

An Employer's Guide to Managing COVID-19 in the Workplace

Prepared by: Christopher Drinovz
Lawyer with KSW Employment & Labour Group
Executive Member, Employment Law Section of the
Canadian Bar Association

Updates on Travel

- On March 12, 2020, BC Public Health Authorities announced that anyone who chooses to travel outside Canada must self-isolate from work and school for 14 days upon return to BC.
- On March 14, 2020 the Public Agency of Canada listed all countries outside of Canada as Level 3 Risk and all persons returning from any country are now asked to self-isolate for 14 days after their return to Canada.
- Therefore, it is reasonable and expected that employers ask all employees returning from outside of Canada to stay away from the workplace for 14 days (even if they don't seem ill).

Restricting Employee Travel

- You can and should place restrictions on business-related travel outside of Canada.
- You may not be able to ban leisure/personal travel, but you can require employees who are travelling outside Canada to disclose their travel and self-isolate for 14 days upon their return.
- You should share the new travel health advisories regarding any travel outside Canada and clearly communicate restrictions or disclosure requirements to all employees.

Employee Compensation & Sick Leave

- Entitlement to pay for employees affected by COVID-19 will depend on contracts of employment, personnel policies and/or your collective agreement.
- If the employee is eligible for sick leave, they are entitled to pay if sick with COVID-19. Absent sick leave, an employer is not required to pay an employee who does not work due to COVID-19. However, if not paid, there may be a risk that a worker will feel constructively dismissed if the reduction in annualized earnings is significant.
- Consider allowing employees to work from home. When this is not possible, invite employees to use vacation days, banked time or offer to let them make up the time at a later date.
- Consider amending your policies to reflect the realities of the pandemic and ensure they are not punitive. For example:
 - relaxing leave policies to allow employees to avail themselves of vacation and sick days.
 - reconsider requiring a medical note when an employee has flu-like symptoms (as requested by BC Health Officials on March 12, 2020).

Employee Benefits

- Encourage affected employees to consult with their doctor and insurer to consider if short-term disability leave may be an option.
- Contact your benefits provider to determine any circumstances under which an employee would be illegible for coverage under (e.g. travel outside of Canada against advisory) and advise your employees of this information.
- Encourage employees to inform themselves of what financial relief is available from the federal government (see next slide).

Employment Insurance Benefits

- Employees who are not eligible for sick leave benefits or other form of paid leave may qualify for up to 15 weeks of Employment Insurance sickness benefits.
- The federal government has announced it is waiving the 1-week waiting period for benefits to start for workers who are quarantined due to COVID-19.
- An employee qualifies for waiver of the 1 week waiting period if:
 1. There is a notice or order from a public health official or authority to self quarantine (i.e. if they travelled outside Canada; or attended a specific event and don't feel well); or
 2. They have received a recommendation to quarantine by their employer, medical doctor, a nurse or a person in authority.

Employment Insurance Benefits

- Workers who voluntarily choose to self-isolate due to COVID-19 without being ill or directed to do so by the employer or a medical professional might not be entitled to waiver of the 1st week waiting period for EI benefits.
- Even if the employee does not qualify for the 1 week waiver, they may still qualify for EI sickness benefits as usual (no benefits for the 1st week).
- At this time, this relief is only available to people who qualify for EI benefits. This might change.

Family Responsibility Leave

- The BC Employment Standards Act (ESA) provides a type of unpaid leave that could apply in an pandemic situation: Family Responsibility Leave.
- An employee is entitled to up to five days of unpaid leave each year to help with the care, health or education of a child under the age of 19 in their care, or any other member of their immediate family.
- If an employment contract provides for equivalent or more generous family responsibility entitlements (for example, paid leave or more than 5 “family responsibility days”), and the employee takes the leave under their employment contract, the employee is considered to have also taken family responsibility leave under the ESA.

Duty to Provide a Safe Workplace

- Employers in BC are required under occupational health and safety laws to protect their employees and other workers from work-related hazards, including any infectious disease posing a risk at their workplace.
- WorkSafeBC's "Controlling Exposure: Protecting Workers From Infectious Diseases" lists the following obligations for employers:
 - identifying infectious diseases in the workplace
 - developing and implementing an exposure control plan
 - educating, training and supervising workers on safe work procedures, including hand-washing
 - directing workers to seek medical attention, as required.
- Further to this duty, an employer should direct a worker from the workplace, and any other worker who came into close contact with the worker, to not attend work, if:
 - they are ill and/or exhibit any cold or flu-like symptoms
 - they have COVID-19
 - they returned from anywhere outside of Canada

Work Refusals

- An employee has the right to refuse unsafe work under BC's occupational health and safety laws if they have reasonable cause to believe that performing their work would create undue hazard to the health and safety of themselves or another person.
- The OHS Regulations outline specific procedures that must be followed – the employer must investigate the concerns, and take any reasonable measures to reduce or eliminate the workplace hazard.
- In the case of refusal due to COVID-19, we recommend erring on the side of caution and respecting the work refusal until conducting an investigation.
- An employer is not permitted to retaliate against an employee who exercises their right to refuse unsafe work. This could leave them liable for a Discriminatory Action Complaint under the Workers Compensation Act.

