

## What Canadian Employers Need to Know about COVID-19

Web Course Taken by Trista on March 23, 2020

### Introduction

- ✓ COVID-19 is a pandemic that is rapidly evolving with the number of infections and deaths continuing to rise around the world
- ✓ While health officials in Canada continue to state the risk of contracting COVID-19 remains low, the recent imposition of school closings and the temporary cancellation of virtually all events and activities involving groups is generating a level of panic with significant consequences for employers
- ✓ This presentation is designed to assist employers in Canada with the myriad of employment law issues arising from the ongoing and ever changing response to the COVID-19 crisis

### Travel

- ✓ The Public Health Agency of Canada is recommending that all non-essential travel be avoided
- ✓ Virtually all Employers have discontinued the requirement for any form of international business travel
- ✓ At this point virtually all Employers are requiring that any Employees returning from travel outside Canada self-quarantine for the Public Health Agency of Canada currently recommended 14 day period

### Temporary Workforce Reductions

- ✓ COVID-19 has impacted supply chains and the global economy, which in most cases is now materially affecting the Employer's business
- ✓ All jurisdictions contain temporary layoff provisions
- ✓ However, absent a right to layoff an Employee in an employment agreement or with Employee consent, a temporary layoff can constitute constructive dismissal. In B.C. there are no provisions allowing a temporary layoff unless a layoff is allowed under a collective agreement, incorporated in an employment agreement, agreed to by the Employee or is a normal part of the industry (i.e. logging)
- ✓ Despite the risk, a temporary layoff may be preferable to both the Employer and the Employee - especially
- ✓ Be mindful of each jurisdiction's maximum layoff length - if exceeded, the layoff, even if consented to, will be deemed to be a termination. In Ontario, temporary layoffs cannot exceed
- ✓ 13 weeks in any period of 20 consecutive weeks, or
- ✓ More than 13 weeks in any period of 20 consecutive weeks but less than 35 weeks in any period of 52 weeks where essentially the employer continues payments or benefits - i.e. group health and welfare benefits
- ✓ Also be mindful of any advance notification requirement - i.e. - Alberta - Employees with service of 2 or more years entitled to written notice of not less than 2 weeks. But "if unforeseeable circumstances" arise, an Employer is not required to provide notice until practicable if the alternative is a termination without cause

### **Employment Insurance Benefits: Sickness/Illness**

- ✓ Employees must have minimum of 600 insurable hours
- ✓ Employer issues ROE although Employees can still apply prior to Employer issuing ROE
- ✓ 1 week waiting has been waived
- ✓ Sickness/illness includes quarantine
- ✓ No medical
- ✓ Benefit period is 15 weeks
- ✓ 55% of weekly earnings up to a maximum of \$573 per week

### **Emergency Care Benefit: Unable To Work Due To Quarantine And Illness Without Sufficient Insurable Hours**

- ✓ Eligible employees receive up to 15 weeks of benefits, up to \$900 bi-weekly
- ✓ No medical
- ✓ Application via CRA

### **Emergency Care Benefit: Unable To Work Due To The Requirement To Take Care Of A Family Member Sick With COVID-19 Without Sufficient Insurable Hours**

- ✓ Eligible employees receive up to 15 weeks of benefits, up to \$900 bi-weekly
- ✓ No medical
- ✓ Application via CRA

### **Emergency Care Benefit: Unable To Work Due To School Closure And Requirement To Care For Children Regardless Of Insurable Hours**

- ✓ Eligible Employees receive up to 15 weeks of benefits, up to \$900 bi-weekly
- ✓ No medical
- ✓ Application via CRA

### **Can Employers Pay Employees While In Receipt of EI Benefits?**

#### **Employer Top Up**

- ✓ Employer top up payments are deducted from EI payments
- ✓ If Employer has registered a Supplemental Unemployment Benefit Program (SUB) with Service Canada payments from the SUB plan are not deducted from EI benefits

