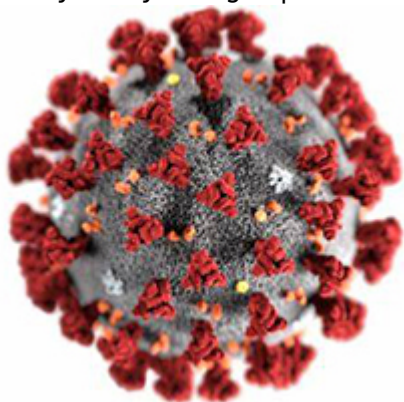


Coronavirus Outbreak: What Canadian Employers Can Do

written by Rory Lodge | March 6, 2020



As most already know, 2020 began with a global health outbreak: the coronavirus, or in medical terms, “2019-nCoV.” Although the government of Canada has indicated the risk of further spread to and within Canada remains low, and as the situation evolves daily, there are a number of important points employers should keep in mind regarding leave entitlements, the duty to accommodate, and the right to refuse work and overtime.

Leaves

In the coming months, employers could see a rise in workplace leaves, namely if the current situation were to escalate. In all jurisdictions, employers could see employees going on leave, either unpaid or with pay, or on short-term disability, if provided by a collective agreement, an employment contract, or a company’s leave of absence policy. Moreover, under employment standards legislation, employees are entitled to a number of leaves that could be triggered. In Alberta, British Columbia, and in Ontario, these include:

Alberta	British Columbia	Ontario
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<p>Sick leave: Up to 16 weeks of unpaid sick leave</p> <p>Leave for personal and family responsibilities: up to five days of unpaid leave</p> <p>Critical illness of child leave: 36 weeks of unpaid leave if the virus has caused an employee's child to become critically ill</p> <p>Compassionate care leave: 27 weeks of unpaid leave in the event of a seriously ill family member where there is significant risk of death</p>	<p>Critical illness or injury leave to provide care or support to a critically ill family member: (i) up to 36 weeks for a family member under 19 years old, and (ii) up to 16 weeks for a family member who is 19 years old or above</p> <p>Family responsibility leave: Up to five days of unpaid leave in order to meet responsibilities relating to the care or health of a child in the employee's care or another member of the employee's immediate family</p> <p>Compassionate care leave: Up to 27 weeks of unpaid leave to provide care or support to a family member with a serious medical condition creating significant risk of death</p>	<p>Sick leave: Three days of unpaid sick leave</p> <p>Family responsibility leave: Three days of unpaid family leave</p> <p>Family caregiver leave: Eight weeks of unpaid leave to care for a family member who has a serious medical condition</p> <p>Critical illness leave to take care of a critically ill minor child who is a family member: Up to 37 weeks of unpaid leave to take care of a critically ill minor child who is a family member</p> <p>Critical illness leave to take care of a critically ill adult family member: Up to 17 weeks of unpaid leave to take care of a critically ill adult family member</p> <p>Family medical leave: 28 weeks of unpaid family medical leave if a family member has significant risk of death occurring within a period of 26 weeks or less</p>
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For federally regulated employees operating in the private sphere, employees are entitled to:

- **Personal leave:** Five days of leave to, among others, treat an illness or carry out responsibilities related to the health or care of any family member, the first three days being paid to employees with a minimum of three months of service
- **Medical leave:** A leave of absence without pay of up to 17 weeks as a result of, among others, personal illness
- **Compassionate care leave:** Up to 28 weeks of unpaid leave within a 52-week period to look after a family member who has a serious medical condition with a significant risk of death
- **Leave related to critical illness:** Up to 37 weeks of unpaid leave to provide care or support to the child, and up to 17 weeks of unpaid leave to provide care or support to the adult

Employers should note that employee eligibility for these leaves varies depending on the nature of the leave and the jurisdiction. In addition, some leave provisions also impose varying requirements on employees to provide their employers with proper notice and supporting documentation. Moving forward, employers should remain alive to these legal requirements.

Accommodating employees

In addition to the above-noted leaves, employers may be required to accommodate employees under human rights legislation if they are suffering from an illness or if a family member needs care. This could, for example, include allowing employees to work remotely or under a modified schedule, or providing time off.

Employee refusals

In all jurisdictions, employees have the right to refuse work if they have reasonable grounds to believe their workplace is dangerous or unduly hazardous from a health and safety perspective. In addition, some jurisdictions allow employees to refuse to work overtime in certain circumstances. For example, employees who work for a federally regulated employer are entitled to refuse overtime to tend to family-related obligations, which can include taking care of a sick family member.

Take-aways

In light of the above, here are some best practices employers may consider:

- **Keep the workplace safe and healthy:** Encourage employees to wash their hands often, especially after coughing, sneezing, or blowing their noses. WorkSafeBC has advised that hands should be washed with soap and water for at least 20 seconds, or, if soap and water are not available, with an alcohol-based hand sanitizer. It has also advised to avoid touching the eyes, nose, and mouth with unwashed hands, and avoid close contact with people who are sick. Finally, employers should ensure frequently touched surfaces are clean and disinfected.
- **Update all relevant policies:** Employers should ensure all policies related to leaves, managing absenteeism and providing accommodation in the workplace are up to date. This will facilitate managing employees who do not or refuse to report to work. Importantly, if employees do not come to work, employers should consider whether that time will be compensated. When reviewing such policies, employers should be cautious about unilateral changes to working conditions that could amount to constructive dismissal, particularly where they go beyond what is reasonably necessary to provide a safe and healthy work environment.
- **Respond to symptomatic employees properly:** If an employee is exhibiting the typical symptoms of the coronavirus, or is asymptomatic but has been in contact with an infected person, he or she should not be allowed access to the workplace and should be sent home and advised to seek medical advice as soon as possible from his or her primary-care provider, local public health office, or by calling 811, or by any other means recommended by the federal or provincial government.
- **Consider alternative working options:** If possible, to reduce the risk of transmission, employers may want to consider whether alternative work arrangements can be made to allow employees to work from home or outside the traditional workplace for a set period of time.
- **Promote awareness:** To properly respond to the coronavirus' evolving status, employers should ensure management and employees are properly trained on what health and safety measures should be strictly observed at this time. Moreover, employers may also wish to advise employees on what to do should they have flu-like symptoms in the workplace.
- **Protect privacy:** Should employees say they or a family member is sick, this information should be kept confidential. Employers should ensure all employee personal information be safely kept, disclosed only when legally permissible, and destroyed in a reasonable timeframe.
- **Stay informed:** Employers should continue to stay updated on any new information

published by public health authorities, and act accordingly. In the meantime, any travel to high-risk areas should be discouraged.

We will keep you updated as new information is made public. For employers operating in Quebec, please read our legal update for that jurisdiction [here](#).

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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