plan.

*\* In addition to, and not to the exclusion of the comprehensive Disclaimer provisions set out at the beginning of this toolkit please note that this section provides only a brief overview of some of the legal issues that you may have to consider when developing a Pandemic or health emergency plan. No legal advice is being provided that may be relied upon by anyone for any reason in this paper and any appendices hereto. The authors accept no responsibility whatsoever for any liability for any acts or omissions done or omitted in reliance, in whole or in part on any information contained in this paper or any liability for any claims for loss, damage or other consequence, whether in contract, equity, tort, statute or law of any kind, whether such losses be direct or indirect, special, incidental, consequential or punitive that may relate to the use of this information, howsoever caused. In order to ensure that you have a clear understanding of any legal rights and obligations that you may have, you must obtain proper legal advice from a lawyer and refer to any and all relevant legislation and regulations.*

### Owners and Managers as Employers

Any Pandemic or health emergency that involves a biological virus may constitute a hazardous substance that is regulated by *Canada Labour Code Part II* and its regulations and the Provincial Occupational Health and Safety Acts and their regulations. Reference should be made to the applicable federal and provincial legislation. A hazardous substance is defined as “a controlled product and a chemical, biological or physical agent that, by reason of a property that the agent possesses, is hazardous to the safety or health of a person”. The most relevant sections of the *Canada Labour Code Part II Occupational Health & Safety* are set out below:

<b>Canada Labour Code, Part II Occupational Health and Safety</b>
<b>Section 124.</b> Every employer shall ensure that the health and safety at work of every person employed by the employer is protected.
<b>Section 125.</b> (1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity
(p) ensure, in the prescribed manner, that employees have safe entry to, exit from and occupancy of the work place;
(s) ensure that each employee is made aware of every known or foreseeable health or safety hazard in the area where the employee works;

**Section 128.** (1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that

(b) a condition exists in the place that constitutes a danger to the employee...

**Section 145.** (2) If a health and safety officer considers that a condition in a place constitutes a danger to an employee while at work,

a) The officer must notify the employer of the danger and issue directions in writing to the employer directing the employer, immediately or within the period that the officer specifies, to take measures to:

i) correct the hazard or condition or alter the activity that constitutes the danger,

(ii) protect any person from the danger...

If the employer agrees that a danger exists, the employer shall take immediate action to protect employees from the danger.

The full *Canada Labour Code Part II – Occupational Health and Safety* is available online at:

<http://laws.justice.gc.ca/en/L-2/146493.html#rid-146499>

Every provincial jurisdiction has the equivalent of an Occupational Health and Safety Act or Workplace Health and Safety Act which contain similar provisions. Please see Appendix 2 in the *Influenza Pandemic: Planning Guide for Commercial Office Buildings* for a list of statutes and regulations that may be applicable. Please note that this list may not be exhaustive and reference should be made to the particular legislation in each province. Having said that, it appears that Work Safe B.C. has considered it prudent to provide a draft Occupational Health and Safety Guideline for consultation purposes to address the expectations for plans to protect workers from possible exposure to a virus in B.C. workplaces. The proposed regulation will require employers to develop and implement an exposure control plan to protect workers where they have or may have occupational exposure to a blood borne pathogen or to other biohazardous materials. It appears that the proposed regulation has been ratified and is likely to become law shortly. The intent is that this would include an influenza Pandemic. Employers can likely expect that if these regulations are implemented in one province, then it is likely that they will be seriously considered by others and implemented.

### Three Rights of Employees

Both federal and provincial occupational health and safety legislation provides three rights:

- Right to Know;
- Right to Participate;
- Right to Refuse.

**Right to Know:** Employees have the right to be informed of known or foreseeable hazards such as Pandemic influenza. They must be given the information, instruction, training and supervision necessary to protect their health and safety. Effective communication will be crucial in preparing for and controlling Pandemic influenza.

**Right to Participate:** Employees have the right and responsibility to identify and correct job-related health and safety issues. They could exercise this right during Pandemic influenza. Employees can also participate through a complaint process and may complain if Pandemic influenza has not been well handled.

**Right to Refuse:** Employees can refuse work where there is reasonable cause to believe:

- A dangerous condition exists;
- An activity constitutes a danger to one or more employees.

It is possible that employees may refuse work when Pandemic influenza poses a danger.

