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Employment Issues During COVID-19

**YOUR QUESTIONS ANSWERED
PART II**

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COVID-19: in the Workplace

BEST PRACTICES

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Employer Health and Safety Obligations

- *Occupational Health and Safety Act*
 - Section 25(2)(h): The employer shall ... take every precaution reasonable in the circumstances for the protection of a worker
 - Section 25(1): An employer shall ensure that (a) the equipment, materials and protective devices as prescribed are provided, (b) ... maintained in good condition
 - Section 25(2)(a): The employer shall ... provide information, instructions and supervision to protect the health or safety of the worker
- *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*



COVID-19 Safety Plan

- Control COVID-19 risks in the workplace
 - Screening
 - Physical distancing and barriers
 - Good ventilation
 - Frequent cleaning and disinfection of surfaces
 - Source control masking
 - Personal protective equipment
- In situations where one or more controls cannot be consistently maintained it is especially important that other controls are in place

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PPE – Masks

- Earlier local bylaws; since October 3rd, masks are required in all workplaces, even those that are not open to the public
- Exception for individuals who have a medical condition that inhibits ability to wear a face covering, or is unable to put on or remove the face covering without help — not entitled to require the individual to produce medical documentation in support
- Medical masks (surgical, medical procedure face masks, and respirators like N95 masks) should be reserved for use by health care workers and first responders



COVID-19 Screening Tool

- Screening Questions
 - Q 1. Do you have any of the following new or worsening symptoms or signs?
Symptoms should not be chronic or related to other known causes or conditions
 - Fever or chills
 - Difficulty breathing or shortness of breath
 - Cough
 - Sore throat, trouble swallowing
 - Runny nose/stuffy nose or nasal congestion
 - Decrease or loss of smell or taste
 - Nausea, vomiting, diarrhea, abdominal pain
 - Not feeling well, extreme tiredness, sore muscles

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COVID-19 Screening Tool

- Screening Questions
 - Q 2. Have you travelled outside of Canada in the past 14 days?
 - Q 3. Have you had close contact with a confirmed or probable case of COVID-19?
- If the individual answers NO to all questions from 1 through 3, they have passed and can enter the workplace
- If the individual answers YES to any questions from 1 through 3, they have not passed and should be advised that they should not enter the workplace — they should go home to self-isolate immediately and contact their health care provider or Telehealth Ontario



Right To Refuse Work

- Section 43(3) A worker may refuse to work or do particular work where he or she has reason to believe that,
 - (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
 - (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;
 - (b.1) workplace violence is likely to endanger himself or herself; or
 - (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker



Right To Refuse Work

- Two-step process:
 - Worker remains on-site, health and safety rep present during internal investigation
 - Ministry of Labour investigation
- Does not apply to commuting, anxiety about returning to the workplace



Ministry of Labour Response

- June 25th: 278 work refusals reported March to June, 2020, 10 times that of any other province, 277 work refusals denied
- Does the hazard exist in the workplace = standard applied
- September 23rd:
 - Announced hiring 98 new frontline health and safety inspectors — a 24% increase
 - March 11–September 8: 19,411 inspections / investigations regarding COVID-19, issued 16,520 orders



What To Do if You Have a Positive Case

- Ensure the employee self-isolates, follows direction of Public Health
- Contact Public Health and follow their directions
- Inform workers who may have been exposed — determine whether they should self-isolate depending on extent of exposure
- Report to the Ministry of Labour in writing within 4 days
- Report to WSIB, if applicable
- Manage new risks, review COVID-19 safety plan



Accommodation Issues

- **Infectious Disease Emergency Leave** – runs until January 2, 2021
 - Employee under individual medical investigation, supervision or treatment related to the infectious disease; in quarantine or isolation implemented as a result of information or directions related to the infectious disease issued to the public, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means
 - Employee under a direction given by employer in response to its concern the employee may expose other individuals in the workplace to the infectious disease
 - Employee providing care or support to a [designated family member] because of a matter related to the infectious disease that concerns that individual, including, but not limited to, school or day care closures
 - Employee directly affected by travel restrictions related to the infectious disease and, under the circumstances, cannot reasonably be expected to travel back to Ontario

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Accommodation Issues

- **Infectious Disease Emergency Leave**
 - Reinstatement: Upon the conclusion of an employee's leave under this Part, the employer shall reinstate the employee to the position the employee most recently held with the employer, if it still exists, or to a comparable position, if it does not
- **Family Status, Disability**



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COVID-19: Remote Working Issues

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Work at Home as a Long Term Plan: Considerations for Employers

- Initial phase of pandemic has passed
- But others are choosing to keep employees in work at home arrangements, either permanently or for the foreseeable future
- What do employers need to consider as they move forward with long term work at home arrangements?
 - Policy changes
 - Employment contracts
 - Data protection
 - Tax issues
 - Safety issues
 - Productivity and performance management
 - Accommodation

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Policy Impacts of Work at Home

- Review and update existing policies regarding working at home or create new ones
 - Specifically address the circumstances of the pandemic
 - Include expectations regarding:
 - Protection of company property and information
 - Availability during business hours
 - Connectivity
 - Appropriate workspace within the home



Policy Impacts of Work at Home

- Review other policies for indirect impacts
 - Workplace safety
 - Accommodation and human rights policies
 - Attendance and punctuality
 - Overtime and hours of work



