

Labour and Employment Communiqué

Managing COVID-19 in the workplace

March 16, 2020 | [Zeinab Yousif](#), [Lisen Bassett](#)

Overview of the Situation (as of March 15, 2020)

The Novel Coronavirus (“COVID-19”) was classified by the World Health Organization as a pandemic on March 11, 2020. At this stage, over 100 countries worldwide have reported cases of COVID-19, including Canada. In Canada, the outbreak is being managed by federal, provincial and territorial emergency management and public health agencies. Government authorities have instituted a number of measures and issued a number of recommendations to limit the spread of COVID-19. These include, but are not limited to, the following:

- self-isolation for all persons returning from travel abroad for 14 days (Government of Canada, British Columbia and Prince Edward Island);
- self-isolation for travellers returning from Hubei province (China) or Iran, and self-monitoring for travellers from all other destinations, for 14 days (Ontario);
- self-isolation for provincial government employees returning from travel abroad (Nova Scotia);
- self-isolation for provincial government employees and employees from both private and public sectors working in education, health services and daycares, returning from travel abroad (Quebec);
- self-isolation for children attending schools returning from travel abroad (New Brunswick);
- 14-day restrictions on visiting long-term and personal care homes for all persons returning from travel abroad (Nova Scotia and Manitoba);
- voluntary self-isolation for 14 days for anyone returning from abroad after March 12, 2020 (Quebec);
- mandatory isolation for 14 days for all public service employees and health care, education and daycare workers, both private and public, who return from abroad on or after March 12, 2020;
- the introduction of job-protected leave for employees in self-isolation (Alberta; Ontario is expected to introduce similar leaves shortly);
- all public gatherings are to be postponed for 30 days (Saskatchewan);
- all public gatherings of 100 or more attendees are suspended (New Brunswick);
- indoor events with 250 or more attendees are prohibited (Quebec);
- all events with 250 or more attendees are to be postponed or cancelled (Manitoba, British Columbia);
- all events with 250 or more attendees are recommended to be cancelled (Ontario);
- mandatory school closures (Ontario, Quebec, Alberta and Nova Scotia);
- mandatory daycare closures (Quebec);
- closing gathering places (bars, libraries, gymnasiums, swimming pools, cinemas, and ski resorts) (Quebec); and
- suspension of certain activities of the courts and tribunals (Quebec and Ontario).

COVID-19 has had a huge impact on employers in Canada. They are faced with a broad range of challenges, including health and safety, accommodations, workplace reductions and privacy issues. This bulletin aims to provide Canadian employers with up-to-date answers and information. Please note that the information in this bulletin is based on currently available information. We will provide regular updates as more information becomes available, and encourage you to contact us with any specific questions.

What You Need to Know

What measures can an employer adopt to reduce the risks associated with COVID-19?

Each jurisdiction in Canada has occupational health and safety legislation which imposes legal obligations on employers and employees. Employers must take reasonable precautions to protect the health and safety of their workers. In the case of COVID-19, we recommend employers consider the following measures. These recommended measures are based upon currently available information and should not replace public health authorities’ recommendations:

- identify an employee who will be responsible for all communication to staff on COVID-19;

- regularly review information from local public health authorities, the provincial governments and the federal government. The links to relevant government sources are available at the end of this guide;
- conduct a risk assessment specific to the workplace;
- develop a plan to reduce the risks associated with COVID-19. Where appropriate, this plan can include the following:
 - constantly reminding employees to follow the best practices put forward by their local public health authority;
 - encouraging employees to stay at home and seek medical treatment if they are not feeling well;
 - identifying when an employee should be sent home and when they may return to the employer's premises in accordance with the recommendations of public health authorities;
 - increasing cleaning and sanitation of surfaces in the workplace as recommended by local public health authorities;
 - converting in-person meetings to conference calls where possible;
 - where it is necessary to host an in-person meeting, instituting a visitor policy to identify current risk factors;
 - cancelling all non-essential business travel;
 - conducting risk assessments on an ongoing basis and updating the plan and communications to employees accordingly; and
 - in the event of an outbreak, instituting temporary office closures.