### **Duties of Employers and Employees**

Under both federal and provincial occupational health and safety legislation:

- Employers: must ensure the health and safety of every employee is protected. This may require the implementation of programs, plans and response actions for Pandemic influenza, and
- Employees: have obligations to prevent occupational-related injuries and diseases. They must take reasonable and necessary precautions to ensure their own and others' health and safety.
- In the event of Pandemic influenza, employees could exercise this obligation and would require guidance, training, education, cleaning substances and protective clothing such as protective barriers, gloves and masks.

### **Owners as Landlords**

There are very significant and varied issues that owners as landlords will face in any Pandemic or health emergency event. It is not possible to anticipate all of the legal issues that may arise however, it is possible to suggest that the following issues should be considered and included in any such discussion or plan as the case may be.

### **Quiet Enjoyment**

- Landlord may wish to limit or restrict access to the property or any part thereof during a health emergency or Pandemic. It is questionable as to whether the landlord under existing leases has the right to do so.
- Can the landlord require that only employees of the tenant are permitted to enter the building as opposed to visitors or invitees?
- Can the landlord require a particular tenant or a particular type of tenant and its staff and invitees to use only one designated entrance, exit or escalator or elevator as the case may be? For example, you may have a medical clinic or doctor's office in the building. In the case of a health emergency, tenants in the building may be concerned about the fact that medical patients may be using the same entrance or elevator. The landlord may wish to have the right to designate a particular entrance or elevator to be utilized solely by a specific tenant or group of tenants in a health emergency.
- Can the landlord enter a tenant's premises to decontaminate any part of the tenant's premises? It is conceivable that an employee or invitee of the tenant may suffer from an illness or disease which may contaminate the leased premises. The landlord may wish to take steps to either require the tenant to decontaminate the premises or failing that, enter the premises to decontaminate at the tenant's expense. It may be that the landlord will wish to do this prior to any possible public health order. The legal basis for the landlord entering the leased premises

and taking steps to decontaminate would be questionable without a health emergency article contained in the lease. Of course, the landlord does not want to have the obligation to do this and any health emergency regulation must provide that any steps that the landlord may choose to take or omit to take are in its sole and unfettered discretion and that there is no obligation on the landlord to take any action.

### **Quarantine or Closing All or Part of Building**

- Can the landlord close all or part of the building where it has been determined that there has been a health emergency notwithstanding that there has not been a closure or quarantine order by any governmental authority?
- Can the landlord close all or part of the building where it determines that it is not safe to continue to operate the building, it does not have the available staff, equipment or ability to maintain the operations of the building?

### **Force Majeure Clauses**

- Most sophisticated leases have a well defined Force Majeure Clause but it may not include provisions that expressly include a health emergency such as a Pandemic or epidemic.

### **Limitation of Liability**

- Ensure that lease provisions adequately protect landlord, its officers, directors, property managers and agents from liability in carrying out the terms of any Pandemic plan or in dealing with any health emergency situation.
- As an example, consider the situation where the cleaning staff (independent contractors) inadvertently spread a virus or other health emergency biohazard in the building. If there is any suit, it is likely that the “deep pocket” landlord defendant will be included in any negligence claim.

### **Tenant Reporting to Landlord**

- During a Pandemic, the landlord will have an interest in knowing if there have been any incidences of illness experienced in a tenant's premises or amongst the tenants' employees. Can the landlord require the tenant to report any incidences of illness amongst its employees to the landlord?
- Are there privacy issues which put the landlord in a position where it cannot communicate the fact of illness in a particular tenant's premises? Can the landlord generally disclose the fact of illness in the building? Does the landlord have a duty to disclose the fact that there have been any incidences of illness in the building to other tenants?

### **Rent Defaults**

- In any health emergency, it is possible that there will be tenants that will default in the payment of rent. Landlords may wish to determine in advance what criteria they may utilize to decide whether any tenants may be offered rent relief and on what terms. In some circumstances, landlords may decide to request further security in exchange for any forbearance agreement.

