

Emerging FAQs for Canadian Employers

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The Cassels Employment & Labour Law Group has been working closely with our clients to help them stay on top of COVID-19 developments as they continue to impact Canadian workplaces. We've learned a lot over the past few days and we thought it would be helpful to pull together some of our most frequently asked questions and share our thoughts on strategies and best practices.

- 1. How do I stay on top of the news on COVID-19?** Currently, the most reliable and frequently updated sources of information are the provincial Ministry of Health websites. For example, the Ontario Ministry of Health has been issuing twice daily updates to its site. The Center for Disease Control and the World Health Organization are also issuing updates but their focus is naturally not on Canadian issues so we recommend using them to supplement your reading but not as a sole source of information. Some news organizations are also waiving their paywall policies for COVID-19 updates.
- 2. Am I legally required to pay employees who cannot work due to self-isolation or quarantine?** Employers who are struggling with this question must start with their employment policies and contracts of employment or, if applicable, their collective agreement. If your employees are eligible for paid personal days or paid sick days, a self-isolation or self-quarantine would qualify them for use of those entitlements. Employees may also ask about using accrued vacation time to help cover their time away from work. Unless your vacation policy or employment agreements say otherwise, it is up to the employer to decide when employees can take paid vacation. We strongly recommend using that discretion to say "yes" to such requests. However, in the absence of paid sick or personal days or accrued vacation, there is currently no requirement for employers to pay employees who are unable to work. We say "currently" because the situation is evolving quickly and it is entirely possible that one of the provinces or the federal government will mandate that employers in their jurisdiction pay employees during any period of self-isolation or self-quarantine. In the meantime, Employment Insurance sick benefits are payable during "quarantine" and the usual one week waiting period has been waived.
- 3. Am I morally obligated to pay employees who cannot work due to self-isolation or quarantine?** This is, of course, a question that each employer must assess having regard to its own workforce and its financial resources. We can't answer it for you. We can say that providing employees with some financial support during periods of self-isolation and/or quarantine greatly encourages accurate self-reporting regarding exposure and travel. It could also yield longer term benefits in terms of employee retention and morale.
- 4. Can I lay people off due to lack of work?** This depends on your contract of employment with your employees (or the collective agreement, if applicable). If the contract or collective agreement states

that the company has the right to implement temporary lay-offs, then you can do so in accordance with the time limits in applicable employment standards legislation. It is important to note that these time limits often change depending on whether or not you continue benefits coverage or provide other payments to the employees while they are on lay-off. Employers who are able to provide continued benefits coverage or supplemental income to the employees on lay-off will be able to extend the temporary lay-off for a longer period than those who do not.

5. **What do I do if someone comes to work when they are supposed to be in self-isolation?** Act immediately. Escort that person off the premises and ask them to confirm each area of your office or workspace that they were physically present in and each person they made contact with before you were notified of their presence. Then wipe down every surface they touched with bleach wipes or other disinfectant and keep people away from their workstation until it can be thoroughly cleaned and disinfected. If they made physical contact with anyone in the workplace, send that person home as well and ask them to self-isolate.
6. **What do I do if someone who I need in the workplace refuses to come in due to safety concerns?** First, ask them to explain why they are concerned. Do they have immune-compromised people in their household? Or are they simply concerned that they will come into contact with an infected person on their commute or in the workplace? The refusal to come to work could be treated as both a work refusal under applicable occupational health and safety legislation or as a request for accommodation on the basis of disability or family status. Either way, it is critical to understand the basis of their concerns so you can decide whether or not you are able to accommodate them and, if so, under what terms. However, please keep in mind that the messaging from our federal and provincial governments has been consistent - the best path to containment is for people to stay at home. If your employees can perform some or all of their duties at home, you should make every effort to allow them to do so.
7. **What are governments doing about this?** It changes every day. As of the date of this alert, the federal government has announced that entry to Canada will be limited to Canadian citizens and permanent residents and American citizens, with limited exemptions for flight crews, diplomats and family members of citizens. The Ontario government also announced that it plans to introduce legislation that will provide workers affected by COVID-19 with certain job protections and prohibit employers from asking for medical notes for leaves related to COVID-19. We are awaiting details of the legislation but it currently does not appear to contain any form of paid leave for Ontario workers.

As always, we will continue to update you and provide you with our insights and lessons learned as this situation evolves.