



# COVID-19 CONSIDERATIONS FOR MUNICIPALITIES

---

## **A. EMPLOYMENT ISSUES (LAYOFFS, TERMINATION, ETC)**

### **1. Are municipalities able to lay off employees who have been deemed essential and will they be eligible for EI or other benefits?**

On March 18, 2020, the Saskatchewan Government declared a state of emergency, and ordered that all but “essential” forms of work must stop. A useful list of “essential” work is available here:

<https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/covid-19-information-for-businesses-and-workers>.

“Essential” in this sense means employees who may continue to work, rather than employees who must continue to work. Therefore, municipalities may layoff “essential” employees.

If an employee is laid off, they are likely entitled to EI, provided their Record of Employment lists either Code “A” (shortage of work) or Code “D” (illness or injury) as the reason for end of employment.

### **2. Can municipalities ‘bring back’ employees who have been laid off to replace an employee who has fallen ill?**

Layoffs are temporary by nature. Laid off employees are expected to be called back when there is enough work for them to perform. Therefore, if you have work for the employees to do, it appropriate to call them back. This is true even if the work is available because some other employee has become ill.

This question must be thought of practically. For example, it is probably unreasonable to recall a laid-off employee to replace another employee who has the common cold. On the other hand, it may be reasonable to recall an employee to replace an individual who will be away from work for the foreseeable future.

**3. What options are available to municipalities if an employee is refusing to work due to concerns over COVID-19? (sick days, vacation days, or termination?)**

Section 3-31 of the *Employment Act* allows employees to refuse work which is “unusually dangerous”. If an employee indicates that they believe certain work is “unusually dangerous” because of COVID-19, the municipality must investigate this concern.

While investigating the concern, the municipality cannot assign another worker to complete these tasks unless it provides certain information detailed in Section 3-34 of the *Employment Act*.

If the Municipality concludes that the work is “unusually dangerous”, it cannot assign the worker to complete it. However, it may assign the employee to do other, safe tasks.

If the Municipality concludes that the work is not “unusually dangerous”, then it may tell the employee that she is no longer allowed to refuse work based on its supposed danger. (Note that the employee can then ask the Occupational Health and Safety to investigate her concern).

If an employee is refusing to complete safe work, discipline up to and including termination may be appropriate. Each case will turn on its own facts.

If the municipality does not currently have enough safe work to justify a particular employee’s position, a temporary layoff may be appropriate.

**4. Can a municipality bar an employee from returning to work if they have not complied with the 14-day quarantine?**

Section 3-8 of the *Employment Act* requires all employers, including municipalities to “ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer’s workers”.

In order to fulfill your obligation to provide a safe workspace in these extraordinary times, you can bar an employee from returning to work for a 14-day period.

If you direct the employee to stay home for 14-days, they will be on “public health leave” under s. 2-59.1 of the *Employment Act*. Note that if you have told the employee they may work from home during this time, they may still be entitled to their regular pay and benefits.

## **B. PROTECTION OF EMPLOYEES AND RATEPAYERS**

### **5. What liability is the municipality exposed to if COVID-19 is unknowingly transmitted by a municipal employee?**

As per *The Municipalities Act*, the purpose of municipalities are:

- (a) to provide good government;
- (b) to provide services, facilities and other things that, in the opinion of council, are necessary and desirable for all or a part of the municipality;
- (c) to develop and maintain a safe and viable community;
- (d) to foster economic, social and environmental well-being; and
- (e) to provide wise stewardship of public assets.

As such, municipalities have the duty to ensure their community is safe, which includes prevention of harm due to exposure to COVID-19. While risk arising from COVID-19 is not something the courts have addressed at this time, it can be assumed the general standard of care rule would apply under the obligation of municipalities to develop and maintain a safe and viable community as well as foster social well-being. Generally municipalities are held to high public and civil accountability, which often necessitates additional steps be taken in ensuring the duty of care is adequately met.

As it is likely a municipality has the duty of care to the community members, this creates a corresponding standard of care that a municipality must meet to avoid liability. The standard of care speaks to what is *reasonable* in the circumstances; a municipality must fully be aware of what is reasonable in the circumstances and allow that to determine how they react to COVID-19 and keep their community members safe. It is important for municipalities to show they are following all public health orders and ensure they take the recommended steps to keep their employees and community members safe. If there is any concern that an employee is sick (either through past travel, or symptoms) they should refrain from contacting the public and self-isolate.

It is impossible to say definitively whether a municipality and/or council will be held liable in a situation such as this, as such finding of liability will depend on the factual background of the circumstances. However, one note to keep in mind, the legislation also provides protection from liability for councils in certain instances so long as they are acting "in good faith".

As such, the test of whether a municipality can (or will) be held liable for allowing Covid-19 to be transmitted by a municipal employee will most likely be determined based on whether the municipality: a) acted reasonably in the circumstances; and b) acted in good faith in the circumstances.

