

Understanding Your Legal Accountabilities: A Guide for Ontario Hospitals

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Disclaimer

This toolkit was prepared as a general guide to assist hospitals and health care providers in understanding areas in which they have legal accountability to various stakeholders. It does not provide an in-depth analysis of applicable law, nor is it comprehensive of all legal requirements to which hospitals are subject. It is intended to provide an overview for hospitals to assist in deciding when they need to seek advice or additional information. Organizations should not rely solely on the summary information contained in this toolkit in deciding whether to take or refrain from taking action.

The material in this toolkit is for general information only and may need to be adapted by hospitals and health care providers to accommodate their unique circumstances. This document reflects the interpretations and recommendations regarded as valid at the time of publication based on available information. It is not intended as, nor should it be construed as, legal or professional advice or opinion. Hospitals and individuals concerned about the applicability of the materials are advised to seek legal or professional counsel.

The OHA and Borden Ladner Gervais LLP will not be held responsible or liable, jointly or severally, for any harm, damage, or other losses resulting from reliance on, or the use or misuse of the general information contained in this toolkit.

Introduction

Public hospitals in Ontario are operating in an increasingly complex and highly regulated environment. Over the years, they have become subject to a growing number of legal requirements, through changes at the health system level, and through evolving policy and regulatory developments. In this environment, hospitals are required to meet their obligations as not-for-profit corporations, including addressing governance, compliance and business operations issues. In addition, as employers, and given their mandate in the provision of health care, hospitals are also required to comply with various statutes on matters ranging from employment standards to health information privacy.

This toolkit was developed by the OHA, in consultation with Borden Ladner Gervais LLP, to help hospitals understand various legal accountabilities. It comprises two parts:

Part 1 presents an overview of some key statutory obligations imposed on directors of Ontario public hospitals. This part is intended to help hospitals understand the legal accountability of directors, in order to assist in deciding when they need to seek legal advice. A general checklist is provided to help hospitals ensure that they have developed appropriate risk management processes and policies.

Part 2 gives a summary of major legislation and regulations with periodic reporting requirements (annual or otherwise) affecting the hospital sector. This part is intended to help hospitals understand their accountability towards internal and external stakeholders, including the public and the government. A general checklist is provided to help hospitals manage and meet key mandated deadlines. Note that this checklist only includes statutory reporting requirements. Hospitals should be aware of any additional reporting requirements which may exist, including those established under contract.

Note that both parts of the toolkit are intended to serve as general guidance only, and do not represent an exhaustive summary of all legislation with which hospitals have to comply. The toolkit should be used in conjunction with other OHA resources, in particular the *Guide to Good Governance*, Third Edition¹ which elaborates on the role of the board of directors of an Ontario public hospital.

Hospitals are encouraged to share this resource with their board of directors and with other appropriate individuals within their organizations.

¹ Governance Centre of Excellence, *Guide to Good Governance*, Third Edition, available for purchase at: <https://www.oha.com/learning/governance>

PART 1: DIRECTOR LIABILITY

A. Summary of Director Liability in the Hospital Context

Hospitals are non-share capital corporations, redirecting any profits they make into achieving the corporation's objectives, as set out in their governing Letters Patent and other corporate documents. The operations of a hospital are governed by a board of directors, who have a fiduciary obligation to the hospital corporation. This obligation requires directors to act in the best interests of the hospital in carrying out their duties.

A new statutory duty and standard of care applies to directors of Ontario public hospitals under the *Corporations Act*, as of January 13, 2018. The new statutory duty codifies the duty to act honestly and in good faith with a view to the best interests of the corporation, and with the standard of the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

As corporations are distinct legal entities with a separate legal existence from their directors, directors are not generally personally liable for the acts and omissions or contractual obligations of the corporations they serve. There are exceptions to this general rule under both the common law (case law) and under federal and provincial legislation. Statutes that impose obligations on directors may also establish offences and penalties that apply where those obligations are breached, which can include fines and imprisonment.

If a director breaches their fiduciary duty to the corporation, fails to meet an acceptable standard of care in carrying out their duties, or acts outside the scope of their authority (as defined by the Letters Patent and other corporate documents), he/she may be held personally liable for their acts and omissions.

For most offences created under legislation, directors have a "due diligence defence", even if it is not expressly included in the legislation. Where a director can demonstrate that he/she met the standard of care and took reasonable steps to prevent the offence, he or she can be relieved of liability. Good governance practices are an essential element in a successful due diligence defence. Directors will not be held liable for errors in judgment if their decision was informed and they engaged in a reasonable decision-making process. Unless there is reason to suspect the contrary, directors are entitled to assume that senior managers of the corporation are acting honestly.

Examples of areas where liability may be imposed on directors include: legislation imposing reporting or filing obligations or relating to employees; the protection of personal information; taxation; and the environment, among other areas.

All directors, including *ex-officio* directors,² are subject to the same obligations and owe the same duties to the corporation, regardless of whether or not they were appointed or elected to the hospital's board of directors.

² *Ex-officio* directors are directors by virtue of their office.

B. Other Sources of Liability

In addition to liability that may be imposed under legislation, there are a number of other sources of director liability, including:

- 1) **Fiduciary Duty** - Directors who breach their fiduciary duties to the corporation by, for example, appropriating a corporate opportunity, may be held liable for losses suffered by the corporation that are directly attributable to the director's actions.
- 2) **Standard of Care** - A director is expected to apply a level of skill and judgment in exercising his/ her duties that may reasonably be expected of a person with his/her experience, and may be held liable where he/she has failed to meet that standard of care.
- 3) **Civil Liability (Contracts)** - Directors are not usually personally responsible for contracts that they have the authority to execute on behalf of the corporation, but can be held personally liable for contracts where, for example, the corporation purporting to enter into the contract does not exist or where the director, as a corporate representative, misrepresents information.
- 4) **Civil Liability (Tort)** - A tort is an act or omission that causes harm where the person responsible had a duty of care and fails to discharge it appropriately. A director may incur personal liability for a tort where the director's negligence contributed to action by the corporation that resulted in damage or harm, for example by failing to ensure proper hiring processes for employees working with children, or failing to address unsafe working conditions (including complaints of harassment).

C. Mitigating Risks – Approaches to Avoiding Liability Arising Under Statute

There is no simple formula that directors can follow to protect themselves against liability. A court will analyze the facts surrounding a director's decision to take a certain action or not to act, so any advice that is appropriate in one set of circumstances or for one director may not be applicable in other circumstances or in regard to another director.

As a general approach however, directors can protect themselves against being found personally liable for the acts or omissions of the hospital through means that include exercising due diligence, establishing good governance systems that facilitate corporate compliance with legislative requirements, insurance, and indemnification. In regard to the latter, federal and provincial legislation permits non-share capital corporations, with the consent of their members,³ to indemnify their directors. By indemnifying its directors, the corporation agrees to assume responsibility for many of the expenses and liabilities that directors may incur in the course of their duties.

³ Note that consent of members will not be required when the *Not-for-Profit Corporations Act, 2010* (NFPCA) comes into force. See further details on the NFPCA in section 3 of the chart below.

D. General Checklist

Accountability in this context requires directors to be aware of various legal obligations, as arising from statute. The checklist in this section is intended to identify some of the key legislative provisions under which personal liability can be imposed on directors. **Please note that this is intended to serve as general guidance only. It does not provide an exhaustive list of statutes, nor an exhaustive summary of all the relevant provisions.**

There is commentary in the checklist about activities that directors can take which may reduce the risk of being held personally liable for an act or omission of the hospital. In the interest of clarity, it should be noted that engaging in the risk management activities described in the commentary will not guarantee that a director will not be held personally liable, but may strengthen the argument that this is the appropriate finding in the event of a claim.

Also for clarity, a notation in the checklist to the effect that “there is no statutory defence” means that there are no conditions expressly set out in the statute under which a director will not be held liable for acts or omissions constituting an offence laid out in the chart. There may be other defences (for example, at common law) available to directors.

E. Updates to the Third Edition (2020)

The Third Edition (2020) incorporates minor changes to Part 1. These changes include updates to sections on broader public sector accountability and the *Excellent Care for All Act, 2004*, to reflect the passage of the *Connecting Care Act, 2019*. Certain statutes have been repealed and/or substantially revised, such as the *Construction Act* (formerly the *Construction Lien Act*), and the *Smoke-Free Ontario Act, 2017* (in response to the legalization of cannabis products). Enhanced penalties for directors and officers have been introduced under some statutes, including the *Fire Protection and Prevention Act, 1997*.

Changes to Part 2 are outlined in detail in that section.

1. Broader Public Sector Accountability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Broader Public Sector Accountability Act, 2010</i> , S.O. 2010, c. 25				
<p>This Act establishes rules and standards of accountability for the use of public funds by broader public sector organizations, including hospitals.</p> <p>Every obligation of a hospital under this Act is deemed to be an obligation it is required to comply with under the terms of a Service Accountability Agreement (SAA), either under section 20 of the <i>Local Health System Integration Act, 2006</i> (LHSIA) or under section 22 of the <i>Connecting Care Act, 2019</i> (CCA), as applicable.</p> <p>Reports on the use of consultants require hospital board approval (section 6); as do compliance-related attestations under the Act (section 15).</p> <p>See Part 2 for further information on obligations under this Act.</p>	<p>No specific offences are outlined for directors.</p> <p>No specific penalties are outlined under the Act.</p> <p>Hospitals are required to comply with their obligations under their SAA, as outlined under LHSIA or CCA.</p>	<p>There is no statutory defence</p>		

General Checklist for Director Liability

<i>Broader Public Sector Executive Compensation Act, 2014</i>, S.O. 2014, c. 13, Sched. 1				
<p>This Act provides for the establishment of compensation frameworks, by way of Regulations, for senior executives in designated broader public sector organizations, including hospitals.</p> <p>Every obligation of a designated employer under this Act is deemed to be an obligation that it is required to comply with under the terms of every agreement or other funding arrangement between the designated employer and the Government of Ontario or an agency of the Government of Ontario.</p> <p>Compliance reports (including attestations) signed by the organization’s highest-ranking officer may be required pursuant to ministerial direction (section 12).</p> <p>See Part 2 for further information on obligations under this Act.</p>	<p>Under section 16 of the Act, no person who is required under this Act to provide a report, statement or attestation shall:</p> <p>(a) willfully fail to provide a report, statement or attestation; or</p> <p>(b) willfully make a false report, statement or attestation.</p> <p>(2) No person shall willfully obstruct an auditor appointed under section 13 in the performance of his or her audit.</p> <p>Every person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000.</p>	<p>There is no statutory defence.</p>		
<i>Health Sector Payment Transparency Act, 2017 (NOT YET IN FORCE)</i>				
<p>This Act received Royal Assent (formal legislative approval) on December 12, 2017, but has not yet been proclaimed into force.</p> <p>When proclaimed and with supporting regulations in force, this Act will require the reporting of information about financial relationships that exist within Ontario’s</p>	<p>Under section 16 of the Act, directors and officers of corporations to which the Act applies are required to ensure that the corporation complies with the Act and the regulations.</p> <p>This Act would also create specific offences for:</p> <ul style="list-style-type: none"> • Hindering, obstructing or interfering with or attempting to 	<p>Generally, it is NOT a defence to a charge under this Act that,</p> <p>a) the person took all reasonable steps to prevent the contravention; or</p> <p>b) at the time of the contravention, the</p>		

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<p>health care system, including within health care research and education.</p> <p>Prescribed “recipients” of “transfers of value” (e.g., payments) will be required to report certain information regarding transactions to the Minister of Health and Long-Term Care (Minister) once regulations around reporting obligations are established.</p> <p>At the time of writing, no timelines have been established for the proclamation of this legislation</p>	<p>obstruct, hindering or interfering with an inspector conducting an inspection or an audit;</p> <ul style="list-style-type: none"> • Destroying or altering applicable records; • Failing to follow orders of an inspector; and • Providing an inspector with false information on matters relevant to an inspection. <p>If the Minister or an inspector has grounds to believe that a person has failed to comply with this Act or the regulations, the Minister or the inspector may serve on the person a compliance order requiring the person to do anything, or refrain from doing anything, in order to comply with this Act and the regulations.</p> <p>Penalties range from fines up to \$10,000 per day (for individuals) or \$50,000 per day (for corporations) on the first offence; to \$ 25,000 per day (for individuals) and \$ 100,000 per day (for corporations) for second and subsequent offences.</p>	<p>person had an honest and reasonable belief in a mistaken set of facts which, if true, would have resulted in there not being any contravention.</p> <p>However, a defence IS available to a charge that a payor, intermediary or affiliate reported false or misleading information if:</p> <ul style="list-style-type: none"> a) the person took all reasonable steps to prevent the contravention; or b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent 		
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2. Charitable Institutions

