

Guidelines for Managing the Coronavirus in the Workplace



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IMPORTANT UPDATE MARCH 13, 2020 CANADIAN GOVERNMENT ANNOUNCES \$1 BILLION TO HELP CORONAVIRUS FIGHT

The Trudeau government has announced a package of \$1 billion to help in the coronavirus fight. This funding comes on the heels of the World Health Organization declaring the coronavirus outbreak a Pandemic. Health Minister Patty Hajdu has estimated that the virus could infect up to 70% of Canadians.

The economic impact of the virus will be significant. Not only will employees be unable to attend work but businesses are bound to suffer decreases in revenue. A portion of the \$1 billion that has been dedicated to fighting the virus will go towards helping employees and employers through two key programs:

1. Elimination of the wait period for employment insurance to ensure that employees continue to receive an income if they become sick or quarantined due to the illness. Prior to this change workers were

subject to a mandatory one week elimination period during which they did not receive benefits; and

2. Increased funding to the Work Sharing program. The work sharing program is an adjustment program designed to help employers and employees avoid layoffs where there is a temporary reduction in their normal operations that is out of the control of the employer. The program provides income support to employees subject to temporarily reduced hours, while the employer recovers operations. To be eligible employers must:

- a. Have been in business in Canada year round for at least two years;

- b. Be a private business, a publicly held company or a not for profit organization;

- c. Demonstrate that the shortage of work is temporary and beyond their control – a factor which should be satisfied in most situations by the existence of the pandemic;

- d. Demonstrate a recent decrease in business activity of approximately 10%; and

- e. Submit and implement a recovery plan designed to return the work sharing units to normal working hours by the end of the work sharing agreements.

Not all employees will qualify to participate in the program. Employees must be considered "core employees". This requires them to be year round permanent full time or part time employees who are required to carry out the everyday functions of the business. They also must otherwise be eligible to receive Employment Insurance benefits and agree to a reduction of their hours.

Employers should consider options to deal with business declines associated with the pandemic other than termination of employees. Termination of employees has both hard costs in terms of severance payments and soft costs in terms of the cost of having to hire and retrain a workforce when regular business resumes. Avoiding that necessity through use of programs such as work sharing should be considered.

IMPORTANT UPDATE MARCH 12, 2020 COVID-19 DECLARED A PANDEMIC

The World Health Organization (WHO) has now declared the Coronavirus outbreak a pandemic. That does not mean that the characteristics of the disease have changed at all, it simply means there are concerns with its geographic spread. According to the WHO a pandemic is declared when a new disease for which people do not have immunity spreads around the world beyond expectations. A pandemic will only be declared when there is a community spread after initial spread through travel. The WHO has stressed that categorizing Covid-19 as a pandemic does not change its advice on how it is to be treated. They are continuing to urge countries to "detect, test, treat, isolate, trace and mobilize their people". The change to calling Covid-19 a pandemic highlights the importance of countries throughout the world to work cooperatively. The question remains whether this also signals a change throughout the world to the more drastic measures seen in Wuhan and Italy to contain the outbreak.

The Coronavirus (also known as novel Covid-19) outbreak has spread to at least 65 countries and has resulted in illness in almost 100,000 people with over 3,000 deaths, and no end in sight to the spread of the illness. Governments have shut borders and imposed quarantines. Companies have imposed travel bans. Sports teams are considering playing without fans in the stands. Health authorities are discouraging large gatherings and even the Vatican is changing its procedures in response to the illness. The South by Southwest Festival was cancelled due to Coronavirus – the first

time in 34 years that it has been called off. Twitter has been the first major US company to strongly encourage all employees to work from home in an effort to minimize Coronavirus spread. Factories in China have shut down and interest rates have been slashed. The human and economic impacts on business have been significant and will only grow.

The pandemic challenges companies to carefully review strategies, policies and procedures they have in place to protect employees, customers and operations. Doing so engages a myriad of questions from compliance with regulatory and contractual requirements to ways to maintain operations in this unsettled environment. Management

of the workplace in the face of the pandemic engages a variety of legal considerations that have significant implications for both employers and employees. Companies will have to work hard to resolve the legal issues that arise while maintaining their workforce.

Management of the pandemic in the workforce begins with employers doing their

best to protect employees from exposure to Coronavirus in the workplace. Coronavirus is thought to spread largely through respiratory droplets from coughing and sneezing, and it seems to spread easily. It may also be possible to become infected by touching a contaminated surface or object and then touching one's nose or mouth. The Centers for Disease Control and Prevention advises the following steps to protect from the spread of the illness:

- a. stay home if you have respiratory symptoms (coughing, sneezing, shortness of breath) and a temperature above 100.4;
- b. leave work if you develop these symptoms while at the workplace;



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- c. shield coughs and sneezes with a tissue, elbow or shoulder (not bare hands);
- d. wash hands often with soap and water for at least 20 seconds and use an alcohol based hand sanitizer;
- e. avoid shaking hands; and
- f. ensure that surfaces are regularly and thoroughly cleaned.

