



MCKERCHER LLP BARRISTERS & SOLICITORS

HEALTH AND SAFETY OBLIGATIONS IN A PANDEMIC

Under *The Saskatchewan Employment Act* an employer has a general duty to “ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer’s workers”. Steps an employer may wish to implement to reduce transmission in the workplace are:

- Remind workers to practice proper cough and sneezing etiquette (into the bend of their elbow);
- Encourage additional hand washing by employees and provide hand sanitizing gels in key places (lunchrooms, washrooms, entrances, exits, etc);
- Ensure cleanliness of work surfaces (desks, phones, keyboards, doorknobs, railings, etc);
- Discouraging handshakes or other such greetings involving physical contact;
- Remind employees to avoid touching their eyes, nose and mouth with unwashed hands;
- If possible, increase distance between workstations;
- Provide good ventilation;
- Where possible, allow employees to work from home or consider staggered shifts to reduce contact.

HOW TO DEAL WITH ACTUAL OR SUSPECTED CASES OF COVID-19 IN THE WORKPLACE

In the event an employee has tested positive for COVID-19, they should not be permitted to return to the workplace and should seek appropriate medical attention and follow the recommendations of their treating physician or other health care professional, including with respect to when they are able to return to work.

If an employee has come into contact with someone who has tested positive for COVID-19 or suspects they may have contracted COVID-19, the employee should be sent home to self-isolate for 14 days in order to determine if symptoms develop.

If the employee is exhibiting symptoms of COVID-19 in the workplace but has not self-isolated of their own accord, the employer has the ability to send that employee home.

DISCLOSURE REQUIREMENTS

If an employee tests positive for COVID-19 the employer does not generally have an obligation to disclose that information to the Public Health Authority unless they operate or manage an establishment in which food is prepared or packaged for sale for human consumption. If an employee tests positive for COVID-19, the medical health professional administering that test would have the responsibility to disclose that information to the proper authorities.

With respect to disclosure requirements within the workplace, if an employee has COVID-19 an employer may need to disclose that information to other employees who may be impacted. However, the employer should limit the amount of information provided in order to protect the privacy of the employee(s) affected. If it is not possible to disclose information surrounding the risk of COVID-19 to other employees without revealing explicitly or implicitly the identity of the employee who has tested positive, employers should consult with counsel to determine how best to address the situation.

TRAVEL – BUSINESS AND PERSONAL

Employers should follow the travel advisories from the **Government of Canada** with respect to all work-related travel. The current recommendations are to avoid all non-essential travel outside of Canada. If work-related travel is unavoidable, employers should consult with counsel and the appropriate authorities for advice regarding such travel.

With respect to employee’s personal travel, an employer would not be able to prohibit employees from travelling during their personal/vacation time. However, the Government of Canada has stated that upon return to Canada, people are to self-isolate for 14 days. Therefore, employees who are in the midst of travelling or plan to travel outside of Canada would have to refrain from attending at work for 14 days upon their return home.

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EMPLOYEES VACATIONS CANCELLED

Reduction in employee availability may become an issue if employees become sick with COVID-19 or are otherwise required to self-isolate. As a result, employers may need to limit the ability of healthy and available employees to take vacation. An employer who cancels or reschedules a previously approved vacation must pay all non-refundable deposits, penalties, and pre-paid expenses paid by the employee that are related to the vacation.

REFUSAL TO WORK

Employees are entitled to refuse work if the employee has “reasonable grounds to believe that the act or series of acts is unusually dangerous to the worker’s health or safety, or the health or safety of any other person at the place of employment”.

A refusal to work must be investigated by an employer and an employer must take reasonable measures to ensure the health and safety of their employees. The ability of an employee to refuse work based on COVID-19 is case specific, but employers should work with their employee(s) to attempt to reach a solution on such issues if possible.

PAYMENT OF EMPLOYEES ABSENT FROM WORKPLACE

The Government of Canada has made changes to **Employment Insurance Sickness Benefits** in response to COVID-19. Under these changes for employees who are quarantined due to COVID-19 the one week waiting period to receive benefits has been waived. The receipt of sick benefits usually requires a doctor’s note, however, a spokeswoman for Employment Minister Carla Qualtrough said that the government is waiving the requirement for a doctor’s note for people required to quarantine by law or by a public health official. Additionally, people who are asked to self-isolate by their employers when public-health officials recommend it could also qualify.

Under these changes, depending on the reason an employee is absent from the workplace due to COVID-19, they may be entitled to receipt of EI benefits during their absence.

Outside of government benefits, there is no general requirement under *The Saskatchewan Employment Act* that employees be paid in the event they are sick, however, if an employee tests positive for COVID-19 they should be able to access any paid sick leave benefits generally available to other employees. Employers may want to inquire with their insurance provider as to whether employee illness due to COVID-19 would fall within their coverage.

If an employee is not sick but has been directed to self-isolate by their employer, a duly qualified medical practitioner, the Government of Saskatchewan or the chief medical officer they are now entitled to take a “public health emergency leave” from work. An employee is also entitled to access this leave if they are required to stay home to care for their child or an adult family member as a result of a direction from the Government of Saskatchewan (ex. Closure of schools and/or daycares). This leave is unpaid, however, if an employer authorizes the employee to work from home, employees are entitled to be paid their regular wage and receive their regular benefits.

SHUTTING DOWN

In the event of a slow down in business, high risk health and safety concerns or government direction, employers may wish to or be required to shut down. Pursuant to the recent changes to *The Saskatchewan Employment Act*, employees can be directed to self-isolate by their employer to “prevent or reduce the spread of the disease”. If the employee is directed to self-isolate on this basis this constitutes a “public health emergency leave” as opposed to a layoff or termination. These provisions of the *Act* only apply if the employer has directed the employee(s) to remain home to “prevent or reduce the spread of the disease” as opposed to other reasons, ie. lack of business.

If the provisions relating to “public health emergency leave” do not apply, and an employer needs to shut down or layoff employees for financial reasons (for example), the Government of Saskatchewan has now enacted regulations permitting temporary layoffs in the event of a public emergency. These provisions exempt employers from the notice or pay in lieu requirements contained in *The Saskatchewan Employment Act* if the layoff is for 12 weeks or less in a 16-week period. If an employee is laid off for one or more periods that total more than 12 weeks in a 16-week period, they are deemed to be terminated and entitled to severance pay under the *Act*.



Employment & Labour Law

Our Firm actively advises clients on labour-related matters and routinely represents clients in appearances before the courts, the Labour Relations Board and various arbitration and human rights tribunals. We represent both Federally and Provincially regulated clientele.

Our experience covers all aspects of labour and employment law, including unjust dismissal disputes, collective bargaining disputes and human rights complaints.

Our lawyers are experienced in advising workplaces regarding the rights and duties of all parties as set out by the occupational health and safety regulations as well as advising on the federal or provincial labour codes that are applicable depending on the sector involved.

We have experience across many industries from construction and non-profit to educational institutions and national retail outlets.

EXPERIENCE IN:

- Collective Bargaining Issues
- Labour Disputes
- Grievance Arbitration
- Termination Disputes
- Human Rights Issues
- Occupational Health and Safety
- Pension Law

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