

March 17, 2020

COVID-19. What Employers Need To Know

What is COVID-19?

COVID-19 is a new virus that belongs to a family of coronaviruses which include SARS and MERS. It originated in the Wuhan, the capital of central China's Hubei province and has spread across the globe. Since the discovery of the virus in December of 2019, it has been detected in 114 countries. The number of people infected by COVID-19 has vastly surpassed the cases of SARS and MERS, reaching more than 110,000 infections confirmed and many other cases are being investigated. On March 11, 2020, the World Health Organization characterized the outbreak as a pandemic due to the number of cases and affected countries outside of China.

What is the current situation in Canada?

The Public Health Agency of Canada (PHAC) is closely monitoring the evolving situation and has activated the Health Portfolio Centre (HPC) to support coordination of federal, provincial and territorial preparedness and response to COVID-19. At the moment, the PHAC has assessed the risk associated with COVID-19 as low in Canada. As of March 16, 2020, there are 324 cases of COVID-19 confirmed in Canada.

The Canadian federal government is advising against all non-essential international travel, including to the United States. The Canadian border is no longer allowing foreign nationals to enter the country. Exceptions to this include permanent Canadian residents, immediate family members of Canadian Citizens, diplomats, air crews, and U.S. Citizens. Any traveler regardless of citizenship will be prevented from boarding a plane if they present with symptoms of COVID-19.

Effective Wednesday, March 18, 2020, most international flights will only be permitted to land at international airports in Montreal, Toronto, Calgary, and Vancouver. Flights from the Caribbean, Mexico, and the United States will be able to land at their planned airports. The Prime Minister said that these restrictions will not apply to commerce or trade. Additionally, boats and cruise ships carrying more than 500 people will be banned from docking at Canadian ports until July.

Although they are permitted to enter Canada, the BC Health Minister in a press conference today, March 16, 2020, urged U.S. Citizens to stay home. The province of British Columbia has also banned gatherings of more than 50 people. Violating the order by permitting the gathering of 50 or more people at which you are the owner, occupier or operator, or you are otherwise responsible is an offence under the BC *Public Health Act*.

Canadian travelers returning from international points are asked to self-isolate and stay home for 14 days as a precaution. Travelers are asked to monitor their health for fever, cough, and difficulty breathing, and to avoid places where they cannot separate themselves from others if they get

sick. If they exhibit symptoms, they are asked to self-isolate and contact a health care professional or contact the public health authority in their province for guidance.

The PHAC is constantly updating their recommendations and travel advisories to Canadians. Employers should stay informed as the COVID-19 situation develops and should monitor the PHAC website: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html>

For many Canadians, the greatest number of interactions with other members of the public occur in the workplace. This article addresses some of the general risks and pitfalls for employers when trying to deal with COVID-19. Below are legal considerations that employers should be aware of as the COVID-19 situation unfolds.

Employers have a Duty to Protect the Health and Safety of Employees

In British Columbia, the *Workers Compensation Act* and *Occupational Health and Safety Regulations* place upon employers the responsibility to ensure the health and safety of employees in the workplace. This would involve taking reasonable steps to ensure that employees are protected from the COVID-19 virus. WorkSafeBC has not suggested any special measures beyond those to prevent common respiratory viruses like influenza.¹ These include:

- Washing hands after coughing, sneezing, or blowing your nose;
- When coughing or sneezing, do not cover your mouth with your hand;
- Wash with soap and water for at least 20 seconds, or, if soap and water are not available, use an alcohol-based hand sanitizer;
- Avoid touching your eyes, nose, and mouth with unwashed hands;
- Avoid close contact with people who are sick; and
- Clean and disinfect frequently touched objects and surfaces.

Employers should encourage employees to take time off work if they exhibit flu or cold like symptoms and to contact public health authorities if they travelled to areas of the world where the virus is prevalent. Employees should be reminded that their employment will not be terminated as a result of them taking time off work and it may be useful to remind them of their entitlements to leaves of absence, and any employer sick leave policies or short term disability benefits.

The COVID-19 situation is rapidly changing. All travel including business travel that is non-essential should be avoided. Further, the government is urging Canadians who are currently abroad to come home and has stressed that additional restrictions on travel could be imposed in the near future.

Statutory Leaves of Absence/Sick Leave

There is no entitlement to sick leave under the British Columbia *Employment Standards Act*, but there are a number of unpaid statutory leaves of absence which may apply in the context of COVID-19.

¹ <https://www.worksafebc.com/en/about-us/news-events/announcements/2020/January/what-workers-employers-need-to-know-about-coronavirus>

Compassionate Care Leave

An employee is entitled to 27 weeks of unpaid leave to provide care or support to a family member if a medical practitioner or a nurse practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death.

It is unclear whether the general mortality rate for COVID-19 would lead to a medical opinion that an employee's family member has a "significant risk of death". Most people infected with COVID-19 have mild disease and recover; however, the mortality rate is much higher in people over the age 60 or who have compromised immune systems.² Therefore, it likely depends on each case.

Family Responsibility Leave

An employee is entitled to five days each calendar year of unpaid leave to meet family responsibilities related to the care, health or education of a child in their care, or the care and health of the employee's immediate family.

Bereavement Leave

An employee is entitled to 3 days of unpaid leave if an immediate family member were to die of COVID-19. The days do not have to be on consecutive days; be for attending a funeral; or have to start on the date of death.