## Services to Leased Premises

- In a health emergency, the landlord may wish to or be forced to reduce or cease any particular services to the leased premises or common areas. In particular, the landlord may be in a position where it must reduce cleaning and trash removal services. Cleaning staff will be on the front line of dealing with any health emergency and many may become ill or not report to work. The landlord may wish to have a step down plan for certain services. It is probably a good strategy to have those discussions with tenants well before any emergency situation arises. Tenants will therefore be in a position to include in their own plans the fact that they may have to take on some of the cleaning or other obligations in the leased premises.
- Can the landlord download some of its obligations pursuant to the lease on the tenant in the case of the health emergency?
- Given the fact that social distancing will be a very significant strategy employed by many tenants to maintain their business operations, landlords may find many tenants requesting that the building hours of operation be extended to facilitate employees working in shifts which may include late evening hours. This is especially the case if there is a transit shutdown or limitations placed on public transit given potential staff reductions. In those circumstances, many more employees may find that the only way for them to travel to work is to drive to the office. Evening shifts will allow for tenants to maximize the parking facilities in the building to facilitate evening workers that have to drive to the office. There are a number of significant building operational issues that flow from this concerning building services and the costs relating to those services.

## Emergency Drills

- Tenants generally understand that they have to participate in fire drills. At some point, a landlord may wish to conduct a health emergency drill in all or part of the building. Can the landlord require tenants to participate in health emergency drills?

## Existing Leases Versus New Leases

Many of the above-noted issues may be considered by the landlord as a basis for amending their lease forms to include expanded health emergency rights or powers. These lease forms may include a specific definition of a health emergency and include a section on health emergency or general emergency powers that a landlord may invoke.

Insofar as existing leases are concerned, it is unlikely that the landlord can make any amendments to the lease form itself without the consent of the tenant. Having said that, most commercial leases do give the landlord the power to pass regulations relating to the operation of the building on an ongoing basis and landlords may wish to utilize that right to draft and deliver a set of health related regulations that may deal with a number of the issues set out above.

The question as to whether the landlord will wish to make amendments to its lease form to include rights concerning health emergency issues is one that will be of course specific to each landlord's situation and experience.

## **Landlord/Tenant Cooperation in a Health Emergency**

During a Pandemic or other emergencies, it's important for landlords and tenants to work together.

During a Pandemic, Medical Officers of Health, as well as other medical health professionals are expected to be given expanded powers to protect public health and safety. For instance, if a health professional identifies a patient as being a suspect, or confirmed case of seasonal influenza or Pandemic influenza, then that health professional will be required to commence contact tracing procedures in accordance with the protocols set by the Medical Officer of Health at that time. This is likely to involve making contacts with the patient's workplace so that those exposed to the infected person can be formally identified, notified and ordered into isolation or quarantine for time periods specified by public health officials.

If a landlord or tenant worker gets sick at work, strict procedures will be needed to minimize the risk of exposing others in the building to infection. For example, the infected person's workstation and other personal objects will need to be disinfected, whether that responsibility rests with the landlord or tenant employer.

## **Property Managers**

- Property managers and agents managing properties for owners will be charged with managing the building through any Health Emergency or Pandemic Event. They may be called upon to implement the landlord Pandemic plan and should of course become familiar with it or alternatively, they may be requested by the Owner/Landlord to prepare a plan.
- Property managers may wish to ensure that their contracts of engagement with Owners properly cover off and indemnify them for any claims that may be made in relation to their operation of the property on behalf of the Owner during a Pandemic or other health emergency.
- Property managers may wish to suggest to Owners/Landlords that they consider preparing or adopting a Health Emergency or Pandemic Plan as part of their business continuity planning and address the issues referred to above.

## Appendix 1 – Letters

### Tenant Letter Template

[Tenant name/address]

Dear Sir or Madam:

**Re: Pandemic Planning**

The possibility of a pandemic is of increasing concern in Canada and around the world, and many companies are addressing the problem through their business continuity planning.

In March 2006, eight major Canadian real estate owners and managers formed the National Industry Pandemic Planning Task Force (“Task Force”), in association with the Building Owners and Managers Association Canada (“BOMA”). The Task Force acknowledges the assistance of Dr. Donald Low, Chief of Microbiology, Mount Sinai Hospital, Toronto; Mr. Ralph Dunham, Senior Vice President, Risk Consulting, Marsh Canada; and Mr. Randall Rothbart, Partner, Solmon Rothbart Goodman LLP.

