

COVID-19 **Frequently Asked Questions to** **Assist Employers**

Updated: March 26, 2020

As the 2019 novel coronavirus (COVID-19) continues to spread around the globe, employers need to know their legal rights and obligations as it relates to the Canadian workplace.

The following are some of the most pressing **Frequently Asked Questions**.

We have organized this Briefing Note in Sections. Most Sections apply to all or the vast majority of businesses. In addition, we have included Sections that provide further information for select industries.

We will continue to update this Briefing Note.

If you have questions or need assistance, please contact your Sherrard Kuzz LLP lawyer or, if you are not yet a Sherrard Kuzz LLP client, our firm at info@sherrardkuzz.com with the re: line: COVID-19. We'll respond promptly.

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Diagnosis of or Close Contact with COVID-19; Self-Isolation; Screening

Q. Can an employer require an employee to advise if he or she has been diagnosed with COVID-19?

Yes. Although human rights case law has generally held an employer is not entitled to ask for an employee's *diagnosis* (only the *prognosis* as it impacts the workplace) in the present circumstances it is reasonable to require proactive disclosure due the risk of transmission.

Remember... an employer should ensure any medical information provided about an employee is kept in a separate and secure location and not broadly disclosed to others. It may be necessary to advise other employees there has been a case of COVID-19 confirmed in the workplace. However, any disclosure should avoid identifying information and be limited to the extent it is necessary to take precautions to protect health and safety.

Unfortunately, there is no cookie-cutter answer to how much information must be disclosed and to whom. Every workplace functions differently from the next. Further, some workplaces are virtual, fluid and/or mobile (*e.g.*, employee may travel *to* clients to service them; or travel routinely as a component of the job, *etc.*). **When in doubt, consult with your employment lawyer about best practices for your organization.**

Q. Can an employer require an employee advise if he or she has been in close contact with someone diagnosed with COVID-19 or travelled outside of Canada?

Yes. An employee can be required to disclose if he or she has been in close contact with someone diagnosed with COVID-19. Similarly, an employee can be required to disclose travel outside of Canada or on a cruise ship within the past 14 days. This includes indirect travel, such as a plane "stopping-over" in an area, because new passengers and service individuals from that area may come into contact with existing passengers and crew. Attendance at large gatherings is also discouraged and should be monitored.

Employers and employees should check the Government site regularly, and adjust protocols and policies accordingly.

Q. Can an employee be required to self-isolate?

Yes. The Government of Canada has stated the following people need to should self-isolate for at least 14 days:

- Effective March 25, 2020 the Government invoked its power under the *Quarantine Act* to mandate that an individual returning from international travel must self-isolate for 14 days.
- anyone who, within the past 14 days, had close contact with a person diagnosed with COVID-19
- anyone diagnosed with COVID-19 or is waiting for results of a COVID-19 test or has been advised to isolate at home by a Public Health Authority.

Special rules may apply to healthcare workers and other essential service workers.

Q. Can an employer implement a “temperature check” screening protocol for an individual entering its facility?

In certain circumstances, an employer may be entitled to screen employees for an elevated temperature prior to granting access to a facility. The employer should take steps to ensure the screening measures are implemented in the least intrusive manner necessary and that adequate steps are taken to protect employee privacy. **For more information on how to appropriately implement a temperature screening policy in your workplace, contact Sherrard Kuzz LLP.**

Work Refusal

Q. Can an employee refuse work due to a fear of contracting COVID-19?

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 if 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 COVID-19.

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 COVID-19 related refusal, this would likely involve investigating the refusing employee and the employee or work practice 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.

Reporting

Q. Must an employer report a suspected case of COVID-19 to Public Health or the Ministry of Labour?

No. An employer is not legally required to report a suspected case of COVID-19 to a local Public Health Unit. Reporting falls to the medical practitioner treating the patient.

