



# *Saskatchewan*

## COVID-19 RETURN TO WORK HANDBOOK FOR EMPLOYERS



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**A MCKERCHER LLP SUMMARY  
UPDATED MAY 26, 2020**

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BASED ON 'RE-OPEN SASKATCHEWAN:  
A PLAN TO RE-OPEN THE PROVINCIAL  
ECONOMY'

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# INTRODUCTION

## UPDATED MAY 26, 2020

The Government of Saskatchewan recently announced its plan to re-open the provincial economy in its report titled “Re-Open Saskatchewan: A plan to re-open the provincial economy” (the “**Re-Open Plan**”). The Re-Open Plan is built on a methodical and phased-in approach to slowly lift restrictions on businesses and services. Under the Re-Open Plan, the lifting of restrictions will be implemented in five phases via public health orders with the timing dictated by evidence of transmission of the COVID-19 virus.



## ABOUT OUR EMPLOYMENT & LABOUR GROUP

We actively advise clients on labour-related matters and routinely represent 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.

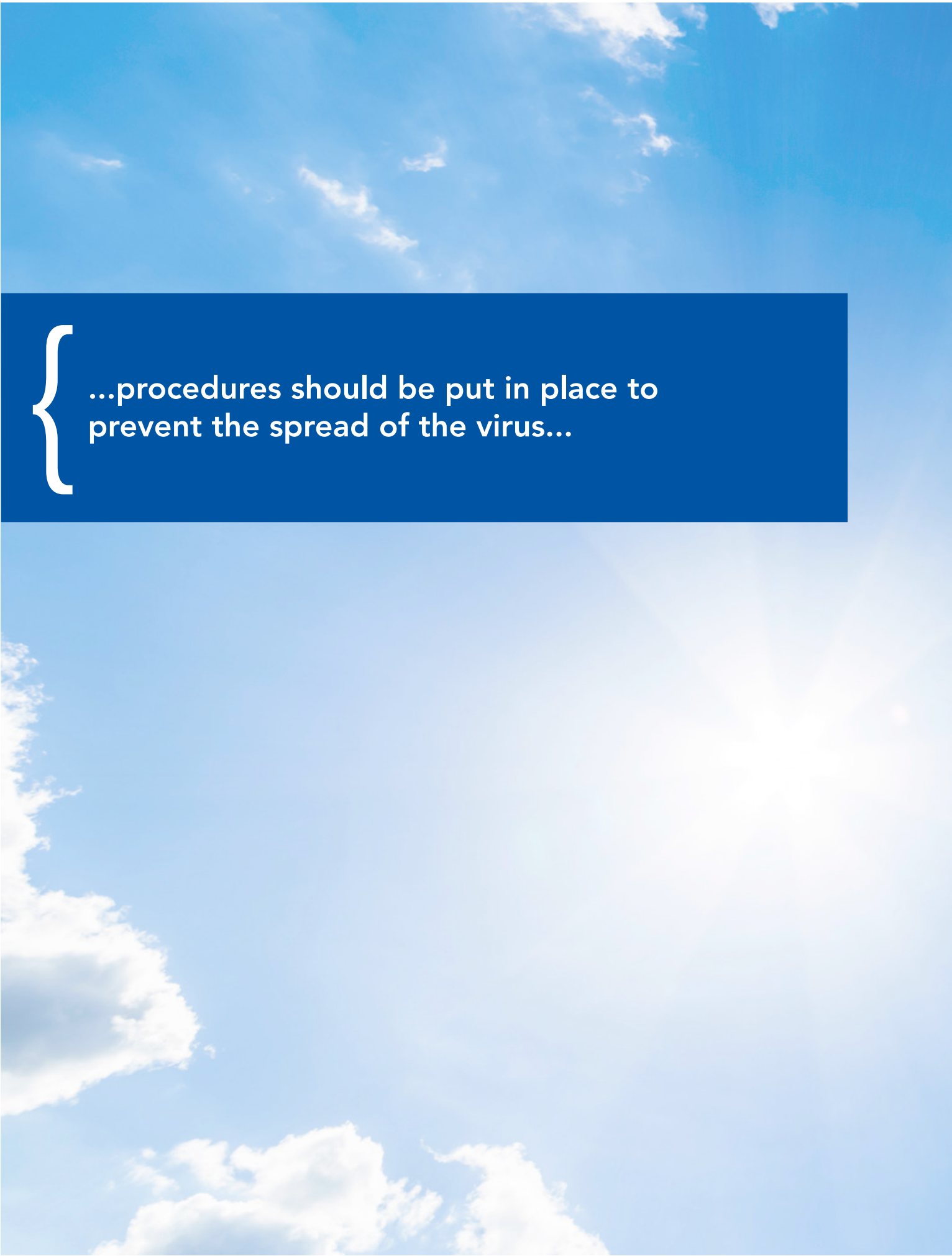
We have experience across many industries from construction and non-profit to educational institutions and national retail outlets.