### **Employer Reduced Hours**

- ✓ Work shortage temporary and beyond the Employer's control
- ✓ Employee working hours average reduction from 10-60%
- ✓ Agreement must have a minimum duration of 6 weeks with the duration maximum now going from 38 weeks to 76 weeks
- ✓ Only applies to permanent (full/part time staff) in units of 2 or more Employees
- ✓ Employee must be eligible for employment insurance benefits
- ✓ Employee earnings from the Employer will not be deducted from the employment insurance benefits paid No waiting period
- ✓ Employer must submit and implement a recovery plan
- ✓ Application must be submitted a minimum of 30 days prior to requested start date

### **Employment Insurance Benefits: Temporary Layoffs**

- ✓ Employees must have a minimum of 700 insurable hours
- ✓ Employer issues ROE although Employees can still apply prior to Employer issuing ROE
- ✓ Employees remains subject to 1 week waiting period
- ✓ Benefit period from 14 weeks up to a maximum of 45 weeks depending on unemployment rate in the region at the time of filing and the amount of insurable hours
- ✓ 55% of weekly earnings up to a maximum of \$573 per week

### **Employer Financial Support: Small Business Temporary Wage Subsidy**

- ✓ Period of 3 months
- ✓ 10% of remuneration paid during 3 month period
- ✓ Maximum subsidy of \$1,375 per Employee up to a maximum of \$25,000 per employer
- ✓ Subsidy immediately obtained through the reduction of remittances of income tax

### **Employee Financial Support: For Employees who Lose Their Jobs or Face Reduced Hours**

- ✓ Emergency support benefit delivered through CRA to provide up to \$5.0 billion in support to workers not eligible for EI and who are facing unemployment
- ✓ Any Employees experiencing symptoms, or exposed to someone with COVID-19, or someone returning from international travel should be immediately sent home to self quarantine
- ✓ Employees may be able to avail themselves of paid sick time pursuant to the Employer's policy or use available vacation or apply an advance against vacation entitlement
- ✓ Employers should also apply the foregoing to Employees that self-quarantine as a result of potential exposure
- ✓ Employers should be flexible in applying their absenteeism policy requiring a medical note to substantiate an absence due to flu like symptoms could put an unnecessary strain on the health care system and also expose an otherwise uninfected person to the virus employer Sick Leave Benefits

## **Statutory Leaves**

Independent of Company policy, many jurisdictions contain job protected leaves for illness (both short and extended durations), some with pay

### **Examples:**

- ✓ Quebec - 26 weeks in 52 week period - 2 days paid if 3 months of service
- ✓ Alberta - 16 weeks unpaid for long-term injury/illness or quarantine or 5 days unpaid for personal leave
- ✓ Ontario - 3 days unpaid sick leave
- ✓ Keep in mind: there are also several job protected leaves related to the care for ill family members - which could apply to caring for a family member with COVID-19
- ✓ Alberta has announced new measures to provide workers with a 14-day unpaid leave if required to self quarantine or caring for someone affected by it
- ✓ Alberta has also announced financial relief for certain workers who are unable to work due to self-isolation and have no other sources of income or compensation while self-isolating. Eligible recipients will receive \$573 per week for a maximum period of 2 weeks to bridge the gap until the Emergency Care Benefit takes effect in April 2020

## **Bill 186 – Ontario**

New Leave of absence: "Emergency Leave: Declared Emergencies and Infectious Disease Emergencies"  
Declared Emergencies

- ✓ Where an emergency has been declared under the Emergency Management and Civil Protection Act (EMCPA) and the Employees are unable to work for one of the following reasons:
  - They are subject to an order under the EMCPA
  - They are subject to an order under the Health Protection and Promotion Act (HPPA)
  - They are needed to provide care or assistance to a specified individual, or
  - Such other reasons as may be prescribed.
- ✓ Specified individuals" for the third category includes:
  - The Employee's spouse
  - A parent, step-parent or foster parent of the Employee's spouse
  - A child, step-child or foster child of the Employee or the Employee's spouse
  - A child who is under legal guardianship of the Employee or the Employee's spouse
  - A brother, step-brother, sister or step-sister of the Employee
  - A grand-parent, step-parent, grandchild or step-grandchild of the Employee or the Employee's spouse
  - A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the Employee
  - A son-in-law
  - An uncle or aunt of the Employee or the Employee's spouse
  - A nephew or niece of the Employee or the Employee's spouse
  - The spouse of the Employee's grandchild, uncle, aunt, nephew, or niece
  - A person who considers the Employee to be like a family member, provided the prescribed conditions, if any, are met
  - Any individual prescribed as a family member

