

Returning to the Workplace - Preparing for the "New Normal"

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As businesses across the country begin the process of re-opening and welcoming their staff back to the physical workplace, employers are turning their thoughts to how to mitigate legal risk and provide their employees with a safe work environment in this new world. To assist with this process, we have prepared a discussion of key considerations for employers who are planning to re-open their workplaces along with some tips for best practices. Please keep in mind that this discussion is not exhaustive and there is no "one size fits all" return to work plan.

1. Health and Safety

Employers across Canada have obligations under occupational health and safety legislation to take all reasonable steps to provide their workers with a safe workplace and to proactively identify and remedy workplace hazards. Before you welcome employees back to your physical workplace, we recommend asking yourself the following questions:

- Do you and your management team understand your liability under your provincial health & safety legislation or, in the case of federally regulated employers, the *Canada Labour Code*? Penalties for companies and individuals who do not comply with their responsibilities regarding workplace health and safety can be significant and, in some jurisdictions, can include jail time.
- Have you made sure that your knowledge of public health recommendations and specific safety regulations that may apply to your workplace is current? Is there someone in your organization who is responsible for staying up to speed on legislative and public health developments related to COVID-19? Simply relying on the existence of a Joint Health & Safety Committee is not sufficient. We recommend specifically designating someone to stay on top of COVID-19 developments that are relevant to you and your workforce.
- Have you conducted a risk assessment that is specific to your workplace? It is not enough to follow general public health guidelines. Employers must review and understand the risks that their particular workplaces may pose to workers and then take measures to mitigate those risks. Such measures could include physically reorganizing workspaces, making common areas unavailable, staggering shift times, installing physical barriers between workers and areas of public access, installing sanitization stations and providing personal protective equipment (PPE) to employees.

- Do you understand work refusals? Occupational health and safety legislation in all jurisdictions gives workers the right to refuse work that they believe is unsafe. Our experience to-date suggests that such refusals will increase once more businesses reopen. We recommend training your supervisors and human resources team to ensure that they understand the proper procedure to follow when someone in your workplace issues a work refusal and that they appreciate that mishandling such a refusal can lead to significant penalties.

2. Accommodation & Discrimination Issues

Employers have always had responsibilities under human rights legislation to accommodate employees on the basis of family status and disability, but COVID-19 is presenting special issues for both employers and employees. Employees may find themselves with increasingly onerous child and elder care responsibilities as schools, day care and community centres continue to remain closed. Employees may also find that medical conditions that do not impact their day-to-day functions in the normal course now make it unsafe for them to commute or attend at work. At the same time, companies have fewer resources available to absorb some of the financial impacts of accommodation and may have less flexibility in terms of scheduling and work allocation.

As part of your planning for a return to the physical workplace, we recommend training managers and supervisors on how to identify and respond to requests for accommodation of restrictions related to protected grounds and how to distinguish such requests from a general reluctance to leave the work at home environment. We also recommend that you be mindful of the fact that some communities in Canada have faced increased prejudice and harassment because of their perceived association with the COVID-19 outbreak and be prepared to respond quickly and appropriately to any such incidents in your workplace.

3. Protected Leaves

Many provinces in Canada have introduced specific leaves of absence to provide job protection to those who need to take time away from work due to health or family care issues related to COVID-19 or who are required to self-isolate or quarantine to comply with public health directives. Ontario has also created a new infectious disease emergency leave which has the effect of converting temporary lay-offs that occurred within a specific time period and were related to COVID-19 into unpaid leaves of absences. For more information on this new legislation and the complexities it introduces for Ontario employers, please review our recent Insight [here](#).

In addition to these COVID-19 specific leaves, most provinces in Canada have other job-protected leaves that may be required by employees who continue to be affected by the pandemic even after we move out of the emergency phase of pandemic management. Examples include leaves of absence to provide care and

support to critically or seriously ill family members, personal sick leave or personal emergency leave. Any request for time away from work to attend to family issues or COVID-19-related concerns should be reviewed carefully to assess whether or not the request falls within the scope of a protected leave, whether under employment standards legislation or your provincial human rights legislation. Once again, we recommend educating your management team on the types of protected leaves that could be available to employees under their supervision so they know when to escalate matters to Human Resources or your legal counsel. Many employees seeking accommodation or a protected leave start by making the request of their immediate supervisor. If your managers are not able to properly identify such requests, your company could be exposed to unnecessary legal risk.

4. Wellness and Morale

The mental health impacts of our sudden transition to self-isolation and working at home have been well documented. Although the lifting of restrictions may give people some respite in terms of their childcare burdens and their feelings of isolation, employers should prepare themselves for employees to experience unusual stress in the workplace, whether such stress is due to continuing issues with reliable and safe child care, the safety of their commute or perceived safety issues at work. In addition, we anticipate potential conflicts between coworkers as they encounter incidents of non-compliance or perceived non-compliance with workplace policies regarding use of PPE, physical distancing or hygiene. Given how concerned people are for their own safety and the safety of their family members these days, it is likely that such conflicts could escalate very rapidly. We recommend instructing supervisors to be vigilant about ensuring compliance with workplace policies to minimize the need for employees to police one another and to ensure that everyone understands the importance of such practices. We also recommend that employers be prepared to intervene quickly if such a dispute does arise and clearly reinforce their expectations regarding workplace safety and appropriate workplace behaviour. We also recommend reaching out to your benefits provider to explore options for increased mental health and wellness resources that you can make available to your employees as they transition back to the workplace.

5. Living with COVID-19 in the Long Term

As we transition away from the emergency phase of our response to COVID-19, employers may find themselves having to make permanent or long-term adjustments to their expectations and policies to account for COVID-19's continuing impact. We expect that many employers will face increasing demands from employees for work at home options even after most workplaces are permitted to re-open. This may be to account for ongoing concerns with safe access to public transit or, more likely, to assist parents with managing more limited or less desirable options for child care. We recommend revisiting your work at home policies to ensure that they accurately reflect your company's core values and capacity to permit employees to perform some or all of their duties at home. It is also advisable to update sick leave policies to address

the fact that employees may still be required to self-isolate after potential exposure to COVID-19 even after the initial wave of the pandemic has subsided.

Another area that will require continuing attention is your company's policies and practices regarding business travel. Unless and until a vaccine is developed, air travel is likely to remain a high-risk activity. Further, the degree of risk of exposure when travelling can vary widely depending on the destination, the method of travel and the employee's activities while on the road. Your company's travel policies and practices will need to be consistently updated to reflect current travel alerts and best practices.

Finally, one lesson most employers learned from COVID-19 was that their existing policies and employment agreements did not adequately address the possibility of temporary lay-offs or emergency work stoppages. We recommend reviewing your job offer templates and workplace policies to ensure that you have flexibility to respond to a potential second wave of COVID-19 or other emergencies that could significantly impact your business. We also recommend staying vigilant regarding your workplace's occupational health & safety practices and policies and ensuring that they are updated to reflect changing public health guidelines.

As we noted in our introduction, there is no standard playbook for a return to work. However, we believe that these are common areas of potential risk that all employers should review before moving employees back into the physical workplace. We will continue to monitor legislative and public health developments and share our insights as we move to the next phase of coping with COVID-19.

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