The requirement in the *Occupational Health and Safety Act* that an employer provide notice of an occupational illness to the Ministry of Labour is only triggered if the exposure to the illness (including COVID-19) occurred at work or the employee files a claim for occupational illness with

the WSIB. There is no general requirement to report to the MOL all cases where an employee is suspected to have or is confirmed to have COVID-19.

If you unsure of whether you are required to report a suspected or potential COVID-19 case to the Ministry of Labour, please contact Sherrard Kuzz LLP.

Protected Leaves; Disability Under Human Rights Legislation

Q. What protected leave is available to an employee with COVID-19 or who is no longer able to attend work for COVID-19 related reasons?

On March 19, 2020, the Ontario *Employment Standards Act, 2000* (“ESA”) was amended to include a new Emergency Leave: Declared Emergencies and Infectious Disease Emergencies.

The new leave combines the provisions of the existing Emergency Leave, Declared Emergencies with new measures to provide job-protected leave for reason related to COVID-19 or any other prescribed infectious disease.

Leave for a Declared Emergency

An employee is entitled to a leave of absence without pay if the employee is not performing the duties of the employee’s position because of an emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act* and,

- (i) because of an order that applies to him or her made under section 7.0.2 of the *Emergency Management and Civil Protection Act*,
- (ii) because of an order that applies to him or her made under the *Health Protection and Promotion Act* (such as a quarantine order),
- (iii) because he or she is needed to provide care or assistance to a prescribed individual.

If leave is taken for a declared emergency, an employer is entitled to require an employee to provide evidence reasonable in the circumstances to demonstrate an entitlement to leave.

On March 17, 2020, the Government of Ontario declared a state of emergency such that an eligible employee may take leave for the reasons prescribed above until at least March 31, 2020, or a later date if the emergency declaration is extended.

Leave for Infectious Disease

To address the current COVID-19 pandemic, the new leave provisions entitle an employee to a leave of absence without pay if the employee is not performing the duties of the employee’s position because the employee:

- (i) is under individual medical investigation, supervision or treatment related to the designated infectious disease (which would include COVID-19).
- (ii) is acting in accordance with an order under section 22 or 35 of the *Health Protection and Promotion Act* that relates to the designated infectious disease (such as a quarantine order).
- (iii) is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.
- (iv) is under a direction given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the designated infectious disease.
- (v) is providing care or support to a prescribed family member because of a matter related to the designated infectious disease that concerns that individual, including, but not limited to, school or day care closures.
- (vi) is directly affected by travel restrictions related to the designated infectious disease and, under the circumstances, cannot reasonably be expected to travel back to Ontario.

An employer is entitled to require an employee to provide evidence reasonable in the circumstances to demonstrate an entitlement to leave for an infectious disease (*i.e.* COVID-19) related purpose. However, this evidence cannot include a medical certificate.

The Government can, by regulation, prescribe individuals who will not be entitled to this leave, as such it remains to be seen whether the leave will be restricted at all, particularly regarding health care and other essential workers (note: it currently does not apply to police officers).

The effective date for the new leave for infectious disease is retroactive to **January 25, 2020**, the date that the first presumptive COVID-19 case was confirmed in Ontario.

In addition, in Ontario there are existing leaves that may apply to COVID-19 related circumstances. The ESA provides the following:

- **Family Medical Leave** – up to 28 weeks in a 52-week period to care for or support a family member suffering from a serious medical condition and 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 care for or support a critically ill minor child, or 17 weeks to care for or support a critically ill adult family member
- **Sick Leave** – up to three days in each calendar year due to employee illness, injury or medical emergency
- **Family Responsibility** – up to three days in each calendar year due to the illness, injury, medical emergency or other urgent matter of a prescribed family member

If you would like to learn about protected leaves in other Canadian jurisdictions, contact us.

Q. Is COVID-19 a “disability” under human rights legislation, requiring accommodation?

It is not certain whether COVID-19 will be considered a “disability” under the Ontario *Human Rights Code* or human rights legislation in other jurisdictions (a “disability” is generally considered to have longer term impact). That said, an employer may wish to treat any confirmed case of COVID-19 as a disability and accommodate the 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.

