

# CLIENT ALERT

## **COVID-19: The Essential Need-to-Know Guide for Employers and Employees**

*by Toronto Office Employment Lawyers*

The immediate impact of the 2019 novel coronavirus (“**COVID-19**”) has caused major disruptions to Ontario’s workplaces. In recent weeks, new questions have emerged for employers, including whether their workplace is considered an essential or nonessential business, whether lay-off is appropriate, whether their business qualifies for any government relief, and what new measures exist to help provide funding for payroll. This guide provides an overview of all of these questions and more as of March 31, 2020. As the situation evolves, the Dickinson Wright LLP team will continue to provide updates in order to help employers and employees navigate the COVID-19 pandemic.

If you have any immediate questions or require further information, please reach out to your Dickinson Wright LLP lawyer or contact the dedicated Dickinson Wright LLP COVID-19 email at [COVID19info@dickinsonwright.com](mailto:COVID19info@dickinsonwright.com).

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## 1. Closure of Nonessential Businesses

The Government of Ontario ordered the mandatory closure of all non-essential workplaces effective as of Tuesday, March 24<sup>th</sup>, 2020 at 11:59 p.m. This closure is in place for 14 days, with the possibility of an extension. The mandatory closure includes all for-profit and nonprofit businesses that provide goods or services. The mandatory closure does not include businesses that operate online, by telephone, or by mail/ delivery. Businesses may telework and engage in online commerce.

Nineteen categories of businesses were deemed essential, each with their own subcategories and descriptions. At this time, the province requires [business owners to review the list of essential businesses](#) that are authorized to stay open, to determine whether they fit into any of the categories and, if they do, to make a business decision as to whether to stay open and/or adapt their operations.

Where a business believes that it should be classified as “essential,” but is otherwise directed or advised by the government to temporarily close, the business will need to make a risk assessment as to whether it should remain open. Failure to comply with the mandatory closures can result in fines of up to \$10 million for noncomplying corporations, and \$500,000 for directors and officers of a noncomplying corporation. At the moment, the government has not introduced a dispute process for businesses who disagree with any decision made by the government to order the closure of a business.

For any questions relating to the closures, the province can contact the [Stop the Spread Business Information Line](#) at 1-888-444-3659. The information line is available from Monday to Sunday, from 8:30a.m. to 5:00p.m. Please note, there are significant wait times to speak to a representative.

## 2. Workplace Exposure to Suspected or Confirmed COVID-19 Cases

Generally, Canadian privacy statutes provide exceptions to consent for the disclosure of personal information in emergency situations involving threats to life, security or health of an individual, or the public at large. We believe that disclosure of certain information in response to the COVID-19 pandemic may qualify for this exception.

### a. Requesting Information

Employers may ask employees whether they have tested positive for COVID-19, or whether they have been exposed to certain risk factors, such as recent travel or coming into contact with others who have tested positive for the COVID-19 virus.

### b. Disclosing Information

It may be important for employers to advise their employees that there has been a confirmed case of COVID-19 in the workplace. However, **this disclosure must be limited** to the greatest extent possible. During a pandemic, the question of what is reasonable and appropriate to disclose will be informed by various factors, including guidance from health authorities, advice from

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healthcare professionals, and fact-specific considerations such as the type, breadth, and volume of personal information required to be collected or disclosed in the circumstances. Employers are typically advising co-workers who may have worked in close proximity to someone who has tested positive for COVID-19.

If an employee requires leave due to COVID-19 related matters (e.g. for self-isolation, to care for a family member, etc.), employers should not disclose the reasons for an employee's leave or remote working arrangements, except on a limited basis to those employees who require that information to carry out their employment duties or to maintain a safe workplace.

What is necessary for the purposes of disclosure may depend on the employer's health and safety obligations to employees under the *Occupational Health and Safety Act* or on what is required by public health authorities. The ultimate objective is to provide sufficient but limited disclosure to potentially exposed employees to enable them to protect themselves and those they interact with and prevent further exposure in the workplace.

