

## **Novel Coronavirus - What Employers Should Know**

January 28, 2020

With news of the Wuhan Novel Coronavirus (“Coronavirus”) making headlines internationally and two positive cases now in Toronto (one confirmed and one presumptive), risk of potential exposure may cause concern for employees and employers.

In this environment of heightened awareness, an employer must balance its legal obligation to take every reasonable precaution to protect the health and safety of employees against its obligation to provide a workplace free of harassment and discrimination.

### **Start with education**

Despite two positive cases in Toronto, Public Health Ontario confirms Ontarians remain at low risk for contracting Coronavirus (see [here](#)). Only individuals who meet the following criteria may be tested for the illness:

- fever and acute respiratory illness, or with pneumonia; AND
- presence in Wuhan, China within 14 days prior to symptom onset.

To provide education to members of the public, the Ontario Government has launched a website with up-to-date information about Coronavirus in the province, found [here](#). It recommends that, to prevent exposure to a range of illnesses, including coronaviruses, all individuals should practice **good hygiene**. This would include:

- Wash hands often with soap and water or use an alcohol-based hand sanitizer.
- Avoid touching eyes, nose, and mouth with unwashed hands.
- Avoid close contact with people who are ill.
- Stay home when ill.
- Cover coughs or sneezes with a tissue, then immediately throw the tissue in the garbage and wash hands.
- If there is no tissue, sneeze or cough into a sleeve or arm, not a hand.
- Clean and disinfect frequently touched objects and surfaces.

### **What to do if Coronavirus strikes**

If an employer has reason to believe an employee who has recently travelled to Wuhan or has had close contact with someone who has the virus is showing Coronavirus-related symptoms, it should advise the employee to seek immediate medical attention. This includes the employee

calling ahead to his or her physician or public health unit/department to be directed to the appropriate emergency department or established virus centre.

An employer is not legally required to report a suspected case of Coronavirus to a local Public Health Unit. Such an obligation will fall to the medical practitioner treating the patient.

### **Leave entitlements**

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

- **Family Medical Leave** – up to 28 weeks in 52-week period where the employee is providing support to a family member suffering from a serious medical condition, who is at significant risk of death within 26 weeks
- **Family Caregiver Leave** – up to eight weeks to care for or support a family member suffering from a serious illness
- **Critical Illness Leave** – up to 37 weeks to provide care or support to a critically ill minor child or 17 weeks to provide care or support to a critically ill adult family member
- **Sick Leave** – up to three days in each calendar year due to employee illness, injury or medical emergency
- **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

Although it is not certain Coronavirus would be considered a “disability” under the Ontario *Human Rights Code* (a “disability” is generally considered to have longer term impact), an employer may wish to treat any confirmed case of Coronavirus as a disability and accommodate an infected employee even if the employee has exhausted his or her applicable leaves of absence under the ESA. Accommodation would include providing the employee with an extended unpaid leave if medically required.

### **What other legal issues may arise?**

Although an employer’s priority is protecting employees from exposure to Coronavirus, acting on assumptions, suppositions and beliefs, rather than objective facts, may unwittingly result in a breach of the *Human Rights Code*. For example, if an employee has recently traveled to Asia but not to a region with any confirmed cases of Coronavirus, 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.

### **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 “physical condition” may also include concern for the spread of a serious illness such as Coronavirus.

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 a Coronavirus-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?**

An employer is encouraged to take a measured approach with an employee returning from international travel. In addition, the following proactive steps can reduce the risk of liability:

1. Ask the employee whether he or she has traveled to Wuhan or any other area of reported cases of Coronavirus.
2. If the answer is *yes*, ask whether he or she may have come in close contact with anyone known or believed to be infected.
3. If the answer is *yes*, promptly direct the employee to the Ontario government website on Coronavirus information and confirm in writing that he or she will immediately report any Coronavirus symptom.
4. If the employee presents or reports symptoms, immediately direct the employee to contact 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. The employee may be placed on an administrative leave pending medical evaluation.
5. To encourage employees to come forward to disclose potential exposure, it is important to communicate that testing positive will not result in loss of employment.

If you have any questions about how Coronavirus may impact your workplace, contact a member of the Sherrard Kuzz team.

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