In the event a pandemic occurs, experts predict that it will be characterized by a breathtaking speed of transmission. The practical realities suggest that landlords, managers and tenants should plan in advance for such an event. Accordingly, the Task Force has prepared the Pandemic Planning Guide for Commercial Buildings for building owners and managers (“the Guide”).

**LANDLORDS’ PANDEMIC PLANNING CONSIDERATIONS**

- [Company name] will take its lead from BOMA Canada, based on recommendations by the Task Force. One objective of the Guide is to help ensure that the majority of landlords nationally are following similar guidelines and policies, so that tenants, building occupants, visitors and suppliers do not experience vastly different and confusing situations from building to building. It should be recognized that [Company name] has the right to deviate from the Task Force recommendations to make allowance for our own policies, and to reflect the complexity and special circumstances relating to certain properties.
- [Company name] will work with building staff, suppliers and service providers in advance to ensure that we are able to keep the building operating for as long as possible during a pandemic event.
- It is widely recognized that proper hand-washing is the *single most effective method* of preventing the spread of illness. The use of hand sanitizers appears to be a good alternative or supplement. [Company name] will very shortly introduce hand sanitizing stations in the main building lobby, washrooms and various service rooms. In addition, anti-bacterial soap will be provided in washrooms. This strategy aims to put commercial buildings in a position where they have a stock of sanitizing agent on hand, subject to availability.
- Tenants are encouraged to provide their employees with sanitizing products for their own work spaces, computers and telephones, or other personal protective equipment as deemed appropriate for individual business activities.
- [Company name] may provide notices in common areas, communicating relevant information to building occupants and visitors.
- Unlike most disasters, a pandemic will affect people as opposed to infrastructure. It is estimated that between 25 to 35% of the general population could be ill at any time, over a period of 6 to 8 weeks. Based on past pandemic experience, experts tell us it is likely that we will experience two “waves” or outbreaks, some six to nine months apart. The impact on the real estate industry is that a range of

building services could be compromised, at the very time that we need them most. These services include cleaning, security and equipment maintenance of all types. Some buildings could be affected to the point where they are forced to close, while others may be able to continue operating. Cleaning is one of the most important services, and we will deal with the alternatives below.

- The Task Force has recommended that building owners and managers do not screen visitors to buildings on behalf of tenants. The main reasons for this decision are: medical advice indicates that symptoms (depending on the virus) may not show for 24 to 48 hours after the individual has contracted the disease, but that individual could nevertheless be contagious; screening will require people to congregate in close proximity (for example a building lobby) at a time when social distancing is being encouraged; and we will not necessarily have qualified people to undertake the screening.
- In the event of a pandemic, we are likely to restrict deliveries directly to tenants. In that event, depending on the building, we will designate an area to hold deliveries and tenants will then be expected to collect delivered items from that area.
- Property owners and managers will carefully monitor government announcements. While reasonable efforts will be made to keep buildings open during a pandemic, in the event that (Company name) determines that it is necessary to close all or part of the building or a government order to shut-down is made, arrangements will be made to do so. Tenants should carefully consider, in advance, all alternative arrangements required to continue operating their businesses during such an eventuality.

#### **TENANTS' PANDEMIC PLANNING CONSIDERATIONS**

- Develop your own emergency response and business continuity plans. These will not only assist with a pandemic, but many other occurrences.
- Develop an employee awareness and education program.
- As mentioned previously, due to labour shortages janitorial services are likely to be at their lowest levels at a time when we might expect them to be at the highest. Individuals will almost certainly have to take responsibility for the cleanliness of their own offices and workstations. You may have to take responsibility for public areas within your premises e.g. washrooms, photocopy and mail rooms, reception etc.
- Review your organization's position regarding visitor screening. As stated above, (Company name) does not intend to screen people entering the building.
- Consider contracting with an "employee assistance provider" to assist your staff with medical support.
- Consider purchasing your own medical kits and/or supplies of hand sanitizers, surface wipes, masks and gloves.
- Consider shelter-in-place capabilities for those key employees that may be required to stay at work during a pandemic event.
- Consider, at a predetermined threshold, the stockpiling of food with a long shelf-life, and water, in your offices.
- Support the development of a personal protection program for your employees that will assist them to deal with a pandemic at home, insofar as it affects their families.