Employers should never provide the following identifiable information:

- The name, date of birth, or other identifiers of the individual who is the subject of suspected or confirmed COVID-19.
- If known, the date of the individual's exposure and the extent and circumstances of their potential exposure.

An exception to these restrictions, as permitted by Canadian privacy laws, is the disclosure of personal information without knowledge or consent of the individual in an emergency that threatens the life, health, or security of another individual. Consultation with a qualified medical professional and legal counsel should occur when determining whether the situation constitutes an emergency.

## **c. Screening in the Workplace**

Given the highly infectious nature of the COVID-19 virus and staggering infection rates across Canada, screening measures, such as taking the temperature of employees, may be reasonable in certain workplaces. Before implementing temperature screening policies, employers must consider the following:

- An employee should only be tested if they first consent. If an employee refuses to be tested recourse should be made available through the employer's COVID-19 policy.
- Screening must be conducted in the least intrusive manner available (i.e. non-contact methods are preferred to contact thermometers).
- Advance notice of the temperature screening should be provided, with details regarding the methods and purposes of the test.
- The tests should be administered by qualified individuals, in a safe manner that does not expose employees to health risks.
- If employees test within an ordinary temperature range, their medical information should not be retained by the employer.

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- Individuals who test above a normal level which would cause concern to medical professionals must be asked to leave the workplace in a safe and discrete manner and to seek appropriate medical attention

In conjunction with the employer's COVID-19 policy in the workplace, employees can be made responsible for self-screening or self-monitoring for symptoms they experience while they are away from the workplace and for contacting their employer if they suspect they are unfit for work due to a virus-related illness.

### **3. Reporting**

Most employers do not have a legal obligation to report a suspected COVID-19 case to public health authorities. However, some employers/employees in a management role have an obligation to report suspected or confirmed cases to Ontario's Chief Medical Officer including (but not limited to):

- Health professionals.
- School principals.
- Superintendents of stipulated institutions.
- Laboratory operators.

The obligation to report occupational illness to the Ministry of Labour is limited to situations where employees were exposed to the illness in the workplace, or if the employee files a claim for occupational illness with the Workplace Safety and Insurance Board ("**WSIB**"). See the section below on WSIB for further details.

### **4. Refusal to Work**

Under section 43 of the *Occupational Health and Safety Act*, most workers are entitled to refuse to work if they have a reasonable belief that working would put their personal health and safety at risk. Personal health and safety risks can include where "the physical condition of the workplace" is likely to put them in danger. In light of the COVID-19 pandemic, workers may refuse to work if their employer cannot, fails, or refuses to take appropriate measures to ensure the physical condition of the workplace will not spread COVID-19.

While most employees may be able to refuse work, those in certain professions, such as first-responders or those who work in hospitals are not entitled to refuse work in light of conditions that may put their personal health and safety at risk.

An employee refusing to work must report the circumstances of his/her refusal to their employer or supervisor. The employer/supervisor must then investigate the report. If the employer decides there is no hazard, but the employee continues to refuse to work, the employer must report the refusal to the Minister of Labour. An inspector appointed by the Ministry of Labour will visit the workplace to investigate. During this time, the employer cannot assign another employee to work in that job or area

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of the work refusal in that workplace until that other employee has been advised of the other worker's refusal and the reason for that refusal.

Most importantly, employers should not dismiss, discipline, or intimidate employees if the refusal was properly exercised and in good faith. Employers considering discipline for a worker who refuses to work should consult a lawyer prior to taking any course of action.

## 5. Protected Leave

In the last couple of weeks, both the federal and Ontario governments have passed legislation granting employees affected by COVID-19 protected unpaid leave. The *Canada Labour Code* ("CLC") applies to federally regulated businesses and industries, such as banks, air transportation, telephone and broadcasting, and most Crown corporations, among others. Most other businesses or industries in Ontario that are not federally regulated are subject to the *Employment Standards Act* ("ESA"). It is important to identify which legislation is applicable to understand the changes that impact your business or industry.

