

COVID-19 and the Workplace: What Employers Need to Know Now

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Agenda

- Overview of COVID-19
- Workplace Prevention
- Responding to Actual and Potential Cases
- COVID-19 and Employment Standards
- COVID-19 and Human Rights
- COVID-19 and Work Refusals
- Travel and Canadian Immigration
- Challenging Issues

OVERVIEW OF COVID-19

Overview of COVID-19

The Canadian Response

- Restrictions and controls on international travel
- Public health agencies making recommendations for self-isolation and how people should work and interact
- States of Emergency are being declared
- Recommending / directing closure of gathering venues and spaces

Overview of COVID-19

What are the Symptoms?

Common	Fever Cough Difficulty breathing Muscle aches and soreness Pneumonia in both lungs
Less Common	sore throat headache diarrhea

Overview of COVID-19

How Does COVID-19 Spread?

- Transmission:
 - Respiratory droplets
 - Close contact with infected person
 - Contaminated surfaces

Overview of COVID-19

Recommended Prevention Measures

- Hand hygiene
- Respiratory hygiene
- Environmental hygiene
- Social distancing
 - Isolation
 - Separation

Overview of COVID-19

What is the Risk?

- **Low Risk:** General population
- **Elevated Risk:**
 - Anyone over age 65
 - Anyone with a compromised immune system or
 - Anyone with underlying medical conditions

Prevention in the Workplace

Prevention In the Workplace

General Employer Obligation

- OHS legislation applies
- No specifically legislated duties for most employers regarding COVID-19
- Employers have a legal duty to take all reasonable care to ensure health and safety of workers
- Flexible duty that may vary from workplace to workplace and from worker to worker

Prevention In the Workplace

Pre-Entry Screening

- Employers may wish to implement screening processes before permitting workers who have been absent from work into the workplace
- A questionnaire could be used to have them confirm:
 - Recent travel destinations
 - Any cruise holiday
 - Close contact with an infected person
 - Absence of symptoms

Prevention In the Workplace

Pre-Entry Screening

- Temperature testing:
 - Generally, mandatory temperature testing is not appropriate
 - However, testing through non-invasive means may become reasonable
 - Continue to consult public health recommendations

Prevention In the Workplace

Reducing “Social” Contact

- Isolation:
 - Requiring workers to not report to work but to self-isolate in circumstances where recommended by public health officials
 - This may include workers:
 - With recent international travel
 - Displaying symptoms of a respiratory illness
 - Reporting as ill
 - With close contact with an infected person

Prevention In the Workplace

Reducing “Social” Contact

- Separation:
 - Breaking work group into smaller units
 - Distancing in the workplace (2 metres)
 - Avoiding face-to-face meetings or gatherings
 - Permitting remote work (where possible)
 - Adjusting work hours/schedule to avoid peak times on public transportation or to separate workers

Prevention In the Workplace

Reducing “Social” Contact

- Separation:
 - Cancel all non-essential business-related travel
 - Cancel attendance at work-related events involving groups of people
 - Encourage/require workers to refrain from non-work related travel outside of Canada

Prevention In the Workplace

Workplace Hygiene

- Encourage regular hygienic behaviours
 - Hand
 - Respiratory
- Provide antiseptic products
- Arrange for frequent cleaning of high-touch surfaces

Prevention In the Workplace

Personal Protective Equipment

- If risk of exposure arising from work duties, an employer must provide PPE (e.g. masks, gloves, etc.)
- Public health authorities currently do not recommend providing PPE generally
- Current recommendations relate to hygiene and social distancing – suggests these are reasonable precautions for most workplaces

Prevention In the Workplace

Vulnerable Workers

- Consider workers who may be vulnerable because of compromised immune systems or underlying medical conditions
- Encourage workers who are vulnerable to raise their individual concerns
- May need to create plans or implement measures to protect these workers

Addressing Actual or Potential Infections

Addressing Actual or Potential Infections

Worker Diagnosed With COVID-19

- Worker should not be permitted to return to the workplace
- If worker returned to the workplace before diagnosis:
 - Immediately separate involved worker from other workers for isolation
 - remove workers who worked “closely” with the worker for isolation
 - Definition of “closely” depends on the workplace