**NOTE TO COMPANIES USING THIS TENANT LETTER TEMPLATE:**

- 1. This letter is intended to be issued at any time after the release of the Guide, before a pandemic event. It is designed to avoid having to deal with tenant concerns on an individual basis.**
- 2. Do not commit in writing to any or all of the Landlord Pandemic Planning Considerations suggested herein unless you are perfectly satisfied that you are able to, and intend to do so.**

## Service Provider Letter Template

*[Supplier name/address]*

Dear Sir or Madam:

### **RE: PANDEMIC PLANNING**

While to date there has been no sustained human-to-human transmission of the Avian Flu, there has been increased publicity over the past year regarding a potential influenza pandemic. At *[Company name]* we are monitoring the situation carefully, as we do any other issue with potential to have an impact on our industry. We believe it is imperative that we obtain, from all of our critical suppliers, a commitment that our supply and support requirements will be met in a timely manner during such an event.

In recognition of the unique characteristics of a pandemic, we have initiated a pandemic planning process to address our business requirements. The goal of this planning process is to develop a common and consistent approach for dealing with a pandemic outbreak of influenza, which may have the potential to seriously disrupt operations at a building level. As part of our diligence in that planning process, we are asking third party suppliers providing services to *[Company name]* to demonstrate their pandemic preparedness for the continuation of critical services. The purpose of this letter is to seek information from you, as a service provider, as to the state of readiness of your own response planning to ensure the continuation of services to your client base. We are sending you this survey (attached) to ensure we are aligned in our pandemic plans, and in the hope that together we will be able to meet anticipated industry demands during a pandemic.

Please ensure the attached survey is completed by your Senior Management, and in order to meet our required timelines, it would be appreciated if you would return the completed survey to us no later than *[Insert date]*. While the attached is the minimum response that we require, we encourage you to provide any additional information that will increase our confidence in your firm's capabilities.

If you have any concerns or require additional information, please do not hesitate to contact us at your convenience. Thanks in advance for your cooperation.

Sincerely,

## Service Provider Preparedness Survey Template

### PANDEMIC BUSINESS CONTINUITY SURVEY

Fax your completed survey to: (XXX – XXX- XXXX)

Company Name: _____	
Please provide or verify your contact information for those who deal with Business Continuity Planning for your organization.	
Name: _____	Name: _____
Title: _____	Title: _____
Email: _____	Email: _____
Phone Number: _____	Phone Number: _____
Please provide the contact information for people who are dealing with the Pandemic issues in your organization.	
Name: _____	Name: _____
Title: _____	Title: _____
Email: _____	Email: _____
Phone Number: _____	Phone Number: _____

Please score each of the following questions as it applies to your company's business continuity management plan for a pandemic scenario.					
	N/A	Not started	Just started	Fully in progress	Finished
Planning has started for a pandemic event					
Identification of a pandemic coordinator or team with defined roles and responsibilities for preparedness for the business to address the impact of a pandemic.					
Identification of critical services that must be sustained.					
Identification of key employees needed to maintain business operations.					
Development of a cross training, succession plan in the event that employees supporting critical services are unable to work.					
Establishment of staffing strategies to prevent the influenza spread (e.g. alternate work arrangements such as remote access, deployment of staff to alternate locations).					
Policies that would help to prevent influenza spread at the worksite.					
Emergency communication plans include key contacts with customers in the event there is a serious disruption to critical services.					
Development of triggers that would signal the need to activate pandemic plans.					

What percentage of employee absenteeism is used in your planning assumptions?	<input type="checkbox"/>	N/A	<input type="checkbox"/>	10%	<input type="checkbox"/>	<25%	<input type="checkbox"/>	35%	<input type="checkbox"/>	>35%
How long do you expect the above absenteeism rates to last?	<input type="checkbox"/>	N/A	<input type="checkbox"/>	< 1 month	<input type="checkbox"/>	1 – 2 months	<input type="checkbox"/>	3 – 4 months	<input type="checkbox"/>	> 4 months
Based on your current assumptions, what impact do you anticipate in the delivery of your services during a pandemic?	<input type="checkbox"/>	Not yet determined	<input type="checkbox"/>	Minimal impact	<input type="checkbox"/>	Reduced service levels	<input type="checkbox"/>	Provision of critical services only		
Has monitoring of pandemic developments (WHO, public health and safety or other sources) commenced?	<input type="checkbox"/>	N/A	<input type="checkbox"/>	Not started	<input type="checkbox"/>	Started				
Based on your responses to the survey questions, please rate the state of readiness of your company's business continuity management plans for a pandemic scenario.	<input type="checkbox"/>	Not started	<input type="checkbox"/>	Just started	<input type="checkbox"/>	Fully in progress	<input type="checkbox"/>	Finished		
What is the approximate number of employees in your firm?	<input type="checkbox"/>	< 25	<input type="checkbox"/>	< 100	<input type="checkbox"/>	<500	<input type="checkbox"/>	<1000	<input type="checkbox"/>	> 1000 or more