Director’s Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<u>Charities Accounting Act</u>, R.S.O. 1990, c. C.10				
<p>The Act establishes reporting and other obligations of trustees (which include corporations incorporated for a charitable purpose) with respect to property acquired by the trustee.</p> <p>The Act also sets out a “complaints and investigation” process, whereby individuals can take concerns about the use or disposition of property acquired by a trustee or the “manner in which a person or organization has solicited or procured funds by way of contribution or gift from the public” to the Public Guardian and Trustee.</p> <p>Effective April 1, 2018, new rules were introduced under Regulation 4/01 of this Act. These regulatory amendments introduce changes to the rules on payments to Directors of Ontario charitable corporations. They allow for more flexibility in processes to pay a Director (or a Connected Person, as defined in the Regulation) for goods, services or facilities provided to the charity. The Board should be aware of these new rules around authorizing payment to Directors of charities.</p>	<p>Where a trustee is in default, fails to comply with an order made under the Act or engages in misconduct, including the misuse of property or the improper investment of funds, the Public Guardian and Trustee can apply to the court for relief that includes a fine or imprisonment not exceeding 12 months.</p>	<p>There is no statutory defence but under the regulations made under the Act, directors may be indemnified in certain circumstances from and against damages arising out of their duties as directors of a trustee.</p> <p>However, directors and officers cannot be indemnified for liability that relates to their failure to act honestly and in good faith in performing their duties.</p>		

3. Corporate Law

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<u>Corporations Act</u>, R.S.O. 1990, c. C.38				
<p>The Act governs the corporate aspects of the hospital's operations, including the rights of members to elect directors, and the obligations of directors to govern the corporation.</p> <p>A statutory duty and standard of care applies to directors of Ontario public hospitals under this Act, as of January 13, 2018. The new statutory duty codifies the duty to act honestly and in good faith with a view to the best interests of the corporation, and the standard of the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.</p> <p>Detailed legislative requirements are established for various corporate and governance issues, including matters that require member approval; borrowing powers; conflict of interest rules; and corporate record-keeping requirements.</p> <p>Record Keeping Requirements with Respect to Ownership Interests in Land</p> <p>Hospitals incorporated under the <i>Corporations Act</i> must comply with record-</p>	<p>Under section 71 of the Act, directors are required to disclose their interest in a contract to be entered into by the corporation at the next meeting of directors. Failing to disclose is an offence under the Act, resulting in liability being imposed on the director for any profit realized from the contract and a penalty on conviction of up to \$200.</p> <p>Section 81 of the Act provides that directors are jointly and severally liable to employees for up to 6 months of wages and 12 months of vacation pay, if the corporation has been sued for the debt and the debt has not been satisfied or the corporation is bankrupt or insolvent and if the director is sued personally while he/ she is a director or within six months of ceasing to be a director.</p> <p>Under section 303 of the Act, it is an offence for a director to</p>	<p>There is a reasonable diligence defence to a claim of breach of duty/standard of care in relation to specific offences.</p> <p>Among other actions, directors should require those responsible for human resources at the hospital to confirm that policies and procedures are in place to address employee remuneration and may want to inquire, without knowing the specifics of the matter, if the hospital is being sued or there is a reasonable prospect that the hospital will be sued by an employee</p>		

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Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<p>keeping requirements with respect to ownership interests in land.</p> <p>Every Ontario corporation is required to maintain a register of its ownership interests in land (registered and beneficial interests in freehold land, as well as leasehold and easement interests) at its registered office. Corporations incorporated or continued (including by way of amalgamation) in Ontario prior to December 10, 2016 had until December 10, 2018 to comply with these recent requirements.</p> <p>Note:</p> <p>Certain matters set out in the Act are superseded by the requirements of the <i>Public Hospitals Act</i>.</p> <p>The Act will be replaced by the <i>Not-for-Profit Corporations Act, 2010</i>, which has not yet been proclaimed in force.</p>	<p>make or assist in the making of any faulty entry in the minutes of the corporation or other documents, including books of account, required to be kept by the corporation under the Act.</p> <p>Under subsection 305(2) of the Act, it is an offence for a director to obstruct the inspection of corporate records by persons and in circumstances authorized by the Act.</p> <p>Under sections 299, 300 and 304, the failure to keep proper books, records and registers at the head office of the corporation and failure to keep such books, records and registers available for inspection by entitled persons may result in personal liability for the directors.</p> <p>Under section 331 of the Act, it is an offence for a director to breach the Act and except where the Act specifies otherwise, the liability on conviction is for a fine of up to \$200.</p>			

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Not-for-Profit Corporations Act</i>, 2010, S.O. 2010, c. 15 (NOT YET IN FORCE)				
<p>This Act received Royal Assent (formal legislative approval) on October 25, 2010 but has not yet been proclaimed in force. At the time of writing, no timelines have been established for the proclamation of this legislation; however, Government has indicated that it is “expected to move beyond early 2020.”</p> <p>The Act will replace the <i>Corporations Act</i> as the statutory regime governing the affairs and activities of Ontario corporations without share capital once it is proclaimed in force. As such, the Act will affect all existing not-for-profit corporations in Ontario, including hospitals.</p> <p>Note that on November 14, 2017, necessary legislative changes to ONCA and related acts in the Cutting Unnecessary Red Tape Act, 2017 became law. These changes also enable non-profits to take advantage of some of the changes made to the <i>Corporations Act</i>. Further information is available here.</p>	<p>When the Act is proclaimed, it will impose similar obligations on hospital directors as the <i>Corporations Act</i>, for example in respect of:</p> <ul style="list-style-type: none"> • Disclosure of interest in a contract: s. 41 • Liability for wages: s. 40 • Corporate documents: s. 193(2) • Any other breach of the Act: s. 193(1) 	<p>The Act provides a due diligence defence in section 193(5) to the commission of any general offence and offences related to false or misleading statements in documents/use of information. The reasonable diligence defence for breach of duty/standard of care will remain.</p>		

4. Criminal Law

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Criminal Code</i>, R.S.C., 1985, c. C-46 [federal]				
<p>The Code defines the types of conduct that constitutes criminal offences under federal law, and establishes the kind and degree of punishment that may be imposed when an individual and/or organization is convicted of an offence.</p> <p>Directors may be held liable if they directed the corporation to commit a crime, did not take reasonable steps to prevent employees of the corporation from committing a crime, or otherwise participated in the commission of a crime.</p> <p>Specific obligations are also set out in relation to workplace safety issues.</p>	<p>Like other persons, a director may be found criminally liable under section 21 of the <i>Criminal Code</i>, if he or she commits, or aids or abets a person to commit an offence, or under section 23 of the <i>Criminal Code</i>, if he or she “knowing that a person has been a party to the offence”, receives, comforts or assists that person for the purpose of enabling that person to escape.</p> <p>Under section 22.1, where a director who: “... is responsible for the aspect of the organization’s activities that is relevant to the offence departs – or the senior officers, collectively, depart – markedly from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to the offence”, the director may be found criminally liable for the offence. The crime under section 22.1 is one of negligence.</p> <p>Section 22.2 establishes criminal liability for offences that do not require negligence; and where senior officers of the organization: act within their scope of authority and are a party to an offence; direct the work of other representatives who commit an offence; or do not take reasonable measures to stop a</p>	<p>There is no statutory defence.</p>		

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Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
	<p>representative of the organization from being a party to an offence.</p> <p>Specific obligations related to workplace safety issues are also set out under section 217.1, which requires that everyone who undertakes, or has the authority, to direct how another person works or performs a task discharge their duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task. See Part 2 for further obligations related to workplace safety issues.</p>			

General Checklist for Director Liability

5. Employment Standards

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<u>Employment Standards Act, 2000</u>, S.O. 2000, c. 41				
<p>The Act provides the minimum working standards for most employees working in hospitals, and sets out the rights and responsibilities of employees and employers.</p>	<p>Given the corporation's not-for-profit status, directors of public hospitals are exempt (under subsection 80(2) of the Act) from the provisions of sections 81 through 83 in Part 20 of the Act. These provisions would otherwise hold directors personally liable for unpaid wages, vacation pay, severance and termination pay (the exemption is from statutory liability and does not affect any civil remedy obtained in an action against a director).</p> <p>There are other obligations under the Act (for example, the keeping of the records set out in section 15 of the Act, the payment of at least minimum wage required by section 23 of the Act, and equal pay required by section 42 of the Act), which if contravened, could result in personal liability for directors.</p> <p>Under section 137, where a corporation contravenes any provision of the Act or the regulations, an officer, director or agent of the corporation or a person purporting to act in any such capacity, who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and is liable on conviction to the penalties provided for the particular offence (which may be, for example, a fine of not more than \$50,000 or to imprisonment for up to 12 months or both), whether or not the corporation has been prosecuted or convicted.</p>	<p>There is no statutory defence.</p> <p>Further, in accordance with to subsection 137(3) of the Act, the burden of proof is on the director or officer to provide that he or she did not authorize, permit or acquiesce in the contravention of the Act.</p> <p>Among other measures, directors may want to require the responsible managers to report on a regular basis on the corporation's compliance with the Act.</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<u>Hospital Labour Disputes Arbitration Act</u>, R.S.O. 1990, c. H.14				
<p>This Act prohibits strikes and lock-outs where collective bargaining involves employees (not including physicians) of the "hospital sector" (e.g., hospitals and long-term care homes); if the parties are unable to reach a negotiated settlement, their bargaining impasse is resolved by binding arbitration.</p>	<p>Pursuant to section 14, the same offence provisions apply as under the <i>Labour Relations Act, 1995</i> (see below).</p>	<p>There is no statutory defence.</p>		
<u>Labour Relations Act, 1995</u>, S.O. 1995, c. 1, Sched. A				
<p>The Act governs circumstances where a trade union is the bargaining agent for employees and the employees wish to enter into a collective agreement.</p> <p>It also prohibits, among other things, an employer's interference with a trade union.</p>	<p>The penalty for contravening the Act or a decision, determination, interim order, order, direction, declaration or ruling made under the Act is a fine of not more than \$2,000 for individuals and \$25,000 for corporations.</p> <p>Each day that a person contravenes the Act, or any decision as set out above, constitutes a separate offence. Moreover, under section 106 of the Act, if a corporation is guilty of an offence, every officer and official of the corporation who assented to the commission of the offence is deemed to be a party to and guilty of the offence.</p>	<p>There is no statutory defence.</p>		

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<i>Pay Equity Act, R.S.O. 1990, c. P.7</i>				
<p>The Act seeks to redress systemic gender discrimination in compensation for work performed by employees in traditionally female job classes. The Act requires, among other things, that designated employers undertake comparisons between male and female job classes in the establishment and use such comparisons to achieve and maintain pay equity.</p>	<p>The penalty for contravening certain provisions of the Act [subsection 9(2) or subsection 35(5)] or an order of the Hearings Tribunal is a fine of not more than \$5,000 for individuals and \$50,000 in any other case.</p> <p>Furthermore, if a corporation contravenes or fails to comply with the above subsections or an order of the Hearings Tribunal, every officer, official or agent of the corporation who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and, on conviction, is liable to the penalty provided whether or not the corporation has been prosecuted or convicted.</p>	<p>There is no statutory defence.</p>		

