

Preventing The Spread Of COVID-19 In The Workplace: Key Considerations For Alberta Employers



By Janna Young and James Jeffrey of Burnet, Duckworth & Palmer LLP

As of March 9, 2020, there are over 109,000 reported cases of coronavirus disease 2019 (**COVID-19**) worldwide, with over 75 cases in Canada. All levels of government in Canada are working together to manage the virus and take appropriate preventative measures. But what should employers be doing?

Many legal issues arise in the context of contagious diseases in the workplace. This article will take a high-level approach to legal issues engaged by COVID-19 for Alberta employers. Any employer dealing with specific issues relating to communicable diseases in the workplace should seek legal advice, as various factors, such as the employer's particular industry, workplace policies, and collective agreements or employment contracts, will impact the optimal response.

Occupational health and safety

Employers in Alberta have a legal obligation to ensure the health and safety of their workers and visitors in the workplace. For provincially regulated employers, many of these obligations are set out in the *Alberta Occupational Health and Safety Act (OHSA)*, and for federally regulated employers, the *Canada Labour Code (CLC)*. Among other things, each is aimed at the prevention of workplace illnesses and diseases, such as COVID-19, and ensuring workers have the right to be informed of such workplace hazards, to express health and safety concerns, and to refuse dangerous work, and to not be subject to discriminatory action for exercising those rights.

What preventative measures should employers take?

Alberta employers are not only obligated to respond to health and safety issues, but to take action to prevent them as well. The Public Health Agency of Canada and Alberta Health Services each recommend a number of common-sense measures to prevent the spread of COVID-19 and other illnesses:

- advise employees to stay home if they are feeling ill;

- remind employees to regularly wash their hands with soap and water for at least 20 seconds, and to apply alcohol-based hand sanitizer if soap and water are unavailable;
- remind employees to keep their hands away from their mouth, nose, and eyes; and
- clean frequently touched surfaces, shared workstations and equipment.

Alberta employers also have a legal obligation to inform workers of circumstances affecting their health and safety at work. That obligation would include information regarding the risk of contracting the virus at work, and the measures implemented by the employer to control or eliminate that risk.

Alberta employers also have a legal obligation to inform each worker of his or her *own* legal duties under occupational health and safety legislation. For example, workers in Alberta must take reasonable care to protect the health and safety of themselves and their coworkers at work, which includes the obligation to report anything hazardous in the workplace.

Employers should utilize the website links included at the end of this article in meeting their obligations.

What if an employee refuses to work due to fear of contracting COVID-19?

Alberta employees generally have a right to refuse work that they reasonably believe to be unsafe. This would include working in an environment where they are at a high risk of contracting a serious illness or disease, such as COVID-19.

When a worker refuses to work for health or safety reasons, he or she must report the refusal and reasons for it to the employer. The employer is then obligated to conduct an investigation and, if necessary, take steps to eliminate the danger. Determining whether an employee's belief is "reasonable" may include relying on credible medical information, such as information from the Public Health Agency of Canada, Alberta Health Services, and WHO.

Employers are encouraged to exercise prudence, even in cases where work refusals appear patently unreasonable. For example, certain mental illnesses, such as specific phobias like "germophobia", are characterized by excessive fear and anxiety, and related behavioural disturbances. Workers with such conditions can have intense fears of contracting contagious diseases and may require accommodation in the context of COVID-19.

The circumstances surrounding the spread of COVID-19 also present an increased risk of workplace harassment. Alberta employers are legally obligated to make reasonable efforts to address, and employees must refrain from causing or participating in, harassment in the workplace. Harassment includes disparaging comments about a person's race, ancestry, or place of origin.

What if an employee recently returned from or is planning to travel to a high-risk region?

Employers generally do not have control over how workers spend their scheduled vacation or holiday time; however, employers should encourage workers to

reschedule personal travel to high-risk regions for the foreseeable future. If a worker is scheduled to travel to an affected area for work, alternatives should be considered, such as the use of teleconferences or virtual meetings instead of in-person meetings. Employers can keep up to date on travel advisories by visiting the Global Affairs Canada website.

Care must be taken when dealing with an employee who has recently returned from an affected area. On the one hand, the employer has an obligation to ensure the health and safety of its workers; but the employer must not act in a way that is discriminatory, violates privacy legislation, or otherwise breaches a worker's rights. Employers are encouraged to meet with workers who have recently returned from an affected area to determine whether they are experiencing respiratory symptoms such as headache, cough, sore throat, fever, or shortness of breath. If the employer decides to put an employee on leave to safeguard the workplace, it is recommended such leave be paid unless the Alberta or Federal Government has required the worker's quarantine, in which case the worker may have access to sickness benefits under the Employment Insurance Act. The employer should ask the worker to provide medical documentation before returning to work if appropriate.