## ABOUT MCKERCHER LLP

For 90 years McKercher LLP has been providing client-focused legal services to Saskatchewan. As a full-service law firm with offices in Saskatoon and Regina, we are proud to have been involved in many of the significant projects, cases and matters that have shaped our communities into what they are today. We are excited for the future and for the new opportunities that it brings to work with our clients and to assist them in positioning Saskatchewan for success. Our commitment is to work with our clients to find preventative and proactive solutions to their legal challenges.

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{ ...procedures should be put in place to prevent the spread of the virus...

# WHEN CAN I LEGALLY RE-OPEN MY BUSINESS?

The Re-Open Plan provides Saskatchewan residents, employees, and business owners with information relating to when businesses previously forced to close their doors could re-open them, what procedures should be put in place to prevent the spread of the virus, and other information relevant to the pandemic. The most recent edition of this plan is the May 22, 2020 version (located at: <https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/re-open-saskatchewan-plan/re-open-saskatchewan>).

The first major section of the Re-Open Plan—and arguably, the one that contains the most-anticipated information—discusses when businesses are permitted to re-open their doors to the public and when certain activities can resume and/or begin. The infographic on the following page lists the various activities and occupations and the corresponding dates on which they can resume and/or provide front-facing services to the public once again.

In addition to Phases One to Four, the Government of Saskatchewan has also suggested a Phase Five whereby the Government will consider lifting some long-term restrictions. The date for Phase Five is to be determined at a later time.

Despite the above list, the following recommendations remain in place through all five Phases:

- 1. Individuals who can work from home effectively should continue to do so.
- 2. Physical distancing for staff, clients, customers, etc. must be maintained, where possible.
- 3. Workplaces should practice regular enhanced cleaning and disinfection procedures; engage in frequent handwashing and sanitizing; and use personal protective equipment (“PPE”) where available and appropriate.

These three recommendations are discussed in more in the section following on safety measures.

Phase One		Phase Two	Phase Three	Phase Four
May 4	May 15	May 19	June 8	Date TBD
dentistry; optometry; optician services; podiatry	fishing (Central Zone); other outdoor individual recreation	clothing and shoe stores; jewelry and accessory stores; toy stores; other retail tenants in shopping malls	esthetician; make-up application; manicurist; pedicurist; electrologist	arenas; curling rinks; swimming pools; municipal parks and playgrounds
physical therapy; occupational therapy; chiropractic treatment	golf courses	gift, book, and stationery stores; music, electronic, and entertainment stores; flower shops	tattoo artist; facilities in which body piercing, bone grafting, or scarification services are provided	casinos; bingo halls; galleries; theatres; museums
public access to medical spas for therapeutic services (not cosmetic services)	drive-in theatres	sporting goods and adventure stores; boat, ATV, and snowmobile dealers	sun tanning parlour; other personal service facilities	other similar recreational and entertainment facilities
boat launches	May 25 fishing (Northern Zone)	vaping supply shops; pawn shops; thrift stores; travel agencies; marinas	gyms and fitness facilities	seasonal programming, camps, recreational, and athletic activities
May 5	June 1	hairstylist/ barber; registered massage therapist; acupuncturist; acupressurist	restaurant and food services (50% capacity; no buffet services or recreation areas); licensed establishments	
fishing (Southern Zone)	parks and campgrounds	public markets and farmers markets (but not garage sales); u-pick produce retail stores	childcare facilities	

Updated May 26, 2020

# WHAT SAFETY MEASURES SHOULD I PUT IN MY WORKPLACE?

## OCCUPATIONAL HEALTH AND SAFETY

Employers have a duty to ensure the health, safety and welfare of their workers under the occupational health and safety provisions of *The Saskatchewan Employment Act*. This duty requires employers to demonstrate they have taken all reasonable precautions to keep their staff safe. Employees and contractors have corresponding duties to ensure their own safety and to ensure they do not endanger the health and safety of other workers.

