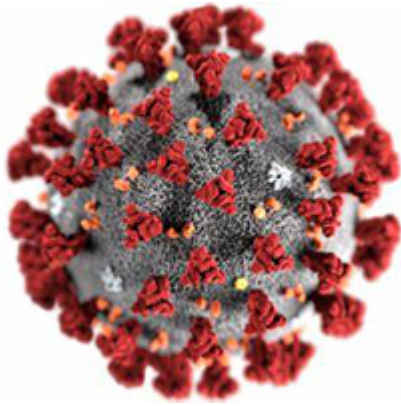


COVID-19 And The Workplace – Your Legal Obligations As An Employer And Employee During A Pandemic



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Since the outbreak of the novel coronavirus known as COVID-19, global updates have been flooding our news feed – whether it be which politician has been tested positive for the virus or what sport and music event has announced they are postponing or cancelling, we are all in one way or another affected by this pandemic. This virus has altered the way we approach our regular routines. World-wide, it seems that people are rethinking daily tasks – could this be the end of the handshake?

In general, we have not been severely impacted in Canada. As of March 13, 2020, 163 cases of COVID-19 have been confirmed in Canada; 64 of which are in BC. The risk to British Columbians remains low, but as we have seen from other countries, this could change rapidly.

News reports of quarantines, business closures, cancellations of public events and stark photos of empty cities in countries like China, and more recently Italy, are available seemingly on-demand. Observing these constant global updates can create a sense of anxiety, but Canadians must focus on what's most important: minimising the further spread of COVID-19 and taking responsible action to contain the virus. **#flattenthecurve**

Tough Business Decisions

Legally, employers have a duty to provide a safe working environment to employees, and in many cases, it may fall to employers to make tough business decisions to ensure the safety of workers and customers. For example, some businesses have begun cancelling rental or delivery programs during the COVID-19 outbreak. In other cases, employers (often tech-based employers like Amazon, Facebook, Microsoft, Google, Twitter, and Square) are urging their employees to work from home in an effort to minimize opportunities to spread the virus.

Not all employers are set-up to allow for remote work. If the situations in China and Italy serve as the proverbial canary in the coal mine, many employers

may soon be faced with difficult decisions of balancing business needs with worker safety and worker financial security.

We recognize these are difficult times for both employers and employees alike and hope that the general guidance and information below provides some useful insights.

Considerations for Employers

Physical steps around the office

1. Put up posters that encourage staying home when sick, cough and sneeze etiquette, and hand hygiene at the entrance to your workplace and high-traffic areas such as the kitchen and boardrooms.
2. Provide soap and water and alcohol-based hand rub (ABHR) in the workplace. Ensure that adequate supplies are maintained. Place ABHR in multiple locations including boardrooms to encourage hand hygiene.
3. Have cleaning supplies, such as disinfectant wipes, readily available around the office. Provide spray bottles with a bleach solution to disinfect surfaces and objects. Ask cleaning staff to take special attention on doorknobs, toilets, photocopiers, and other high-touch surfaces.
4. Encourage social distancing strategies by limiting conference travel and in-house meetings to essentials only.

An employee has COVID-19 and cannot work – do I have any recourse?

Employers should ensure they comply with any obligations they have to provide sick leave either under employment contracts, in personnel policies, or under the Employment Insurance (EI) scheme.

EI sick leave benefits are available for eligible workers with no or limited paid leave benefits through their employers. They can apply for up to 15 weeks of employment insurance if they cannot work for medical reasons, such as being quarantined due to COVID-19. Normally, an eligible worker has a one-week waiting period before payments begin – meaning, if you are quarantined for two weeks, you would only get EI for one of those two weeks.

However, on March 11, 2020, Prime Minister Justin Trudeau announced the government has eliminated the waiting period entirely. Eligible workers are now able to get EI benefits for an entire 14-day quarantine.

Additionally, the BC Health Minister has asked employers to excuse employees who are ill or required to self-isolate for sick leave without requiring a doctor's note, as the effort to minimize the steps required of a person who needs to go into quarantine.