WorkSafeBC Compensation & COVID-19

- A worker is not entitled to compensation from WorkSafeBC simply because they contracted COVID-19 while at work.
- A worker may qualify for WCB benefits due to COVID-19 if:
 - the nature of the worker’s occupation creates a risk that they would contract a contagious disease to which the public at large is not normally exposed; or
 - the nature of the worker’s employment creates for the worker a significantly greater risk of contracting a viral infection (COVID19) than the ordinary exposure risk of the public at large.
- A worker may also qualify if they contracted the virus while traveling to another country affected by COVID-19 for work purposes.
- If you believe your employees may fall into one of these categories, you should report any cases to WorkSafeBC. Examples include: care home workers, health care workers, first responders, and others.

Human Rights Issues

- Negative treatment, including termination, of employees who have or are perceived to have COVID-19 is discriminatory and prohibited under the BC Human Rights Code.
- It is not discriminatory to lay off employees when there is no work available due to COVID-19. However, this may amount to wrongful dismissal of the employee (discussed in next slides).
- Employers have a duty to accommodate employees in relation to COVID-19 up to the point of undue hardship based on costs or health & safety. This may include accommodating employees who must care for another family member who is ill or in isolation, or a child whose school is closed.
- An employer should not send an employee home or ask them not to work because of concerns over COVID-19 unless the concerns are reasonable and consistent with the most recent advice from medical and Public Health officials.

Workplace Health Testing & Privacy

- Compulsory health testing of all employees, such as mandatory temperature checks, may not be permitted by human rights and privacy legislation. However, as the prevalence of COVID-19 continues to escalate, it may become reasonable for employers to take more aggressive health testing measures in the workplace to meet their health and safety obligations.
- Employers should continue to review recommendations from the Public Health Agency of Canada and provincial health authorities and consult with an experienced employment or labour lawyer before implementing any procedures that go beyond their recommendations.

Workplace Health Testing & Privacy

- Information should only be collected to the limited extent necessary to achieve COVID-19 preventative or precautionary measures. Access to this information should be limited to management and/or human resources.
- For any collection of personal information, including medical testing data and absenteeism records, employers must follow applicable privacy legislation regarding the use, disclosure and security of the information. In no case should any personal information be disclosed, except as required by law or with the employee's express consent.

Lay-offs and Termination

- If you lay off employees due to shortage of work caused by COVID-19 (even temporarily) be aware that in most cases this will be considered a wrongful dismissal entitling employees to termination pay under the ESA and/or severance pay under the employment contract.
- Exceptions include where the contract expressly permits temporary lay-offs or in certain seasonal industries where lay-offs are expected.
- In all cases, a temporary layoff will become a termination under the ESA if the absence is more than 13 weeks in a 20 week period.
- In unique circumstances, the employer may defend a wrongful dismissal claim by arguing that COVID-19 frustrated the employment contract. You should consult a lawyer if you believe this might apply to you.

Operating With Sick or Absent Employees

- You are permitted to hire temporary employees to fill in for persons absent due to COVID-19. The temporary workers should sign a contract specifying the limited period of employment.
- You may also require healthy employees to work additional hours, so long as you comply with the overtime requirements of the ESA and do not require employees to work excessive hours.

Resources for Employers

- Checklist of key considerations for businesses prepared by the Province of BC
 - <https://smallbusinessbc.ca/wp-content/uploads/2020/03/small-business-resource.pdf>
- Guides:
 - CPHR BC & Yukon:
<https://cphrbc.ca/coronavirus-covid-19-advice-for-canadian-employers/>
 - Canadian HRReporter:
<https://www.hrreporter.com/employment-law/news/7-key-questions-for-employers-dealing-with-covid-19/327403>
 - Canadian Labour and Employment Law:
<https://www.labourandemploymentlaw.com/2020/03/covid-19-checklist-for-canadian-employers/>
- WHO – Getting your workplace ready for COVID-19:
 - https://www.who.int/docs/default-source/coronaviruse/getting-workplace-ready-for-covid-19.pdf?sfvrsn=359a81e7_6
- For national and local updates, you could encourage staff to visit the link:
Public Health Agency of Canada
 - <https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html>
- BC specific resources:
 - BC Centre For Disease Control: <http://www.bccdc.ca>
 - Vancouver Coastal Health: <http://www.vch.ca>

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WorkSafeBC

Wrongful Dismissal

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Human Rights

Collective Bargaining

Investigations

Employment Standards Act



**KANE
SHANNON
WEILER** LLP
ESTABLISHED 1973

Christopher Drinovz
cdd@ksw.bc.ca | 604-509-6192

www.ksw.bc.ca

Michael Weiler
mweiler@ksw.bc.ca | 604-336-7423

Surrey. Langley. Abbotsford. Vancouver

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