

Managing a Workplace Ebola Scare

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“Ebola Virus Disease” The words strike fear in the hearts of employees and employers alike. Particularly in Canada’s multicultural society, where international travel is prevalent, concerns over employee exposure increase with each reported Ebola case.

In this environment of heightened awareness, an employer must balance its legitimate concerns with a legal obligation to take every reasonable precaution to protect the health and safety of employees. If properly managed, a workplace Ebola scare need not result in *any* liability for an employer.

Start with education

An employer cannot be properly positioned to respond to an issue arising from potential exposure to Ebola if it does not understand where reported cases have occurred and how the virus is, and is not, transmitted. Public Health Ontario has produced a very helpful tool to assess the risk which may be posed by a traveler returning to Ontario (click [here](#)). It recommends considering the following risk factors:

- travel history (including whether the individual has travelled to an affected area)
- the individual’s activities in the affected area (including whether he or she has had direct contact with or exposure to the bodily fluids of anyone known or highly likely to have Ebola)
- symptoms compatible with Ebola (including, but not limited to, sudden onset of a fever equal to or higher than 38°C, headache and vomiting)

Public Health Ontario cautions, however, that there are other common travel-related illnesses that may display similar symptoms, and meeting the above criteria is not conclusive of the presence of Ebola. Public Health Ontario also cautions that Ebola is only transmitted when a person is symptomatic, thus during the incubation period (up to 21 days), exposure should not result in transmission of the virus.

What to do if Ebola strikes

If an employer has reason to believe an employee is showing Ebola-related symptoms, it should advise the employee to seek immediate medical attention. An employer is not legally required to report a suspected case of Ebola to a local Public Health Unit. Such an obligation will fall to the medical practitioner treating the patient.

In the event an employee or a member of his or her family does contract Ebola, there are a number of leave entitlements under the *Employment Standards Act, 2000* (the “ESA”) which may apply:

- **Family Medical Leave** – up to eight (8) weeks where the employee is providing support to a family member suffering from a serious medical condition, who is at significant risk of death within twenty six (26) weeks
- **Family Caregiver Leave** – up to eight (8) weeks to care for or support a family member suffering from a serious illness
- **Critically Ill Child Care Leave** – up to thirty seven (37) weeks to provide care or support to a child whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury
- **Personal Emergency Leave** – up to ten (10) days and available to the employee due to personal illness or illness of a family member
- **Declared Emergency Leave** – where an employee will not be performing his or her duties as a result of an emergency declared under the *Emergency Management and Civil Protection Act* or other similar legislation

Further, although it is not certain that Ebola would be considered a “disability” under the Ontario *Human Rights Code* (a “disability” is generally considered to have longer term impact), an employer would be well served to treat Ebola as a disability. This means continuing to accommodate an infected employee even if the employee has exhausted his or her applicable leaves of absence under the ESA, including providing the employee with an extended unpaid leave.

What other legal issues may arise?

While an employer’s priority is protecting healthy employees from exposure to Ebola, acting on assumptions, suppositions and beliefs, rather than objective facts, may unwittingly result in a breach of the *Human Rights Code*. For example, where an employee has recently traveled to Africa but not to a country affected by Ebola, treating that employee as a workplace risk may result in an allegation of discrimination on the basis of race, colour, ethnic origin, place of origin, or perceived disability. Similarly, requiring an employee to remain at home or segregated from other employees may be considered a breach of privacy as the basis for the differential treatment may become apparent to others.

Can an employee refuse to work with a recent traveler?

Certain groups of employees are not entitled to refuse to perform work on health and safety-related grounds. This includes employees for whom danger is an inherent part of their work or where their withdrawal of services would directly endanger the life, health or safety of another person (*e.g.*, police, firefighters, and hospital, long term care or group home employees, *etc.*).

Other employees have the right to refuse to perform work when they hold a *bona fide* belief a “physical condition” in the workplace constitutes a risk to their health or safety. Generally, this involves concern over equipment or machinery. However, it is possible that “physical condition” may also include concern for the spread of a serious illness such as Ebola.

In the event of a work refusal, an employer has an obligation to place the refusing employee in an area where he or she is safe, and perform an investigation into the circumstances surrounding the refusal. Such an investigation must include a worker representative of the Joint Health and Safety Committee, as applicable. In the case of an Ebola-related refusal, this would likely involve speaking with both the refusing employee and the employee thought to be causing the risk. If it is determined there is no objective risk, but the refusing employee maintains his or her refusal, the Ministry of Labour must be

contacted to perform its own investigation. Should the Ministry confirm the absence of risk, the refusing employee may be disciplined if he or she continues to refuse to return to work.

What are an employer's options with a returning employee?

While an employer is strongly cautioned to take a measured approach with an employee returning from international travel, the following proactive steps can reduce the risk of liability:

1. Post Public Health Ontario's information concerning Ebola.
2. Ask any returning employee whether he or she has traveled to an area of reported cases of Ebola (for up-to-date information, click [here](#)).
3. If the answer is *yes*, ask whether he or she may have come in contact with the bodily fluids of anyone known or believed to be infected.
4. If the answer is *yes*, promptly direct the employee to the Public Health information and confirm in writing that he or she will: (a) monitor his or her temperature at least twice a day; and (b) immediately report any Ebola symptom.
5. If an employee presents or reports symptoms, immediately direct the employee to a medical professional (the employee's or the employer's) who will administer the appropriate medical analysis. The decision whether to quarantine an employee should be made by the medical professional, not the employer. As well, place that employee on an administrative leave pending medical evaluation.
6. To ensure employees are not discouraged from coming forward to proactively disclose potential exposure, it is important to communicate that testing positive will not result in loss of employment.

If you have any other questions concerning how Ebola may impact your workplace, contact any member of the Sherrard Kuzz team.

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