Those who operate businesses that will be permitted to re-open will want to consider how they will operate in light of these obligations. Employers will want to be proactive in ensuring policies and procedures are up to date and that they are communicated to employees and third parties who may be working at your workplace. Failure to comply with the duty to ensure a safe workplace can lead to fines and penalties, even imprisonment.

In the Re-Open Plan, the Government of Saskatchewan listed various procedures and precautions that employers can and should take as they begin to re-open their businesses. Ensuring compliance with these procedures and precautions provides a starting point for employers to comply with the duty to ensure the health and safety of their workers.

The following safety measures—adapted from the Re-Open Plan—apply generally to all types of businesses. For the safety measures specific to each type of business/activity, please consult the relevant pages of the Re-Open Plan.



*General Protocol for Conducting Business in All Workplaces*

The following provides a list of general protocol that should be maintained within businesses in Saskatchewan:

1. Two-metre distancing between individuals should be maintained where possible and other measures should be implemented, including:
  - self-monitoring of personal health;
  - supervision by Infection Prevention and Control (“IP&C”) or Occupational Health and Safety (“OH&S”) staff in the workplace;
  - washing hands often (note: use alcohol-based hand sanitizers approved by Health Canada (i.e., those with a DIN or NPN number) when hands are not visibly soiled;
  - use soap and water (and scrub for 20 seconds) when hands are visibly soiled, before and after and breaks, at the beginning and end of the shift, and before preparing food); and
  - practicing good coughing/sneezing etiquette (i.e., cough into elbow and then wash hands with soap and water).
2. Except for customers, business-related visitors should be limited to essential services only. Examples of essential services include:
  - tradespeople;
  - pest control; and
  - compliance officers.
3. Business-related visits should be scheduled such that people do not gather in reception and other common areas.
4. Customers should be encouraged to use credit or debit cards for payment and scan/tap/swipe their own cards.
5. Business should be conducted remotely when possible through conference calls, video conferences, emails, etc.
6. The exchange of papers should be limited, where possible. If documents must be signed, leave them on a clean surface while maintaining a two-metre distance. Avoid sharing pens and office equipment, and disinfect the surface and any materials after each use.
7. Each staff member should be assigned to a dedicated work area as much as possible.
8. Staff should be discouraged from sharing phones, desks, offices, and other tools and equipment.
9. Handshakes any other physical contact with others should be avoided.

*Cleaning, Disinfecting, and Using PPE in the Workplace*

The following provides suggestions for ensuring workplaces are properly cleaned to avoid the transmission of the virus:

1. Clean and disinfect commonly-touched areas and shared equipment (e.g., light switches, door handles, toilets, taps, handrails, countertops, mobile devices, keyboards, etc.) at least twice daily, but always when visibly soiled. Disinfectants with a Drug Identification Number (“DIN”) are products approved for use by Health Canada.
2. Clothing and fabric items must be laundered and dried on the highest temperature setting possible, and items should be thoroughly dried.
3. Employees should be provided access to tissues, no-touch trash receptacles, hand soap, alcohol-based hand sanitizers, disinfectants, and disposable towels.
4. The Government of Saskatchewan has indicated that most workers in non-healthcare settings will not require PPE for protection against the COVID-19 virus unless they are in situations similar to health care workers (e.g., police, fire officials, corrections officials, group home and personal care home workers, funeral home staff, public health officials, personal care services, etc.). Employers are encouraged to re-examine PPE policies to ensure valuable PPE resources are not unnecessarily diverted from the health care system. If PPE is required in the workplace, there must be protocols in place for donning and doffing the equipment and also instructions for disposing of it.