### a. **Federal Amendments to the *Canada Labour Code***

On March 25, 2020, the federal government passed Bill C-13, *COVID-19 Emergency Response Act*. This legislation introduces amendments to the *Canada Labour Code* and other related acts and provides for unpaid leave of up to 16 weeks for employees who are unable or unavailable to work for reasons related to COVID-19. An employee does not have to provide a certificate or medical note issued by a healthcare provider, but an employee is required to give written notice to their employer setting out the reasons for the leave and its length as soon as possible.

If an employee provides written notice to their employer, the employer must make note of the following:

- Reprisals: Employers cannot discipline, demote, lay-off, or dismiss an employee or threaten an employee with any of the foregoing because the employee is taking COVID-19 leave.
- Benefits: Employers must still continue to provide pension, health, and disability benefits, and seniority or service accumulation for the duration of the leave. If applicable, employees are responsible for benefit contributions during the leave, unless they declare they wish to discontinue their benefits during the leave. Employers must continue to pay their proportionate contributions during the leave, if any.
- Opportunities: Where an employee provides a written request, the employer must continue to provide information to the employee on leave of employment, promotion, or training opportunities relating to the employee's qualifications that arise while the employee is on leave.
- Vacation: Vacations may be interrupted to take COVID-19 related leave.
- Parental Leave: The 78-week period for parental leave may be extended, and the 68 weeks available for parental leave may be interrupted in circumstances of a COVID-19 related leave.

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## **b. Ontario's Amendments to the *Employment Standards Act***

On March 19, 2020, the Ontario government passed the *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020* which adds s.50.1 to the *Employment Standards Act, 2000* ("ESA"). This legislation entitles employees to unpaid, job-protected leave during a declared or designated infectious disease emergency, which is deemed to include COVID-19. The job-protected leave is retroactive to January 25, 2020, and remains in effect until the COVID-19 emergency is declared lifted. Employees that are protected under the leave include full-time workers, part-time workers, students, temporary help agency assignment employees, and casual workers.

Employees are not required to provide a medical certificate or note in order to take this new infectious disease leave. However, employers may ask the employee to provide reasonable evidence to show that leave is required. This can include evidence that an airline cancelled their flight or that a daycare is closed.

The amendments to the ESA provide job protection for employees unable to work for the following COVID-19 related reasons:

- Employee is under medical investigation, supervision or treatment.
- Employee is acting in accordance with an order under the *Health Protection and Promotion Act*.
- Employee is in isolation or quarantine in accordance with public health information or directive.
- Employer directs the employee not to work due to concern that COVID-19 could spread in the workplace.
- Employee needs to provide care to a prescribed individual for COVID-19 related reasons.
- Employee is prevented from returning to Ontario due to COVID-19 travel restrictions.

Employers are not required to pay employees who are quarantined or otherwise unable to work because of a qualifying COVID-19 related leave of absence (unless the business's employment or workplace policy says otherwise). While employees employed for two or more consecutive weeks are entitled to sick leave of three days per calendar year under the ESA, this leave is unpaid unless the employee's contract of employment specifically allows for paid sick leave.

The general provisions in the ESA concerning other types of statutory leaves also apply to a COVID-19 leave. These include the right to be free from reprisal, the right to continue to participate in benefit plans (provided employee contributions are made, as applicable), and the right to continue to accumulate credit, as applicable, for length of employment, length of service, and seniority. Finally, as a job-protected leave, a qualifying COVID-19 leave also entitles the employee with the right to reinstatement after the leave ends; subject to instances where an employer dismisses an employee for legitimate reasons completely unrelated to COVID-19. Such instances should be discussed with an employment lawyer.