**6. Are municipalities forced to close all public buildings even if use is by an essential service?**

All recreational and entertainment facilities including fitness centres, casinos, bingo halls, arenas, curling rinks, swimming pools, galleries, theatres, museums and similar facilities must be closed as per the public health order issued by the province of March 26, 2020.

Municipal administration, and resources deemed essential by the municipality, are considered an essential service, but even essential services must practice social distancing when possible and explore non-traditional ways of continuing business, such as teleconferences and video meetings. If a public building is still required to be used by an essential service it is still important to note that there must (currently) be less than 10 people in attendance.

**7. What are the standard protections recommended to protect front-line workers from exposure to COVID-19?**

The Government of Saskatchewan has released various recommendations for cleaning and disinfecting to ensure essential workers are as protected as possible. The following are key takeaways to be implemented into daily practice for workers who are deemed essential and are at a higher risk of exposure to COVID-19:

- provide Personal Protective Equipment (PPE) including protective gloves to be changed often;
- reduce contact as much as possible between people within facilities;
- wash hands often with soap and water for over 20 seconds, when hand washing is not available, use hand sanitizer approved by Health Canada;
- avoid touching face, mouth, nose, and eyes;
- all clothing and fabric items are to be laundered and dried on the highest temperature setting possible, ensuring each item is thoroughly dried; and
- all equipment is frequently wiped down with a disinfectant. It is recommended to use products approved by Health Canada which will have an 8-digit Drug Identification Number (SIN) or Household bleach (5% sodium hypochlorite, one part bleach into nine parts of water).

In regards to waste collection, a municipality may insist ratepayers ensure garbage is properly placed in approved bins to minimize as much human contact as possible with waste. If a home has an active case of COVID-19 it is recommended the home not use recycling receptacles but rather include all waste in the waste receptacle and ensure the bags are properly tied.

**8. How do municipalities report ratepayers who do not comply with the mandatory 14 day self-isolation after international travel?**

Currently it is recommended to phone the local police detachment to report violations of the mandatory 14 day self-isolation. The province is currently implementing a formal reporting system which has not yet been put in place but municipalities should be on the lookout for any updates.

Larger cities such as Regina have implemented a 24-hour public health line to the Regina Police Service to monitor complaints arising from a breach of the 14 day self-isolation. While this may not be feasible for smaller municipalities it is recommended each reach out to their local police to work together to put a system in place.

**C. SECONDARY QUESTIONS**

**9. What effect will the *Emergencies Act* have on municipalities?**

In Canada, various powers are split between municipalities, provinces, and the federal government. The *Emergencies Act*, RSC 1985, gives the federal government the authority to declare a national emergency and subsequently act without the cooperation of provinces or municipalities. A national emergency is defined as “an urgent and critical situation of a temporary nature that...cannot be effectively dealt with under any other law of Canada.” An example of a national emergency is a public welfare emergency caused by “a real or imminent ... disease in human beings, animals or plants” that presents a risk to life or property, social disruption or a breakdown in the supply of essential goods or services.

However, this power is limited to situations where the emergency extends beyond the control of the provinces. It is estimated this step would only be taken if the spread of COVID-19 exceeds the response capabilities of the provinces. This is a high threshold and unlikely an immediate step by the federal government in the near future. For now, the current COVID-19 pandemic has not reached the level of a national public health emergency and so far provinces have mostly responded in coordination with the federal government.

**10. Do municipalities have the obligation and duty to ensure the safety of contractors hired by the municipality?**

Contractors are not considered employees under the *Employment Act* and therefore municipalities do not have the same obligations and duties to them as they would to their own employees. However, it is still important steps are taken to ensure the general safety of contractors is met to the best ability of the municipality. A review of the contract will be required to determine the extent of the responsibility of the municipality.

**11. Does a municipality have the obligation to implement an essential supply delivery system to those quarantined and/or who are unable to travel to get their own supplies?**

As per *The Municipalities Act*, municipalities have the duty to provide services, facilities and other things that, in the opinion of council, are necessary and desirable for all or a part of the municipality. The emergence of the COVID-19 pandemic has made this duty all the more important. While the courts have not determined access to supplies to be a specific duty of municipalities, each counsel should review the needs required by their community and determine if there are steps that can be taken to ensure the safety of community members.

## **GOING FORWARD**

We invite you to connect and speak with a lawyer from our Saskatchewan Municipal Team about any issues discussed in this article.

If you have any questions please feel free to contact Troy Baril, a partner with Miller Thomson who is a member of our Saskatchewan Municipal Team at [tbaril@millerthomson.com](mailto:tbaril@millerthomson.com) or 306.667.5630.

### Disclaimer

This publication is provided as an information service and may include items reported from other sources. We do not warrant its accuracy. This information is not meant as legal opinion or advice.