Ask The Expert: Can We Keep Infected Employees from Coming to Work?



This is an Ask The Expert from 2020, reflective of the COVID-19 pandemic, but the principles and strategies mentioned are still applicable for HR directors facing the spread of infectious illnesses in and outside of the workplace.

QUESTION

Are we allowed to ban employees with COVID-19 from coming to work?

ANSWER

Yes. You not only can but MUST keep employees or anybody else who has or are at high risk of having COVID-19 from entering the workplace.

EXPLANATION

You should ensure that the following workers and visitors don't come to your work site:

- People with COVID-19-like symptoms such as sore throat, fever, sneezing, or coughing—these people are required to self-isolate at home for at least 10 days from the start of symptoms, until those symptoms disappear.
- People who have travelled internationally—these people must remain away from the workplace for at least 14 days.
- People who live in the same household as a confirmed or clinical COVID-19 case who is self-isolating.

The source of your authority to keep these people out are the government requirements adopted by Health Canada for the COVID-19 public health emergency. But what you may not realize is that under OHS laws, you can also bar entry to people with other less dangerous infectious illnesses, like the flu, even when a public health emergency is not in effect.

The specific source of that authority is the OHS Act "general duty clause" requiring employers to take all "reasonable" or "reasonably practicable" measures to protect workers from recognized health and safety risks. In addition, the case can be made that regulations barring workers from working while they're impaired apply to workers

with an infectious illness. Here's a quick summary of the current workplace impairment rules in each jurisdiction.

Jurisdiction	Current OHS Workplace Impairment Rules (if any)
Federal	Employee may not work if his/her ability to function is impaired by fatigue, illness, alcohol, drugs or other conditions (*Oil & Gas Occ. Safety & Health Regs*., Sec. 18.16)
Alberta	OHS laws don't address workplace impairment but government guidelines specify that it's a workplace hazard employers must address
British Columbia	Person must not and employer must not allow person to enter or stay at workplace while his/her ability to work is affected by alcohol, a drug or other substance so as to endanger the person or anyone else (*OHS Reg.,* Sec. 4.20)
Manitoba	Employers must "take all reasonable steps to ensure" that workers don't work while under the influence of alcohol or a drug that impairs or could impair their ability to work safely; Workers may not work under the influence of alcohol or a drug that impairs or could impair their ability to work safely (*WSH Reg.,* Sec. 2.19)
New Brunswick	None
Newfoundland & Labrador	Employer, supervisor or worker may not enter or stay at workplace or job site while his/her ability to perform work responsibilities is impaired by intoxicating substances or other cause that endangers health or safety (*OHS Regs*., Sec. 26(2))
Nova Scotia	None
Ontario	(1) No person under the influence of, or carrying, an intoxicating alcoholic beverage, drug or narcotic substance may enter, be on or knowingly allowed to enter, or be on, a **mine, mining plant or oil rig**—exception for workers with prescriptions who can provide medical proof of ability to work (OHS, respectively, *Mines & Mining Plants*, Sec. 15; *Oil & Gas-Offshore Reg*., Sec. 64)
Prince Edward Island	None
Québec	Employer **at construction site** must ensure no worker works while his/her faculties are impaired by alcohol, drug or other substance (OHS, *Safety Code for Const. Ind.,* Sec. 2.4.2.(e))
Saskatchewan	Employer or contractor **at mining site** must take all reasonable steps to ensure that no person whose ability to work safely is impaired by alcohol, drugs or other substance is allowed to work at mine (OHS, *Mines Reg., 2003,* Sec. 21)
Northwest Territories	*Ban on worker entering or staying at work site if impaired, i.e., have weakened judgment or physical abilities due to fatigue, illness, alcohol or drugs that harms his/her normal abilities to work safely *Employer duty to prevent worker from entering or staying at site if impaired *Workers' duty to notify employer that they're impaired *Employer duty to implement written impairment policy (*OHS Regs*, Sec. 35.1)
Nunavut	None
Yukon	None