6. Environmental and Safety Standards

Director’s Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Environmental Protection Act</i>, R.S.O. 1990, c. E.19				
<p>The Act authorizes action designed to protect and conserve the natural environment, including providing directors appointed by the Minister of the Environment with order-making powers.</p> <p>The Act establishes a general prohibition that “No person shall discharge into the natural environment any contaminant, and no person responsible for a source of contaminant shall permit the discharge into the natural environment of any contaminant from the source of contaminant, in an amount, concentration or level in excess of that prescribed by the regulations.”</p> <p>A number of specific offences are also outlined in the Act.</p>	<p>Under section 194 of the Act, every director or officer of a corporation has a duty to take all reasonable care to prevent the corporation from a number of actions. A director or officer who fails to carry out his or her duty under section 194 is guilty of an offence and is liable to conviction whether or not the corporation has been prosecuted or convicted.</p> <p>The penalty on conviction for a contravention of section 194 of the Act is:</p> <ul style="list-style-type: none"> a) for each day or part of a day on which the offence occurs or continues, to a fine of, not less than \$5,000 and not more than \$4,000,000 on a first conviction, not less than \$10,000 and not more than \$6,000,000 on a second conviction, and not less than \$20,000 and not more than \$6,000,000 on each subsequent conviction; b) to imprisonment for a term of not more than five years less one day; or c) to both such fine and imprisonment. <p>Section 188.1 contains a list of “aggravating factors” that the court is to consider in determining the appropriate penalty.</p>	<p>There is no statutory defence and there is a reverse onus applied: “if a director or officer of a corporation is charged with an offence [...] in connection with a specific contravention of the corporation, the director or officer has the onus, in the trial of the offence, of proving that he or she carried out the duty [...] in connection with that contravention”.</p>		

General Checklist for Director Liability

<i>Human Pathogens and Toxins Act</i> (S.C. 2009, c. 24) [federal]				
<p>This Act is designed to protect the health and safety of the public against risks posed by the accidental or deliberate release of human pathogens and toxins from research or other facilities.</p> <p>A companion standard, the Canadian Biosafety Standard sets out the physical containment, operational practice, and performance and verification testing requirements to ensure the safe handling and storing of human and terrestrial animal pathogens and toxin.</p> <p>“Controlled activities” are established by the Act. Risk groups (for classification purposes) are also created under the Act.</p> <p>There is an obligation to inform the federal Minister of Health if a licence holder (such as a hospital and/or any of its research laboratories) under the Act inadvertently releases or produces human pathogens or toxins, contrary to the Act; or if a licence holder has reason to believe that a human pathogen or toxin that was in their possession has been stolen or is otherwise missing.</p>	<p>Offences are established according to various risk groups, and include fines of varying levels, and the potential for imprisonment.</p> <p>Under section 63, if a person other than an individual commits an offence under this Act, any of the person’s directors, officers, agents or mandataries who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the person has been prosecuted or convicted.</p>	<p>Under section 59, due diligence defences may apply to particular sub-sections of the Act only.</p>		

General Checklist for Director Liability

<i>Transportation of Dangerous Goods Act, 1992</i> (1992, c. 34) [federal]				
<p>This Act regulates the transportation of dangerous goods (including infectious substances), and may apply to vendors and contractors transporting dangerous goods to and from a hospital.</p> <p>“Dangerous goods” are defined by classes included in the Act and its regulations. Comprehensive requirements apply to how dangerous goods may be “handled” – i.e. loading, unloading, packing or unpacking dangerous goods in a means of containment for the purposes of, in the course of or following transportation, which also includes storing them in the course of transportation.</p> <p>This Act should be reviewed alongside the companion provincial statute, <i>Dangerous Goods Transportation Act</i>, R.S.O. 1990, c. D.1</p>	<p>Offences apply to contravention of the Act, directions issued under the Act, regulations, security measures and interim orders.</p> <p>Every person who commits an offence:</p> <ul style="list-style-type: none"> a) is liable on indictment to imprisonment for a term not exceeding two years; or b) is liable on summary conviction to a fine not exceeding \$50,000 for a first offence, and not exceeding \$100,000 for each subsequent offence. <p>Particular provisions apply to directors under section 39 of the Act:</p> <p>“If an organization commits an offence, a representative who plays an important role in the establishment of the organization’s policies or is responsible for managing an important aspect of the organization’s activities — and, in the case of a corporation, an officer, director, agent or mandatary — who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the organization has been prosecuted for the offence”</p>	<p>Pursuant to section 40, due diligence defences may apply if it is established that the person took all reasonable measures to comply with this Act or to prevent the commission of the offence.</p>		

General Checklist for Director Liability

Waste-Free Ontario Act, S.O. 2016 C.12				
<p>This Act enacts the <i>Resource Recovery and Circular Economy Act, 2016</i> (RRCEA) and the <i>Waste Diversion Transition Act, 2016</i> (WDTA). It is intended to enable a shift to a circular economy, which would increase resource recovery and waste reduction in Ontario.</p> <p>Section 98(6) of the RRCEA stipulates that if a corporation commits an offence under this section, a director, officer, employee or agent of the corporation who directed, authorized, assented to, acquiesced in or failed to take all reasonable care to prevent the commission of the offence, or who participated in the commission of the offence, is also guilty of the offence, whether the corporation has been prosecuted for the offence or not</p> <p>The WDTA also has offence provisions for individuals and corporations (section 65), but the statute itself does not impose obligations on hospitals.</p>	<p>Numerous offence provisions are outlined in section 98 of the RRCEA.</p> <p>An individual who is guilty of an offence under this section is liable, on conviction,</p> <p>(a) in the case of a first conviction, to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues; and</p> <p>(b) in the case of a subsequent conviction, to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues.</p> <p>A corporation that is guilty of an offence under this section is liable, on conviction,</p> <p>(a) in the case of a first conviction, to a fine of not more than \$250,000 for each day or part of a day on which the offence occurs or continues; and</p> <p>(b) in the case of a subsequent conviction, to a fine of not more than \$500,000 for each day or part of a day on which the offence occurs or continues</p> <p>A Court also has the option to apply a penalty due to monetary benefit (i.e. increase a fine imposed on the person by an amount equal to the amount of the monetary benefit that was acquired by or that accrued to the person as a result of the commission of the offence).</p>	<p>Under the RRCEA, a two year limitation period applies from the day on which the evidence of the offence first came to the attention of a provincial offences officer.</p> <p>There is no statutory defence.</p>		

7. Health System and Health Professions Governance

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Excellent Care for All Act, 2010, S.O. 2010, c. 14</i>				
<p>This Act creates obligations for Ontario health care organizations (currently defined as public hospitals) with respect to quality improvement and performance review. This includes the establishment of quality committees, patient surveys, employer and service provider surveys and annual quality improvement plans, among other measures.</p> <p>The board of directors of a public hospital receives reports and recommendations from the hospital's quality committee (sections 1, 3 and 4). Offence provisions are outlined in section 14. These provisions are not specific to directors.</p> <p>See Part 2 for further information on obligations under this Act.</p> <p>Note that the <i>Connecting Care Act, 2019</i> introduced a number of changes to ECFAA, some of which must still be proclaimed into force. These changes do NOT directly impact Director and Officer liability.</p>	<p>Every person who contravenes a provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine, (a) not exceeding \$10,000, in the case of an individual; and (b) not exceeding \$25,000, in the case of a corporation.</p>	<p>There is no statutory defence.</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Healing Arts Radiation Protection Act</i>, R.S.O. 1990, c. H.2				
<p>The Act prohibits anyone from installing x-ray equipment unless the Director (as defined in the Act) has issued written approval for the installation, and from operating x-ray equipment unless the operator has the qualifications set out in the Act and the equipment meets the prescribed standards.</p> <p>Note that on a date to be named by proclamation, this Act will be repealed and replaced by the <i>Oversight of Health Facilities and Devices Act, 2017</i> (OHFDA). New licensing requirements will apply under this Act, together with enhanced enforcement powers (see Part VIII).</p> <p>At the time of writing, no date has yet been established for the coming into force of the OHFDA.</p>	<p>The penalties that may be imposed when a person: (a) knowingly furnishes false information in an application under the Act or in any statement or return required to be furnished under the Act or the regulations; or (b) fails to comply with any order, direction or other requirement made under the Act; or (c) contravenes any provision of the Act or the regulations, are not unique to directors of hospitals.</p> <p>The penalty on conviction for a first offence is a fine of not more than \$25,000 or imprisonment for a term of not more than 12 months, or both and for subsequent offences, a fine of not more than \$50,000 or imprisonment for a term of not more than 12 months, or both.</p>	<p>There is no statutory defence and the prohibition and penalties are not specific to directors of hospitals.</p>		

General Checklist for Director Liability

Director’s Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Health Protection and Promotion Act, R.S.O. 1990, c. H.7</i>				
<p>The Act outlines a number of requirements with respect to communicable diseases.</p> <p>For example, under subsection 27(1) of the Act, a hospital must report to the medical officer of health of the health unit in which the hospital is located, if the records of the hospital in respect of an inpatient or an outpatient of the hospital state that the patient has or may have a disease of public health significance or is or may be infected with an agent of a communicable disease.</p>	<p>Under subsection 100(2) of the Act, it is an offence to fail to report a disease of public health significance, a communicable disease or a reportable event following the administration of an immunizing agent.</p> <p>Under subsection 101(3) of the Act, where a corporation is convicted of an offence, “each director of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence, is guilty of an offence unless he or she satisfies the court that he or she took all reasonable care to prevent the commission of the offence”.</p> <p>Under subsection 101(1) of the Act, a director “...is liable on conviction to a fine of not more than to \$5,000 for every day or part of a day on which the offence occurs or continues.”</p>	<p>Subsection 101(3) of the Act provides directors with a defence: directors will not be found liable where they can satisfy the court that they took all reasonable care to prevent the commission of the offence.</p> <p>In order to demonstrate that they took all reasonable care to prevent the commission of the offence, directors should be able to demonstrate that:</p> <ul style="list-style-type: none"> • The hospital has policies in place regarding reporting under the Act; • All relevant staff members are made aware of the hospital’s obligations under the Act; and • There are penalties for failing to comply with the hospital’s policies in relation to the reporting requirements under the Act. 		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Laboratory & Specimen Collection Centre Licensing Act, R.S.O. 1990, c. L.1</i>				
<p>This Act regulates licenced laboratories in Ontario. All laboratories must operate under a licence issued by the Director of Laboratory and Specimen Collection Centre Licensing.</p> <p>Licences are issued with specific conditions, including in relation to one or more classes of tests; or one or more classes of specimens.</p> <div style="background-color: #FFF9C4; padding: 5px; margin-top: 10px;"> <p>Note that on a date to be named by proclamation, this Act will be amended. Among the changes, new provisions will come into effect on licencing requirements and with respect to inspection of laboratories.</p> <p>At the time of writing, no date has been established for the coming into force of these changes.</p> </div>	<p>Under section 22, any individual who contravenes the Act is liable for a fine of \$25,000 per day for the first offence; and \$ 50,000 per day for subsequent offences.</p> <p>Any corporation who contravenes the Act is liable for a fine of up to \$50,000 per day for the first offence; and up to \$200,000 per day for subsequent offences.</p> <p>Where a corporation has been convicted of an offence</p> <ul style="list-style-type: none"> a) each director of the corporation; and b) each officer, servant or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence, <p>is a party to and guilty of the offence, and on conviction is liable to the punishment provided for under section 22, unless he or she satisfies the court that he or she had no knowledge of any of the acts constituting the offence, and could not reasonably be expected to have had such knowledge and that reasonable diligence to prevent the commission of the offence was exercise.</p>	<p>Due diligence defences may apply, pursuant to section 22(3).</p>		

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General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<u>Local Health System Integration Act, 2006</u>, S.O. 2006, c. 4 / <u>Connecting Care Act, 2019</u>, S.O. 2019, c. 5, Sched. 1				
<p>LHSIA provides the framework under which local health integration networks (LHINs) fund, organize and oversee regional health care systems.</p> <p>LHSIA creates obligations for “health service providers” including hospitals. Hospital boards and board chairs have specific roles in the service accountability agreements negotiated under section 20 of LHSIA or section 22 of the CCA, as applicable.</p> <p>At the time of writing, LHSIA is in the process of being repealed and replaced by the CCA. The CCA modifies the framework under which LHINs fund, organize and oversee regional health care systems with the introduction of a new provincial agency, Ontario Health.</p> <p>See Part 2 for further information on obligations under these Acts.</p>	<p>LHSIA and the CCA do not include penalty or offence provisions in respect of directors.</p>			