Compensation

Q. If an employee has been placed in quarantine for COVID-19, is the employer under an obligation to pay the employee while he or she is off work?

No. There is no legal obligation to continue an employee’s pay if he or she is unable to attend work due to illness or quarantine, unless a workplace policy or collective agreement provides otherwise (e.g., paid sick leave). The employee may be able to access short-term disability benefits, if available, or Employment Insurance sickness benefits (see below).

Layoff (including constructive dismissal considerations)

Q. Can an employee be laid off due to shortage of work during the COVID-19 crisis?

The ESA entitles an employer to lay off an employee for a prescribed period of time, after which the layoff is deemed to be a termination of employment and the employee is entitled to **termination** and **severance** pay (if severance pay applies).

A temporary layoff is deemed a termination of employment if the layoff lasts longer than 13 weeks in any period of 20 consecutive weeks. However, a temporary layoff may last for up to 35 weeks in any period of 52 consecutive weeks if:

- the employer continues the employee’s coverage under a group or employee insurance plan or retirement or pension plan

- the employer provides substantial payments or supplementary unemployment benefits to the employee during the layoff period (or would have if the employee was not employed elsewhere)
- the employer recalls the employee within the time approved by the Director of Employment Standards
- the employer and a non-unionized employee have agreed to the period of layoff in writing
- in a unionized workplace, the employer recalls a laid off unionized employee with a right of recall under a collective agreement within the 35 week period.

It is important to recognize a reduction in employee hours may also be considered a layoff for purposes of the ESA, even though the employee continues to work. An employee is considered to be laid off for a week if the employee earns less than 50% of the amount the employee would earn at their regular rate of pay in a regular work week.

For the purpose of establishing an employee's entitlement to **severance** pay, an employee is considered to be laid off for a week if the employee earns less than 25% of the amount the employee would earn at their regular rate of pay in a regular work week. An employee is entitled to severance pay if laid off for more than 35 weeks in a 52 week period.

If an employee works an irregular schedule, the ESA establishes a formula to determine when an employee is considered to have been laid off . This means that, over time, a work reduction may eventually be considered a termination, triggering entitlement to termination and severance pay (if it applies).

Q. What needs to be included in a layoff notice?

There are no specific requirements. In fact, the ESA does not expressly require written notice of layoff be provided. However, as a best practice, an employer should clearly provide written notice of layoff. It should state when the layoff will start, who the employee should be in contact with during the layoff, and if there is an expected date of recall, include the date (or an anticipated date).

Q. Does the layoff notice need to include a definite return to work date?

An employer is not required to have a return to work date for a temporary layoff. However, the layoff will turn into a termination once the period of layoff is no longer considered to be a “temporary layoff”. In this case the employee is deemed to have been terminated on the first day of the layoff.

Q. Could a layoff trigger a potential constructive dismissal?

Despite the provisions of the ESA, courts have held that, **unless an employment contract or other agreement includes an express or implied right to lay off an employee an employer has no right to do so**. If there is no express or implied right, a layoff may amount to a fundamental breach of the employment contract (whether or not that contract is in writing). In such a case, the employee is deemed to be constructively dismissed and entitled to notice of termination, or pay in *lieu* of notice, and possibly severance pay. Because notice (in this context) is based on what a court would award

from a common law perspective, the amounts involved are generally considerably higher than those required by employment standards legislation.

If an employer unilaterally and significantly reduces an employee's hours of work this *may* be viewed as a constructive dismissal. In this case, the employee may be entitled to notice of termination, or pay *in lieu*, even if the reduction does not meet the threshold of a "layoff" under the ESA.

It is important to note that a constructive dismissal arises only if there has been a **unilateral** change by the employer to terms and conditions of employment. As such, if an employee **agrees** to the change in the terms of employment (either the temporary layoff or the reduction in hours) no constructive dismissal arises.

Similarly, if the change to terms and conditions of employment are not imposed by the **employer** but are the result of a Government directive to close operations, it is arguable an employee will not be able to successfully assert the layoff constitutes a constructive dismissal.