Changes to Employment Contracts

- Review existing employment agreements to determine if amendments are needed
 - Car allowances
 - Restrictions on working from home
 - Allowances for fitness club or other memberships
 - Expense accounts for client and business development costs
 - Reimbursement for home office expenses
 - Technology allowances



Tax Issues

- Home office expenses
 - Canada Revenue Agency has created a safe harbor for up to \$500 in home office expenses, e.g., computer, desk, chair etc. — not a taxable benefit for employees to be reimbursed for costs under \$500; must be a reimbursement
- Deductions for home office costs
 - Limited options for employees — only permitted when employee works from home more than 50% of the time
 - Can be heating, electricity, wifi but not mortgage costs or property taxes
 - T2200 must be issued — unclear if will apply if employee has the option to come to the office



Tax Issues

- Location from which the employee works
 - Employers usually withhold and remit employee taxes based on where the employee performs their work
 - But if the employee moves to a new province during the work at home period and no longer reports to a physical workplace, can remit on the basis of the province in which your payroll operates
- Cross-border appointments
 - If you have employees who live in Canada but regularly cross the border to work in the US, the fact that they now work at home in Canada can give rise to Canadian tax obligations for the US-based employer — could be required to file a Canadian tax return or be deemed to have created a permanent establishment

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Data Security

- Employers should update policies and provide training on data security at home
 - Use of company devices by others in the household
 - Printing and destruction of confidential information in home environment
 - Creating secure environment for telephone calls and virtual meetings
 - Secure home wifi network
 - Password protection for company-owned devices

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Workplace Safety Issues

- Definition of workplace in health & safety legislation very broad
- Employer obligated to ensure that employees have a safe home environment in which to work
 - Provide employees with guidance on how to make their home offices safe for work
 - Ask them to verify that their home offices are safe
 - Provide assistance if safety issues are identified
 - Domestic violence
 - Lack of ergonomic office furniture
 - Isolated workers
 - Emergency protocols

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Performance and Attendance

- Managing employee performance remotely can be a challenge
 - Track hours of work and monitor potential overtime
 - Set clear expectations regarding availability and responsiveness
 - Schedule routine check ins with managers
 - Offer coaching and technological support
 - Strike balance between effective monitoring and micro-managing
 - Adhere to usual disciplinary protocols and performance management practices, with appropriate adjustments for remote environment



Accommodation

- Employers obligated under human rights legislation to accommodate restrictions related to protected grounds
 - Family status — the status of being in a parent/child relationship
 - Disability
- Employers should consider
 - Modified work hours or duties to accommodate child/elder care
 - Requests to work in the office, if available
 - Modifications to home office environment to accommodate disabilities
 - Leaves of absence

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COVID-19 & Canadian Immigration

THE IMPACT ON
BUSINESS TRAVEL



Requirement 1: Meet Regular Entry Requirements

- Visa Required or Visa Exempt
 - USA, Mexico, Europe, Hong Kong
 - China, India, Africa, South America
- Electronic Travel Authorization
- Work Permit Required or Work Permit Exempt
- Criminal Inadmissibility



Requirement 2 : Travel Ban Exemptions

- Travel Ban from the US
 - The purpose of travel must not be “optional or discretionary”
- Travel Ban from all Countries (except US)
 - Anyone who has a valid work permit or work permit approval
 - The purpose of travel must not be “optional or discretionary”
 - Anyone whose presence is in the “national interest” as determined by either the Minister of Foreign Affairs, Minister of Citizenship and Immigration, or Minister of Public Safety
 - Medical, emergency or other essential services



Requirement 3: No COVID-19 Symptoms

- Do not travel when sick
 - Commercial airline restrictions
 - Border restrictions
- Health Check
- ArriveCAN



Requirement 4: Mandatory Quarantine

- Quarantine Plan
 - Identified location
 - Transport
 - Arrangements for necessities
 - Separate from “vulnerable persons”
- Post-Entry Monitoring (ArriveCAN)



Alberta Pilot Project

- Reduced Quarantine Time
 - Calgary International Airport
 - Coutts land border
- Eligibility Requirements Include:
 - International traveler
 - 2 COVID-19 tests
 - 14-day stay in Alberta or less period if travel only to Alberta
 - Quarantine plan
 - Symptom Free
 - No contact with confirmed case in 14 days

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Requirement 4: Quarantine Exemption

- Self Quarantine Order
 - A person (or a class of persons) who the Chief Public Health Officer determines will provide an essential service
 - Technicians or specialists specified by a government, manufacturer, or company, who enter Canada as required for the purpose of maintaining, repairing, installing or inspecting equipment necessary to support critical infrastructure (Energy and Utilities, Information and Communication Technologies, Finance, Health, Food, Water, Transportation, Safety, Government and Manufacturing) and are required to provide their services within 14 days of their entry to Canada and have reasonable rationales for the immediacy of the work and the inability to plan for a 14 day quarantine
 - A person who enters Canada if the entry is necessary to return to their habitual place of residence in Canada after carrying out an everyday function that, due to geographical constraints, must involve entering the United States



Domestic Travel

- Health checks when traveling by air
- Provincial/Territorial border restrictions
 - Maritimes
 - Nunavut and Northwest Territories
 - Yukon and British Columbia



Departing Canada

- Avoid all non-essential travel outside of Canada
- Know travel and border restrictions and entry requirements of travel destination



Questions? We're Here to Help!

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Visit our COVID-19 Resource Centre at **cassels.com/covid19**

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