General Checklist for Director Liability

Director’s Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<u>Nuclear Safety and Control Act</u> (S.C. 1997, c. 9) [federal]				
<p>This Act is intended to regulate risks associated with the development, production and use of nuclear energy and the production, possession and use of nuclear substance.</p> <p>Under this Act, nuclear medicine facilities (including hospitals) must be licenced and inspected, and annual compliance reports must be submitted to the Canadian Nuclear Safety Commission. Records must be maintained in accordance with retention requirements under the Act.</p>	<p>Offences are outlined in section 48, and include failure to comply with any condition under a licence; discloses prescribed information, except pursuant to the regulation; and failing to comply with an order of the Commission, a designated officer or an inspector.</p> <p>Punishment ranges from \$ 5,000 to \$ 1,000,000, depending on the offence, and in some cases, include imprisonment terms. Administrative monetary penalties (AMPs) may also be applied.</p> <p>Under section 65.03, if a corporation commits a violation pursuant to section 44(1)(u.1), any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the violation is a party to the violation and is liable to an administrative monetary penalty of an amount to be determined in accordance with the regulations, whether or not the corporation has been proceeded against in accordance with this Act</p>	<p>A defence of due diligence is available in most cases: A person shall not be found to have contravened any provision of this Act, other than section 50 [possession of certain nuclear substances], if it is established that the person exercised all due diligence to prevent its commission.</p> <p>Due diligence defences may not apply in the context of AMPs.</p>		

General Checklist for Director Liability

Director’s Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Public Hospitals Act</i>, R.S.O. 1990, c. P.40				
<p>The Act establishes the primary regulatory framework within which Ontario public hospitals are established and operate.</p> <p>The Act imposes a number of requirements on public hospitals, including approval by the Ministry of Health and Long-Term Care of certain decisions (e.g., acquisition/disposition of real property), detailed mandatory corporate governance requirements (certain of which supersede the <i>Corporations Act/NFPCA</i>), patient admission and record-keeping requirements, and provisions relating to the granting of hospital privileges.</p> <p>There are a number of board-specific obligations in the Act, including governing and managing the hospital, appointing, revoking and suspending hospital privileges, passing by-laws, establishing the fiscal advisory committee, and ensuring that the CEO establishes a system for disclosure of critical incidents. See Part 2 for further information on obligations under this Act.</p>	<p>There are no provisions in the Act making directors personally liable for acts or omissions of the hospital, but directors could be held personally liable for damages where they act in bad faith (for example, where they engage in an abuse of process).</p> <p>Additionally, every person who contravenes or is a party to the contravention directly or indirectly of any provision of the Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$50 and not more than \$1,000.</p>	<p>Under section 13 of the Act, “No action or other proceeding for damages or otherwise shall be instituted against any member [...] of a board [...] for any act done in good faith in the execution or intended execution of any duty or authority under this Act or the regulations or for any alleged neglect or default in the execution in good faith of any such duty or authority.”</p>		

General Checklist for Director Liability

<i>Regulated Health Professions Act, 1991</i>, S.O. 1991, c. 18				
<p>This Act is “umbrella legislation” containing general provisions which govern all regulated health professionals in Ontario, including those working in a hospital setting. There is companion legislation relating to each profession which details their scope of practice, controlled acts and issues relating to delegation.</p> <p>This Act provides a framework for regulating the scope of practice for regulated health professionals and outlines the manner in which regulatory colleges operate with regard to health care professionals.</p> <p>The <i>Health Professions Procedural Code</i>, a Schedule to the Act, creates obligations for public hospitals with respect to matters such as reporting (e.g., revocation/resignation of hospital privileges, sexual assault).</p> <p>See Part 2 for further information on obligations under this Act.</p>	<p>Offences are prescribed under section 40 in relation to various parts of the Act; and under section 93 of the <i>Health Professions Procedural Code</i>. For example, hospitals are required to report sexual abuse of patients; and where there is a failure to do so, fines of up to \$50,000 can be applied for individuals; and up to \$200,000 for corporations.</p>	<p>Pursuant to section 42(3), certain offence exceptions apply to public hospitals (as they relate to performance and restriction of controlled acts).</p>		

8. Privacy, Freedom of Information and Anti-spam

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Canada's Anti-Spam Legislation</i> (S.C. 2010, c. 23) (federal)				
<p>This legislation generally prohibits the sending of commercial electronic messages without the recipient's consent (permission), including messages to email addresses and social networking accounts, and text messages sent to a cell phone.</p> <p>The Act sets out a number of obligations that require organizations to ensure recipients' consent for electronic messages, and that appropriate unsubscribe features are in place.</p>	<p>Complaints about violations are submitted to the Canadian Radio-television and Telecommunications Commission (CRTC). If the company is in violation, the CRTC has a range of enforcement tools available. The CRTC will assess each case based on a series of factors, including the nature of the violation, the company's history with CASL, whether the company benefited financially from the violation, and the company's ability to pay a penalty.</p> <p>Directors may be liable for an offence under the Act if they directed, authorized, assented to, acquiesced in or participated in the commission of the offence, whether or not the corporation is proceeded against.</p> <p>Penalties for the most serious violations of CASL include a maximum penalty of up to \$1 million for individuals and \$10 million for businesses.</p>	<p>The Act provides a due diligence defence for directors.</p>		
<i>Personal Health Information Protection Act, 2004</i> , S.O. 2004, c. 3, Sched. A				
<p>Hospitals are health information custodians for the purposes of the Act.</p> <p>Subsections 13(1) and section 18 of the Act prohibit the collection, use and disclosure of personal health information by health information</p>	<p>Under subsection 72(1) of the Act, it is an offence to willfully collect, use, disclose or destroy personal health information in contravention of the Act or to obstruct the Information and Privacy Commissioner of Ontario (Privacy Commissioner) in the performance of his functions, or to fail to</p>	<p>There is no statutory defence, although there is a good faith defence in respect of any action or proceeding for</p>		

General Checklist for Director Liability

Director’s Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<p>custodians without consent except in specified circumstances. Express consent is required under the Act whenever a hospital makes disclosure to a person that is not a health information custodian or makes disclosure to another health information custodian and the disclosure is not for the purposes of providing health care or assisting in providing health care.</p> <p>See Part 2 for further information on obligations under this Act.</p>	<p>comply with an order of the Privacy Commissioner.</p> <p>Under subsection 72(3) of the Act, if a corporation commits an offence, “every officer, member, employee or other agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted”.</p> <p>The penalty for an individual convicted of an offence under the Act is fine of not more than \$100,000, and \$500,000 for corporations. The Privacy Commissioner has order-making powers under the Act, but they do not include the power to levy a fine. The Commissioner can require a health information custodian take or refrain from taking necessary action to ensure compliance with the order</p>	<p>damages against a health information custodian or any other person.</p> <p>There have been a number of orders of the Privacy Commissioner relating to a hospital’s management of personal health information. If a hospital were to ignore the Privacy Commissioner’s recommendations or to willfully continue in a course of conduct that has led to breaches of the Act, the provisions of subsection 72(3) could be applied.</p> <p>Directors can protect themselves from liability by, ensuring that the hospital:</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
		<ul style="list-style-type: none"> • Appoints a privacy officer for the hospital; • Implements and enforces privacy policies, particularly policies relating to mobile devices such as laptops and cellphones; and • Implements protocols which ensure that the privacy officer is involved when personal health information is at risk or has been compromised. 		

General Checklist for Director Liability

<i>Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31</i>				
<p>This Act provides the public with a limited right to access information about hospitals, subject to certain restrictions. It also protects the privacy rights of individuals with respect to their personal information held by hospitals; and provides a right of access to such information.</p> <p>The Chair of the hospital’s board of directors is the “Head” responsible for complying with the Act, including ensuring that reasonable measures respecting the records in the custody or under the control of the hospital are developed, documented and put in place to preserve the records in accordance with records retention requirements.</p> <p>See Part 2 for further information on obligations under this Act.</p>	<p>Offence provisions are outlined in section 61 and include:</p> <ul style="list-style-type: none"> • Willfully disclosing personal information in contravention of the Act; • Altering, concealing or destroying a record, or causing any other person to do so, with the intention of denying a right under this Act to access the record or the information contained in the record; • Willfully obstructing the Information and Privacy Commissioner in the performance of his or her functions under this Act; and • Willfully failing to comply with an order of the Privacy Commissioner. <p>Every person who contravenes the Act is liable on conviction to a fine not exceeding \$5,000.</p>	<p>There is no statutory defence.</p>		

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Quality of Care Information Protection Act, 2016, S.O. 2016, c. 6, Sched. 2				
<p>The Act prohibits the disclosure of certain information that is collected or prepared by or for a quality of care committee for the sole or primary purpose of assisting the committee in carrying out its functions, or relates solely or primarily to any activity that a quality of care committee carries on as part of its functions.</p> <p>Section 9 of the Act prohibits the disclosure of quality of care information, with limited exceptions for quality of care (internal disclosure) and to prevent risk (internal or external disclosure).</p> <p>Section 9(3) allows for the disclosure of quality of care information to management if appropriate to do so for the purpose of maintaining or improving the quality of health care provided in or by the facility. It also permits disclosure if it is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons.</p>	<p>Under subsection 12 of the Act, if a corporation commits an offence under the Act, every officer, member, employee or other agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted.</p> <p>The penalty for contravening the Act is a fine of up to \$50,000 for individuals and up to \$250,000 for corporations.</p>	<p>There is no statutory defence.</p> <p>Directors should generally not be privy to the proceedings of any quality of care committee established by the hospital.</p>		

General Checklist for Director Liability

<p>Section 10 provides that no court or other body holding a proceeding shall permit or require a witness in the proceeding to disclose quality of care information.</p>				
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9. Physical Facilities

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<p><u>Accessibility for Ontarians with Disabilities Act, 2005</u>, S.O. 2005, c. 11</p>				
<p>The purpose of the Act is to develop, implement and enforce accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises.</p> <p>Hospitals are required to comply with various accessibility requirements.</p> <p>Hospitals are also required to file accessibility reports at the frequency required by the legislation. These reports must be available to the public and must be signed by a director, a senior officer or other responsible person with authority to bind the organization.</p>	<p>Section 37 of the Act sets out a number of offences, including furnishing false or misleading information in an accessibility report, or failing to comply with an order under the Act.</p> <p>The penalty for persons found guilty of an offence is a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues to occur; or for corporations, a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues to occur.</p>	<p>There is no statutory defence.</p> <p>Directors may want to ensure that the board reviews and approves hospital policies, including policies on the provision of services to persons with disabilities and that there is a system for tracking and making same available on the request of staff or the public.</p> <p>Directors may want to review the accessibility report</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
Further information on these requirements can be found in Part 2.		in addition to other mandatory reports to government.		
<i>Building Code Act, 1992, S.O. 1992, c. 23</i>				
The Act grants authorization to various entities to set rules regarding construction, demolition, property standards and related matters, and creates a system for enforcing such rules.	<p>Under section 36 of the Act, every director or officer of a corporation who knowingly concurs in the furnishing of false information, the failure to comply with an order, direction or other requirement made under the Act, or the contravention of the Act, the regulations, a by-law or a condition is guilty of an offence.</p> <p>A person who is convicted of an offence is liable to a fine of not more than \$50,000 for a first offence and to a fine of not more than \$100,000 for a subsequent offence. For corporations, the fines are \$100,000 and \$200,000 respectively.</p> <p>Further, if a person fails to comply with an order made by a chief building official, in addition to the fine mentioned above, the person is liable on conviction to a fine of not more than \$10,000 per day for every day the offence continues after the time given for complying with the order has expired.</p>	<p>There is no statutory defence.</p> <p>There is a one-year limitation period on commencing a proceeding under section 36 of the Act (from the time that the subject-matter of the proceeding arises).</p>		
<i>Construction Act, R.S.O. 1990, c. C. 30</i>				
This Act has subsumed the previous <i>Construction Lien Act</i> .	Subsection 13(1) provides that “every director or officer of a corporation ...who assents to, or acquiesces in, conduct that he or she knows or reasonably ought to know amounts to breach of	There is no statutory defence.		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<p>It responds to the financial risks inherent in the construction industry, by granting special protections to contractors and suppliers of work, services and supplies to real property. The Act sets out the rules as to who has a lien or trust (security against the property) and the process by which lien claimants can enforce their various rights.</p>	<p>trust by the corporation is liable for the breach of trust”.</p>			
<p><i>Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4</i></p>				
<p>The Act establishes a framework for public protection around fire safety. The Ontario <i>Fire Code</i> is a regulation under this Act, and outlines the minimum requirements of fire safety in buildings.</p> <p>See Part 2 for further information on obligations under this Act.</p>	<p>Under subsection 28(5), a director or officer of a corporation who knows that the corporation is violating or has violated a provision of the fire code is guilty of an offence and on conviction, is liable to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for a subsequent offence or to imprisonment for a term of not more than one year, or to both. .</p> <p>Under subsection 28(6), every director or officer of a corporation who knowingly committed an offence under subsection 28(1) which includes the refusal or neglect to obey or carry out the instructions of the Fire Marshall, is guilty of an offence and on conviction, is liable to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for a subsequent</p>	<p>There is no statutory defence.</p> <p>As with occupational health and safety issues, directors should ensure that there is a clear chain of responsibility for issues relating to fire protection and prevention, and that those responsible report to the board from time to time on the corporation's compliance with the Act.</p>		