Addressing Actual or Potential Infections

Potential Case of COVID-19

- Anyone with even mild symptoms should stay home
- Refer to Ontario 2019 novel coronavirus (COVID-19) self-assessment tool:

<https://www.ontario.ca/page/2019-novel-coronavirus-covid-19-self-assessment>

- If symptoms present while at work:
 - Immediately remove involved worker for isolation
 - Inform other workers of possible exposure and remove them from the workplace for isolation

Addressing Actual or Potential Infections

Worker in Close Contact With Person Diagnosed With COVID-19

- Remove the worker for at least 14 days
- Direct co-workers to self-monitor

Addressing Actual or Potential Infections

Reporting Obligations

- Where a worker has been diagnosed with COVID-19, and contraction is from the workplace or work duties, there may be an obligation to report the infection to health and safety and/or workers' compensation authorities
- Whether such a report is required will vary from jurisdiction to jurisdiction and will turn on the particular circumstances – advice should be sought from experienced counsel

COVID-19 and Employment Standards

COVID-19 and Employment Standards

Job-Protected Leaves

- Employment standards legislation from across Canada provides a variety of leaves and some jurisdictions are creating them for COVID-19 quarantines/isolations
- The requirements for such leaves vary and workers may not qualify
- Most statutory leaves are unpaid

COVID-19 and Human Rights

COVID-19 and Human Rights

Accommodation

- Employers have a duty to accommodate to the point of undue hardship
- Potential protected grounds involved:
 - Disability
 - Perceived disability
 - Marital status
 - Family status

COVID-19 and Human Rights

Accommodation

- Workers should not be sent home unless concerns are reasonable and consistent with public health guidance
- Workers who cannot work in connection with COVID-19 must not be negatively affected by absenteeism policies or be subject to discipline or termination

COVID-19 and Human Rights

Accommodation

- Be aware of the potential for workplace harassment or bullying
- Employers are liable for the failure to respond to workplace discrimination by workers
- Decisions to exclude workers must not be based on any protected grounds such as race, ethnicity, or place of origin

COVID-19 and Work Refusals

COVID-19 and Work Refusals

The Right to Refuse Unsafe Work

- Workers have the right to refuse work based on COVID-19 concerns
- Will have to treat refusals based on COVID-19 similarly to work refusals exercised on other bases
- Remain mindful of public health advice when carrying out investigation

COVID-19 and Work Refusals

Investigation by the Regulator

- Ensure that regulator can be given details regarding workplace measures and procedures regarding COVID-19 and any specific matters relating to the work refusal
- Regulator may not respond to work refusals in the usual manner
- Based on limited information to date, appears regulator is relying on recommended public health practices as a guide

Travel and Canadian Immigration

Travel and Canadian Immigration

Travelling During COVID-19

- Government of Canada has advised to avoid non-essential travel abroad
- Canadians and Permanent Residents (PRs) outside of Canada, should return to Canada ASAP
- Funding may be available for Canadians or PRs returning to Canada

Travel and Canadian Immigration

Travelling During COVID-19

- Only 4 airports will receive international flights:
 - Calgary
 - Montreal
 - Toronto
 - Vancouver
- Domestic flights will continue, as will flights from the US, Mexico, St. Pierre-et-Miquelon and the Caribbean

Travel and Canadian Immigration

Travelling During COVID-19

- As of March 18, 2020, anyone who is not a Canadian citizen or permanent resident will be refused entry into Canada (will not be able to board flights to Canada)
- Exceptions are as follows:
 - US citizens
 - Air crew
 - Diplomats
 - Family members of Canadian citizens and PRs

Travel and Canadian Immigration

Travelling During COVID-19

- Temporary workers, international students and visitors will **not** be allowed to re-enter Canada if they are abroad, unless they are providing essential services. This may be updated as things continue to unfold.
- The denial of boarding would apply to:
 - All foreign nationals on flights to Canada other than trans-border flights; and
 - Any foreign national on a trans-border flight who has resided outside the US and Canada in the last 14 days.