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## 6. Lay-off and Termination

### a. Lay-off

In Ontario, the framework for lay-off is set out in the ESA; however, where temporary lay-off is not expressly permitted in a contract of employment, collective agreement, or in some instances, sufficiently covered by a workplace policy, lay-off runs the risk of prompting a constructive dismissal claim.

Generally in Ontario there is no requirement to provide advance notice of a lay-off. Subject to an employment policy that states otherwise or a registered plan for supplemental employment benefits, employers are not required by legislation to pay an employee (or provide them with benefits) during a period of temporary lay-off. In Ontario there are no mass or group termination considerations for temporary lay-offs; however, should the lay-off extend beyond the allotted time periods prescribed under the ESA mass termination entitlements may apply.

The ESA specifies the time periods for lay-off, following which the employee will be deemed to be terminated and subsequently entitled to termination pay, and if applicable, severance pay. The employee is deemed to have been terminated on the first day of the lay-off.

If the employer does not have a lay-off provision in its employment agreements or the ability to argue that it is implied by the nature of the workplace or industry, laying somebody off (even temporarily) could be a constructive dismissal and may expose the employer to a lawsuit (see discussion below on constructive dismissal).

In these circumstances, many employers are asking their employees to voluntarily agree in writing to temporary lay-offs.

In Ontario, to qualify a period of employee absence as a lay-off rather than an immediate termination of employment, the following ESA criteria apply:

- The term of the lay-off is less than 13 weeks in a period of 20 consecutive weeks; or
- The term of the lay-off is more than 13 weeks in any period of 20 consecutive weeks, but less than 35 weeks in any period of 52 weeks, and where:
  - the employee continues to be paid substantial payments from the employer;
  - the employer continues to make payments to the employee's pension plan or insurance plan;
  - the employee receives supplementary unemployment benefits;
  - the employee is employed elsewhere during the lay-off and would be entitled to receive supplementary unemployment benefits if they were not employed elsewhere;
  - the employer recalls the employee within a time limit approved by the Director of Employment Standards; or in the non-unionized context, the employer recalls the employee within the time set out in an agreement between the employer and the employee; or

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- in a unionized workplace, the employer recalls the employee within the time set out in an agreement between the employer and the employee.

A substantial reduction in an employee's working hours may constitute a lay-off. An employee is considered to be on lay-off if they earn less than 50% of the amount they would earn at their normal pay rate in a regular workweek.

Employers should review their employment agreements and policies in order to determine whether a temporary lay-off is an option that they would like to pursue. Employers who seek to impose a temporary lay-off should ensure that they comply with applicable provincial legislation (i.e. the ESA for employees in Ontario).

At the federal level, a lay-off is considered a termination when the employer has no intention of recalling the employee to work.

The *Canada Labour Code* provides for temporary lay-offs as follows:

- the lay-off is for a duration of 3 months or less;
- the lay-off is for a duration of 3 to 6 months with a fixed date of recall; or
- the lay-off is for a period of more than 3 months where:
  - The employee continues to receive payments during the term of the lay-off from their employer in an amount agreed upon by the employee and the employer;
  - The employer continues to make payments for the benefit of the employee to a pension plan that is registered under the Pension Benefits Standards Act, 1985, or under a group or employee insurance plan;
  - The employee receives supplementary unemployment benefits; or
  - The employee would be entitled to supplementary unemployment benefits but is disqualified from receiving them pursuant to the *Employment Insurance Act*.

In addition, in circumstances where there are periods of re-employment that last less than two weeks, these are not included in determining the term of lay-off. Lay-offs may also be directed by the provisions of a collective agreement, and where employees retain a right of recall, such lay-offs are permissible. If you are contemplating lay-offs, it is recommended that you seek advice from legal counsel.