General Checklist for Director Liability

Director’s Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
	<p>offence or to imprisonment for a term of not more than one year, or to both.</p>	<p>Directors could be found liable for not ensuring that action is taken to correct a violation.</p>		
<p><u>Smoke-Free Ontario Act, 2017</u>, S.O. 2017, c. 26, Sched. 3</p>				
<p>The Act prohibits smoking, vaping or holding lighted tobacco or cannabis in any enclosed public space or workplace and imposes a duty on employers and proprietors to enforce compliance with the Act (for example, by providing notice and by posting no-smoking signs). Hospital policies should also be implemented to comply with related obligations under the <i>Long-Term Care Homes Act, 2007</i> by January 15, 2019 (see sections 8(1), 132.1 and 132,2 of O. Reg. 79/10).</p> <p>Hospitals and psychiatric facilities must be completely smoke-free pursuant to section 6 of O. Reg. 268/18, subject to limited exceptions under the legislation.</p>	<p>The penalty upon conviction is a fine, and the Act establishes a detailed regime for determining the amount of the fine. This may depend on the number of previous infractions of the Act of which the corporation has been convicted. Penalties may range from \$1,000 to \$600,000.</p>	<p>There is no statutory defence available.</p> <p>Directors should ensure that appropriate policies are in place around smoking.</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<p>There are exceptions for traditional use of tobacco by Aboriginal persons.</p> <p>Note that this Act was amended in 2019 in response to the issue of legalization of cannabis use. The offence provisions relating to tobacco products and vapour products now also extend to cannabis – for example, smoking or holding lighted cannabis is prohibited in the same areas as for tobacco and vapour products.</p>				

10. Occupational Health and Safety

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Occupational Health and Safety Act, R.S.O. 1990, c. O.1</i>				
<p>The Act sets out the rights and duties of all parties in the workplace, as well as the procedures for dealing with workplace hazards and compliance and enforcement measures.</p> <p>Every director of a corporation is required to ensure compliance with:</p> <ul style="list-style-type: none"> a) The Act and its regulations b) Orders and requirements of inspectors; and c) Orders of the Minister <p>Employers are required to abide by a number of duties, such as: providing safety-related equipment, materials and personal protective devices; ensuring a structurally-safe working environment; and providing information and training workers on safety issues or workplace hazards. The general duty is to take every precaution reasonable in the circumstances for the protection of a worker.</p>	<p>Under section 66, individuals convicted of an offence may be liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than twelve months, or to both; and corporations convicted of an offence may be fined up to \$1,500,000.</p>	<p>There is no statutory defence.</p> <p>Directors should ensure that there are in place, among other measures:</p> <ul style="list-style-type: none"> • Policies and procedures on workplace health and safety; • Systems or protocols for managing adverse events; and • A clear chain of responsibility for workplace health and safety. <p>Directors should ensure that workplace health and safety issues are brought to the board's attention</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<p>Employers are also required to prepare and enforce policies and programs on workplace violence and workplace harassment, including sexual harassment, which must include procedures for investigating complaints.</p> <p>See Part 2 for further information on obligations under this Act.</p>		<p>and addressed expeditiously.</p>		
<p><i>Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A</i></p>				
<p>The Act governs the administration of the provincial workplace insurance regime, including fees and levies for employers, and claims administration for injured workers.</p> <p>The Act sets out a number of requirements, including registration, fees and levies, accident reporting and claims administration and return to work/accommodation issues.</p> <p>See Part 2 for further information on obligations under this Act.</p>	<p>Sections 149 through 158 of the Act set out various offences and penalties. Under section 149 of the Act, a person who knowingly makes a false or misleading statement or representation to the Workplace Safety and Insurance Board (WSIB) in connection with a claim for benefits under the insurance plan is guilty of an offence.</p> <p>An employer who willfully fails to inform the WSIB of a material change in circumstances (in connection with a relevant obligation under the Act) within 10 days after the change occurs is guilty of an offence.</p> <p>Under section 157, if a corporation commits an offence under the Act, every director who “knowingly authorized, permitted or acquiesced in the commission of the offence is guilty of an offence, whether or not the corporation has been prosecuted or convicted.”</p>	<p>There is no statutory defence.</p> <p>Prosecution of an offence under the Act must be commenced within two years of the date on which the most recent act or omission upon which the prosecution is based comes to the knowledge of the WSIB.</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
	A director who is convicted of an offence is liable to a fine not exceeding \$25,000 or to imprisonment not exceeding six months or to both; and corporations convicted of an offence may be fined up to \$500,000.			

11. Taxation, Pension Contributions and Insurance

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Canada Pension Plan</i>, R.S.C., 1985, c. C-8 [federal]				
<p>The <i>Canada Pension Plan</i> (CPP) provides contributors and their families with partial replacement of earnings in the case of retirement, disability or death.</p> <p>Under section 21 of the CPP, employers are generally required to deduct and remit an amount (determined by the Government) from the remuneration paid to employees, and to remit that amount and a contribution that the employer is required to make to the CPP.</p>	<p>Every employer that fails to remit these amounts, at the time when it is required to do so, is liable to pay the whole amount that should have been deducted and remitted from the time that it should have been deducted, as well as an additional penalty of up to 20 percent, depending on the circumstances.</p> <p>Under section 21.1, if an employer that fails to deduct or remit an amount as and when required is a corporation, the persons who were the directors of the corporation at the time when the failure occurred are jointly and severally liable, together with the corporation, to pay that amount and any interest or penalties relating to it.</p>	<p>Certain procedural requirements (initiated through the Federal Court) must be met for a director to be found liable.</p> <p>A director is not liable for a failure of the corporation to withhold and remit CPP contributions where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
		<p>exercised in comparable circumstances. Further, no action or proceedings to recover any such amounts from a director may be commenced more than two years after the director ceased to be a director of the corporation.</p>		
<p><i>Employer Health Tax Act</i>, R.S.O. 1990, c. E.11</p>				
<p>The Act imposes a payroll tax that provides partial funding by Ontario employers for the Ontario Health Insurance Plan (OHIP).</p>	<p>Sections 31 to 36 provide that where a corporation contravenes or fails to comply with any provision of the Act, such as failing to remit taxes or to report or retain records, “any officer director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is guilty of the offence”.</p> <p>Depending on the nature of the offence, the penalty may be a fine of not more than \$5,000 per day, imprisonment for up to two years and/or a percentage of the tax that should have been paid, whether or not the corporation has been prosecuted or convicted.</p>	<p>There is no statutory defence.</p> <p>Among other measures, directors may want to require management to report on the corporation’s compliance with the requirements of the Act on a regular basis.</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Excise Tax Act</i>, R.S.C., 1985, c. E-15 [federal]				
<p>The Act mandates that businesses collect Goods and Services Tax (GST) on all household products and services bought by consumers.</p>	<p>Subsection 323(1) provides that “if a corporation fails to remit an amount of net tax required under the Act or to pay an amount that was paid to, or was applied to the liability of, the corporation as a net tax refund, the directors of the corporation at the time the corporation was required to remit or pay, the amount are jointly and severally liable, together with the corporation, to pay the amount and any interest on, or penalties relating to, the amount.”</p>	<p>Certain procedural requirements (initiated through the Federal Court) must be met for a director to be found liable.</p> <p>A statutory due diligence defence is available to directors.</p>		
<i>Income Tax Act</i>, R.S.C., 1985, c. 1 (5th Supp.) [federal]				
<p>The Act guides the application and collection of income tax, including both personal and corporate tax.</p>	<p>Section 227.1, provides that, under certain circumstances, directors are jointly and severally liable to pay all employee income tax deductions which the corporation fails to remit. Claims must be brought before the expiry of the second year following the date on which the director ceases to be a director.</p>	<p>Certain procedural requirements (initiated through the Federal Court) must be met for a director to be found liable.</p> <p>A statutory due diligence defence is available to directors.</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
<i>Taxation Act, 2007, S.O. 2007, c. 11, Sched. A, R.S.O. 1990, c. I.2 [provincial]</i>				
<p>The Act is the provincial counterpart to the federal <i>Income Tax Act</i>. This Act enables the provincial income taxation scheme.</p> <p>Note that the <i>Taxation Act, 2007</i> (Ontario) largely replaces the <i>Corporations Tax Act</i> (Ontario) and the <i>Income Tax Act</i> (Ontario) for years ending after 2008.</p>	<p>Directors may be held personally liable, under subsection 139(1) of the provincial <i>Taxation Act</i>, if they fail to deduct or withhold the amounts the corporation is required to deduct or withhold under the <u>federal</u> <i>Income Tax Act</i>.</p> <p>Directors may be jointly and severally liable, together with the corporation, for payment of up to the amount that should have been deducted or withheld plus interest and for a penalty.</p>	<p>Certain procedural requirements (initiated through the Superior Court) must be met for a director to be found liable.</p> <p>A statutory due diligence defence is available to directors.</p> <p>No action or proceedings to recover any amounts owed from a director may be commenced more than two years after the director ceased to be a director of the corporation.</p>		
<i>Insurance Act, R.S.O. 1990, c. I.8</i>				
<p>The Act governs all matters relating to contracts of insurance and insurable interests in the province.</p>	<p>Directors are guilty of an offence under subsection 447(4) of the Act, if they cause, authorize, permit or participate in the corporation making a false or misleading statement or misrepresentation in connection with the corporation's entitlement under a contract of insurance, willfully fail to inform the insurer of a change in connection with such an entitlement, make a false or misleading statement to obtain payment, or fail to take</p>	<p>There is no statutory due diligence defence.</p> <p>Proceedings must be commenced within two years of the date on which the facts first came to the knowledge of the Superintendent of Financial Services.</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
	<p>reasonable care to prevent the corporation from committing any such offence.</p> <p>The fines on a first conviction is not more than \$100,000 and on each subsequent conviction, not more than \$200,000, whether or not the corporation has been prosecuted for or convicted of the offence. In addition, the court may order a person convicted under the Act to compensate or make restitution in connection with the offence.</p>			
<p><i>Pension Benefits Act</i>, R.S.O. 1990, c. P.8</p>				
<p>The Act applies to designated pension plans provided for persons employed in Ontario. It establishes the benefits required to be provided under such plans, the content of documents that create and support a pension plan, and imposes a number of obligations on employers.</p> <p>It is an offence to contravene the Act or an order made under the Act by the Superintendent of Financial Services.</p>	<p>Under section 57 of the Act, whether an employer receives money from an employee for payment into a pension fund or withholds money by way of a payroll deduction or otherwise for payment into a pension fund, or is required to pay contributions to a pension fund, those monies (or the amount that the corporation is required to pay) are deemed to be held by the employer in trust for the beneficiaries of the pension plan.</p> <p>Under section 110 of the Act, every director, officer, official or agent of a corporation is guilty of an offence if he/she:</p> <ul style="list-style-type: none"> • Causes, authorizes, permits, acquiesces or participates in the commission of an offence by the corporation; or • Fails to take all reasonable care in the circumstances to prevent the corporation from committing an offence. 	<p>There is a statutory defence in certain circumstances.</p> <p>Under section 110, a director that takes all reasonable care to prevent a corporation from committing an offence will not be held liable for the offence.</p> <p>There is also a five-year limitation period on prosecutions for an offence (from the date when the offence occurred or is alleged to have occurred).</p>		

General Checklist for Director Liability

Director's Obligations	Penalties and Offences	Commentary	Applicable Risk Management Process	Applicable Date
	<p>A person who is guilty of an offence described above is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000 whether or not the corporation has been prosecuted for, or convicted of, an offence arising from the same facts or circumstances. Further, where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company.</p> <p>In addition to the fines which may be levied in respect of convictions under the Act, as of January 1, 2018, a new regime was created which provides for the imposition of administrative monetary penalties (AMPs) on any person who has failed to comply with the Act, up to a maximum of \$25,000 for a person (including a corporation such as a hospital) or \$10,000 for an individual (including a director). Note that most hospitals have pension plans that are administered centrally or through a professional firm, as a way of managing risks associated with AMPs.</p>			

PART 2: PERIODIC REPORTING COMPLIANCE FOR THE 2020 REPORTING YEAR

A. Overview

There are a number of statutes in Ontario that impose reporting requirements in the hospital context. These statutes require hospitals to prepare periodic (annual or more frequent) reports to the relevant oversight body (for example, a hospital committee, a regulatory body or the government); and in some cases, to make those reports available publicly on the hospital's website. Accountability in this context requires hospitals to navigate these various reporting requirements, to ensure that they meet their obligations towards stakeholders. Hospitals should be aware of any additional reporting requirements that may exist outside of these statutes, including those established under contract.