Employers should plan for business continuity in the event that people are unable to attend the employer's premises to work, or operations are significantly reduced. Employers should consider measures such as remote work arrangements, scheduling changes, and temporary lay-offs. These options will be discussed in greater detail below.

What is self-isolation?

Self-isolation is not a quarantine order. Generally, people self-isolate at the recommendation or request of public health authorities and/or their health practitioners in order to prevent the spread of COVID-19 or to protect themselves if they are at increased risk due to a compromised immune system.

Can an employee refuse to work?

With limited exception in some sectors, occupational health and safety laws permit employees to refuse work if they reasonably believe the work is unsafe. When an employer receives a work refusal, it should immediately investigate the employee's concerns in accordance with the requirements of the applicable occupational health and safety legislation. If hazards are identified, the employer is required to respond with appropriate measures.

Employees should not be disciplined for legitimate work refusals. Further, the employer may be required to continue to pay them.

Employers should take an individualized approach when dealing with work refusals.

What about employees who may be more vulnerable to COVID-19?

If an employee identifies that they are at an increased risk due to a compromised immune system and must, therefore, self-isolate, the employer may ask for information to substantiate the request. If it is substantiated, the employer should consider a remote work arrangement if possible. If a remote work arrangement is not possible, employees may qualify for workers' compensation in certain jurisdictions. Measures such as preventive leaves could also apply pursuant to a medical recommendation (for example, for pregnant women). These should be assessed on a case-by-case basis.

Can an employer impose a travel restriction?

As a first step, employers should regularly review the travel health notices issued by the Public Health Agency of Canada (PHAC) to identify travel destinations with increased risk. PHAC issues notices identifying several levels of risk:

Level 1: practice usual precaution.

Level 2: practice special precautions.

Level 3: avoid non-essential travel.

Level 4: avoid all travel.

On March 14, 2020, PHAC classified **all** countries outside of Canada as Level 3. The Government of Canada advised Canadians to avoid **all** non-essential travel outside of Canada until further notice. The Government of Canada also asked all Canadians to voluntarily self-isolate for 14 days after returning from travel outside of Canada. We recommend employers monitor the Government's [COVID-19 related travel and health notices](#) for the latest information. Employers should also check with their provincial and local health authorities for any travel and self-isolation recommendations and requirements specific to their geographic area.

Given these developments, employers should restrict **all** business-related travel for the time being.

While employers cannot ban personal travel of employees, employees should be advised:

- of active PHAC Travel Notices; and
- that restrictions may be imposed on them upon their return.

Employers may wish to consider implementing and communicating the following restrictions:

- Require employees to disclose travel outside of Canada:
 - which occurred over the last 14 days; and/or
 - which is planned to occur within the next 30 days.
- For employees who have just returned from travel outside of Canada within the past 14 days, advise them:
 - to refrain from attending the employer's premises for the period of self-isolation recommended by public health authorities; and
 - to monitor their health, follow the recommendations of the Government of Canada, as set out in [PHAC's COVID-19: Information Sheet – Travellers returning to Canada](#), and comply with the recommendations of the applicable provincial and local public health authorities; and
 - that, at the end of the period of self-isolation, if the employee does not develop any symptoms, they may return to work at the employer's premises.
- For employees who are travelling within the next 30 days, advise them:
 - to review PHAC's travel health notices and advisories;
 - that, upon their return to Canada, they may be required to refrain from attending the employer's premises for the period of self-isolation recommended by public health authorities;
 - that they should monitor their health, follow the recommendations of the Government of Canada, as set out in [PHAC's COVID-19: Information Sheet – Travellers returning to Canada](#), and comply with the recommendations of the applicable provincial and local public health authorities; and
 - that, at the end of the period of self-isolation, if the employee does not develop any symptoms, they may return to work at the employer's premises.

Prior arrangements can be made to allow the employee to work remotely during the period of self-isolation, provided they are not sick.

We expect these travel restrictions to be temporary. Accordingly, employers should monitor the information provided by public health authorities, and update their plans accordingly.