Employers may also want to revisit their paid sick leave and/or vacation policies in an effort to encourage those with symptoms or who otherwise fall within a riskier category (due, for example, to potential recent exposure from travel or community contact with a person who has the virus) to stay home. Employees without any options for paid leave in connection with COVID-related illness or exposure may be more likely to attend work, potentially contributing to increased infection rates and, ultimately, greater safety risk and operational complications. Employers of course will need to be vigilant in

monitoring and managing any potential abuse of paid sick leave programs during this time and, in appropriate cases, may request evidence to substantiate a COVID-related leave.

If you're an employer and need guidance on preparing ROEs for your employees for the purposes of EI benefits entitlements and/or reviewing or updating your sick leave policies, feel free to get in touch with us.

What if my employee isn't sick, but they have a sick child or family member?

Employees caring for a family member who has tested positive for COVID-19 will have to subject themselves to the 14-day quarantine as they have been in close contact with the family member.

Under the BC *Employment Standards Act*, employers are obligated to provide up to 5 days of unpaid family responsibility leave per year for the care, health or education of a member of an employee's immediate family. Serious illness of a family member can lead to longer unpaid leaves: up to 27 weeks of compassionate care leave where the family member has a serious medical condition with a significant risk of death, and up to 16 or 36 weeks of critical illness or injury leave, depending on the age of the family member.

How do I know if an employee may pose a safety concern at my workplace, for example, for having returned from international travel, having COVID-like symptoms or having been in contact with someone who is infected – can I ask them for this information?

Employers are generally entitled to require employees to provide limited personal information that is reasonably necessary to manage the employment relationship. In times of heightened public health concerns, including pandemics, an employees' privacy rights can be subject to reduced protection, in the interests of public health and safety. For safety reasons, an employer is entitled to information to permit them to know whether an employee falls within a category of person who is at increased risk of infection and/or transmission of COVID-19. Such information would include:

- whether the employee has recently engaged in international travel, and if so, when;
- whether the employee has had any contact with individuals who have been infected with COVID-19, and if so, when and whether such individuals have had contact with any other employees;
- whether the employee exhibits any symptoms of infection; and
- whether an employee has tested positive for COVID-19, and if so, when.

Additionally, employers may also request information from employees related to its legitimate needs for workplace/business planning in light of potential or actual reductions in businesses or services that may affect employees, including the closure of schools and daycares. To be able to plan for the potential absence of an employee to address lack of school/childcare, an employer may request basic information from an employee regarding:

- the kind of childcare an employee utilizes (e.g. school, daycare or nanny);
- whether any closures have been announced or contemplated; and

– whether the employee has alternative childcare arrangements in the event of a closure, and if so, their scope (e.g. timing and frequency).

All of the information above would be considered, in today's pandemic climate, to be reasonably necessary to an employer to manage the employment relationship.

In every case, it is important for an employer to limit the collection of personal information to the minimum amount reasonably needed to serve the employment-related purpose for which it was collected.

An employee returned from travel, has COVID-like symptoms or has been in contact with someone who is infected – can I tell them they can't return to work?

In light of the BC Government's request that all individuals returning from international travel self-quarantine for 14 days, employers may rely on this to prevent an employee who has engaged in international travel coming to work for that period. As noted above, where remote working arrangements are not available, employers should encourage employees to apply for medical EI benefits and/or may wish to provide an amount of paid leave time to encourage compliance and disclosure of international travel and self-quarantine.

The Provincial Government also stressed that if an employee exhibits symptoms or otherwise is considered a risk for transmission (e.g. for having been in contact with someone who is infected), the employee should be referred to appropriate health authorities to determine the need for testing. It is prudent to prevent such an employee from attending work until such time that the risk of infection and/or transmission has been identified and steps taken to address it. Again, remote working arrangements and, where not available, facilitating access to medical EI benefits and/or paid sick leave are measures that an employer may wish to consider in the interests of employees making full disclosure and ensuring workplace safety and public health.