B. General Checklist: Updates to the Third Edition (2020)

This checklist has been updated for the 2020 reporting year, reflecting applicable reporting timeframes and relevant legal changes that occurred in the previous calendar year. In particular, hospitals may wish to ensure that they are aware of modified requirements with respect to:

- Changes under the *Broader Public Sector Accountability Act*, to reflect a new Executive Compensation Framework Regulation, and associated changes under the *Broader Public Sector Executive Compensation Act* (note that a specific date for enactment of the changes has not yet been established);
- Changes to the provisions of the *Local Health Systems Integration Act, 2004* and the *Excellent Care for All Act, 2004*, to reflect the passage of the *Connecting Care Act, 2019*; and
- Changes to the requirements around the Broader Public Sector Procurement Directive through the passage of the *Supply Chain Management Act, 2019* (note that a specific date for enactment of the changes has not yet been established).

Where applicable, relevant links have been provided to OHA resources or other guidance resources, to assist hospitals in meeting their periodic reporting obligations. Note that specific proclamation dates for some legislative changes have not been established at the time of writing; and we encourage hospitals to continuously review OHA backgrounders and communications for the most current guidance.

Please note that this is a general checklist and is intended to serve as preliminary guidance only. It does not represent an exhaustive summary of all legislation with which hospitals have to comply. Hospitals may wish to use this checklist as a starting point for their own processes and policies to manage periodic reporting requirements.

Hospitals should review the checklist as well as the relevant legislation, to ensure that they meet the mandated deadlines. We would encourage you to share the checklist with the appropriate individuals within your organization.

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<i>Accessibility for Ontarians with Disabilities Act, 2005</i>					
Web Link: Government of Ontario, Background on Accessibility Laws					
GENERAL REQUIREMENTS					
<ul style="list-style-type: none"> • Hospitals are considered “designated public sector organizations” under the legislation. • Hospitals with <i>50 or more employees</i> are classified as a “large designated public sector organization.” • Hospitals with at least one, but <i>fewer than 50 employees</i> are classified as a “small designated public sector organization.” • All hospitals are required to have accessibility policies in place; and to develop, implement and maintain multi-year accessibility plans. • Hospitals are also required to ensure that they provide training to their employees and volunteers on accessibility issues. • Accessibility criteria must be incorporated during procurement processes or when acquiring goods, services and facilities. • Further information: Government of Ontario, Accessibility Rules for Public Sector Organizations 	<p>January 1, 2010, with ongoing compliance dates</p> <p>Compliance dates vary depending on the size of the hospital, either as a “large designated public sector organization” or a “small designated public sector organization”.</p>				<p><i>Accessibility for Ontarians with Disabilities Act, 2005</i></p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
REQUIRED REPORTS AND PROCESSES					
<p>Pursuant to a regulatory proposal, effective July 1, 2016, the <i>Customer Service Standard Regulation</i> was incorporated into the <i>Integrated Accessibility Standards Regulation</i>, streamlining the language across all standards under the <i>Accessibility for Ontarians with Disabilities Act, 2005</i>.</p> <p>Other key changes resulting from this regulatory amendment include:</p> <ul style="list-style-type: none"> • Requiring that <u>all</u> employees and volunteers be trained on accessible customer service; • Expanding the types of health care professionals who can provide documentation of the need for a service animal; and • Clarifying that an organization can only require a support person to accompany someone with a disability for the purposes of health or safety and in consultation with the person. 	July 1, 2016	Ongoing compliance dates.			Integrated Accessibility Standards, O. Reg. 191/11
<p><u>Integrated Accessibility Standards Regulation</u></p> <ul style="list-style-type: none"> • Combines general accessibility requirements and five specific accessibility standards: <ol style="list-style-type: none"> 1. Customer Service Standard – applying to the provision of goods, services and facilities. 2. Information and Communications Standard – providing people with disabilities with more access to accessible formats and communication supports. 3. Employment Standard – accommodating persons with disabilities in more workplaces. 	Compliance dates are particular to each of the five standards, and depend on the size of the hospital, either as a “large designated public sector organization” or a “small designated public sector organization”.	Ongoing compliance dates.			Integrated Accessibility Standards, O. Reg. 191/11

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p>4. Transportation Standard – making it easier for people with disabilities to travel in Ontario.</p> <p>5. Design of Public Spaces Standard (Built Environment) – removing physical barriers in building and public spaces.</p> <p>Designated public sector organizations, including hospitals, are required to file a bi-annual Accessibility Compliance Reports.</p>					
FURTHER DETAILS ON REQUIREMENTS UNDER THE INTEGRATED ACCESSIBILITY STANDARDS REGULATION					
<p><u>Customer Service Standard, O. Reg. 191/11, Part IV.2</u></p> <p>Hospitals are required to provide accessible customer service, which includes:</p> <ul style="list-style-type: none"> • Training staff and volunteers on service standards for people of all abilities; • Keeping a written record of the training; • Welcoming service animals and support persons; • Creating accessible ways for people to provide feedback; • Informing the public when accessible goods and services are temporarily unavailable; and • Developing, implementing and maintaining policies on the provision of goods, services and facilities to persons with disabilities. 	<p>January 1, 2010, with ongoing compliance dates</p>	<p><input type="checkbox"/> Report due December 31, 2013 and every two years thereafter.</p>			<p>Integrated Accessibility Standards, O. Reg. 191/11 Part IV.2</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p><u>Information And Communications Standard, O. Reg 191/11, Part II</u></p> <ul style="list-style-type: none"> • Organizations must provide accessible formats and communication supports in relation to their communications with the public. • This includes a number of requirements that hospitals must phase into regular business processes by 2021 (including accessible websites, feedback processes, emergency procedures/plans and public safety information). • See the Regulation for the compliance dates for specific requirements. 	<p>Various dates: See Regulation for requirements regarding particular kinds of communications.</p>	<p><input type="checkbox"/> Report due December 31, 2013 and every two years thereafter.</p>			<p>Integrated Accessibility Standards, O. Reg 191/11, Part II</p>
<p><u>Employment Standards, O. Reg 191/11, Part III</u></p> <ul style="list-style-type: none"> • Hospitals, as employers, are required to make their employment practices and workplaces accessible to potential and existing employees with disabilities. • This includes: <ul style="list-style-type: none"> ○ Recruitment, selection and assessment processes; ○ Performance management and career development processes; and ○ Accommodation plans for employees with disabilities. • Note: these obligations do not apply in respect of volunteers and other non-paid individuals. 	<p>Large designated public sector organizations by January 1, 2014</p> <p>Small designated public sector organizations by January 1, 2015</p>	<p><input type="checkbox"/> Report due December 31, 2015 and every two years thereafter.</p>			<p>Integrated Accessibility Standards, O. Reg 191/11, Part III</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p><u>Transportation Standards, O. Reg 191/11, Part IV</u></p> <ul style="list-style-type: none"> Hospitals are classified as organizations <u>not</u> primarily in the business of transportation. If they provide transportation services, they are required to either use accessible vehicles on main transit routes, or provide an equivalent service on request (this service must offer similar fares, schedules and routes). 	<p>July 1, 2011, with ongoing compliance dates</p>	<p><input type="checkbox"/> Report due December 31, 2013 and every two years thereafter.</p>			<p>Integrated Accessibility Standards, O. Reg 191/11, Part IV</p>
<p><u>Design of Public Spaces Standards (Accessibility Standards For The Built Environment), O. Reg 191/11, Part IV.1</u></p> <ul style="list-style-type: none"> A number of technical requirements apply for new and redeveloped outdoor recreational, eating, travel, service counter, waiting area, and parking spaces. See the Regulation for specific requirements. Multi-year accessibility plans must include procedures for preventative and emergency maintenance of above spaces and procedures for dealing with temporary disruptions of the above spaces. 	<p>For all designated public sector organizations, by January 1, 2016</p>	<p><input type="checkbox"/> Report due December 31, 2017 and every two years thereafter.</p>			<p>Integrated Accessibility Standards, O. Reg 191/11, Part IV.1</p>

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<u>Broader Public Sector Accountability Act, 2010</u>					
Web Link: Ontario Government, Broader Public Sector Accountability					
DIRECTIVES UNDER THE BPSAA					
<p>There are several directives under the BPSAA:</p> <p>1. <u>Compensation Arrangements Compliance Report Directive</u></p> <p>Part II.1 of the BPSAA, which has historically governed executive compensation reporting requirements, has been repealed under the Budget Bill (2019) and will be removed upon proclamation. At the time of writing, a date for proclamation/repeal has not yet been announced.</p> <p>The current Executive Compensation Framework Regulation under the <i>Broader Public Sector Executive Compensation Act</i> (BPSECA) came into effect on August 13, 2018. This Regulation supersedes the former compensation restraints under the BPSAA, along with associated reporting requirements.</p> <p>For further guidance on the requirements under BPSECA, see below.</p>	N/A				

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p>2. <u>Broader Public Sector Business Documents Directive</u></p> <p>This Directive sets out the requirement for all designated BPS organizations to prepare and publish online business plans and other business or financial documents.</p> <ul style="list-style-type: none"> • Hospitals must prepare and publish online business plans and other business or financial documents containing specified information: • (A) Business plans that contain at <u>minimum</u> the following information: <ul style="list-style-type: none"> ○ An organization’s mandate and strategic direction; ○ An overview of current and future programs and key activities; and ○ Performance measures and targets. • (B) <u>Additional</u> business or financial documents that contain at minimum the following information: <ul style="list-style-type: none"> ○ A description of key activities over the previous fiscal year of the organization; ○ An analysis of operational performance; ○ A discussion of performance targets achieved and actions to be taken if not achieved; and ○ Audited financial statement. • All the documents and information required in this directive must be available on the same webpage on the organization’s website. • An organization’s annual report may satisfy these requirements if it contains all the necessary information. 	<p>January 1, 2016</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Information required under (A) must be posted each year within six months of the <u>beginning</u> of the hospital’s fiscal year. <input type="checkbox"/> Information required under (B) must be posted within six months of the <u>end</u> of the hospital’s fiscal year. 			<p>BPSAA, s. 13.1</p>

