

Coronavirus: Information Bulletin for Employers



As of today's date, January 28, 2020, more than 100 people have died from the Wuhan coronavirus – a novel (new) coronavirus – and more than 4,500 others have been infected. A warning has been issued to travellers to avoid all non-essential travel to China and cases of infection have been reported in countries other than China, including Japan, South Korea, Taiwan, Thailand and the United States.

In Canada, a couple of cases of infection have been identified in the Toronto area. A number are suspected in Quebec. One case has now been presumptively confirmed in British Columbia.

Concerns arising out of the potential spread of the coronavirus in the Lower Mainland and elsewhere in BC have been raised with members of our firm over the last few days. This information bulletin addresses those concerns. The situation is developing very rapidly and the views expressed in this bulletin may change to address future developments.

We will be available to provide support to you and your team as or when further information becomes available and you take action to protect your employees and workplaces.

A. BC Centre for Disease Control

The BC Centre for Disease Control (BCCDC) has information regarding the coronavirus and early detection and containment of the disease available online: <http://www.bccdc.ca/about/news-stories/stories/2020/information-on-novel-coronavirus>.

The BCCDC has identified the following symptoms of infection: fever, coughing, sore throat, headache, breathing difficulties, and pneumonia in both lungs.

The BCCDC has recommended that if an individual has been travelling and becomes ill, he or she should tell a healthcare provider about: his or her recent travel and symptoms as well as if he or she had "close contact with a sick person" or "another high risk-exposure such as direct contact with animals".

B. Workplace protection measures

Employers in BC have an obligation to provide a safe workplace under the *Workers Compensation Act* and the *Occupational Health and Safety Regulation*. This includes taking reasonable and responsible measures to protect employees from a contagion like the coronavirus.

Given the medical and other information currently available, we recommend the following:

- If an employee is exhibiting any of the reported symptoms of infection and has recently travelled to a place where cases of coronavirus have been identified such as Wuhan, China, he or she should be denied access to the workplace and sent home and strongly advised to seek immediate medical attention.
- If an employee is asymptomatic but has been in direct contact with an individual who is symptomatic, he or she should also not be permitted to be at work and should be told to consult with his or her healthcare provider immediately.

Employers should communicate with employees in a proactive and reassuring way to provide any necessary support and help prevent panic in the workplace.

Hand sanitizing units should be placed in common areas in the workplace and disinfectant wipes should be made readily available to all employees.

Employees should be encouraged to wash their hands frequently – with soap under warm running water for at least 20 seconds. They should also be reminded to cover their mouth and nose with a flexed elbow when coughing or sneezing or, alternatively, to use a tissue and then throw away the tissue and wash their hands. Finally, employees should be warned to avoid close contact with any individual who has a fever or cough and/or is exhibiting breathing difficulties.

C. Work refusals

Under the workers' compensation regime in BC, employees have the right to refuse to work in dangerous or unsafe circumstances or conditions and cannot be disciplined for exercising their right in that regard.

If an employee is reluctant or refuses to attend at work, approach the matter on a case-specific basis and deal with the situation on its merits.

Employers should generally err on the side of caution to avoid putting their employees at risk. They should consider whether: any individual in the workplace is symptomatic and/or there is evidence of recent travel to a place where cases of coronavirus have been identified or evidence of direct contact with an infected person.

Information provided by health authorities like the BCCDC can be instructive in assessing the legitimacy of a work refusal.

D. Prohibited discrimination in employment

Employees are protected from prohibited discrimination in employment under human rights law.

Employers should take steps to ensure that no employee is subjected to discrimination resulting out of a misplaced perception that he or she is the carrier of a communicable disease. During the outbreak of SARS in the early 2000s, members of the Asian community were wrongly singled out as potential carriers of the disease because of the unfounded perception that SARS was an "Asian disease".

Any employee who is subjected to this sort of unlawful stereotyping may have a claim for prohibited discrimination in employment, be it on the ground of perceived disability, race, colour, ancestry, place of origin or otherwise.

E. Employee absences from work

In order to prevent the spread of the coronavirus and contain the disease, employees must know in no uncertain terms that they will not be penalized, financially or otherwise, if they are ill or have reasonable grounds to suspect they are ill and do not attend at work.

Employers may consider the following options to compensate an employee who is denied access to the workplace and sent home or voluntarily enters quarantine for legitimate reasons:

- The employee should be provided with the opportunity to claim benefits under a sick leave or short-term disability policy if such benefits are available under the terms of policy.
- If such benefits are not available or the employee does not wish to claim them, he or she should be permitted to use vacation time or days in lieu or take a leave of absence without pay.

Employment Insurance (EI) sickness benefits may also be available to any employee who is employed in insurable employment, meets the specific criteria for receiving EI sickness benefits, has had a reduction in his or her normal weekly earnings by more than 40 percent, and has accumulated at least 600 hours of insurable employment during the qualifying period: <https://www.canada.ca/en/services/benefits/ei/ei-sickness/qualify.html>.

Statutorily-protected leaves of absence may also be available to employees in BC under the *Employment Standards Act* or federally under the *Canada Labour Code*. In BC, for example, an employee can take critical illness or injury leave to care for a family member whose health has significantly changed as a result of an illness or injury and the life of the family member is at risk. The employee can 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. Family responsibility and compassionate care leaves are also available under provincial employment standards legislation.

Employers should evaluate whether any aspect of the business or operation can be suspended for a temporary period of time. They should also consider whether paid job functions can continue to be performed on a temporary basis through remote work or telecommuting or another workable arrangement.

F. Conclusion

In the coming days and weeks, employers will be faced with a unique and difficult challenge as they try to take responsible action to prevent the spread of the coronavirus and contain the disease. They will have to strike a delicate

balance between their obligations to provide a safe workplace and treat employees appropriately and reasonably and with the respect and dignity to which they are entitled.

If you and your team have any questions regarding the issues raised in this bulletin and how they might affect you or your organization, please do not hesitate to contact the authors or any other member of our firm.



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James is a founding member and partner* at Roper Greyell. He practises in all areas of employment and labour law and acts as a mediator in workplace law disputes.

James is known for providing practical, cost-effective and long-lasting solutions to difficult employment, labour and workplace challenges, including those related to wrongful or constructive dismissal actions, restrictive covenants, compensation disputes, disability and attendance management, and discipline and discharge in the unionized environment. He has represented employers and senior employees before all levels of court and a wide range of workplace-related administrative tribunals in British Columbia.