To determine whether an employee is sick or might have contracted a communicable disease, the employer will likely need to collect medical information, and should be cautious in doing so. Collection of a worker's medical information typically involves at least the following:

- explaining to the worker the purpose for which the information is collected;
- providing the name and position of a person who is able to answer the worker's questions about the collection;
- obtaining the worker's consent to the collection, use, or disclosure of that information;
- following up on any information received if further details are required (which may require additional consent from the worker); and
- following up with the worker if the information is not provided.

Employers may disclose personal information only for purposes that are reasonable and only to the extent necessary for meeting the purposes for which the information is disclosed. Generally, safeguarding the workplace does not include disclosing a worker's private information to other workers.

Workplace leaves

Employers may see a rise in leave requests, whether to take care of a worker's own health or the health of a family member. Workers may be entitled to paid or unpaid leaves under applicable employment contracts or collective agreements. In addition, the following minimum standards apply in Alberta:

Provincially regulated workplace

Long-term illness and injury leave (unpaid)

- up to 16 weeks per calendar year
- must provide notice ASAP
- must provide medical certificate

- must have at least 90 days' service

Compassionate care leave (unpaid)

- up to 27 weeks per calendar year
- must give 2 weeks' notice
- must provide medical certificate
- must have at least 90 days' service

Critical illness of family leave (unpaid)

- up to 36 weeks per calendar year if family member under 18; 16 weeks if over 18
- must give 2 weeks' notice
- must provide medical certificate
- must have at least 90 days' service

Personal and family responsibility leave (unpaid)

- up to 5 days per calendar year
- must give notice ASAP
- no proof required
- must have at least 90 days' service

Federally regulated workplace

Medical leave (unpaid)

- up to 17 weeks per calendar year
- must provide 4 weeks' notice unless valid reason why 4 weeks cannot be given
- must provide medical certificate if absence 3 days or longer

Compassionate care leave (unpaid)

- up to 28 weeks per calendar year
- must give notice ASAP
- must provide medical certificate

Critical illness of family leave (unpaid)

- up to 37 weeks per calendar year if family member under 18; 17 weeks if over 18
- must give notice ASAP

Personal and family responsibility leave (paid/unpaid)

- up to 5 days per calendar year
- if at least 3 months' service, first 3 days paid; if not, all unpaid
- must give notice ASAP

Generally, an employer cannot dismiss or lay off an employee who is on any of the leaves described above.

Employees affected by COVID-19 may also qualify for Employment Insurance sickness benefits. During the outbreak of Severe Acute Respiratory Syndrome

(**SARS**), for example, Human Resources Development Canada amended the *Employment Insurance Regulations* to respond to SARS-related claims. A medical certificate was no longer required, and the two-week waiting period was waived, for workers who had received a recommendation from a public health official and were asked by their employer to self-quarantine. The law remains the same today and would likely apply to situations involving COVID-19.

Duty to accommodate

An employee who has contracted COVID-19, or who an employer suspects may have contracted COVID-19, may be deemed to have a disability entitling him or her to workplace accommodation. For example, in the early 2000s, the Ontario Human Rights Commission classified SARS as a disability, which meant Ontario employers had a duty to accommodate employees with SARS or who were exposed to SARS.

While a “transient illness” such as the common cold or flu will not ordinarily constitute a disability under relevant human rights legislation, use of sick leave may demonstrate a frailty of health which can result in a disability. As such, employers are advised to accommodate workers they believe may have been exposed to an infectious disease like COVID-19.

Takeaways for Alberta employers

- Respond to symptomatic workers discreetly and in a non-discriminatory manner
- Maintain a safe and healthy workplace by sending sick workers home, encouraging workers to maintain proper hygiene, and cleaning frequently touched surfaces
- Update relevant policies and, if not already in place, consider developing a communicable illness policy and business continuity plan
- Designate an individual or team to monitor COVID-19 in the workplace, communicate with workers, and coordinate prevention efforts
- Encourage employees to regularly consult the following websites:
 - World Health Organization
 - Public Health Agency of Canada
 - Government of Canada Travel Health Notices
 - Alberta Health
 - Alberta Health Services
 - Alberta Occupational Health and Safety
 - Alberta Health Link: employees can call Health Link (811 or 1-866-408-5465) if they have questions about their health