Managing Coronavirus in the workplace engages considerations under the *Employment Standards Act*, the *Human Rights Code*, the *Workers Compensation Act* and the contract of employment. From imposing self quarantines, travel bans and dealing with an employee who has contracted the illness, all aspects of management of the Coronavirus in the workplace have potential legal implications. Companies must put in place policies for dealing with Coronavirus in the workplace, educate managers and employees on those policies and ensure that the policies do not result in contravention of either the employment contract or the regulatory regimes applicable to employment relationships.

There are a number of practical steps that employers should take in managing the workplace with the threat of the Coronavirus looming. Employers need to consider measures that can be put in place to allow employees to work from home where possible. Systems should be implemented and checked in advance of them becoming necessary. Consideration should be given to how to remotely manage employees and exploration of ways to use technology to facilitate remote meetings. Employers also have to think through ways to manage worker shortages that may result from illness or requirement to care for others that are ill. Employers should ensure the availability of washing facilities and that they are kept well stocked. Evidence indicates that paper towel drying is less likely to spread Coronaviruses than jet dryers. Alcohol based sanitizers and sanitizing wipes should be distributed throughout the workplace and all frequently touched surfaces should be routinely cleaned.



Other steps employers should take now including reviewing their paid time off and sick leave policies and communicating these policies to employees. Policies should give employees confidence that they will not be penalized for taking sick time. Wage replacement options should be considered and communicated, including the availability of medical employment insurance, short and long term disability options and where available paid sick time. Thorough communication and education of policies is an important tool in encouraging self-reporting and reducing potential exposure to the illness in the workplace.

Managers should be advised that it is proper to exclude workers or visitors from the workplace if they are exhibiting symptoms. Managers should be empowered to send people home if they are exhibiting symptoms and when they do so should be able to clearly communicate any policies with respect to wage replacement options, including advising on how to access any potential wage replacement options.

Education of employees is also important and ensuring that your work force has reliable, accurate information regarding the spread of Coronavirus is key. Dangerous rumors and worker fears can spread as quickly as the Coronavirus. Companies should ensure that they have reliable systems in place to enable them to reach all workers, including those not on the work site, with regular, internally coordinated, factual updates about infection control, symptoms and company policy regarding remote work and circumstances where employees might be excluded from the workplace. An emergency response team should be created with responsibility for communications. All communications

should be vetted to avoid inconsistent policies being communicated by different managers or functions. Make sure that you have current phone/text and email contact information for all employees. Organization wide communication should be tested periodically. If your workplace does not have an organization wide communication system it would be a good time to create it.

All supervisors and managers should be thoroughly trained and provided with access to information regarding infection control and policies relevant to dealing with Coronavirus in the workplace. An individual should be designated as the contact person for reporting potential exposures.

Employers should consider shifting work hours if possible when it is not possible to have workers working from home. The effect of this is that commute times will be staggered decreasing density on public transit. It also will result in fewer people in the work space at any particular time. Both of these could help limit an individual's exposure to the Coronavirus and other illnesses in general. Such arrangements could also be beneficial to working parents in the event of a school closure.

These are the practical operational types of things that employers can put in place to manage the workplace during the pandemic. With respect to the legal implications, the following must be considered:

1. preventing workers from attending the workplace, or sending them home;
2. sick leave;
3. workers refusing to attend work due to fears of exposure to illness; and
4. lay-offs due to decreasing profits.

Preventing workers from attending the workplace

Employers may prevent workers from attending the workplace if they are ill, if there has been a decision made to have workers work remotely or

if a worker has attended the workplace but is ill. In the case of workers attending the workplace exhibiting signs of illness, it is absolutely OK for managers to send them home. People will often attend work despite showing signs of illness out of a sense of duty, because of workload, out of fear of losing their job or out of concerns about losing wages. Employees should be assured that their job is not in jeopardy if they do not attend work due to illness and employers should feel confident that it is within their rights to ensure that ill workers do not attend work.

If employees have traveled to high risk areas it is reasonable for the employer to inquire about the travel and also to require the employee to not attend work for a period of time after travel to a high-risk area if there is a perceived risk that the employee may have been exposed to Coronavirus. Employers should take steps to ascertain whether there is a reasonable possibility that the employee could have been exposed to the Coronavirus during their travels. Some questions to consider include:

- whether the employee had contact with anyone who is believed to have Coronavirus;
- whether the employee is experiencing any Coronavirus symptoms – headache, cough, sore throat, runny nose or fever;
- whether the employee traveled to high risk areas in the 14 days prior to the onset of those symptoms.

If an employer reasonably concludes that there is a risk that the employee has been exposed to the Coronavirus during their travels it is reasonable to require the employee not to be in the workplace. The employer may also require medical clearance prior to the employee returning to the workplace.

If working from home is not a possibility for those thought to have been either exhibiting signs of illness or having been exposed to the Coronavirus, employers should consider whether Human Rights legislation imposes on them a requirement to continue to pay the absent employee. Human Rights legislation prohibits differential treatment on the basis of illness. Requiring an employee to be away from the

workplace due to fears of illness may carry with it an obligation to pay that employee or risk being found to be discriminating.

