
COVID-19

Is Your Workplace Ready?

Presented by Erin R. Kuzz
to Canadian Manufacturers & Exporters
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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
 - <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/health-professionals/covid-19-affected-areas-list.html>

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?

Legal Considerations

- *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 we 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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