Even if an employee does not agree to the layoff, and claims it amounts to a constructive dismissal, the employee has an obligation to mitigate any damages they claim to have suffered. This means, if a laid off employee is recalled to work and declines, they may later be found to have failed to mitigate their losses (in whole or in part), dramatically reducing the value of their claim against their employer.

Q. What are an employer's potential liabilities on termination of employment?

If an employer terminates an employee there are two potential sources of liability: **employment standards legislation** and **common law**.

Employment Standards

Under the ESA, an employee is entitled to **notice** based on years of service, to a maximum entitlement of eight weeks of notice, or pay *in lieu*. In addition, an employee with five or more years of service may be entitled to severance pay approximately equivalent to one week's pay per year of service to a maximum of 26 weeks.¹

There are additional termination entitlements on a "mass termination" which generally involves a termination of 50 or more employees within a prescribed time period. **If an employer is considering a mass termination it is critical to first consult with an experienced employment lawyer because the requirements are different and the potential liability is considerable.**

¹ An employee is only entitled to severance pay where the employer has an annual payroll in Ontario of \$2.5 million or more, or the employee is one of 50 or more employees terminated at an employer's establishment in a six-month period.

Common Law

In addition to employment standards entitlements, an employer may be required to pay a terminated employee common law reasonable notice. This is a term of art used by Canadian courts intended to be a rough estimate of how long an employee will take to find comparable, alternate employment. The length of reasonable notice owed to an employee varies depending upon a range of factors including type of work, degree of expertise or training, length of service, employee age, remuneration, availability of alternative employment, and the circumstances surrounding the hiring of the employee (e.g., was the employee ‘lured’ from secure employment). When assessing the length of reasonable notice the employment standards notice period is included.

Unfortunately, there is no hard and fast formula to determine reasonable notice. The analysis often starts with a frequently referenced estimate of “one month per year of service” to an approximate maximum of 24 months, although there have been exceptional cases in which courts have exceeded this number. In reality, “one month per year of service” is a guidepost and each case requires individualized assessment.

Following termination from employment, an employee typically has an obligation to mitigate their losses during the period of reasonable notice by actively seeking comparable employment. As noted above, if an employee is recalled to employment following a layoff, and refuse to return, the employer may take the position the employee has failed to mitigate their losses, either in whole or in part, depending on the amounts at issue.

If an employer has a properly drafted and enforceable employment agreement with an employee, this will limit the amount of notice, or pay in *lieu*, to which an employee is entitled to as little as the ESA minimum entitlements. As such, it is **important** an employer reach out to experienced employment counsel to determine whether any of its employment agreements will limit potential liability should it be necessary to terminate an employee.

The layoff provisions of the ESA can be tricky and, and if not implemented correctly, can expose an employer to considerable liability. If you need assistance, contact Sherrard Kuzz LLP.

Employment Insurance (“EI”)

Q. Will an employee be eligible for Employment Insurance benefits if temporarily laid off due to economic reasons?

An employee temporarily laid off for economic reasons may be eligible to apply for benefits. Benefits are paid at 55% of earnings, to a maximum of \$573.00 per week (taxable income).

To qualify, an employee must meet the minimum number of “insurable hours” calculated over the previous 52-week period. The exact number of insurable hours required varies by region. Benefits are paid for a maximum period of time and this too varies by region.

At present, there is a one-week waiting period for benefits. This may be waived by the Government during the current COVID-19 pandemic, but this has not yet occurred.

To facilitate an employee's access to EI benefits, an employer should complete a Record of Employment (ROE) within five days from the interruption in earnings. The "Reason for Issuing" the ROE (Block 16) should be marked as "A" (shortage of work). Under the "Expected Date of Recall" (Block 14) the employer should indicate the anticipated return to work date, or mark "unknown" if no anticipated return to work date has been indicated in the layoff notice. The ROE may be completed online (if an employer wishes to issue it in paper form, the employer must order paper copies from Service Canada).