## **b. Constructive Dismissal**

Notwithstanding the provisions of the ESA, Ontario courts have held that unless an employment contract or other agreement includes a right, either express or implied, to lay-off an employee, the lay-off is a negative fundamental change to the employment relationship. Accordingly, laying-off an employee in the absence of an implied or expressed right (or agreement of the employee) may amount to a fundamental breach of the employment contract. In these cases, an employee will be deemed to have been constructively dismissed and the employee may commence a wrongful dismissal lawsuit.

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A reduction in an employee's hours of work could also be considered a form of constructive dismissal. This may be the case even if the reduction in hours does not meet the threshold for lay-off as specified under the ESA.

A constructive dismissal arises in circumstances where there has been a unilateral change by the employer to the terms and conditions of employment. There is no constructive dismissal if the employee has agreed to the change.

An employer may be able to assert that they have an implied right to lay-off employees in light of the COVID-19 outbreak and government mandated closure of businesses. As it remains unclear how courts will interpret lay-offs in the current environment, we recommend that employers continue to be cautious and take the following steps, if possible:

- Maintain records that provide evidence of the necessity of the decision to temporarily lay-off the employees.
- Ensure that a temporary lay-off proceeds in accordance with the ESA.
- Request an employee's consent to the temporary lay-off.
- Consider whether continuation of benefits or payment towards insurance plans is possible.

In any event, if the employee claims their lay-off actually amounts to constructive dismissal, the employee will have an obligation to mitigate their damages. For example, if an employee is on lay-off, but is later recalled to work and declines to return, this may significantly lower the value of their claim against their employer.

## **c. Termination**

An employee cannot be terminated for taking protected leave due to COVID-19. However, an employer can terminate an employee at a workplace impacted by COVID-19 without cause. Employers generally have a right to terminate their employees without cause at any time, subject to the terms of their employment agreement or provision of reasonable notice of termination (or pay in lieu of notice).

The ESA sets out the statutory minimums an employee is entitled to on termination. The amount of notice is based on years of service and can be up to a maximum of eight weeks or pay in lieu of the same. In addition, an employee with five or more years of service with the employer may be entitled to severance pay equal to approximately one week's pay per year of service to a maximum of 26 weeks. Severance pay is required if an employer has an annual payroll in Ontario of \$2.5 million or more, and the employee has five or more years of service with the employer or if 50 or more employees are terminated from a workplace in a six-month period. There are complex legal issues in the event an employer will be making a "mass termination" and which could be triggered by a mass lay-off involving 50 or more employees that extends beyond the time limits in the ESA. Such instances should be conducted with the advice of a lawyer.

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During this time, employers must ensure the terminations cannot be perceived to be based on any prohibited ground of discrimination under the *Human Rights Code* or related to any employee's decision to take a leave in connection with COVID-19.

## 7. Employment Insurance

Employees on lay-off as a result of business slowdowns or mandatory closures may be eligible to receive regular Employment Insurance ("EI") benefits. To qualify for EI benefits when an employee is experiencing a lay-off due to economic reasons, an employee must meet the minimum number of "insurable hours" calculated over the previous 52 weeks.

The federal government has recently [adopted measures](#) to respond to novel challenges posed by COVID-19 including:

- Waiving the one-week waiting period to allow new EI claimants who are in quarantine to be paid for the first week of their claim.
- Facilitating a dedicated toll-free number at 1-833-381-2725, to support enquiries related to waiving the EI sickness benefits waiting period.
- Removing the obligation for people in quarantine to provide a medical certificate in support of their claim.
- Introducing the opportunity for certain quarantined employees to apply for EI benefits at a later date and to have their claim backdated to cover the period of the delay.
- Allowing employees who are required to self-isolate by an employer for reasons consistent with a directive of public health authorities to have access to EI benefits.

