

NINE TO FIVE

My boss insists we come to the office and doesn't enforce mask use. Do we have the right to work from home?

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THE QUESTION

I work for a real estate investment firm, and it is absolutely not essential for my colleagues nor I to be in the office, but the owner of the company prefers we be there for his own socializing purposes. The office has provided hand sanitizer but otherwise does not enforce the use of masks or physical distancing. We still have plenty of crammed boardroom meetings. I'm in Ontario, so with the rollback to Stage 2, do we have the legal right to work from home? We are 100-per-cent equipped to do so and very much capable.

THE FIRST ANSWER

George E. Cottrelle, partner, Keel Cottrelle LLP, Toronto

Employees are legally obligated to report to work in their employer's workplace, if required by their employer, even if they are able to perform all of their job functions from home.

There are exceptions, such as where working remotely is a term of the employment agreement, or if the employer is required to provide this specific accommodation under

human-rights legislation or employer policies.

Employers in Canada have a legal duty to provide a safe workplace. In each province, there are specific COVID-19 rules for workplaces. Certain provinces and/or municipalities have legislation requiring that masks be worn in indoor public spaces, which is also the recommendation from federal and provincial health authorities. In Ontario, it is mandatory that masks be worn inside all workplaces, subject to exceptions, including where the workplace area is not open to the public and a distance of at least two metres is maintained between workers.

Workers in Canada, subject to applicable health and safety legislation, have a statutory right to refuse work, without reprisal, that they reasonably believe to be unsafe, which may include all or part of the workplace. Your employer is not following the COVID-19 requirements governing all businesses in Ontario regarding the use of masks and physical distancing in the workplace.

You need to advise your employer of your workplace safety concerns. If your employer fails to make the necessary changes, you should contact the Ministry of Labour. In the interim, if you feel the entire office is unsafe, and not just the meetings, advise your employer you are working from home until the matter is resolved.

You do not have the right to work from home as a matter of your preference, but you do have the right to refuse to work in an unsafe workplace.

THE SECOND ANSWER

Matthew Bobawsky, associate, Carbert Waite LLP, Calgary

It sounds as though you are asking if your employer can require you to work in an unsafe workplace. Employers generally have the right to direct how their business operates, including the right to determine where their employees work. However, legislation, such as occupational health and safety legislation, and your workplace's policies may restrict that right.

Each of the provinces has occupational health and safety legislation designed to protect an employee's health and safety while they are at work. According to these laws, employers have the obligation to take reasonable and practical steps to ensure the health, safety and welfare of their employees. To fulfill this obligation, your employer could enforce the use of face masks or implement physical-distancing measures at work.

You also have the right to refuse unsafe work and are protected from reprisals when you exercise that right. When you refuse work because it is unsafe, your employer will then have the obligation to investigate and take steps to make your workplace safe.

It is important to note that the right to refuse work, which is triggered by an unsafe workplace, is not the same as the right to work from home. The right to work from home is a legal privilege granted by employers under a telecommuting policy. Telecommuting policies allow employees to work remotely or from home provided the employee meets the policy's eligibility requirements and has demonstrated an ability to work independently.

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