If an employer wishes to, it may "top up" the EI benefits provided to an employee during a temporary layoff through a Supplemental Unemployment Benefit Plan (SUB Plan). **Special rules apply to a SUB Plan, which must be registered with EI.**

Q. Will an employee be eligible for Employment Insurance benefits if ill or quarantined by government due to suspected illness?

An employee will be entitled to EI sickness benefits if ill for any reason (including COVID-19) or quarantined by public health. In addition, the Federal Government has indicated an employee will be entitled to EI sickness benefits if the employee is required to self-isolate by an employer for reasons consistent with the directive of Public Health officials. At present, this would be in circumstances where an employee has returned from international travel and is to self-isolate for a 14 day period.

Sickness benefits are available for a 15-week period. The regular one-week waiting period to apply for these benefits has been waived. The amount of the benefit and the manner of calculation is the same as with regular benefits, as discussed above.

To facilitate an employee's access to EI benefits, an employer should promptly complete a Record of Employment (ROE). The "Reason for Issuing" the ROE (Block 16) should be marked as "D" (illness or injury").

Q. Can an employer "top up" Employment Insurance benefits if an employee is off due to illness or has been laid off due to shortage of work?

Yes. An employer can implement a Supplemental Unemployment Benefit Plan (SUB Plan) to "top up" EI benefits if an employee is temporarily out of the workforce. Under a SUB Plan an employer can top-up an employee's EI benefits to a maximum of 95% of the employee's normal weekly earnings.

If the SUB Plan is implemented to "top up" regular benefits or sickness benefits, the SUB Plan must be registered with Service Canada. **For more information on how to set up and register a SUB Plan in your workplace, please contact Sherrard Kuzz LLP.**

Workplace Safety and Insurance

Q. If an employee contracts COVID-19 at work is the employee entitled to WSIB benefits?

Typically, an infectious disease claim is adjudicated through the WSIB's Occupational Disease and Survivor's Benefits Program, a specialized team at the Workplace Safety and Insurance Board that deals with infectious diseases, such as SARS and H1N1. To obtain WSIB benefits a worker must be diagnosed with COVID-19 **as a result of a work-related exposure**.

The WSIB has issued an adjudicative reference (found [here](#)) for how decision-makers should evaluate the work-related nature of a COVID-19 claim. Under this reference, a decision-maker will consider whether:

- the nature of the worker's employment created a risk of contracting the disease to which the public at large is not normally exposed; and
- the WSIB is satisfied the worker's COVID-19 condition has been confirmed.

If established, this will generally be considered persuasive evidence that the worker's employment made a significant contribution to the worker's illness. However, all claims will be adjudicated on a case-by-case basis even if they do not fit within the above noted test for work relatedness.

When entitlement to benefits is granted, a worker may be eligible for wage loss benefits which includes any period in quarantine pre-diagnosis, healthcare benefits, and permanent impairment benefits as a consequence of the disease. In the case of a fatality the worker's survivors would receive benefits from the WSIB.

If a worker stayed away from work due to stress or anxiety resulting from the risk of contracting COVID-19, a claim for benefits may be made under the Chronic Mental Stress policy. The worker would have to provide a DSM diagnosis of an anxiety or stress disorder and prove, on the balance of probabilities, the work related stressor, fear of COVID-19 and/or quarantine, arose out of and in the course of the worker's employment and was the **predominant cause** of the diagnosed mental stress injury. Practically speaking the "predominant cause" test is a significant hurdle to most chronic mental stress claims.

For a worker exposed at work to the COVID-19 virus but who does not develop symptoms, the worker may choose to voluntarily report COVID-19 exposure through the WSIB's Program for Exposure Incident Reporting (PEIR) program.

Work-Sharing

Q. What is "Work-Sharing"?

"Work-Sharing" is a Federal program that allows an employer to continue to employ its 'core' employees during a period when they might otherwise be laid off on a temporary basis due to shortage of work beyond the employer's control. Under a Work-Sharing arrangement, an employee

is eligible to receive EI benefits on a *pro-rata* basis for the time the employee is not otherwise able to work due to the reduction in hours.

