COVID-19
Is Your Workplace Ready?

Presented by Erin R. Kuzz
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COVID-19 Globally

- COVID-19 originated out of Wuhan, China
- Has spread rapidly throughout the globe
- As of March 8, 2020
  - 105,586 confirmed cases globally
  - 80,859 in China
  - 24,727 outside China
  - 3,584 deaths
COVID-19 in Canada

- As of March 11, 2020
  - British Columbia- 39
  - Ontario- 36
  - Quebec- 4
  - Alberta- 14

- In Ontario, have run a total of 3394 tests
  - 465 currently under investigation
  - 2888 negative
COVID-19 Symptoms

- Many experience mild symptoms, similar to a common cold or flu
  - Fever
  - Cough (but no runny nose)

- More severe symptoms can mirror respiratory illness such as pneumonia
  - Difficulty breathing

- Currently no vaccine or treatment
COVID-19 Affected Areas

- Certain COVID-19 ‘hotspots’ identified by Government of Canada as ‘affected areas’
  - China, Hong Kong, Iran, Italy, Japan, Singapore, South Korea
- List of ‘affected areas’ will change with time
Legal Considerations

- Relevant ESA unpaid leaves:
  - **Sick Leave** (up to 3 days for personal illness, injury or medical emergency)
  - **Family Responsibility Leave** (up to 3 days for illness, injury, medical emergency or other urgent matter of a family member)
Legal Considerations

Relevant ESA unpaid leaves:

- **Family Medical Leave** (up to 28 weeks to care for or support family member suffering serious medical condition at significant risk of death within 26 weeks)

- **Family Caregiver Leave** (up to 8 weeks to care for or support family member suffering serious illness)
Legal Considerations

- Relevant ESA unpaid leaves:
  - **Critical Illness Leave** (up to 37 weeks to care for or support critically ill minor or 17 weeks to care for or support critically ill adult family member)
  - **Declared Emergency Leave** (if employee not performing duties as a result of an emergency per *Emergency Management and Civil Protection Act* or similar legislation)
Legal Considerations

- Relevant ESA unpaid leaves:
  - Employer has right to reasonable proof of need for leave (and specific medical information in relation to some leaves); consider waiving that in context of COVID-19
  - Consider strain on medical system and employee morale

- Collective agreement entitlements:
  - Ensure you comply with other leave entitlements under any CBA
Legal Considerations

■ Is COVID-19 a ‘disability’ under the Human Rights Code?
  □ Unclear at this time
  □ Cold and flu not treated as disability
  □ Brief period of illness suggests not, but associated ‘stigma’ and rarity suggests could be
  ■ May wish to err on side of caution and treat as disability
Legal Considerations

- Is employer required to pay employee off work ill with COVID-19?
  - Subject to sick leave plan or CBA requirement, NO
  - EI benefits may be available (including for employee caring for another or in quarantine by public health)

- Consider why people are off work
  - Do you want a disincentive to report illness?
Is COVID-19 covered by WSIA? YES

- However, worker must establish exposure at the workplace lead to diagnosis.
- Adjudicated through WSIB’s Occupational Disease & Survivor’s Benefits Program
- If absent due to COVID-19 anxiety, must show DSM diagnosis of anxiety or stress disorder, and work-related stressor was predominant cause

Difficult to establish
Legal Considerations

- Can employer require an employee to advise if suffering flu-like symptoms? YES
  - OHSA obligation to take reasonable steps to protect workers

- Can employer require an employee with symptoms to remain off work? YES
  - Can require they work from home (if possible) or if not, remain off until incubation period complete (currently 14 days)
Legal Considerations

- Can employer require an employee who has travelled to an ‘affected area’, or who may have come into contact with someone who has a possible or confirmed COVID-19 diagnosis, to remain off work? YES
  - For reasonable time
  - Consider ‘work from home’ or payment
Legal Considerations

- Can an employee refuse to work if they hold a bona fide concern a co-worker has been exposed? YES
  - Treat as any other health and safety work refusal
  - Employer must investigate (include joint health and safety committee member)
  - If employer determines no risk and employee continues to refuse, contact MOL
  - If MOL clears and employee continues to refuse, subject to discipline
Legal Considerations

- Can employer tell other employees about a co-worker’s COVID-19 diagnosis?
  - Medical information subject to specific privacy concerns
  - Unique circumstance may warrant some disclosure to protect health and safety
  - Disclosure should avoid identifying information about the individual, limit information only to what is necessary to take precaution and avoid spread
Practical Considerations

- Now is the time to decide, formulate and distribute your policies

- Task someone (or a team) in your organization with ownership to (a) monitor COVID-19 developments (including ‘affected areas’) and (b) administer your organization’s COVID-19 response policy
Practical Considerations for Policy

- Should employer require proactive reporting?
  - Flu-like symptoms?
  - Contact with someone who has suspected or confirmed case of COVID-19?
  - Travel to affected area?

- What to do in response to a report
  - 14 days out of workplace?
  - Work from home (is this possible?)
Practical Considerations for Policy

■ If employer requires employee to remain off work, is this paid?
  - If work from home, yes.
  - If cannot work from home, consider:
    ■ Sick pay? Check your policy
    ■ STD benefits? Check your policy
    ■ EI sick/quarantine benefits?
    ■ What if asymptomatic?
    ■ Cost of paying employee to stay at home vs. threat to enterprise if sick employee attends work
Practical Considerations for Policy

- Identify someone who will be responsible for keeping contact with employees off work.
  - Is there anything else you want to do to support employees?
    - Grocery delivery?

- What is the requirement to report if symptoms require COVID-19 testing?
  - Test results?
  - Report to whom?
Practical Considerations for Policy

- When to require a doctor’s certificate to return to work?
  - Only when tested for COVID-19?
  - Any time employee is off with flu-like symptoms?

- Health officials are asking employers not to require a medical note every time employee off work
Practical Considerations for Policy

- Employee travel
  - Non-essential business travel – suspend?
  - Who decides what is essential?
- No obligation to travel for business at all?
- What about non-work related travel?
  - Require employees to disclose travel plans?
- What to do if someone travels to affected area?
  - Hold out of work for 14 days on return?
Practical Considerations for Policy

- Visitors to your workplace
  - Should employer require disclosure if traveled to affected area, exposed to person with diagnosed or suspected case, or experiencing flu-like symptoms?
  - How will employer administer?
    - Send questionnaire in advance of visit?
    - Question immediately at entry?
  - Track all visitors for public health purposes
Practical Considerations for Policy

- Contacting your employees
  - Does employer have non-work contact information for all employees?
  - How will employer reach them if there is a public health emergency, they may have been exposed, or employer needs to immediately suspend operations?
  - Who is responsible for these decisions, and communicating with employees?
Parting Thoughts

- Plan now to be in best position to address a potential influx of COVID-19
  - Prepare policy
  - Train employees on the policy
  - Educate employees on proper hygiene
  - Consider operational supports required to work from home (if possible)

- For assistance, contact Sherrard Kuzz LLP
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