

How to go from Pandemic Panic to Pandemic Plan

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March 13, 2020

On March 12, 2020, the Ontario government announced that, in an effort to stem the spread of COVID-19, all public schools in the province would be closed for two weeks following the end of March break. This followed the cancellations of several major entertainment events and the suspension of most major league sports seasons in North America. After weeks of being told that the risk to Canadians was low, many employers are now asking, "Is it time to panic?" The answer is obviously "no." However, it is time to escalate your risk mitigation efforts.

In our previous discussion on COVID-19, we advised employers to designate team leads to manage communication and planning for your organization. If you haven't already taken that step, do so now. The response team should be regularly reviewing Health Canada's website and the updates issued by your provincial Ministry of Health. Many provinces are providing twice daily updates on their websites. The COVID-19 situation is fluid and whomever is tasked with managing communication on behalf of your team needs to have the bandwidth to regularly monitor and report on any updates that may affect your workforce and should also be in a position to work closely with Human Resources and key operational personnel to quickly implement any changes that may need to be made. Perhaps it goes without saying but the designated lead of your COVID-19 team should be someone with good judgment, deep knowledge of your workforce and operational requirements and, of course, is currently in good health.

Our first update also emphasized the importance of personal hygiene in containing the spread of COVID-19. While handwashing remains critical, it is also advisable to embrace what many are calling "social distancing." We recommend cancelling any meetings with more than five people and any events where food and drink would be served. We also recommend surveying your physical workplace. How close together are people's workstations? Are there shared offices? What opportunities are there to give people more private workspaces? Can you ask some or all of your employees to work from home? It may also be helpful to remind employees that handshakes are not advisable in this particular climate and that they should be mindful of one another's personal space to an even greater degree than ever before.

It is also important to revisit and update your company's travel protocol. If it hasn't happened already, we strongly recommend cancelling all business travel for the time being, even to areas that have not yet been identified by Health Canada as hot spots. The list of affected areas is evolving quickly and people who flew to a place they thought was clear may find themselves returning from a hot spot. The federal government announced today that anyone who has travelled internationally – even to somewhere that is not currently listed as an affected area on the Health Canada website - should remain in self-isolation for fourteen days. We now recommend asking employees to notify you of **any** planned travel outside of Canada, regardless of

whether or not the destination is currently listed as an affected area.

Employees who are asked to leave the workplace and do not have the opportunity to work from home will obviously be concerned about the financial impact. If you are not in a position to pay employees who are in self-isolation or quarantine, we recommend being flexible with respect to allowing employees to use vacation that has not yet accrued or other paid time off entitlements that may be available to them under your benefits programs. They should also be reminded that the federal government has recently announced that it is waiving the waiting period for Employment Insurance benefits, thus allowing employees to access those benefits during a 14-day self-isolation period.

Many employers may be considering whether or not to implement temporary lay-offs. Lay-offs are distinct from terminations in that they are a temporary suspension of active duty, during which time the employee does not come to work and is not paid but retains the right to be recalled to his or her former position. The permitted length and specific terms of temporary lay-offs varies by province but an important thing to keep in mind for all jurisdictions is that there is no inherent right to temporarily lay-off your employees. The right to lay-off must be established in a contract of employment or collective agreement or through consistent past practice to avoid claims of constructive dismissal. The risk of constructive dismissal claims arises from both unauthorized lay-offs and from any attempt to prevent people from reporting to work without pay for safety reasons that are not supported by public health authorities.

Finally, our first update also discussed family support obligations that your employees may have as a result of the spread of COVID-19. In addition to the possibility that your employees could be caring for unwell family members, we are also now faced with widespread school closures. Many employees will be scrambling to find alternative child care on very short notice. Employers must keep in mind that any requests by employees that are related to the need to provide child care in these circumstances would have to be considered a request for accommodation on the basis of family status and thus must be evaluated on that basis. We strongly suggest opening lines of communication with impacted employees so you can try to mitigate the impact on your operations.

It is clear that the COVID-19 situation is continuously evolving. In fact, this author had to revise the section on international travel halfway through writing this article due to new updates from the federal government. We will continue to monitor as circumstances develop and will keep reporting back to you with our insights and recommendations.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.