When employees experience an interruption in their earnings, an employer must quickly issue a Record of Employment ("ROE"), typically within five days of the last day of work, as an ROE is required for employees to access EI benefits. In order to complete the ROE, employers should be aware of and use the following codes when indicating the reason for the interruption in employee earnings:

- When the employee is sick or quarantined, use code D (illness or injury) as the reason for separation (block 16). Do not add comments.
- When the employee is no longer working due to a shortage of work because the business has closed or decreased operations due to coronavirus (COVID-19), use code A (Shortage of work). Consult with a lawyer for the use of additional comments.

Employers who have no choice but to lay-off their employees may elect to enroll in a Supplementary Unemployment Benefit Plan (SUB Plan) which allows qualifying employers to "top up" an employee's EI benefits during a period of unemployment due to a lay-off, whether temporary or permanent. The amount of the top-up can be up to 95% of the employee's weekly wages/salary, less the amount of the employee's corresponding EI benefits, and will not decrease the employee's entitlement to EI benefits.

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## 8. Canada Emergency Relief Benefit (CERB)

On March 25, 2020, the federal government announced that it created a streamlined benefit, the “Canada Emergency Response Benefit” (“[CERB](#)”). The CERB is a taxable benefit that will provide \$2,000 a month for up to four months to qualifying workers who lose their income as a result of the COVID-19 pandemic. The Government of Canada introduced the CERB to replace the previously announced Emergency Care Benefit and Emergency Support Benefit, with the intention that the CERB would be a more simplified and accessible option.

Presently, the CERB is intended to support Canadians who have lost their jobs, are sick, quarantined, or are taking care of a prescribed family member who has contracted COVID-19. Working parents who must stay home without pay to care for children who are sick or at home because of school and daycare closures may also be supported by the CERB.

The CERB is available to employees and self-employed workers who:

- Are at least 15 years of age and a resident in Canada.
- Have earned a total income of at least \$5,000.00 or more in 2019 or the 12 months prior to their application for the CERB from any of the following sources:
  - employment;
  - self-employment;
  - from pregnancy or parental EI benefits; or,
  - from pregnancy or parental benefits under a provincial plan;
- Cease working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in which they apply for the CERB payment; and,
- **Do not** receive, in respect of those 14 consecutive days:
  - income from employment or self-employment;
  - EI benefits;
  - pregnancy or parental benefits under a provincial plan; or,
  - any other income that is prescribed by regulation. (At this time, there are no regulations specifying any other disqualifying income sources).

Employers should be sure to inform any employees on an unpaid leave of their ability to apply for the CERB (subject to any prior application for EI) and direct them to resources with more information.

According to the Government of Canada, Canadians would begin to receive their CERB payments within 10 days of application. The CERB would be paid every four weeks and be available, backdated, from March 15, 2020 until October 3, 2020. The application form will be available through a Government of Canada portal on April 6, 2020.

## 9. Employees and Workplace Safety and Insurance Benefits

A worker is entitled to WSIB benefits for COVID-19 infections caused by the worker’s employment. In order to obtain WSIB benefits, a worker must be diagnosed with COVID-19, and the exposure to COVID-

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19 must have occurred at the workplace or was a significant contributing factor in the development of the illness.

If an employee is found to be entitled to WSIB benefits, the employee may be eligible for wage loss benefits that include:

- Any period in quarantine pre-diagnosis.
- Healthcare benefits.
- Permanent impairment benefits arising from the disease.
- In cases of fatality, the employee's survivors could receive WSIB benefits.

## **a. Employer's Reporting Obligations**

Employers must report all claims to WSIB by filing an [Employer's Report of Injury/ Illness Form 7](#) within three days of the worker's report of an injury/illness. If the status of the worker changes, the employer must submit a [report of material change](#) within 10 days of becoming aware of that change. Examples of a COVID-19 material change could include the employee confirming their COVID-19 diagnosis, a need for more, or different treatment for the employee related to the COVID-19 diagnosis.

