

Client Update: COVID-19 information bulletin

March 16, 2020

1. BACKGROUND

COVID-19 is an illness caused by a novel coronavirus. The most common symptoms are similar to a cold or flu and include fever, fatigue, cough and difficulty breathing. According to Health Canada and the World Health Organization, symptoms may take up to 14 days to appear after exposure. It is believed that COVID-19 can live on surfaces for 3 days. Most people who contract COVID-19 recover on their own; some may not experience symptoms. However, the likelihood that a person becomes severely ill as a result is higher in elderly people and people with underlying medical conditions or a weakened immune system.

The Public Health Agency of Canada (“PHAC”) has assessed current risk of COVID-19 to public health as being [low](#) for the general population in Canada. However, this could change rapidly and there is widespread concern that COVID-19 has the potential to overwhelm the Canadian health care system.

Employers need to regularly monitor the status of COVID-19 and update their practices accordingly. At the moment, all employers should:

- Encourage social distancing. This has been proven to be an effective means of reducing and slowing virus transmission (also called “flattening the curve”);
- Adopt and reinforce best hygiene practices such as frequent and effective handwashing as well as coughing and sneezing etiquette;
- Increase the number of available hand sanitizer dispensers;
- Ensure that employee contact information is current;
- Discourage physical contact, including shaking of hands;
- Remind employees about sick leave policies;
- Prohibit business travel outside Canada;
- Limit direct employee interaction by exploring alternatives such as working remotely;
- Educate employees wishing to travel about the [Government of Canada’s Travel Advice and Advisories](#) and implement “self-quarantine” policies for 14 days after such travel; and
- Require employees who have come into contact with an individual who has travelled to a high risk area to “self-quarantine” for 14 days.

To confront the potential for rumour, exaggeration or complacency and consistent with occupational health and safety expectations, employees should be educated continuously with fact-based commentary. The following are links you should be monitoring regularly to stay alert to what is happening in your jurisdiction:

- [British Columbia](#);
- [Alberta](#);
- [Saskatchewan](#);

- [Manitoba](#);
- [Ontario](#);
- [Quebec](#);
- [New Brunswick](#);
- [Nova Scotia](#);
- [Prince Edward Island](#);
- [Newfoundland and Labrador](#);
- [Yukon](#);
- [Northwest Territories](#); and
- [Nunavut](#)

While we seek to provide general information in this update, we encourage employers to seek legal advice from one of our [Labour & Employment Group](#) lawyers with respect to the particular issues facing your organization.

2. WORKPLACE SAFETY ISSUES

What if an employee appears sick but has no confirmed diagnosis?

If an employee presents with any COVID-19 symptoms, they should seek medical attention immediately. This is a critical step in looking after their health and wellbeing as well as limiting workplace exposure.

Sending an employee home who exhibits symptoms of any contagious illness, such as COVID-19 would not violate human rights or employment standards statutes.

Employers must ensure that they meet their legal obligations to employees. Under occupational health and safety legislation, employers have a legal obligation to provide a safe working environment for all employees. Employers must put in place a policy which limits access to the workplace of those employees who may be infected with COVID-19. Employers must explicitly inform employees to remain away from the workplace who are exhibiting COVID-19 symptoms; who may have been in contact with someone who is also exhibiting symptoms; or who has recently visited an infected hotspot.

If we tell an employee to stay home, should they be compensated or should a temporary lay-off be imposed?

Telling employees to voluntarily take unpaid leave or use vacation time could prove problematic. During the SARS outbreak in 2003, many employers paid quarantined employees, who were not sick, while they remained away from the workplace. Other “at risk” employees were also paid while remaining away from work, though they were not ill.

While employers do not wish to incentivize employees not to work, alternatively, employers face the dilemma of employees coming to work sick, if staying away from work will cost them a day’s pay. Employees who have contracted COVID-19 will be entitled to sick leave benefits if available. Additionally, employees who have not contracted COVID-19 may also seek to claim sick leave benefits.

Employees should be reminded about the scope of any existing employment contracts, collective agreements, and sick leave policies and if not addressed in a sick leave policy, organizations should consider how to address the employees who are not sick but who you require to self-quarantine or who are otherwise required to quarantine in accordance with the law.

What degree of inquiry / investigation as an employer can I undertake to determine whether an employee may be infected?