In the normal course, a Work-Sharing arrangement may last for up to 26 weeks (with an additional 12 weeks, on request). However, in light of the COVID-19 pandemic, the Federal Government will permit a Work-Sharing arrangement to extend up to **76 weeks**.

The Work-Sharing program allows an employee to make more money than if the employee was completely laid off and on EI regular benefits. It also permits an employer to continue to run its operations on a partial basis during a slow economic period. In order to implement a Work-Sharing arrangement, the employer must obtain approval from Service Canada and agreement of employees in the workplace.

A Work-Sharing agreement must include a reduction in the employees' regular work schedule from a minimum of 10% (one-half day) to a maximum of 60% (three days). In any given week, the work reduction depending on available work, as long as the reduction on average over the life of the agreement is between 10% and 60%.

For more information on establishing a Work-Sharing arrangement in your workplace, please contact Sherrard Kuzz LLP.

Canada Emergency Relief Benefit

Q. What is the Canada Emergency Relief Benefit and who is eligible?

The Canada Emergency Relief Benefit (CERB) is an income-relief benefit that will replace the Emergency Care Benefit and Emergency Support Benefit introduced by the Federal Government last week.

A worker can apply for the CERB for any four-week period beginning March 15, 2020 and ending October 3, 2020. A worker will be entitled to receive the CERB for a maximum of 16 weeks. The monthly CERB entitlement is \$2,000 (or another amount as fixed by Regulation).

In order to be eligible, a worker must:

- be at least 15 years of age and a resident of Canada
- have had a total income of at least \$5,000 in the 12-months preceding the worker's application from employment, self-employment, maternity or parental EI benefits, or other maternity or parental-related allowances, money or other benefits paid under a provincial plan
- have ceased working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the CERB.

A worker will not be eligible for the CERB if, they have quit employment voluntarily or, if during the period when the worker is not working, the worker is in receipt of:

- income from employment or self-employment
- EI benefits
- maternity or parental-related allowances, money or other benefits paid under a provincial plan.

The Federal Government has indicated there will be an online portal available by early April 2020 to process CERB applications and that workers will begin to receive payments within 10 days of application.

The CERB is designed, in part, to alleviate the current strain on the EI system. As such, even if a worker would otherwise be eligible to apply for EI, the worker can instead apply for the CERB. In some circumstances, the CERB may be a superior entitlement for an individual than EI, depending on the worker's annual income. In addition, the CERB is available to a worker who might otherwise be ineligible for EI entitlement, such as a self-employed worker or a worker who takes a leave of absence for COVID-19 related reasons to care for children at home due to a school closure.

If a worker has already applied for EI and is in receipt of EI regular or sickness benefits, the worker will not be eligible for the CERB. However, the worker may apply for the CERB once the EI benefit entitlement ceases, if this occurs prior to October 3, 2020.

Closure of Non-Essential Businesses

Q. The Ontario Government ordered the closure of all non-essential business in Ontario. How can an employer determine if this applies to its business?

To further contain the spread of COVID-19 the Ontario Government ordered the **mandatory closure of all non-essential workplaces effective as of Tuesday, March 24th at 11:59 p.m.** This closure will be in effect for 14 days with the possibility of extending the order as the situation evolves.

Businesses permitted to remain open can be found [here](#). This list of businesses is broken out into categories followed by further descriptions. It is important to read the descriptions carefully because many contain important qualifiers. In some cases, the descriptions are clear. However, with others, there may be some confusion whether a business is or is not essential for the purposes of this government directive.

If you are unsure whether your business is essential, the Ontario Government has set up a hotline to field inquiries (1-888-444-3659). An employer can also contact Sherrard Kuzz LLP.