## **b. WSIB's Adjudicative Guideline for COVID-19 Claims**

To handle potential COVID-19 related claims, the WSIB has established an adjudicative guideline. Claims for the benefit are adjudicated on a case-by-case basis, based on the merits and justice of the case, taking into consideration the facts and the circumstances surrounding the employee's exposure to COVID-19. When determining entitlement, the WSIB decision-maker will consider whether:

- The nature of the worker's employment created a risk of contracting the disease to which the public at large is not normally exposed; and
- The WSIB is satisfied that the worker's COVID-19 condition has been confirmed.

If these elements are established, these two factors will generally be considered persuasive evidence that the worker's employment made a significant contribution to the worker's illness. When determining entitlement, the decision-maker will consider other relevant questions to inform their decision, including:

- The nature of the worker's employment created an elevated risk of contracting COVID-19:
  - Has a contact source to COVID-19 within the workplace been identified?
  - Does the nature and location of employment activities place the worker at risk for exposure to infected persons or infectious substances?
  - Was there an opportunity for transmission of COVID-19 in the workplace via a compatible route of transmission for the infectious substance?

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- The worker's COVID-19 condition has been confirmed:
  - Are the incubation period, the time from the date of exposure and the onset of illness, clinically compatible with COVID-19 exposure that has been established to exist in the workplace?
  - Has a medical diagnosis been confirmed? If not, are the worker's symptoms clinically compatible with the symptoms produced by COVID-19? Is this supported by an assessment from a registered health professional?

The WSIB decision-maker will consider the above factors, but also any other information that may impact the decision-making. This could include information such as the work environment itself, any work processes involved, job tasks, the use of personal protective equipment, the employer's COVID-19 policy, social distancing in the workplace, among other evidence. All of these factors can indicate and inform the decision-maker whether the working environment created a higher risk of contracting COVID-19 than the public is not normally exposed.

Where a claim does not meet these two factors or answer the related questions in the affirmative, that claim will be reviewed on its own merit, based on the circumstances of the individual case.

## **10. Support for Business**

Both the federal and Ontario governments have introduced programs to mitigate the economic effects of COVID-19 for businesses.

The federal government has announced the following programs:

- A Canada Emergency Wage Subsidy: a three-month wage subsidy for eligible employers. The government will cover up to 75% of an employee's salary on the first \$58,700 for businesses who have experienced a decrease in revenue of at least 30%. The wage subsidy is retroactive to March 15, 2020. Businesses of all sizes will be eligible for this subsidy. However, the Prime Minister has warned of serious consequences for employers who misuse the subsidy. What this subsidy will mean for employers will depend on the details of the program which have not yet been released.
- Guaranteed bank loans of up to \$40,000 for small businesses which will be interest free for the first year. Organizations who are able to repay the balance of the loan on or before December 31, 2022 will result in loan forgiveness of 25% (up to a maximum of \$10,000). The federal government has allocated \$25B to this program.
- A [Business Credit Availability Program](#) through the Business Development Bank of Canada and Export Development Canada and Economic Development Canada for small businesses.
- A deferral of GST and HST payments, duties and taxes owed on imports until June 2020.
- A deferral, until August 31, 2020, of the payment of any income tax owing between March 18, 2020 and September 1, 2020. This applies to tax balance dues and installments under Part I of the *Income Tax Act*. No interest or penalties will accumulate on these amounts during this time.

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The Ontario government has announced the following programs:

- [A temporary increase in the Employer Health Tax exemption to \\$1,000,000.](#)
- A [five-month relief period](#) between April 1, 2020 and August 31, 2020 for Ontario businesses unable to file or remit their provincial taxes (including employer health tax, gas tax, etc.) on time due to COVID-19.
- [A suspension of auditing interactions with most Ontario businesses and representatives for the month of April 2020.](#)
- [The deferral of WSIB premiums until August 31, 2020 for all businesses.](#)

## **11. Work-Sharing**

The work-sharing program is designed to help employers and employees avoid lay-offs due to a temporary reduction in business that is beyond the employer's control. As part of the program, employees experiencing reduced working hours will have their income supplemented with EI benefits.

