

COVID-19

Frequently Asked Questions to Assist Unionized Construction Employers

Updated: March 30, 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 unionized construction businesses in Ontario.

On Tuesday, March 31, 2020 at 9:00 am, Sherrard Kuzz LLP lawyer Keith Burkhardt will co-host a free, two-hour webinar to address various issues related to COVID-19 and construction businesses. Webinar details can be found at the end of this briefing note.

Note – The answers provided apply to workers employed under a construction industry collective agreement in the Province of Ontario. Different considerations may apply to non-union workers and those in other provinces. For example, answers regarding layoff and termination will be very different in respect of non-union workers. A [Frequently Asked Questions](#) document providing information about non-union workers can be found on our [website](#).

If you have additional questions, 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 will respond promptly.

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

Yes. Construction businesses are included on the Government of Ontario’s “List of Essential Workplaces.” 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. Can an employer require a worker to advise if, within the past 14 days, he/she has had flu-like symptoms, been in close contact with someone diagnosed with COVID-19 or travelled outside of Canada?

Yes. A worker can be required to disclose if, within the past 14 days, he or she has had flu-like symptoms, been in close contact with someone diagnosed with COVID-19, travelled outside of Canada or been on a cruise ship. This includes indirect travel, such as a plane “stopping-over” outside of Canada, because new passengers and service individuals from that area may come into contact with existing passengers and crew.

In addition, constructors and employers should consider asking workers and visitors to a jobsite (government officials, suppliers, union representatives, etc.) the following questions every time they arrive at the jobsite:

Within the last 14 days, have you:

1. *Experienced, or been in close contact with someone with, flu-like symptoms, or been diagnosed with, or been in close contact with someone who has been diagnosed with, COVID-19; or*
2. *Travelled outside Canada; or*
3. *Been on a cruise ship?*

If the individual answers “yes”, the individual should not be granted access to jobsite.

Q. Can a constructor or employer implement a “temperature check” screening protocol before granting access to a jobsite or facility?

In certain circumstances, a constructor or employer may be entitled to screen workers and visitors for an elevated temperature prior to granting access. The constructor or 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 the individual’s privacy. **For more information on how to appropriately implement a temperature screening policy, contact Sherrard Kuzz LLP.**

Q. Can a worker be required to self-isolate?

Yes. The Government of Canada has stated the following people need to 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 waiting for results of a COVID-19 test, or has been advised to isolate at home by a Public Health Authority.

Q. If a worker has been placed in self-isolation, is the employer under an obligation to pay the worker while off work?

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

Q. Will a worker be eligible for Employment Insurance benefits if ill or required to self-isolate due to suspected illness?

A worker will be entitled to EI sickness benefits if ill for any reason (including COVID-19) or required to self-isolate by public health. In addition, the Federal Government has indicated a worker will be entitled to EI sickness benefits if the worker is required to self-isolate by an employer for reasons consistent with the directive of Public Health officials.

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.

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

The Canadian government has also introduced the **Canada Emergency Response Benefit (CERB)** to provide \$2,000 per month as income support for workers who are not able to work for a reason related to COVID-19. This includes a worker laid off due to a shortage of work and who may not otherwise qualify for EI benefits on account of being self-employed or not having completed sufficient hours to qualify for EI benefits. The CERB is also available to an eligible worker who is unable to work because they are caring for a family member who has COVID-19 or a child who is unable to attend school at this time. **For more information, contact Sherrard Kuzz LLP.**

Q. Can a worker be laid off due to shortage of work during the COVID-19 pandemic?

Yes. A worker can be laid off the same way as during any other shortage of work or conclusion of a project.

Some unions and employers associations have reached an agreement to suspend the normal hiring obligations under a collective agreement and allow an employer to recall a worker who incurs a break in employment (self-isolation or layoff) as a direct result of the COVID-19 pandemic. Employers should check with their employers association to determine if such an agreement has been reached with a union to which it is bound.

Q. Will a worker be eligible for Employment Insurance benefits if laid off due to shortage of work?

A worker 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, a worker 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 a worker'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 a worker 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.**

See also the CERB, described above.

Q. What obligations do parties have regarding sanitary conditions on a jobsite?

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

The requirements include a sufficient number of toilets, urinals and hand washing facilities, and that each meets standards and is regularly serviced (pumped), cleaned and sanitized. Constructors must also ensure a reasonable supply of potable drinking water on the site.