Support for Business

Q. Has the Ontario Government implemented programs to assist employers?

The Ontario Government has introduced three programs to assist employers navigate the COVID-19 pandemic:

Increase in Employer Health Tax Exemption- A Private-sector employer with total annual Ontario remuneration of less than \$5 million is eligible for an Employer Health Tax exemption on up to \$490,000 of payroll. For 2020, this exemption will increase to \$1,000,000.

WSIB Relief- The Workplace Safety and Insurance Board will allow an employer to defer WSIB payments for a period of six months. All employers are automatically eligible for the financial relief package. Schedule 1 employers with premiums owed to the WSIB will be allowed to defer reporting and payments until August 31, 2020. The deferral will also apply to Schedule 2 businesses that pay WSIB for the cost related to their workplace injury and illness claims. No interest will be accrued on outstanding premium payments and no penalties will be charged during this six-month deferral period. More information on this program may be found [here](#).

Tax Deferral- From April 1, 2020 to August 31, 2020, the Province will not apply any penalty or interest on late-filed returns or incomplete or late tax payments for select provincially administered taxes, such as the Employer Health Tax, Tobacco Tax and Gas Tax. This is intended to complement the tax deferral holiday provided by the Federal Government.

For information on financial programs in other provinces, please contact Sherrard Kuzz LLP.

Q. Has the Federal Government introduced programs to assist employers?

The Federal Government has introduced three programs to assist employers navigate the COVID-19 pandemic:

Temporary Wage Subsidy- The Temporary Wage Subsidy for Employers program is a three-month measure to allow an eligible employer to reduce the amount of payroll deductions required to be remitted to the CRA. Effective March 18, 2020, it runs to June 20, 2020. The subsidy is equal to 10% of the remuneration an employer pays between March 18, 2020, and June 20, 2020, up to \$1,375 per employee and to a maximum of \$25,000 total per employer.

Tax Deferral- the Canada Revenue Agency will allow all businesses to defer, until after August 31, 2020, the payment of income tax that become owing on or after March 18, 2020 and before September 2020. This relief will apply to tax balances due, as well as instalments, under Part I of the *Income Tax Act*. No interest or penalties will accumulate on these amounts during this period.

Business Credit Availability Program- the Business Credit Availability Program will allow the Business Development Bank of Canada and Export Development Canada to provide more than \$10 billion of additional support, largely targeted to small and medium-sized businesses.

COVID-19 Workplace Policy

Q. What should an employer include in a COVID-19 (infectious diseases) policy?

As noted earlier, every workplace functions differently from the next. Further, some workplaces are virtual, fluid and/or mobile (*e.g.*, employee may travel *to* clients to service them; or travel routinely as a component of the job, *etc.*). As a result, no two workplace policies will be exactly the same.

At the very least, consider the following topics:

Communication

- How will the employer communicate with employees or other contractors?
- Does the employer have the information and technology required for efficient communication (*e.g.*, mass text)?

Reporting

- When must an employee report exposure or suspected exposure to COVID-19?
- To whom must the employee report and how: HR, Public Health, *etc.*

Self-Quarantine/Isolation

- When, for how long, and to whom to report?

Working from Home

- Is this possible given nature of the work, technology, legal considerations, *etc.*?
- If not, what if anything can be put into place to facilitate this? Can this be done proactively?
- What are the expectations of an employee working from home?
- If an employee cannot work from home, what is the impact on the employee's status in the workplace?

Return to Work

- When and how?
- Medical certification (will the employer pay for the certificate)?

Business Travel

- Reporting: when and to whom?
- Will there be no obligation to travel for business?
- What is "non-essential" travel?

Personal Travel

- Reporting: when and to whom?

Visitors to the Workplace

- Visitors' log
- Pre-screening questions

- Privacy considerations

Internal Reporting and No Reprisal

- Encourage internal reporting and reinforce that there will be no-reprisal for doing so.