As work-sharing is a three-party agreement between the employee, employers, and Service Canada, employees must agree to a reduced work schedule and be willing to share the available work temporarily. The employee's work reduction cannot exceed 60%. Under normal circumstances, work-sharing programs are capped at 38 weeks. However, in light of the COVID-19 outbreak, work-sharing agreements for businesses who have experienced a downturn in business due to COVID-19 can enter into a work-sharing arrangement for up to 76 weeks.

Employers interested in entering into work-sharing programs with their employees can find more information here: <https://www.canada.ca/en/employment-social-development/services/work-sharing.html>

## **12. How to Create Effective COVID-19 Workplace Policies**

During this unprecedented time, employers must take extraordinary steps to limit the spread of COVID-19 in order to protect their employees and the public at large. Implementing clear policies and procedures to accomplish this aim is crucial. Employers should consider the following questions in order to adequately prepare and implement effective workplace policies:

### **a. Risk Evaluation**

- In order to tailor your policies and procedures to adequately protect employees and customers, make decisions based on the following:
  - What is the demographic of your workforce and clientele? Are they considered high-risk?
  - What is the demographic in the local community?
  - What type of service do you provide?
  - Do your employees have access to occupational health and safety services including personal protective equipment on site?
  - Does your workplace require travel?

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## **b. Communication**

- What do your staff and customers know about COVID-19? Are they aware of the measures you have taken for prevention?
- Do you have the information and technology required for efficient workplace communication with your workforce (e.g. mass email or text capabilities)?

## **c. Hygiene**

- Evaluate the workplace for areas where people have frequent contact with each other and share spaces and objects, and increase the frequency of cleaning in these areas.
- Have you provided the necessary facilities and cleaning products to maintain a clean and safe workplace (e.g. handwashing facilities, hand sanitizing dispensers, personal protective equipment, etc.)?

## **d. Reduce Social Contact**

- Have you considered the feasibility of teleworking arrangements, flexible hours, staggering start times, use of email and teleconferencing?
- Is working from home viable given the nature of work, resources required, legal concerns, etc.?
- Can you minimize the interactions between customers and your employees, such as limiting the number of customers permitted in your establishment at one time or serving your customers virtually or by phone when possible?
- Can you institute measures to ensure your employees are social-distancing in the workplace?
- Have you placed restrictions on allowing visitors to your workplace?

## **e. Travel**

- Can you cancel or postpone all nonessential meetings or travel?
- Can you include measures that restrict business travel in concert with recommendations by the Public Health Agency of Canada?
- Is there a reporting requirement for employees who have travelled either for work or pleasure?
- Have you considered including a requirement for employees travelling for non-business reasons to follow recommendations and advisories on travel and to destinations set out by the Public Health Agency of Canada and the World Health Organization?

## **f. Reporting**

- When and to whom should an employee report their symptoms or exposure to COVID-19?
- How should the employee report their symptoms and exposure?

## **g. Self-Isolation**

- For how long are employees required to self-isolate?

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- Who should the employee report to if they have chosen or been asked to self-isolate?
- When and how should an employee return to work following self-isolation? Will you require a medical certificate before they return?

## 13. Conclusion

The COVID-19 outbreak has had an unprecedented impact on employers and employees that is changing in real-time. Consequently, the contents of this article may become outdated quickly. We recommend that employers seek current, up-to-date legal advice on these issues, and the decisions they may take to address employment matters arising out of the COVID-19 pandemic to be prepared to adapt to any changes. The Dickinson Wright LLP team remains committed to helping our clients navigate this unprecedented time and remains fully available to provide any assistance that may be required.

*Special thanks to articling students Carly Walter, Jacky Cheung and Richard Schuett for their contributions to this piece.*

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