Travel and Canadian Immigration

Travelling During COVID-19

- Anyone, regardless of nationality, showing symptoms of COVID-19, will not be allowed to board an aircraft destined for Canada
- Any asymptomatic person returning to Canada will be subjected to additional screening at the Ports of Entry and will be required to self-isolate for at least 14 days on return.

Travel and Canadian Immigration

Travelling During COVID-19

- Chief Medical Officer Ontario:
 - Re-confirms self-isolation
 - Healthcare worker or other essential workers who have travelled and are asymptomatic need to self-monitor and can return to work, once they notify the employer and a plan is in place for the protection of the work place

Immigration and COVID-19

Current and Potential Impact

- Some Visa Application Centres (VACs) are closed and certain IRCC offices working with operational staff only
- There are likely to be delays in processing applications

Immigration and COVID-19

Processing Impacts

- Applications will not be refused for non-compliance
- If additional documents are requested, IRCC will allow 90 days to complete, with further extensions possible
- Most Biometric collection centres have closed and appointments cancelled until further notice

Immigration and COVID-19

Systemic Impacts

- IRCC has implemented special measures for applicants from China, Iran and South Korea
- Citizenship ceremonies and tests have been cancelled until further notice
- Labour Market Impact Assessments may be extended (and may now be issued for 9 months, going forward)

Temporary Residents

- Temporary Residents in Canada
 - If status is soon expiring – must submit an online application to extend
 - Applicants still need to meet all status requirements. Standard processing fees applies
- Applicants who are in Canada and have applications processing will continue to benefit from implied status

Immigration and COVID-19

Permanent Residents

- Permanent residency applications can continue to be submitted
- New PR files submitted that are missing documents: onus is on the Applicant to advise IRCC why documents are missing
 - Files technically incomplete due to those missing documents will be retained by IRCC for 90 days.
 - IRCC may extend the deadline to provide documents even further

Immigration and COVID-19

Frequently Asked Questions

- Valid confirmation of Permanent Residency and Permanent Resident Visa, but unable to land because of travel restrictions?
- Will a period of leave during COVID-19 affect a worker's ability to apply for Permanent Residency?

Challenging Issues: Entitlement to Compensation

Entitlement to Compensation

Potential Compensation for Workers

- Symptomatic: work-related exposure
 - Workers' compensation benefits
- Symptomatic: non-work related exposure
 - Statutory leave pay, if available
 - Contractual sick pay, if available
 - STD/ LTD, if available
 - EI and Supplementary Unemployment Benefits

Entitlement to Compensation

Potential Compensation for Workers

- Asymptomatic: excluded from workplace
 - Depends on circumstances:
 - Type of workplace
 - Alternatives (e.g. working from home)
 - Contract or collective agreement requirements
 - Generally, entitled to usual compensation if capable of performing work remotely

Entitlement to Compensation

Potential Compensation for Workers

- Consider the practical implications of not compensating workers
- Be aware of the potential for claims of constructive dismissal or damages under human rights legislation
- Consider flexibility around the use of vacation pay, banked time off, and advances

Challenging Issues: Layoff or Termination due to Downturn of Business

Layoff or Termination – Business Downturn

Layoff Considerations

- An employer can layoff workers due to a downturn of business
- However, keep in mind the risk of claims of constructive dismissal
- Evaluate the number of workers involved

Layoff or Termination – Business Downturn

Benefit Considerations

- Review policies with benefit plan provider
- Advise workers of limitations or restrictions in coverage

Layoff or Termination – Business Downturn

Business Closure

- Concern for health and safety may result in the decision to close a business
- Obligations to provide notice or pay in lieu of notice are fact-dependent

Challenging Issues: Essential Workplaces and Workers

Essential Workplaces and Workers

Anticipating the Possible

- Government may designate certain workplaces, or parts of workplaces, as essential
- May mean these businesses are required to operate while others are ordered closed (e.g. pharmacies, grocery stores, utilities, etc.)
- This may require employers to adopt enhanced workplace practices that may exceed what has been recommended to date
- Should consult with public health authorities

24 HOUR COVID-19 EMPLOYER SUPPORT

1.855.632.4647

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Questions?

24 hour COVID-19 support line: 1.855.632.4647
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