Leave Respecting the Death of a Child

The risk of children dying from COVID-19 is currently low compared to adults. However, an employee could be entitled to as much as 104 weeks of unpaid leave if they lost a child to COVID-19.

Critical Illness or Injury Leave

An employee would be permitted to take up to 36 weeks to care for a child and up to 16 weeks to care for a family member over the age of 19 within a 52 week period to provide care and support to a family member whose health has significantly changed and their life is at risk.

The *Canada Labour Code* provides employees with personal leave of up to five (5) days per calendar year. The specified reasons for the personal leave include: illness, injury, or health related family responsibilities. The first three (3) days of leave are paid for those employees with 3 months' service. The *Canada Labour Code* also allows employees to take up to 17 weeks of unpaid Medical Leave as a result of personal illness.

Employment Insurance Benefits

The Federal Government recently announced financial support to employers and employees by expanding its employment insurance benefits. Normally a worker who qualifies for the benefits has a one-week waiting period before payments start. However, the government has advised that for any worker quarantined due to COVID-19, the government is eliminating the waiting period entirely so a worker can obtain benefits immediately to cover a 14-day quarantine.

² <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>

Work-Sharing Program

Canadian Employment and Social Development Canada's Work-Sharing (WS) program is designed to help employers and employees avoid layoffs when there is a reduction in the employer's business and it was out of their control. The Work-Sharing is a three-party agreement involving employers, employees and Service Canada.

Employees who participate in the Work-Sharing program agree to work a reduced schedule and share the available work with another employee over a specified period of time. Employment insurance benefits are then provided for eligible employees to help supplement the loss of income due to reduced working hours.

To help deal with the shortage of business due to the COVID-19 pandemic, the Federal Government is implementing temporary special measures. The measures are available to employers that have been impacted directly and indirectly. For employers who are actively participating in the program, the Work-Sharing agreements may be extended by an additional 38 weeks, for a total of 76 weeks. If an agreement has recently expired, the mandatory waiting period is waived so that employers may immediately apply for a new agreement, without waiting between applications. The Federal government has also eased Recovery Plan requirements for the duration of Work-Share agreements.

Information on the special measures can be found here: <https://www.canada.ca/en/employment-social-development/services/work-sharing/temporary-measures-forestry-sector.html>

Human Rights / Anti-Bullying and Harassment

Canadian human rights legislation prohibits discrimination in employment on the basis of ethnicity, ancestry, race, and place of origin, amongst other protected characteristics. There have been numerous reports around the world of an increase of discrimination and harassment towards people of Asian descent because COVID-19 originated in China. Workplace bullying and harassment is prohibited under human rights and occupational health and safety legislation. Employers should be cognizant of the increased vulnerability that certain groups may have to bullying and harassment as a result of the COVID-19 outbreak. Employees should be reminded of employer policies, and that any bullying and harassment, or discrimination will not be tolerated.

Further, if an employer imposes measures within the workplace to address concerns related to the spread of COVID-19, they should not target employees simply because of a perceived association between certain communities and COVID-19. Any measures that an employer takes to prevent the potential spread of COVID-19 in the workplace should be applied uniformly to its workforce without regard to place of origin, race, or ethnicity.

Healthy Employees Refusing Work in Fear of COVID-19

According to *Occupational Health and Safety* legislation, the cause for an employee's belief that a workplace is unsafe must be reasonable. If an employee refuses work because they believe there is an undue hazard to their health and safety, they must immediately report the unsafe condition to their supervisor. The employer must investigate and inform the employee whether they agree with the employee's concerns. Eventually, if the issue does not get resolved the employer and the employee must notify WorkSafeBC and a representative will attend the workplace and investigate the matter.

If a situation arises where an employee refuses to attend work because of the fear of contracting COVID-19, employers may decide to:

- Permit employees to work remotely where possible;
- Permit and supply safety equipment such as face masks or gloves;
- Install hand sanitizer stations in conspicuous areas within the workplace; and
- Provide updates to employees as the COVID-19 situation evolves.

Assuming accommodations such as this do not unreasonably interfere with the employer's business, they may help to reduce employee anxiety and prevent the spread of COVID-19 in the workplace. Whatever accommodations or measures are implemented, they should be documented and it should be made clear that they are a temporary response.

Medical Information Must be Kept Confidential

Finally, there are privacy concerns that may become relevant when implementing certain measures to curtail the potential spread of COVID-19 in the workplace. Under certain circumstances, employers may be entitled to medical information from employees who test positive for COVID-19 and that information may need to be communicated to other employees who have been in close contact with the infected person. In those circumstances, employers must keep employees' medical information in strict confidence and only disclose information if it is absolutely necessary to protect the health and safety of other members of the workforce.

Furthermore, certain measures like mandatory temperature checks for employees are likely prohibited if they go beyond what the PHAC and public health officials consider necessary in dealing with the COVID-19 situation.

Final Comment

The COVID-19 epidemic is a rapidly evolving situation. Employers should remain up to date on the spread of COVID-19. When employers are implementing measures to deal with COVID-19, special consideration will apply depending on the nature of the work environment, the job duties of employees, and whether it is a unionized or non-unionized workforce. While the above provides some general issues for consideration, we recommend seeking further advice for specific situations confronting employers.