While employers have a duty under the occupational health and safety legislation to provide a safe working environment, this has the potential to conflict with their duty under human rights legislation prohibiting employers from discriminating against an employee on the basis of a disability (and in Nova Scotia, an irrational fear of contracting a disease).

It is generally impermissible to mandatorily require employees to undergo a health-related test such as taking temperatures as such constitutes an invasive action. However, such testing may be permissible, if COVID-19 becomes widespread in Canada. Even without COVID-19 becoming widespread or reaching epidemic proportions, Canadian employers may be entitled to engage in an individualized assessment of whether they have reasonable cause to require mandatory temperature testing in a specific employee's circumstances.

Employers have the right to prevent an employee from entering the workplace, but this right must be exercised on a reasonable basis. If mandatory employee health testing becomes justified in Canada, the dignity of employees should be respected throughout the entire process. Results of employees' tests should be kept in the strictest of confidence and they should not be shared with other employees, except on a "need to know" basis.

An employee has tested positive for COVID-19. What should we do?

You should notify your provincial health authority immediately and send home all employees who worked closely with that employee for a 14-day period to limit the spread of COVID-19.

Ask the employees to identify all individuals who worked in close proximity (three to six feet) with them in the previous 14 days to ensure you have a full list of those who should be sent home. To ensure privacy interests, do not identify by name the infected employee. You may also want to consider asking a cleaning company to undertake a deep cleaning of your affected workspaces. If you work in a shared office building or area, you should inform building management so they can take whatever precautions they deem necessary.

One of our employees has a suspected but unconfirmed case of COVID-19. What should we do?

Take the same precautions as noted above. Treat the situation as if the suspected case is a confirmed case for purposes of sending home the potentially infected employee as well as all other employees who worked in close proximity with the employee.

How can we distinguish between a "suspected but unconfirmed" case of COVID-19 and a typical illness?

Caution should guide any decisions. Absent evidence that an individual contracted COVID-19, this is not a simple determination. Indicators that will lead you to conclude an illness could be a suspected but unconfirmed case of COVID-19 include whether that employee travelled to a high risk area, whether that employee was exposed to someone who travelled to one of those areas, or similar facts.

One of our employees self-reported that they came into contact with someone who had a presumptive positive case of COVID-19. What should we do?

Again, proceed cautiously and treat the situation as though the employee themselves tested positive for COVID-19 by sending home the exposed employee as well as other employees who were in close contact with the exposed employee.

One of our employees has been exposed to the virus but only found out after they had interacted with clients and customers. What should we do?

Take the same precautions as noted above with respect to coworkers, treating the situation as if the exposed employee has a confirmed case of COVID-19 and sending home all employees the exposed employee came into contact with.

As for clients and customers, you should communicate with all individuals that came into close contact with the exposed employee to notify them of their potential COVID-19 exposure.

Can an employee refuse to come to work because of fear of infection?

Occupational health and safety legislation provides employees with the right to refuse to work where doing so “is likely to endanger” their occupational health or safety.

Employees encountering COVID-19 in the workplace (or who fear that they may encounter it) may seek to exercise their right to refuse work in this regard. Once an employee reports their concern to their supervisor (as they are obligated to do) employers should immediately investigate the reasonableness of this refusal in the manner prescribed by legislation.

Can employers refuse an employee’s request to wear a mask or can an employee refuse to work without a mask?

This depends on the reasonableness of the risk to the employee in question. Where, for example, an employee has direct contact with individuals known to have, or likely to have, contracted COVID-19 (for example, a health care worker), wearing a mask is likely a “reasonable precaution”.

If an employee does not have this type of heightened risk, and has duties that involve interactions only with fellow employees or the general public, protective equipment is likely unwarranted and may be contrary to the employer’s interests.

3. ISSUES FOR WORKFORCES THAT TRAVEL

What current travel restrictions are in place?

There are many active travel health notices for COVID-19, and they are evolving. Each country or area may have different levels of risk. These risk levels may change and new restrictions may be imposed with little warning.

The Government of Canada has advised against all non-essential travel outside of Canada until further notice and all individuals are being requested to self-quarantine for 14 days upon return in the event of any travel outside of Canada.

To ensure you are aware of the latest developments in respect to this evolving situation, the Government of Canada’s travel advice is accessible [here](#).

Can we prohibit an employee from travelling outside Canada?

Obviously, any restrictions an employer wishes to impose in respect to their employees’ business-related travel is their prerogative.