Construction Industry

Q. Is a construction business an “essential business” and therefore allowed to remain open?

Yes. Construction businesses are included on a “List of Essential Workplaces”. Specifically, in addition to other areas, construction businesses are included in:

Institutional, Residential, Commercial and Industrial Maintenance

13. Businesses that provide support and maintenance services, including urgent repair, to maintain the safety, security, sanitation and essential operation of institutional, commercial industrial and residential properties and buildings, including...plumbers, electricians...fire safety and sprinkler systems, building systems maintenance and repair technicians and engineers, mechanics, (e.g. HVAC, escalator and elevator technicians), and other service providers who provide similar services...

Construction

26. Construction projects and services associated with the healthcare sector, including new facilities, expansions, renovations and conversion of spaces that could be repurposed for health care space;

27. Construction projects and services required to ensure safe and reliable operations of critical provincial infrastructure, including transit, transportation, energy and justice sectors beyond the day-to-day maintenance;

28. Construction work and services, including demolition services, in the industrial, commercial, institutional and residential sectors;

29. Construction work and services that supports health and safety environmental rehabilitation projects

Utilities and Community Services

41. Utilities, and Businesses that support the provision of utilities and community services, including by providing products, materials and services needed for the delivery of utilities and community services...

c. Electricity Generation, transmission, distribution and storage ...

e. Road construction and maintenance ...

Q. What obligations do parties have with re: sanitary conditions on a jobsite?

In addition to the general duties and obligations that owners, constructors, employers, supervisors and workers have under the *Occupational Health and Safety Act*, constructors and supervisors are also responsible for maintaining a sanitary jobsite. These obligations are set out in *O Reg 213/91 - Construction Projects*.

Under this regulation, constructors are responsible for ensuring a sufficient number of toilets, urinals and hand washing facilities on each jobsite, and that each meets certain standards and is regularly serviced (pumped), cleaned and sanitized. Constructors are also responsible for ensuring a reasonable supply of potable drinking water is available on the site.

Q. Must workers remain at least six feet apart while on a jobsite?

There is no government directive requiring workers to remain at least six feet apart. However, employers should make best efforts to abide by the recommendations provided by public health and government officials regarding social distancing and hygiene. To this end, employers may consider the following:

- Stagger start and end times, breaks and lunch.
- Limit the number of workers at a toolbox or safety talk.
- Limit the number of workers in a hoist.

Healthcare Industry

Q. Have there been changes to the labour landscape to help health care employers prepare and respond to the anticipated influx of COVID-19 cases?

On each of March 21, 2020 and March 23, 2020, the Ontario Government issued an order under the *Emergency Management and Civil Protection Act* to provide greater flexibility to hospitals, long-term care homes and certain psychiatric facilities (“health care providers”) in respect of work deployment and staffing. These orders are in effect for 14 days from when issued, although may be extended for a further period.

The orders authorize a health service provider to take any reasonably necessary measure, as it relates to work deployment and staffing, to respond to, prevent and alleviate the outbreak of COVID-19 for patients, despite any collective agreement, policy, statute, or agreement that might otherwise limit its right to do so. This can include, but is not limited to:

- Redeploying staff within different locations in (or between) facilities of the health service provider
- Redeploying staff to work in COVID-19 assessment centres
- Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work
- Changing the scheduling of work or shift assignments
- Deferring or cancelling vacations, absences or other leaves, regardless of whether such vacations, absences or leaves are established by statute, regulation, agreement or otherwise
- Employing extra part-time or temporary staff or contractors, including for the purpose of performing bargaining unit work
- Using volunteers to perform work, including to perform bargaining work
- Providing appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan.

The orders specifically note that a health care provider may implement a redeployment plan without complying with any applicable collective agreement provisions, including those that might relate to layoff, service, seniority or bumping rights. In addition, the orders provide a health care provider the ability to suspend, for the duration of the order, any grievance process with respect to any matter referred to in the order.

Bottom line: There are many issues at play in this serious and evolving situation. If you have any questions about how COVID-19 may impact your workplace or would like assistance, contact your Sherrard Kuzz LLP lawyer or, if you are not yet a Sherrard Kuzz LLP client, our firm at info@sherrardkuzz.com with the re: line COVID-19. We'll respond promptly.

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