

Quiz: Employees at Heightened COVID-19 Risk Who Aren't Allowed to Work from Home



SITUATION

For eligible bachelor Sal Monella, staying home was a tough pill to swallow at first, especially on weekends. But as he learned more about COVID-19, Sal grew scared, especially because his asthma puts him at elevated risk of exposure. He asked for permission to work from home but the accounting firm he works for said no, assuring him that it's implemented all infection control measures recommended by public health authorities. But Sal is convinced that the general COVID-19 guidelines aren't enough to protect somebody with asthma and has made an executive decision: I'm not leaving this apartment until the pandemic is officially over. Now, Sal is considering his next move.

QUESTION

Which of the following options is/are available to Sal?

- A. Quitting his job and collecting EI and CERB benefits
- B. Going on unpaid COVID-19 leave
- C. Exercising his OHS work refusal rights
- D. Requesting accommodations from the accounting firm

ANSWER

- D. Sal's best option in the circumstances is to ask the firm to accommodate his disability.

EXPLANATION

Human rights laws require employers to accommodate employees with disabilities to the point of undue hardship. Asthma and respiratory conditions are clearly disabilities for which accommodations are due. Such accommodations may include allowing Sal to work from home to avoid COVID-19 exposure. If that would impose undue hardship and Sal absolutely has to work at the site, the firm may have to adopt additional safety measures that go beyond the current public health

guidelines to protect Sal, e.g., installation of physical barriers or a special ventilation system in or around his office and/or disinfecting the space every 3 hours. So, D is the right answer.

Why Wrong Answers Are Wrong

A is wrong because if Sal does leave it won't be due to layoff or termination but of his own decision to quit. And employees who voluntarily quit their job aren't eligible for EI employment or CERB benefits.

B is wrong because COVID-19 leave is for employees who *have to* miss work due to COVID-19, because they have the virus, are in self-isolation, forced to stay home to take care of sick family members or kids as a result of school or daycare closure. None of these situations apply to Sal.

C is wrong because Sal can't initiate an OHS work refusal unless he actually goes to work. However, at least one province, New Brunswick, has suggested that it would relax this rule for the COVID-19 pandemic, but only if the employer agrees to the process. So, barring further clarification, employees still have to follow the normal OHS refusal procedures and can't phone in their refusal.