*Plans and Preventative Measures for the Workplace and Employees*

In addition to the above processes and procedures, employers can also utilize the following suggestions for planning to prevent disease-related issues in the workplace and keep employees safe:

1. Conduct a walk-through of the workplace to identify specific conditions or tasks that may increase the risk of exposure of workers to COVID-19.
2. Ask workers (including the OH&S Committee or an OH&S representative) where they think potential exposures may occur and how they think exposures may be controlled.
3. Staff who are members of IP&C or OH&S should assist in monitoring employees symptoms and provide advice based on the provincial public health order.
  - Control the number of employees at the workplace by:
  - considering whether all workers need to come in, or whether they can work effectively from home instead; and
  - determining whether it is possible to stagger employee shifts to reduce the number of people present at one time.
4. Employers should have plans in place for increased worker absences due to illness or isolation.
5. All workers must have a workplace illness policy that includes the following, at a minimum:
  - sick employees must:
    - stay home or be sent home from work; and
    - use the Government of Saskatchewan's self-assessment tool for COVID-19 and follow the subsequent directions;
  - sick employees housed in workplace accommodations (e.g., work camps) must be confined to their rooms until cleared for re-entry into the workforce; and
  - when employees go home sick, their work areas must be cleaned and disinfected.
6. Continue to review the plan(s) for the workplace, and ask:
  - What are the controls implemented that will eliminate or minimize the risk of exposure?
  - Are the controls effective?
  - How do we know the controls are working?
  - How can we check and track whether the plan is being adhered to and working?

For further protocol that are specific to particular businesses, employers and business owners should consult the following sources, if applicable:

- 1) the Re-Open Plan; and
- 2) regulatory bodies.

# HOW DO I DEAL WITH EMPLOYEES SHOWING SYMPTOMS?

The Government of Saskatchewan has indicated that it expects businesses to keep staff who demonstrate or report COVID-19 symptoms out of the workplace. The Government has also indicated that it expects all workers to (a) self-monitor for symptoms, and (b) use the self-assessment tool at [Saskatchewan.ca/COVID19](https://saskatchewan.ca/covid19).

Based on the above, employers should remind employees to stay home if they exhibit symptoms of COVID-19, and where employers notice employees have symptoms at the workplace, the employees should be sent home from work.

The most common symptoms of COVID-19 are fever, dry cough, and tiredness. Where employee physical symptoms are obviously apparent (such as a dry cough or tiredness), it will be easy for employers to observe such employees and ask them to leave the workplace where appropriate.

However, other symptoms (such as a fever) are not always so easily apparent, and therefore, employers may want to consider implementing temperature testing in their workplace. The following list contains some considerations for employers who may be implementing such processes:

1. Provide employees with advanced notice that their temperature may be taken at the workplace.
2. Inform employees that that the temperature test may only determine if employees exhibit a symptom consistent with COVID-19—it does not necessarily mean that the employee would test positive for COVID-19, but that he or she should nevertheless stay home as a precaution.
3. A contactless temple or forehead thermometer should be used rather than an oral one. The individuals administering the test should be appropriately trained to use it, and the equipment should be sanitized between each use.
4. Temperature tests should be taken, and the results given, in private. If the test indicates that an employee has a fever, the test should be performed again to ensure accuracy, and the employee should see the thermometer themselves. Furthermore, sending an employee home should be done in an inconspicuous manner to protect the employee from stigma from colleagues and/or the community.
5. The results of temperature tests should be documented (recording only the information that is necessary), kept confidential, and stored with other employee medical records.

## EMPLOYMENT CONCERNS



**As long as there is an order of the chief medical officer in place regarding COVID-19 public health emergency, the new temporary layoff rules continue to apply.**

### *Do I have to Recall Staff who have been Laid Off?*

In May, the provincial government amended *The Saskatchewan Employment Act* and *The Employment Standards Regulations* in response to the COVID-19 pandemic to permit employers to temporarily lay off staff for the duration of a public health emergency period without triggering the obligation to provide pay in lieu of notice of termination of employment. Furthermore, the obligation is not triggered for two weeks following the end of the public health emergency period as long as the employee is scheduled to return to work within the two-week period. However, if an employee is not accordingly scheduled within the appropriate amount of time, the pay in lieu of notice provisions will be triggered (with pay instead of notice being calculated from the date the employee was laid off).

As long as there is an order of the chief medical officer in place regarding the COVID-19 public health emergency, the new temporary layoff rules continue to apply. Employers who have laid off staff and will be re-opening will need to determine staffing requirements and consider which employees will be recalled and when.