As with all medical conditions in which there is a valid concern with workplace safety associated with a return to work, in appropriate situations involving COVID-19, an employer may also require that an employee provide medical clearance before returning to work. However, this must also be balanced against the need to be conservative with precious health care resources at this time and not overburdening the health care system with requirements for medical clearance certificates.

During the pandemic, an employer would be well-advised to take steps to facilitate and/or improve remote working arrangements and may wish to consider updating or revising paid sick leave policies. As we noted-above, the absence of means for an employee to pay their bills while in quarantine or while sick may simply encourage employees to not report travel, symptoms or connections that would require quarantine or testing, leading to greater infection rates and threats to workplace safety and operations and broader public health.

What an employer should not do, however, is make any assumptions about an individual due simply to their ethnicity or place of origin. For example, employers should not assume that individuals who may originate from or be married or otherwise associated with a person from a country with a higher infection rate are at a higher risk of transmission and treat them differently.

Doing so engages human rights considerations that must be avoided. In all cases, employers need to base their decisions on objective facts and criteria from public health authorities, and not on stereotypes or assumptions based solely on a person's ethnicity or place of origin.

If you have any questions about managing your workforce during this important time of public health and safety, do not hesitate to reach out to one of our workplace law specialists.

Considerations for Employees

Preventative measures for employees

1. Wash your hands often with soap and water for at least 20 seconds. Using soap and water is the single most effective way of reducing the spread of infection. If a sink is not available, alcohol-based hand rub (ABHR) can be used to clean your hands as long as they are not visibly dirty. If they are visibly dirty, use a wipe and then ABHR to effectively clean them.
2. Wipe down surfaces with disinfectant wipes or bleach spray often, especially the high-touch surfaces, such as: keyboards, mouse, desks, and phones.
3. Avoid touching your face, nose, mouth and eyes. Avoid making contact with high-touch public surfaces, like door handles, elevator buttons, and light switches, with your bare hands. Use your sleeve or tissue as protection.
4. Stay home if you're sick! If you're showing symptoms of COVID-19, place yourself in a 14-day quarantine.

I am experiencing COVID-19 symptoms – what do I do?

If you have symptoms such as fever, cough or difficulty breathing and have travelled outside Canada or may have been exposed to someone who has COVID-19, avoid contact with others. You should contact your health care provider as soon as possible or call 811, and prior to your visit, you should call so they can arrange for a safe environment for assessment.

When being assessed, you will be asked to provide the following information:

- your symptoms;
- where you have been travelling or living;
- if you had direct contact with animals (for example, if you visited a live animal market); and
- if you had close contact with a sick person, especially if they had a fever, cough or difficulty breathing.

More info provided by the HealthLinkBC and the World Health Organization.

I have travel plans – what risks do I face with my employment?

Your employer cannot prevent you from travelling. However, it would not be surprising if and when your employer requests an assessment on your ability to return to the workplace upon your return to BC. Your employer may require medical clearance or request that you self-quarantine for at least 14 days before returning to the workplace.

As of March 9, 2020, cruise-ship travel is considered to be a high-risk

environment for transmission, and the Government of Canada is advising that Canadians avoid all travel on cruise ships until further notice.

Final Thoughts

In coming weeks, employers will face difficult decisions as everyone tries to minimize the further spread of COVID-19 and take responsible action to contain the virus. Employers have to balance their obligations to provide a safe and healthy workplace and to treat their employees reasonably and respectfully.

In reality, the transmission of this virus is widening, and it pushes employers and employees to consider steps they can take to prevent further infection – including staying home from work or working remotely. As we prepare for the next stage of this pandemic, we recommend employers to think proactively about their physical office space and creatively about alternate ways of work, and we encourage employees to take proper preventative and medical measures.

Resources: Public Updates on COVID-19

HealthLinkBC – Public Health Alerts
The Government of Canada's Public Health Agency
Infection Prevention and Control Canada (ipac)