It is also recommended constructors ensure "high touch areas" (handrails, hoists, door handles, etc.) are cleaned on a regular basis and signage regarding sanitation and clean work practices posted on the site.

Supervisors are responsible for inspecting the sanitation system on at least a weekly basis and ideally on a daily basis during the COVID-19 pandemic.

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 should consider:

- staggering start times
- staggering breaks
- staggering lunches
- restricting the number of people on-site and where they are assigned to work
- controlling site movement (by limiting the potential for workers to gather, including personnel in material hoists and site trailers)
- limiting the number of people who use elevators and hoists at one time
- holding meetings in an outside or large space to enable physical distancing
- limiting unnecessary on-site contact between workers, and between workers and outside service providers, and encourage physical distancing in these areas (for example, by removing coffee trucks from the site)

Employers should also remind workers to follow other precautions to limit the risk of transmitting COVID-19 including not attending work if the worker has flu-like symptoms, regularly washing hands, wearing gloves and other PPE, coughing into a handkerchief, sleeve or tissue and engaging in social distancing where it is practical.

Information from Ontario's Chief Prevention Officer regarding construction site health and safety during COVID-19 can be found [here](#).

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

Construction workers 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 worker in an area where he or she is safe (the worker should not simply go home), 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 worker and the worker or work practice thought to be causing the risk. If it is determined there is no objective risk, but the refusing worker 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 worker may be disciplined if he or she continues to refuse to return to work.

Q. Must an employer report a positive result for COVID-19?

Yes. Any positive test result for COVID-19 should be reported to the employer's Joint Health and Safety Committee (JHSC) or health and safety representative as well as any trade union to which the employer is bound.

The employer should also report the positive test result to the Ministry of Labour but, in doing so, make it clear the employer is making the report because it understands it is required to do so, not because there is any connection between the workplace and the worker having contracted COVID-19.

Bottom line: There are many issues at play in this serious and evolving situation. If you have any questions, contact your Sherrard Kuzz LLP lawyer or, if you are not yet a Sherrard Kuzz LLP client, a member of the Sherrard Kuzz LLP team.

*The information contained in this briefing note is provided for general information purposes only and does not constitute legal or other professional advice, nor does accessing this information create a lawyer-client relationship. This article is current as of **March 30, 2020** and applies only to Ontario, Canada, or such other laws of Canada as expressly indicated. Information about the law is checked for legal accuracy as at the date the presentation/article is prepared, but may become outdated as laws or policies change. For clarification or for legal or other professional assistance please contact Sherrard Kuzz LLP.*

Invitation to Free Webinar

Impact of COVID-19 on the Construction Industry

COVID-19 and the Government of Ontario's response to it has had a significant impact on the construction industry. Over the coming days and weeks, we expect project shutdowns, work refusals, unpaid accounts, insolvencies and claims.

On-site, the health and safety of workers must be safeguarded, the willingness of workers and sub-trades to attend a site may vary, and exposure to claims may be heightened.

Assessing your organization's risk and developing a plan forward requires an understanding of macro issues such as the common law and labour relations norms in times of global pandemic, as well as micro issues such as the terms and conditions of individual collective agreements, contracts and subcontracts, health and safety requirements, suspension of work and dispute resolution.

On Tuesday, March 31, 2020 at 9:00 am, **Rob Kennaley of Kennaley Construction Law and Keith Burkhardt of Sherrard Kuzz LLP** will present a free, two-hour webinar to owners, contractors and subcontractors to address these and other issues.

This webinar was first conducted on March 26, 2020 and attracted more than 500 attendees. Given the response and demand for additional sessions, we will provide updates every Tuesday morning at 9:00 a.m. during the months of March and April 2020.

Details

- Date – Tuesday, March 31, 2020 (and continuing each Tuesday during April 2020)
- Time – 9:00 am to 11:00am
- Cost – Complimentary
- Registration - https://zoom.us/webinar/register/WN_OO7xty6fRESka3UequfsSg
- Additional Information -
 - Rob Kennaley – 416.700.4142 - rjk@kennaley.ca
 - Keith Burkhardt – 416.788.4893 – kburkhardt@sherrardkuzz.com

Note – To obtain the registration link for a subsequent webinar, please contact Keith Burkhardt at kburkhardt@sherrardkuzz.com or see our [speaking engagements](#).