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<ul style="list-style-type: none"> The Government has also developed an outline of best practices (2019), to improve the quality of reporting in annual reports and business documents. Hospitals are encouraged to review these best practices here (as originally referenced in Chapter 4 of the Auditor General of Ontario’s 2017 Annual Report). <p>Further Information: Frequently Asked Questions about the Business Documents Directive</p>					
<p>3. BPS Expenses Directive</p> <p>This Directive sets out the requirement for designated BPS organizations to establish expense rules when their expenses are reimbursed from public funds.</p> <ul style="list-style-type: none"> Every hospital must establish rules for all individuals in the hospital with respect to travel, meal and hospitality expenses. These expense rules apply to any individual in the organization making an expense claim. Every hospital must post travel, meal and hospitality expenses for designated individuals (Board of Directors, CEO, COO and the senior management group reporting to the CEO or COO). The expense rules may use meal allowances (where meal expenses are reimbursed at established rates without receipts) or may require original and itemized receipts for meals (this was a new provision as of January 1, 2017). 	<p>April 1, 2011</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Reports semi-annually beginning in the 2011/2012 Fiscal Year. <input type="checkbox"/> Expenses must be posted no later than 60 days following the end of the semi-annual reporting period. <input type="checkbox"/> Reporting and posting cycle: Period of April 1- September 30 by November 30; and period of October 1-March 31 by May 31. 			<p>BPSAA, ss. 8-11</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<ul style="list-style-type: none"> • The information must be posted on a website readily available to the public. • Expense rules must also be posted on the hospital’s website. • The expense rules must also provide direction on the circumstances in which a consultant or contractor can claim and be reimbursed for expenses. The rules should set out what is an allowable expense. • Individuals approving claims are prohibited from approving their own expenses; and expenses for a group can only be claimed by the most senior person present. <p>Further information: FAQs on the Expense Rules Directive</p>					
<p>4. BPS Perquisites Directive</p> <p>This Directive sets out the requirement for designated BPS organizations to establish rules related to perks in cases where perks are provided through public funds.</p> <ul style="list-style-type: none"> • A perquisite is not allowable if it is not a business-related requirement. To be allowable, a perquisite must be a business-related requirement for the effective performance of an individual’s job. • Every designated organization must establish rules respecting perquisites that address: <ul style="list-style-type: none"> ○ Which expenses will be allowable as relating to business requirements for the effective performance of a person’s job; 	<p>August 2, 2011</p>	<p><input type="checkbox"/> Every hospital is required to submit to the relevant LHIN or Ontario Health, as applicable, the required attestation, approved by the hospital’s board, covering the Reporting Period (i.e. April 1 to the following March 31), by June 30 of every year.</p>			<p>BPSAA, s. 11.1</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<ul style="list-style-type: none"> ○ Club memberships, seasons' tickets to cultural or sporting events, clothing allowances unrelated to job requirements, access to private health clinics, and professional advisory services cannot be provided by any means; ○ An accountability framework to ensure that there is appropriate governance, and that everyone understands who in the organization has the authority for approvals. The approval authority for an allowable perquisite should be at a high level within the organization; ○ Record-keeping practices, to be maintained for verification and audit purposes; and ○ How summary information about allowable perquisites will be made publicly available. This summary information should be made available on an annual basis. <p>Further information: FAQs on expense rules in the broader public sector</p>					
<p>5. <u>Broader Public Sector Procurement Directive</u></p> <p>This Directive sets out requirements to ensure that designated BPS organizations acquire publicly funded goods and services through a process that is open, fair and transparent.</p>	<p>July 1, 2011</p>	<p><input type="checkbox"/> Every hospital is required to submit to the relevant LHIN, or Ontario Health, as applicable, the required attestation, approved by the</p>			<p>BPSAA, s. 12</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<ul style="list-style-type: none"> • Under the Directive, hospitals must undertake procurement of goods and services in accordance with Ministry issued directives. • Hospitals must formally adopt the supply chain code of ethics (code) in accordance with their governance processes. • The code must be made available and visible to all hospital members, suppliers and stakeholders involved with supply chain activities. <p>Further information: Directives to hospitals in respect of reporting requirements under the BPSAA</p> <p>Note that this Directive must be read alongside the requirements in the <i>Supply Chain Management Act (Government, Broader Public Sector and Health Sector Entities), 2019</i>. Regulations under the Act will prescribe rules for supply chain management.</p> <p>At the time of writing, the <i>Supply Chain Management Act</i> is not yet in force, but will supersede the Directive requirements upon proclamation. A date for proclamation has not yet been established.</p>		<p>hospital's Board, covering the Reporting Period (i.e. April 1 to the following March 31), by June 30 of every year.</p>			

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p>requires hospitals to register their lobbying activity with the Integrity Commissioner when lobbying activity by paid hospital staff totals <u>50 hours or more per year</u>.</p> <ul style="list-style-type: none"> The registration must be filed within 2 months of the lobbyist meeting the definition of an in-house lobbyist in the LRA. See also: Office of the Integrity Commissioner, Changes to the Lobbyist Registration Act. 		<p>(i.e. April 1 to the following March 31), by June 30 of every year.</p>			
<p>Attestations – Compliance Reports</p> <p>Further information: Ministry of Health and Long-Term Care, Directive to Hospitals in Respect of Reporting Requirements under the BPSAA</p> <ul style="list-style-type: none"> Every hospital is required to prepare attestations, attesting to: <ol style="list-style-type: none"> The completion and accuracy of reports required on the use of consultants; Compliance with the prohibition on engaging lobbyist services using public funds; Compliance with Expense Claim Directives issued by the Management Board of Cabinet; Compliance with the Perquisites Directive issued by the Management Board of Cabinet; Compliance with Procurement Directives issued by the Management Board of Cabinet; and Compliance with Directives issued by the Management Board of Cabinet on the preparation and publication of business 	<p>April 1, 2011</p>	<p><input type="checkbox"/> Every hospital is required to submit to the relevant LHIN, or Ontario Health, as applicable, the required attestation, approved by the hospital’s Board, covering the Reporting Period (i.e. April 1 to the following March 31), by June 30 of every year.</p>			<p>BPSAA, s. 15</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p>plans and other business or financial documents.</p> <ul style="list-style-type: none"> • Attestations must be made by the administrator and approved by the hospital board. • Board approved attestations must be posted publicly on the hospital's website by August 31 of each year. • Attestations to remain available for 1 year on main public website, after 1 year they can be moved to the archive section of the website. 					
<i>Broader Public Sector Executive Compensation Act, 2014</i>					
<p>Web Link: Government of Ontario, Broader Public Sector Executive Compensation Program Directive</p>					
<ul style="list-style-type: none"> • This Act provides for the establishment of compensation frameworks, by way of regulation, for senior executives in designated BPS organizations, including hospitals. <p><u>Executive Compensation Framework Regulation</u></p> <ul style="list-style-type: none"> • Sets out the process for determining the maximum amount of salary and performance pay that will be available for designated executives of designated employers, including public hospitals, as well as other parameters regarding other elements of the executives' compensation. • Generally, the limits are based on the executives' entitlements as at the Regulation's effective date, August 13, 2018. 	<p>August 13, 2018</p>	<ul style="list-style-type: none"> <input type="checkbox"/> As of August 13, 2018, designated employers are required to comply with the revised Executive Compensation Framework Regulation [O. Reg. 406/18]. <input type="checkbox"/> A government review of this Regulation is currently underway and is scheduled to be completed by 			<p>Broader Public Sector Executive Compensation Act, 2014</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p><u>Executive Compensation Framework Compliance Report Directive</u></p> <ul style="list-style-type: none"> • This Directive outlines the reporting requirements that every hospital must comply with under the BPSECA. • The Directive requires an Annual Executive Compensation Compliance report to be submitted annually on or before May 1 of each year, covering the preceding period of April 1 to March 31. • This report must include a statement signed by the designated employer’s board chair, or equivalent highest ranking officer, attesting that the employer has compensated its designated executives in accordance with the terms of the Framework Regulation during the relevant reporting period. <p>Note: Given the recent changes to the Compensation Framework, the status of this Directive is somewhat unclear during the interim “freeze” period. Further clarity is anticipated upon the completion of the Executive Compensation Framework review. At the time of writing, the completion of the review is scheduled for early 2020. Please review future OHA backgrounders and communications for further guidance.</p>		<p>early 2020. Please review future OHA backgrounders and communications for further guidance.</p> <ul style="list-style-type: none"> <input type="checkbox"/> During this interim “freeze” period, the drafting, consultation, approval, and posting process for executive compensation programs under the former Regulation [O. Reg. 304/16] is no longer applicable. <input type="checkbox"/> Each designated employer is required to submit an annual executive compensation compliance report (annual compliance report) on or before May 1 of each year. 			

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
		<input type="checkbox"/> Subsequent reporting years cover April 1 to March 31 of the preceding year.			
<i>Electricity Act, 1998</i>					
<p><u><i>Broader Public Sector: Energy Reporting and Conservation and Demand Management Plans</i></u></p> <ul style="list-style-type: none"> • Under Regulation 507/18, every public hospital is required to prepare, publish, make available to the public and implement energy conservation and demand management plans. • This plan is composed of two parts: <ul style="list-style-type: none"> ○ A summary of the hospital’s annual energy consumption and greenhouse gas emissions for its operations; and ○ A description of previous, current and proposed measures for conserving and otherwise reducing the amount of energy that the hospital consumes; and for managing the hospital’s demand for energy, including a forecast of the expected results of current and proposed measures. • Annual reports must be completed using the form entitled “Energy Consumption and Greenhouse Gas Emissions Reporting” available from the Ministry of Energy, Northern Development and Mines • On or before July 1 each year, every hospital must submit the above form to the Minister, 	<p>July 1, 2019</p> <p>Regulation 507/18 under the Energy Act, 1998</p>	<input type="checkbox"/> July 1, 2019 and every year thereafter.			<p>O. Reg 507/18, ss. 4 and 5</p> <p>O. Reg 507/18 s. 6</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p>publish it on the hospital’s website and intranet site (if it has either or both) as well as make it available in printed form to the public at the hospital’s head office.</p> <ul style="list-style-type: none"> • There is additional information that hospitals must publish on their website and intranet site (if it has either or both) and make available to the public in printed form at its head office related to energy conservation and demand management measures, <p>Further information is available through the Government’s Online Guide to Energy and Water Reporting</p>					
<p><i>Excellent Care for All Act, 2010</i></p>					
<p>Web Link: Ministry of Health and Long-Term Care, Background on the Excellent Care for All Act</p>					
<p>REQUIRED REPORTS AND PROCESSES</p>					
<p>Annual Quality Improvement Plan (QIP)</p> <ul style="list-style-type: none"> • The hospital must develop a QIP every fiscal year for the next fiscal year and make the QIP available to the public. • The hospital shall provide its LHIN with a draft of the QIP for review before it is made available to the public. • The hospital shall provide a copy of its QIP to Health Quality Ontario in a format established by the Health Quality Council that permits province-wide comparison of and reporting on a minimum set of quality indicators. 	<p>Regulation filed June 8, 2010</p>	<p><input type="checkbox"/> Have the QIP in place, submitted to Ontario Health, and publicly posted each year by April 1.</p>			<p>ECFAA, s. 8</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p>Mandatory indicators</p> <ul style="list-style-type: none"> • New requirements introduced under the regulation require that hospitals include a number of mandatory indicators, which may relate to safety, effectiveness, patient-centredness, efficiency, timeliness, equity, and workplace violence. <p>Patient engagement in the development of the QIP</p> <ul style="list-style-type: none"> • Pursuant to Regulation 187/15 under ECFAA, effective September 1, 2015, hospitals must engage patients and their caregivers in the development of the annual QIP. • In addition, the QIP must contain a description of the organization's patient engagement activities and an explanation of how these activities inform the development of the QIP. • For further information, see: OHA Backgrounder on Regulation 187/15 					<p>Annual Quality Improvement Plan, O Reg 187/15, s. 1</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p>Surveys</p> <ul style="list-style-type: none"> • Every fiscal year, hospitals must carry out a survey of patients from the past 12 months and of caregivers of those persons who had contact with the organization in connection with those services. The purpose of the survey is to collect information concerning satisfaction with services provided. • Every two fiscal years, hospitals must carry out a survey of employees of the hospital and of persons providing services within the hospital. The purpose of the survey is to collect information on the satisfaction of employees and other persons with their experience working for or providing services within the organization, and to solicit views about the quality of care provided by the health care organization 	<p>January 1, 2011</p>	<ul style="list-style-type: none"> <input type="checkbox"/> April 1, 2011 and every year thereafter. <input type="checkbox"/> April 1, 2012 and every two years thereafter. 			<p>ECFAA, s. 5</p>

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Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p>Quality Committee twice annually (every 6 months).</p> <ul style="list-style-type: none"> For further information, see: OHA Backgrounder on Regulation 188/15 					
<p>Patient Declaration of Values</p> <ul style="list-style-type: none"> Every hospital must have a publicly available patient declaration of values that has been developed in consultation with the public. A hospital may amend its patient declaration of values after consulting with the public, and shall make every amended declaration available to the public. 	June 8, 2010	<ul style="list-style-type: none"> <input type="checkbox"/> Must consult on draft Declaration by December 8, 2010. <input type="checkbox"/> Publicly available Declaration of Values by June 8, 2011. 			ECFAA, s. 7
<i>Fire Protection and Prevention Act, 1997</i>					
<p><i>Fire Code (Ont. Reg 213/07)</i></p> <p>Care and Treatment Occupancies</p> <ul style="list-style-type: none"> Hospitals fall under the definition of “care and treatment occupancy” (CATOs) under the <i>Building Code</i> as being “an occupancy where people receive special care and treatment”. A fire safety plan is required for all CATOs. This plan must be submitted to the Chief Fire Official for approval. Fire drills must be held for supervisory staff at least monthly. This does not necessarily mean a total evacuation drill – but may include occupant involvement in other ways (such as familiarization with primary and alternate evacuation routes and general awareness of the 		<ul style="list-style-type: none"> <input type="checkbox"/> One-time plan submitted to the Chief Fire Official for approval. 			<p>Fire Code, Division B, s. 2.8 Division A, s. 1.4 (definition of “supervisory staff”)</p> <p>TG-02-1999 “Fire Safety Planning Guideline for Institutional Facilities”</p>