## **Bill 186 – Ontario**

### **Infectious Disease Emergencies**

- ✓ New leave provision applies where the government designates an infectious disease by regulation and an Employee will not be working for one or more of the following reasons:
  - The Employee is under individual medical investigation, supervision or treatment
  - The Employee is subject to an order of a medical officer of health or a court under the HPPA
  - The Employee is in quarantine or isolation
  - The Employer directs the Employee to stay home because of concerns the Employee might expose other individuals in the workplace to the designated infectious disease
  - The Employee is providing care to any of the specified individuals listed above, including because of closures of schools and daycares
  - The Employee is directly affected by travel restrictions preventing the Employee from returning to Ontario
  - Any prescribed reason

## **Bill 186 – Ontario**

- ✓ Leave is unpaid
- ✓ No medical notes required
- ✓ Employers can require "evidence reasonable in the circumstances" ... "at a time reasonable in the circumstances" to verify the leave
- ✓ Work Refusals
- ✓ Under health and safety legislation, an Employee may have the right to refuse unsafe work where the work or the workplace is likely to endanger their health and safety
- ✓ Employees who fear contracting COVID-19 at work or on their way to work may attempt to exercise their right to refuse unsafe work
- ✓ Absent a change in circumstances, a work refusal based upon a fear of contracting COVID-19 is likely not legitimate - save and except for perhaps mandatory business travel to a 'risk area'
- ✓ Despite the work refusal not being legitimate, an Employer may have to meet its procedural obligation to investigate the issue in accordance with the applicable health and safety legislation
- ✓ Employees cannot be disciplined for exercising their right to refuse unsafe work, even if the work is later determined to be safe
- ✓ Failing to comply with occupational health and safety legislation can also result in fines

## **Workers Compensation**

- ✓ Employees who contract COVID-19 in the course of their employment may be able to claim workers' compensation benefits
- ✓ Infection from other Employees is likely not sufficient enough to establish a claim
- ✓ The infection typically has to be an 'occupational disease'
- ✓ These types of claims were made by healthcare workers during the SARS outbreak of 2003
- ✓ Even though the likelihood of a legitimate claim for workers' compensation benefits related to COVID-19 is low in most workplaces, awareness on how to respond to a claim is important
- ✓ Employers may have an obligation to complete forms when faced with an employee claim

## **Human Rights**

- ✓ Employers have a duty to accommodate an Employee's disability
- ✓ While the 'flu' is typically not considered a 'disability' under human rights legislation, now that it has been declared a pandemic, COVID-19 may be considered a 'disability'
- ✓ Employees may also request accommodation (i.e. being able to work from home or take a leave) related to the fear of contracting COVID-19
- ✓ While these requests will generally be unsupported, there could be a situation where an Employee has presented medical evidence that suggests they are more susceptible to death if they contract COVID-19 due to a pre-existing medical condition and are requesting to minimize the likelihood of infection by self-quarantine
- ✓ All requests will need to be carefully considered in the context of the particular Employee
- ✓ Employers should require Employees who have contracted COVID-19 or have been placed in quarantine to get medical clearance before returning
- ✓ That said, absent a reasonable justification, Employers will not likely be able to require an Employee to undergo a COVID-19 test following a absence due to 'flu-like' symptoms before returning to work

## **Current Employer/Employee Support Available**

- ✓ Temporary Layoffs
- ✓ EI benefits for laid off Employees and for Employee illness or Employee quarantine assuming sufficient Employee insurable hours
- ✓ Emergency care benefit for Employees without sufficient insurable hours
- ✓ Emergency care benefit for Employees required to provide childcare as a result of school closures regardless of insurable hours
- ✓ Employer support provided through 10% wage subsidy
- ✓ Employee support for those Employees who lose jobs or face reduced hours and are not eligible for EI are eligible for the \$5.0 billion Emergency Support Program delivered through CRA