Other Comments:


## ***Appendix 2 – Collateral***

### **Education and Information Poster Templates**

It is recommended that you proactively begin your own Pandemic communications plan, including ordering building signage in advance of the on-set of Pandemic conditions.

Two sets of posters are suggested, the first to give tenants and visitors clear messaging and education prior to on-set of a Pandemic, to help stop the spread of influenza, and the second is for informational purposes, while operating under Pandemic conditions.

You may wish to produce your own campaign collateral, and recommended wording is provided in the Pandemic Planning Toolkit. The Task Force has also designed template posters that are made available to customize. A central ordering system through Poster One is available to expedite the ordering and production process. Visit [www.PosterOne.com/bomacanada](http://www.PosterOne.com/bomacanada) for details, and to order from the BOMA Canada library of posters. Note: if you do not already have an existing Poster One account, you may create one on their site.

#### ***SET ONE***

The first set of poster messaging is positioned to prevent the spread of the influenza, in advance of any Pandemic on-set. The recommended wording is as follows:

#### **Hand washing:**

Hand washing is the single most effective way to reduce transmitting infection

#### **Your Workspace Cleaning:**

Frequently touched surfaces should be cleaned and disinfected on a regular basis

#### **Stay Healthy:**

Eat a balanced diet, get lots of rest, and exercise in moderation

#### **Personal Hygiene:**

Cover your nose and mouth when sneezing or coughing, use a tissue or the crease of your elbow instead of your hands

**SET TWO**

The second set of posters is designed for use when operating in Pandemic conditions. The recommended wording is as follows:

<p><b>POSTER 1 Text:</b></p> <p>DUE TO THE PANDEMIC, THIS BUILDING IS OPERATING UNDER EMERGENCY CONDITIONS. PLEASE NOTE:</p> <ul style="list-style-type: none"> <li>• BUILDING SERVICES MAY BE REDUCED OR SUSPENDED.</li> <li>• ACCESS TO OR FROM SOME AREAS MAY BE RESTRICTED OR REDIRECTED.</li> <li>• BUILDING PERSONNEL ARE RESPONDING TO TENANT REQUESTS ON A STRICTLY PRIORITIZED BASIS.</li> <li>• EVERY EFFORT WILL BE MADE TO KEEP THE BUILDING OPEN, BUT IT IS POSSIBLE THAT WE MAY BE FORCD TO CLOSE. PLEASE CONSIDER YOUR OPTIONS.</li> </ul>
<p><b>POSTER 2 Text:</b></p> <p style="text-align: center;">DUE TO THE PANDEMIC, THIS BUILDING IS CLOSED.</p> <p style="text-align: center;">WE WILL REOPEN AS SOON AS POSSIBLE.</p> <p style="text-align: center;">IN THE EVENT OF AN <b>EXTREME</b> EMERGENCY, PLEASE CONTACT <i>(Insert contact)</i></p>
<p><b>POSTER 3</b></p> <p style="text-align: center;">DUE TO THE PANDEMIC, THIS ENTRANCE IS CLOSED.</p> <p style="text-align: center;">PLEASE USE AN ALTERNATIVE ENTRANCE.</p> <p><i>(Property managers – review building entrances, decide in advance which will be closed and make your poster more specific if you are able to).</i></p>
<p><b>POSTER 4</b></p> <p style="text-align: center;">DUE TO THE PANDEMIC, THIS AREA IS CLOSED.</p> <p><i>(Property managers – this sign can be used in any area, for any purpose e.g. clean-up if someone is ill).</i></p>
<p><b>POSTER 5</b></p> <p style="text-align: center;">DUE TO THE PANDEMIC, THIS PARKING AREA IS CLOSED.</p>