

Preparing Your Workplace to Respond to COVID-19: Questions and Answers for Employers

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The World Health Organization has declared COVID-19 a pandemic, and in Canada the various levels of government in each jurisdiction have taken significant steps to control and contain the spread of the virus. Employers are faced with a rapidly changing environment and the need to respond quickly but carefully.

We have provided answers to some of the questions employers may have regarding the current situation and some practical tips.

Can I direct employees to self-quarantine and not report to work?

Answer: Yes, provided that such direction is based on the employer's duty under the applicable occupational health and safety legislation or as directed by local authorities. For example, the Ontario *Occupational Health and Safety Act* (OHSA) requires employers to take "every precaution reasonable in the circumstances for the protection of a worker".

Practical Tips:

- Assess the risk that your employees may be exposed to the coronavirus in the workplace and determine the appropriate criteria to determine if employees should self-quarantine. Involve the company health and safety committee or representative in the assessment process.
- Stay up to date on the guidance and directions from public health officials that may affect the workplace or your employees.

Do I have to pay an employee who is unable to work due to the coronavirus?

Answer: No (in most cases). However, an employee may be entitled to paid leave benefits if the circumstances are covered by your company's leave policies or benefits plans. An employee may also choose to take the time they are unable to work as vacation/PTO as a means to receive pay. The federal government has also recently waived the mandatory one-week waiting period to access Employment Insurance benefits for employees who cannot work due to quarantine or self-isolation due to the coronavirus.

Practical Tips:

- Review your company's leave policies and benefits plans to identify any paid leave benefits that may be available to employees in the present circumstances and make employees aware of these benefits.
- Determine your organization's ability to make alternative work arrangements if employees are required to self-isolate or are otherwise unable or prevented from reporting to work.

Can an employee refuse to work because of the coronavirus?

Answer: Yes, if the employee has reason to believe that the circumstances are a health and safety risk. Under the OHSA, an employee may refuse to work or do particular work where he or she has reason to believe that “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”.

Practical Tips:

- Be proactive; identify and address the potential risks to employee health and safety (this would also be part of an employer's duty to maintain a safe workplace for employees under occupational health and safety legislation).
- Clearly communicate the steps the company has implemented for the protection of employees; provide regular updates based on developments in circumstances and the guidance from public health officials.

I need to reduce my labour costs because of the impact the coronavirus is having on my business – can I cut employee wages or lay off employees?

Answer: Yes, but only if the employer has a contractual right to do so or if the employee agrees to such reduction. Otherwise, doing so may constitute a constructive dismissal, thereby giving rise to a claim by the employee to termination entitlements.

Practical Tips:

- Review employee contracts and collective agreements (if applicable) to determine the extent to which an employer can make unilateral changes to an employee's terms and conditions of employment.
- Assess whether alternative cost-saving measures can be implemented before an organization considers workforce or wage reductions.

For more information on how to respond to COVID-19 in your workplace or organization, please contact Daniel, Sean or Megan.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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