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Employers' legal and public health due diligence related to the coronavirus

As of March 11, 2020 the National Microbiology Laboratory has confirmed 33 positive cases of coronavirus (COVID-19), with 22 in Ontario, 21 in British Columbia, and two in Quebec. The COVID-19 outbreak is evolving daily. The situation and employers responses to it may need to evolve along with it. Employers are advised to remain abreast of developments and related official public health recommendations. The Public Health Agency of Canada publishes [COVID-19 outbreak updates](#) daily. The following is presented based on information currently known. Additional action items may be necessary, depending on the nature of the work being performed (for example, healthcare).

Employer Action Items

During the COVID-19 outbreak, employers face legal and official public due diligence, as well as government imposed travel restrictions. The specific obligations imposed upon employers under occupational health and safety legislation varies by jurisdiction, but the common theme is the general responsibilities of the employer to take reasonable action to ensure workplace safety. In addition to taking all steps reasonably required to protect employee safety, employers must also manage any workplace bullying or harassment related to the outbreak. Finally, employers must ensure that COVID-19 related workplace policies are in place and uniformly applied to all employees, and be careful that their employees do not engage in any behaviour that can be construed as stigmatizing or discriminating.

It is also important to respect employees' right to privacy to the extent possible while ensuring compliance with the employer's health and safety obligations.

Employees have certain entitlements, many of which entail employer action. It should be noted that employers with collective bargaining agreements must review those contracts prior developing and implementing COVID-19-related policies (either within their sick leave policies or as a stand-alone policy). CBAs may limit the terms of such employer policies or require joint review of policies. Further, an employer with a CBA may have obligations regarding the adoption of the policy or its terms.

Specifically, employers will want to ensure they are considering the following items:



Occupational Health and Safety

Under occupational health and safety legislation, employers are required to take reasonable action to ensure the safety of workplaces.

Employers should develop policies, protocols or communication that introduce ways to prevent the spread of the virus, such as proper handwashing technique, proper technique for coughing or sneezing, refraining from shaking hands, and protocol for not reporting to work if experiencing symptoms of a respiratory illness. Relevant and effective communication to employees is important.

To remain in compliance with the regulation employers should continuously track COVID-19 developments and official public health notices and remind their employees to adhere to these recommendations.

Employers should consider providing access throughout the workplace to hand sanitizer that contains at least 60% alcohol.

Multinational corporations may have a duty to protect their international workforce under local occupational health or other relevant legislation, and are advised seek legal advice, while following WHO guidelines along with the official public health guidelines of the countries they operate in.

Statutory leaves, social benefits, and other legal employee entitlements

Employees have certain unpaid leaves, social benefits, and other legal entitlements that they may claim as a result of the COVID-19 outbreak. These entitlements are detailed below.

Unpaid statutory leave

Employers must be prepared for employees' claiming unpaid statutory leave entitlements during the COVID-19 outbreak. Employees affected by the coronavirus (either directly, or indirectly because of an affected family member) may be eligible for certain unpaid statutory leaves provided for by the applicable employment standards legislation.

Statutory unpaid leaves vary by province. Ontario's Employment Standards Act, 2000 (ESA), for example, provides for: sick leave, family responsibility leave, family medical leave, family caregiver leave, and critical illness leave. The ESA also provides for emergency leave that may apply if the COVID-19 outbreak

turns into a global pandemic, and an emergency is declared under the Emergency Management and Civil Protection Act.

Comparable statutory leaves are provided for by employment standards legislation across other provinces, such as the Alberta's Employment Standards Code, British Columbia's Employment Standards Act.

Employment Insurance Short-term Disability Benefits

Short-term disability benefits, referred to as sickness benefits, are provided from the federal Employment Insurance (EI) program for all provinces, including Québec. EI sickness benefits are paid to individuals who are unable to work due to sickness, injury, or quarantine. To be eligible for sickness benefits, the insured must show a decrease in regular weekly earnings of more than 40 per cent. The insured must have also worked 600 hours in the previous 52 weeks or since last filing a short-term disability claim.

Additionally, the insured must prove that he or she would be otherwise available for employment, and must provide a medical certificate stating how long the illness is expected to last. Eligible employees receive 55 per cent of their earnings up to a maximum of \$573 per week, for 15 weeks.

Employment Insurance waiting period being waived

Please note that the Canadian government has announced that they will waive the one week waiting period for employment insurance for those affected by novel coronavirus. The government has also announced that they are exploring methods for income protection for persons affected by COVID-19 that are not eligible for EI.

Workers' Compensation

Employees who are infected with COVID-19 due to their type of work, or in the course of their work, for example during essential business travel, may be entitled to workers' compensation benefits. In such cases, applications for workers' compensation benefits are the employer's responsibility.

Employees refusing to work or to travel for work

Under the occupational health and safety legislation, with some exceptions such as police, or certain healthcare providers, employees are entitled to refuse to work or to travel if they believe their health and safety is at risk due to workplace conditions.

During the COVID-19 outbreak some employees may refuse to work or travel for work. In this context, it is worth recalling that employer retaliation against an

employee exercising their right to refuse work is prohibited. In such cases, if an agreement cannot be reached between the employer and their employee, the work refusal process of the applicable jurisdiction must be followed by both parties.

Employers should make clear to their employees that there will be no adverse employment consequences resulting from the exercise of statutory entitlements.

Employees who are infected with COVID-19 due to their type of work, or in the course of their work, for example during essential business travel, may be entitled to workers' compensation benefits. In such cases, employer's have an obligation to submit required information in connection with an employee's applications for workers' compensation benefits.

International travel restrictions

Government's global travel recommendations

The official source of destination-specific travel information – [Travel Advice and Advisories](#), provides safety and security conditions, including possible health hazards and health restrictions, for 230 countries and/or destinations. As of March 6, 2020, the advisory is:

- Avoid all travel to 14 countries
- Avoid non-essential travel to nine countries
- Exercise high degree of caution in 96 countries
- Exercise normal security precautions in 111 countries

Special immigration measures

As COVID-19 continues to spread globally, travel restrictions and disruptions in service are resulting in certain foreign nationals experiencing difficulties with visa applications for temporarily and permanent entries to Canada.

As of February 29, 2020 special immigration measures, which were first introduced on February 7th for visa applicants from China, were expanded to applicants from Iran and South Korea.

The Immigration, Refugees and Citizenship Canada (IRCC) has put in place [special measures to assist temporary or permanent residents and applicants affected by COVID-19](#) related restrictions and disruptions in services.



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Workplace Bullying, Harassment and Discrimination

Employers must be mindful that the COVID-19 outbreak may result in bullying or harassment cases in the workplace. Employers would be well advised to remind their employees of their duty to comply with company anti-harassment and anti-bullying policies. Indeed, occupational health and safety regulations in many jurisdictions require employers to have anti-harassment policies and programs in place.

Furthermore, human rights legislation prohibits harassment and discrimination on protected grounds, such as disability, ethnicity, race, ancestry, and place of origin.

Employers must be vigilant not to engage in any conduct that might be construed as discrimination, especially in their employment, rewards, and/or promotion practices.

Additionally, employers should consider communicating to their employees that there will not be any adverse employment consequences from testing positive for coronavirus, for reporting symptoms to the public health authorities, or for exercising their statutory or contractual rights.