General Checklist for Periodic Reporting Compliance

Requirement	Effective Dates	Submission Date	Compliance Y/N	Compliance Date	Source
<p>building’s emergency procedures – i.e. a silent drill or a table talk drill).</p> <ul style="list-style-type: none"> • Supervisory staff must be trained in fire emergency procedures. • All fire drills must be documented, and the documentation retained for at least 12 months. The documentation should identify the date of the drill, persons participating, the type of drill, fire drill scenario, and the summary analysis and outcomes of the fire drill. • Copies of any records required by the Code (for example, for tests and inspections) must be retained by the hospital for a period of at least two years; and so that at least the most recent and the immediately preceding record of a given test are maintained. 		<ul style="list-style-type: none"> <input type="checkbox"/> Records of fire drills must be retained. <input type="checkbox"/> Record keeping requirements also apply to copies of test or inspections required by the Code 			<p>Fire Drill Guidelines: TG-01-2004</p>

<i>Freedom of Information and Protection of Privacy Act</i>					
OHA Link: OHA Freedom of Information Toolkit (member login is required for full access)					
REQUIRED REPORTS AND PROCESSES					
<p>Make materials available</p> <ul style="list-style-type: none"> Information and privacy heads must make manuals, directives or guidelines (and related instructions/guidance) related to an enactment on rights, privileges or benefits conferred (and whether to suspend or revoke them) or related to an enactment that imposes obligations or liabilities, available on the internet or in print in the designated reading room, library or office. 	January 1, 2012	<input type="checkbox"/> Make materials available by Jan 1, 2012.			FIPPA, ss. 33, 35
<p>Information and privacy head must make reports to the Information and Privacy Commissioner</p> <ul style="list-style-type: none"> Report of the number of requests, number of refusals, purposes/uses of disclosures, fees collected and any other practice put into place. Information and privacy head must conduct an annual review to ensure up-to-date information. Make report available on the internet or in print in the designated reading room, library or office. Information and Privacy Commission Guidelines for Annual Reporting: Annual Statistical Reporting and Supporting PDF Materials 	January 1, 2012	<input type="checkbox"/> 2012 and every year thereafter. <input type="checkbox"/> 2018 reporting deadline is February 28, 2018. January 1 – December 31 is the reporting year.			FIPPA, ss. 34, 35 and 36

<i>Local Health System Integration Act, 2006/Connecting Care Act, 2019, S.O. 2019, c. 5, Sched. 1</i>					
<ul style="list-style-type: none"> • This Act (LHSIA) creates obligations for “health service providers” including hospitals. • Hospital boards and board chairs have specific roles in service accountability agreements, negotiated under section 20 of LHSIA or section 22 of the <i>Connecting Care Act, 2019</i>, as applicable. • Specific reporting obligations and timelines are also provided in each service accountability agreement. <p>At the time of writing, LHSIA is in the process of being repealed and replaced by the CCA. The CCA modifies the framework under which LHINs fund, organize and oversee regional health care systems with the introduction of a new provincial agency, Ontario Health.</p>	2006	<input type="checkbox"/> Ongoing. Review the hospital’s service accountability agreements for specific dates.			LHSIA, s. 20
<i>Occupational Health and Safety Act</i>					
<p>Reporting of workplace injuries</p> <ul style="list-style-type: none"> • Where a person is killed or critically injured from any cause at a workplace, the employer’s reporting obligations are triggered. • Reporting obligations require immediate notification of a critical injury to a Ministry of Labour (MOL) inspector, Joint Health and Safety Committee (JHSC)/ Health and Safety Representative (HSR) and the trade union. • Within 48 hours, the employer must also send a report to a Director of the Ministry of 	1990, 2001	<input type="checkbox"/> Ongoing. Ensure that appropriate policies are in place for reporting of workplace injuries.			OHSIA, ss. 51-52 O. Reg 67/93, s. 5 R.R.O. 1990, Reg. 834 (definition of “critical injured”)

<p>Labour, outlining the circumstances of the occurrence.</p> <ul style="list-style-type: none"> • Non-critical injury accidents where a person is disabled from performing their usual work, or requires medical attention because of an accident, explosion, fire or incident of workplace violence must also be reported through similar mechanisms, within four days of the occurrence. • Similar notice is also required within four days where an employer is advised that a worker has an occupational illness, or where the worker files a claim with the Workplace Safety and Insurance Board for an occupational illness. 				
<p><i>Personal Health Information Protection Act, 2004</i></p>				
<p>OHA Link: Proposed Regulation on Mandatory Reporting of Privacy Breaches</p>				
<p>RELEVANT BACKGROUND</p>				
<ul style="list-style-type: none"> • The <i>Personal Health Information Protection Act</i> (2004) (PHIPA) sets out the rules around personal health information (PHI) to ensure that patient privacy is protected. • Health information custodians (such as hospitals) are required to inform individuals when PHI is used or disclosed in an unauthorized manner. They must also inform individuals when PHI is lost or stolen. Hospitals are also required to make note of the uses and disclosures and keep the note as part of the individual's record of PHI. 	<p>June 3, 2016</p>	<p><input type="checkbox"/> Point-in-time reporting is required to regulatory colleges and the IPC at every instance of a privacy breach meeting prescribed circumstances.</p>		<p><i>Personal Health Information Protection Act, 2004, s.12(3)</i> <i>PHIPA, ss. 12(2), 16(2)</i></p>

<p>Reg 965: Critical Incident Reporting</p> <ul style="list-style-type: none"> • Critical incidents must be disclosed to the MAC, the hospital administrator and the patient • Hospital board must ensure that the administrator establishes a system for ensuring the incident is analyzed and a plan is developed with systemic steps to avoid or reduce the risk of further similar incidents. • Hospital board must ensure that the administrator provides aggregated critical incident data to the Quality Committee at least two times per year. • Systemic or recurring quality of care issues identified by the MAC should be provided as recommendations to the Quality Committee. • Directive: hospitals are required to report all critical incidents related to medication / IV fluids through the National System of Incident Reporting (NSIR) within 30 days following the disclosure of the critical incident to the MAC, administrator and/or patient. • Changes to Reg 965 were introduced through the 2015 review of the <i>Quality of Care Information Protection Act</i> (QCIPA) and came effect on July 1, 2017. Among the new requirements, hospitals are required to: <ul style="list-style-type: none"> ○ Disclose the cause or causes of critical incidents, if known; ○ Ensure that a person representing the patient perspective is included during all critical incident reviews; and ○ Offer to interview affected patients or their families in reviewing a critical incident. 	<p>July 1, 2010</p> <p>January 1, 2011</p> <p>October 1, 2011</p> <p>July 1, 2017</p>	<p><input type="checkbox"/> Aggregated critical incident reporting to the Quality Committee at least two times per year.</p>		<p>Hospital Management, Reg. 965</p>
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<p>Public Reporting of Patient Safety Indicators</p> <ul style="list-style-type: none"> Hospitals must publicly report on: diagnoses of hospital-acquired infections; activities undertaken to reduce hospital-acquired infections; and mortality. Hospitals are required to disclose the results of each indicator through their website. For further information, see the HQO resource on Patient Safety Indicator Reporting 	<p>Various dates, depending on the indicator.</p>	<p><input type="checkbox"/> Various dates. See MOHLTC guidance materials for further information.</p>			<p>Hospital Management, Reg 965, s. 22.2</p>
<p>Public Sector Salary Disclosure Act, 1996</p>					
<p>Web Link: Ministry of Finance, Ontario Public Sector Salary Disclosure</p>					
<p>Reporting of salaries and benefits</p> <ul style="list-style-type: none"> Requires hospitals and other public sector organizations that receive public funding from the Province of Ontario to disclose annually the names, positions, salaries and total taxable benefits of employees paid \$100,000 or more in a calendar year. Disclosure records must be submitted to the funding ministry by the fifth business day of March every year. Hospitals are also required to make the records available for inspection by the public. 	<p>April 15, 2004</p>	<p><input type="checkbox"/> Fifth business day of March each year. <input type="checkbox"/> Hospitals and other public sector organizations may also use a new online submission tool for submissions after January 1, 2018. See Treasury Board Secretariat guidance materials for further information.</p>			<p><i>Public Sector Salary Disclosure Act, 1996, section 3 and O.Reg 85/96</i></p>
<p>Regulated Health Professions Act, 1991</p>					
<p>Reporting in relation to a regulated professional's conduct:</p> <ul style="list-style-type: none"> Reporting requirements (to the applicable regulatory college) apply where a hospital (as 	<p>August 1, 2016</p>	<p><input type="checkbox"/> Ensure that processes are in place for reporting to the Registrar of</p>			<p><i>Regulated Health Professions Act 1991,</i></p>

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<p>an institutional employer) terminates the employment of a regulated health professional, or revokes, suspends or imposes restrictions on practice privileges.</p> <ul style="list-style-type: none"> • Changes that came into effect on August 1, 2016 require an institutional employer to report where a member has resigned or voluntarily relinquished his or her privileges as a result of professional misconduct. • Changes that came into effect on May 30, 2017 introduced enhanced penalties for failing to report sexual abuse of patients. Hospitals may face fines of up to \$200,000 for failing to report sexual abuse by regulated health professionals. <p>Separate reporting requirements apply in respect of physicians and reporting to the College of Physicians and Surgeons of Ontario (see section 33 of the <i>Public Hospitals Act</i> and section on the <i>Public Hospitals Act</i> above).</p>	<p>May 30, 2017</p>	<p>the applicable regulatory college, when appropriate.</p>		<p>Schedule 2, section 85.5</p>
<p><u>Workplace Safety and Insurance Act, 1997</u></p>				
<p>Notice to the WSIB of an accident</p> <ul style="list-style-type: none"> • Requires hospitals to notify the Workplace Safety and Insurance Board (WSIB) within three days after learning of an accident to a worker employed by the hospital. Employers must report a work-related accident to the WSIB if they learn that a worker requires health care and/or the worker <ul style="list-style-type: none"> ○ Is absent from regular work; ○ Earns less than regular pay for regular work (e.g., part-time hours); 	<p>January 1, 1998</p>	<p><input type="checkbox"/> Ensure appropriate notification policies are in place.</p>		<p><i>Workplace Safety and Insurance Act, 1997, section 21</i></p>

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<ul style="list-style-type: none"> ○ Requires modified work at less than regular pay; or ○ Requires modified work at regular pay for more than seven calendar days following the date of accident. • The notice must be in a form approved by the WSIB, and the hospital may be required to provided additional information to the WSIB from time to time in connection with the accident. A copy of the notice must also be given to the injured worker. • Hospitals are advised to review applicable WSIB policies and administrative practice document to ensure they understand their obligations to give notice of an accident. <p><u>Reporting responsibilities of Schedule 1 employers</u></p> <ul style="list-style-type: none"> • Public hospitals are considered Schedule 1 employers under Reg 175/98 under the WSIA. • Hospitals are generally required to give the WSIB an annual statement setting out the total wages earned during the preceding year by all workers. • The WSIB may request additional information from employers, such as the total estimated wages that workers are expected to earn during the year. • This statement is used by the WSIB to determine the amount of premiums that the hospital must pay. • More frequent reporting requirement may also apply depending on insurable earnings. 		<ul style="list-style-type: none"> <input type="checkbox"/> Ensure appropriate annual financial reporting obligations are met. 		<p><i>Workplace Safety and Insurance Act, s 78</i></p>
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General Checklist for Periodic Reporting Compliance

<ul style="list-style-type: none">• Hospitals are advised to review applicable WSIB policies and administrative practice documents to ensure they understand their obligations.				
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200 Front Street West, Suite 2800
Toronto, Ontario M5V 3L1
www.oha.com