In what circumstances can an employer tell an employee not to attend work due to COVID-19 concerns?

An employee who should self-isolate in accordance with the recommendations of public health authorities can be instructed not to report to work.

An employer may require an employee who is exhibiting symptoms associated with COVID-19 to leave the workplace. The employee should only be permitted to return to work following the period recommended for self-isolation or until they are cleared to return to work by a health practitioner.

If an employee reports that they have been in close and/or prolonged contact with a person who has tested positive for COVID-19, including caring for someone with COVID-19, they should similarly be required to self-isolate in accordance with the recommendations of the public health authority.

Do we have to pay employees who are self-isolating?

If employees who are self-isolating are working remotely, they should be paid.

If working remotely is not an option, the employee may be placed on a leave of absence.

There is generally no requirement for an employer to maintain wages in these cases, absent an express contractual or statutory obligation.

If the employee is self-isolating because they are sick, they may be able to claim benefits under a sick leave policy, subject to the terms of the plan.

Some provinces have announced the introduction of self-isolation leaves. Employees who self-isolate but are not sick may not qualify for these leaves. If self-isolation leaves are not available in the employer's jurisdiction, the employer should consider whether they can extend sick benefits to their employees who are self-isolating but not sick. To permit employees to access EI sickness benefits, the employer should promptly issue a Record of Employment. The Government of Canada has waived the one-week waiting period and, as we understand it, no medical note is required to access these benefits under the circumstances.

In circumstances where an employee does not qualify for a paid or job-protected leave, employers may wish to consider a temporary layoff so that the employee is able to apply for Employment Insurance benefits.

Employees should be permitted and required to return to work in accordance with the recommendations of the applicable public health authorities or the employee's health practitioner.

What happens if an employee reports that they have tested positive for COVID-19?

The employer should seek the guidance of local health authorities to assess risk, potential disclosure obligations and develop a plan. In some circumstances, it may be necessary to notify other employees that they may have been in close contact with COVID-19.

With schools and daycares closing, employees are unable to manage their childcare obligations. What are the employers' obligations and options in these circumstances?

Employers should adopt a flexible approach that is consistent with the duty to accommodate to the point of undue hardship. We recommend that employers communicate with employees about alternative childcare options that may be available, and consider whether remote or flexible arrangements, including rotating shifts, are possible.

In addition, employers should be reminded that some employees may be entitled to family responsibility leave in accordance with the employment standards legislation in their province.

What options do we have if we have to temporarily close or reduce operations?

Employers may wish to consider the following options:

- **Temporary layoffs.**

Employers must comply with the requirements in the minimum employment standards legislation in their jurisdiction. For unionized employees, employers should also ensure that they are following the requirements of the collective agreement. For non-unionized employees, employers should consider the employment contract. There is some risk that a temporary layoff of a non-unionized employee may amount to a constructive dismissal absent an express or implied contractual term.

- **Work-Sharing Program.**

As an alternative to layoffs, employers should consider applying to the Government of Canada's Work-Sharing Program. The program allows for employment insurance benefits as income support to employees with a temporarily reduced workload. For further details about this program, please refer to our [communiqué](#) of February 27, 2020.

Where can I find more information about COVID-19?

For information from the Government of Canada: [Public Health Agency of Canada](#)

For information from the provinces and territories, please follow the applicable link below:

- [Ontario](#)
- [Nova Scotia](#)
- [Prince Edward Island](#)
- [New Brunswick](#)
- [Newfoundland and Labrador](#)
- [Québec](#)
- [Manitoba](#)
- [Saskatchewan](#)
- [Alberta](#)
- [British Columbia](#)
- [Nunavut](#)
- [Yukon](#)
- [Northwest Territories](#)

Conclusion

Employers should continue to monitor and respond to the COVID-19 situation as it evolves. We encourage you to contact us if you require any assistance.

We will also provide regular and ongoing updates, including a live Webinar on **Friday, March 20, 2020** entitled *COVID-19: Addressing the Pandemic and the Panic in the Workplace*. The registration details will follow shortly.

Stay Informed

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