If the workplace is not unionized, the employer can determine which employees will be recalled and in what order. Unionized employers must comply with any applicable provisions in their collective agreement. In either case, employers will want to ensure employees are scheduled to return to work within two weeks following the end of the public health emergency period if they wish to avoid the statutory notice requirements.

Employers should carefully consider the content of any public health orders as they are released to determine how the orders may impact their operations.

### *What About Employees who are on Public Emergency Leave?*

Employees who have been directed to self-isolate by their employer, their physician, or the provincial government or chief medical health officer may remain on public emergency leave for the period during which an order of the chief medical health officer remains in force as may be required. Where employees are authorized to work from home while on leave, they are entitled to be paid their regular wages and receive their regular benefits. Otherwise, it is an unpaid leave.

As described above, with each phase a new public health order will be issued. Employers will want to carefully review the contents of any public health orders to determine how they will impact their operations and staffing requirements or any requirements respecting public health emergency leave.

*What if an Employee Refuses to Return to Work?*

The occupational health and safety provisions of *The Saskatchewan Employment Act* give workers the right to refuse work that they believe would be unusually dangerous to their health or to the health of another person. Some employees may refuse to return to the workplace because they feel it is unsafe, perhaps due to the level of public interaction involved.

If the government has permitted the business to re-open, and the business complies with the public health guidelines in effect, it may be unlikely that the workplace would be viewed as unusually dangerous. The guidelines are perhaps best viewed as minimum standards. Accordingly, employers must ensure that their operations are compliant with the guidelines and should, where possible, attempt to exceed them. It is important to note that under the legislation, a work refusal on the ground the work is unusually dangerous must be investigated by the employer.

In addition to an employee's right to refuse unsafe work, employers are required to accommodate employees with characteristics protected by human rights legislation, including disability and family status. Employers may encounter employees who are unwilling to return to work because COVID-19 infection would pose a particularly significant threat to them owing to a disability, or because of childcare issues resulting from continued school and daycare closures.

When faced with a refusal to return to work or a request for other accommodations, such as changes to hours of work or duties, employers will want to take the time to ensure they fully understand the basis of the request. If the case of a request made on the basis of disability, employers will want to ensure that prior to making any determinations they have been provided relevant medical information confirming a disability and the nature of any required accommodations.

It is questionable whether an employer would have to accommodate an employee who expresses they are unable to return to work due to fear they may contract the COVID-19 virus. Employers ought to explore the basis of the employee's fears and seek clarification as to whether the fear is based on an underlying physical or mental health condition that may amount to a disability. Employers will also want to consider the nature of the employee's work and if it is possible to have the employee work remotely.

In any case where an employee expresses that they are unable to return, whether based on a prohibited ground under human rights legislation, or due to a fear of contracting the virus, employers will want to ensure they have a clear understanding of the situation prior to taking action and are advised to consult with legal counsel.



*Changes to Terms of Employment*

In an effort to withstand the harsh economic repercussions of the COVID-19 pandemic, many employers have instituted temporary measures to reduce their payroll obligations, such as reducing employees' salaries or hours. A unilateral change to a fundamental term of the employment contract may constitute constructive dismissal, absent contractual terms authorizing the employer's action.

For employers who reduced employee salary and/or hours to offset the financial impacts of COVID-19, we anticipate arbitrators and courts will be sensitive to the difficult decisions undertaken by businesses, however it is also a matter of degree.

Employers can mitigate the risk of constructive dismissal claims by ensuring any changes to employees' terms of employment are temporary and to limit such changes to what is absolutely necessary. Employers considering such changes should also ensure to the extent possible that changes do not appear to target particular employees. Where feasible, employers may also consider repaying lost salary when the financial circumstances of its business improve. Prior to considering such changes, employers should review the terms of any employment contracts and applicable policies.

In addition, it may be appropriate for employers to engage in a more general review of workplace policies such as those related to sick leave and other leaves of absence, travel and telecommuting.

**CONCLUSION**

COVID-19 has changed the way we live and work. Employers need to remain aware of the latest developments to ensure a safe and efficient re-opening of their businesses and need to consider a variety of issues, such as their legal obligations to employees from both employment law and occupational health and safety perspectives in addition to how they will ensure a safe environment for patients, client or customers.

As with all employer/employee questions and concerns, a lawyer should be consulted to ensure the relevant law is complied with in the specific circumstances.



# Employment & Labour Law

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## EXPERIENCE IN:

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

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