For employees engaging in personal travel, employers should ask for proactive notice of any pending travel plans. An employer cannot generally prevent employees from travelling during their leisure time but can seek to protect their interests upon the employee’s return. This may involve advising employees of a “self-quarantine” mandating any employee who has travelled outside Canada to take a leave of absence for 14 days upon their return to Canada. Additionally, employers should give advance consideration to whether they will pay employees who are required to institute self-quarantine measures.

What should I do if an employee has recently travelled to an affected area or otherwise may have been exposed to the COVID-19 coronavirus?

If an employee has travelled outside of Canada they should be self-quarantining for 14 days, beginning the day they began their journey home to Canada.

Can employees refuse to travel as part of their job duties?

Under occupational health and safety legislation, most employees have the right to refuse to work or to do particular work at a work site if the worker believes on reasonable grounds that there is a dangerous condition at the work site or that the work constitutes a danger to the worker's health and safety.

4. REMOTE WORK

May an employer encourage employees to work remotely as an infection-control strategy?

Yes. The Public Health Agency of Canada and other provincial health authorities have stated that isolation is an effective infection-control strategy and that employers may encourage employees to work from home if they have any symptoms of COVID-19 and/or have recently travelled to a high-risk area.

Should we institute a temporary remote work policy in light of the COVID-19 outbreak?

The choice of whether to institute a temporary remote work policy will depend on the nature of your organization, the existence of remote work systems already in place, and the imminence of illness in areas where your employees live. If your organization does have remote work programs in place, then it may be advisable to make use of these systems and pre-empt the spread of illness if transmission will be an issue in your workplace. Needed systems integrity and security arrangements supporting such remote work arrangements have to be undertaken.

5. HEALTHCARE/PRIVACY ISSUES

How should we treat medical information and what specific privacy issues should we be concerned about?

In the event an employee is experiencing symptoms of COVID-19, has been diagnosed with COVID-19, or has come into contact with someone that has contracted COVID-19, employers should have policies in place requiring employees to disclose this information. Employers are also justified in asking employees to disclose travel plans. Additionally, given that the symptoms of COVID-19 are comparable to those of a normal cold or flu, employers may consider asking potentially affected employees to provide confirmation from a medical professional that the employee does not suffer from COVID-19. Employers should not disclose the reasons for an employee's leave or remote working arrangements, except to those employees who require that information to carry out their employment duties.

6. BENEFITS/GROUP HEALTH PLAN ADMINISTRATION

If our employees are no longer working, are they still entitled to group health plan coverage?

You need to check your group health plan document (or certificate of coverage if your plan is fully insured) to determine how long employees who are not actively working may remain covered by your group health plan.

7. HUMAN RIGHTS ISSUES

Does the COVID-19 coronavirus constitute a disability?

Colds and flus are generally not considered disabilities and therefore not protected by human rights legislation. However, COVID-19 may constitute a disability (it is widely described as a "disease"), and trigger an employer's duty to accommodate to the point of undue hardship. This may include granting the employee extended leave and/or requiring the employee to work from home.

Do we have any human rights concerns related to the COVID-19 coronavirus?

While employers may implement policies which require employees who show symptoms of COVID-19

coronavirus or who have recently travelled to a high-risk area to stay home for 14 days, employers cannot implement broad policies based on race, ancestry or national or ethnic origin.

8. LABOUR RELATIONS

My workforce is unionized. Can my company make changes to unionized employees work schedules or duties in response to the COVID-19 coronavirus?

Every collective agreement is unique, therefore whether an employer may make unilateral changes to unionized employees work schedules or duties in response to the COVID-19 coronavirus depends on the agreement. We recommend that employers carefully review the wording of their collective agreement and consult legal counsel before implementing any unilateral changes to work schedules or duties.

9. WORKERS' COMPENSATION

My employee says they contracted COVID-19 while at work. Will this result in a compensable workers' compensation claim?

If the employee is a health care worker or first responder, the answer is likely yes. For other categories of employees, a compensable workers' compensation claim is possible, but the analysis would be very fact-specific.

My employee contracted COVID-19 while on a business trip for my company. Is this a compensable workers' compensation claim?

It depends. While employees who contract a disease while travelling for business can be entitled to worker's compensation benefits, they are also required to demonstrate that this disease occurred when they were in the course of working for their employer.

This article is provided for general information only. If you have any questions about the above, please contact a member of our [Labour and Employment Group](#).