If an employee refuses to follow orders to remain away from the workforce, they can be disciplined similar to any other failure to follow orders.

Sick Leave

The same rules apply to sick leave due to coronavirus as any other sick leave. Employers do not have to pay for sick days under the *BC Employment Standards Act* but they may agree to do so. Employment contracts and policies should be reviewed and complied with. If the terms of employment include payment for a set number of sick days, they should be provided. Employees may choose to use vacation days to ensure continued income. If sick leave is paid or allowed, it may not later be deducted from vacations, vacation pay or statutory holiday pay.

Employees may be entitled to benefits from Employment Insurance. To be eligible for sickness benefits, employees must have worked 600 hours in the qualifying period. If eligible, employees will be paid 55% of earnings up to a maximum weekly amount of \$562. Employees can receive medical employment insurance for a total of 15 weeks.

Employees may also be entitled to benefits under short and long term disability policies and employers should be proactive in assisting employees to apply for benefits. If an employee

has become infected with the virus at the workplace, consider whether an application for benefits should be made to WorkSafe.

It would be contrary to Human Rights legislation to adversely affect an employee due to illness. They can not be demoted or terminated due to taking sick leave. It is improper to change their job duties or compensation due to the illness.

Employers will also have to consider whether a worker being infected with coronavirus triggers obligations under Occupation Health and Safety legislation. Workers are entitled to a safe workplace and employers are required to provide a safe workplace. If the virus has entered the workplace, this may impose on the employer positive obligations to ensure that the workplace is safe for all workers. WorkSafe legislation could include the requirement to put in place remote work possibilities and take other steps to ensure that the workplace is safe for all workers despite the presence of the virus.

Workers Refusing to Attend Work due to Fears of Illness

Where this pandemic is going remains unknown. The number of diagnosed cases is continually increasing and it is clear that the disease has not yet been contained. It is not unrealistic to envision some employees taking the position that they will not attend work due to fears of exposure to the virus. If that happens, not only will employers need to consider what implications this has for payment of wages, but also must be aware of the implications that are triggered under Occupational Health and Safety legislation.

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WorkSafe legislation imposes an obligation on both employers and workers to take reasonable care to protect the health and safety of workers. Employees can refuse work if they believe on reasonable grounds that there is a dangerous condition at the worksite or that work constitutes a danger to their health and safety. If an employee refuses to come to work due to fear of contracting the Coronavirus, employers must respond by carrying out an investigation and if applicable take action to eliminate the danger. While the employer is investigating the worker is entitled to the same wages and benefits that they would have received if they had continued to work. Reprisal against an employee exercising a work refusal is prohibited.

Lay offs

The impact of the coronavirus on businesses could include decreases in profitability, the requirement to close segments of the business and ultimately the requirement to lay off workers to deal with the financial impacts of the pandemic. Business insurance, if it provides any coverage at all, will likely only provide coverage in the event that coronavirus becomes a pandemic. Before terminating employees, companies should consider utilizing lines of credit, particularly given the low interest rates. There is a significant cost to terminating employees, not just in the payment of severance but also the soft costs associated with hiring and training new employees.

If a company determines that they have no option but to decrease their workforce the usual rules will apply to termination. Employees are entitled to reasonable notice of the termination of their employment unless that right has been eliminated contractually. At the very least, employers will have to comply with the requirements for notice imposed by Employment Standards legislation. If enforceable employment contracts with provisions limiting notice to employment standards minimums are in place this will be the limit of the employer's liability. If not, employers will have to provide the

severance required by the contract or if there either is no contract or the contract is silent as to notice, the employer must provide reasonable notice or pay in lieu of notice of the termination.

An employer cannot however terminate an employee due to an illness such as Coronavirus. Terminating or discriminating against an employee due to physical disability is prohibited by human rights legislation. The existence of illness cannot be a factor in the decision to terminate an employee. Employers are obligated to accommodate an ill employee to the point of undue hardship.

The coronavirus creates many practical and legal challenges for employers to navigate. Implementation of all practical measures possible to lessen the risk to workers is necessary to manage the health risk. Compliance with occupational health and safety legislation, employment standards legislation and human rights legislation is necessary to manage the legal risks.

Additional information about Coronavirus and health and safety recommendations can be found at:

- [http://www.bccdc.ca/health-info/diseases-conditions/Coronavirus-\(novel\)#Information--about--the--Coronavirus](http://www.bccdc.ca/health-info/diseases-conditions/Coronavirus-(novel)#Information--about--the--Coronavirus)
- <https://www.who.int/news-room/q-a-detail/q-a-Coronaviruses>
- <https://www.canada.ca/en/public-health/services/diseases/2019-novel-Coronavirus-infection/frequently-asked-questions.html>

If you have any questions related to managing the Coronavirus in the workplace please contact our leading Workplace Law Group.

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