



# COVID 19 IN THE WORKPLACE: What Employers Need to Know

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# COVID19 Overview

- ▶ Effective March 26, 2020 the Government of BC ordered certain businesses to close and identified a list of essential businesses.
- ▶ Non-essential businesses, other than those specifically ordered to close, can stay open as long as social-distancing measures are implemented.

# Agenda

- ▶ Safety in the Workplace
- ▶ COVID-19 Related Leave
- ▶ Terminations, Layoffs and Reductions in Working Hours
- ▶ Human's Rights Concerns
- ▶ Privacy Considerations

# Safety in the Workplace

- ▶ Employers are required by law to provide a safe workplace for their employees.
- ▶ Employees have the right to refuse work if on reasonable grounds there is a danger to worker's health and safety.
- ▶ Not all allegations that the work is dangerous will be established
- ▶ British Columbia has specific processes that must be followed when a work refusal is initiated (3.12 OHS Regulation)
- ▶ Employers must continue to pay employees during the work refusal process, although they can be assigned temporary duties while the process is ongoing.

# Practical Solutions for Employers

- ▶ Encouraging remote work as much as possible;
- ▶ Providing masks, gloves, face shields, eye wear, or other PPE;
- ▶ Increasing the frequency that the workplace is cleaned, particularly in high-risk areas.
- ▶ Ensuring employees who have cold and flu-like symptoms do not attend the workplace;
- ▶ Ensuring that workers or guests who have travelled do not attend the workplace;
- ▶ Limiting guests to the workplace;
- ▶ Providing hand sanitizer, wipes, soap, and water to workers;
- ▶ Providing tissue boxes and encouraging use of the same;
- ▶ Providing disposable cutlery, cups, mugs, and plates for worker use;
- ▶ Refusing to accept cash and not handling customers' debit or credit cards;
- ▶ Installing physical barriers between the worker and the public;
- ▶ Creating a rotating shift schedule; and
- ▶ Anything else that will minimize the hazard of COVID-19.

# COVID-19 Related Leave

- ▶ Employers are entitled to expect that employees will continue to provide work unless they have a legitimate reason why they cannot, including public health guidance to physically distance or self-isolate.
- ▶ Section 52.12 of the *Employment Standards Act* recently added a COVID-19-related leave for employees, if:
  - ▶ They are sick with COVID19 or another illness;
  - ▶ They are required to quarantine due to a public health order;
  - ▶ They are providing care to a child who no longer has daycare due to COVID 19;
  - ▶ They are caring for someone who is sick with COVID 19; or
  - ▶ They are stuck outside of BC due to travel restrictions.

# Terminations, Layoffs and Reductions in Working Hours

- ▶ In BC, an employer can terminate an employee at any time for almost any reason, as long as the reason does not violate the employee's human rights, and is not discriminatory.
- ▶ Generally, a layoff can be considered a termination if it is not provided for in the employment contract, layoffs are unusual for the industry, or a layoff is more than 13 weeks in any period of 20 consecutive weeks.
- ▶ The British Columbia Employment Standards Branch ("B.C. ESB") updated its "Employment Standards Act Interpretation Guide."
  - ▶ IF employer's business is directly impacted by COVID-19 and there is no way for the employee to perform work in a different way (i.e., working from home), an "impossible to perform" exception may apply.



# Practical Solution for Employers

- ▶ Employers should think of creative solutions to keep employees working.
- ▶ Employers should obtain employees consent in writing if a temporary lay-off is necessary.
- ▶ Employers should continue to pay for employee's medical benefits.
- ▶ Employers should not make significant changes to an employee's job, including to pay or hours worked.



# Human's Rights Concerns

- ▶ **BC Human's Rights Commission April 4, 2020 statement:**
- ▶ In this time of rapidly changing circumstances, neither the Human Rights Tribunal nor the courts have had time to weigh in on whether COVID-19 amounts to a disability. However, in my view as BC's Human Rights Commissioner, it does. The seriousness of this illness – and the potential stigma that attaches to it – make it more akin to the legal protections that apply to HIV than to the common cold. Therefore, discrimination on the basis of someone having (or appearing to have) COVID-19, is prohibited under the Code except where the duty bearer can justify such treatment (for example, to prohibit or diminish the transmission of the virus).
- ▶ If COVID-19 or the effects of COVID-19 are protected under the *BC Human Rights Code* (the "Code"), then employers, housing providers and service providers need to accommodate the needs of the infected person to the point of undue hardship.

# Practical Solutions for Employers

- ▶ Employers should not make hiring, firing or discipline decisions on the basis of whether the person has or appears to have COVID-19, or comes from (or appears to come from) COVID-19 hot spots (for example, China and Italy).
- ▶ Employers should try to accommodate employees (especially those who are particularly vulnerable and those with increased child care obligations).
- ▶ Employers should not send an employee home or ask them not to work due to COVID-19 unless the employer's concerns are reasonable and consistent with current advice from medical and Public Health officials.
- ▶ Employers should stay informed, update and review policies, and communicate with employees.

# Privacy Considerations

- ▶ Objective is to provide potentially exposed employees with sufficient information to obtain medical advice and, if necessary, treatment.
- ▶ **DO NOT PROVIDE INFORMATION REGARDING:**
  - ▶ The name, date of birth, or other identifiers of the COVID-19 subject individual.
- ▶ **DO PROVIDE INFORMATION REGARDING:**
  - ▶ The fact that the individual was potentially exposed to COVID-19;
  - ▶ If known:
    - ▶ date(s) of their potential exposure; and
    - ▶ the extent and circumstances of their potential exposure (i.e., incident indirect contact vs prolonged direct contact).

# Get in touch!

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