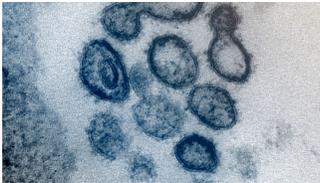


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## COVID-19 FAQs For Employers

Frequently asked questions by employers needing more information on the impact, rules and best practices for addressing the global coronavirus outbreak.

*This FAQ is legal information only. While every situation will have its own nuances and unique factors that may require a different solution, we hope this general legal information helps guide workplaces through the current unprecedented health pandemic.*

### Layoffs, Terminations and Pausing Pay

- 1) **Our workplace requires in person attendance (e.g. clinic, restaurant, hair salon). Am I required to pay employees if we must temporarily close the business and they are not able to work remotely?**

#### **Stopping Pay**

*In general, you cannot stop paying your employees without risking that they will assert a constructive dismissal (meaning they say you actually terminated their employment) and assert their right to termination entitlements.*

#### **Temporary Layoffs**

*The exception will be when your employee is under a contract that allows for the employer to temporarily lay off an employee. Employees on temporary layoff are not entitled to pay or any termination entitlements. In most cases, an employee on a temporary layoff can claim EI.*

*Temporary layoffs are temporary and can only last for a specified amount of time - 13 weeks in a 20 week period or less than 35 weeks in a 52 week period, if certain other conditions are met. If the lay off goes longer than the law specifies, the employee will be entitled to termination entitlements.*

*When the employee is not under a contract that allows a temporary lay off, employers could still give the employee the option of being temporarily laid off vs. being*

*terminated. We'd recommend that you get legal advice if you're in this situation as the wording is important.*

## **Terminations**

*While you may not want to lose your employees, termination may be the only viable option. Employees have certain entitlements on termination, which vary depending on their contracts, their length of service and the size of the employer. If you're in a situation in which you need to let people go, we recommend you talk to a lawyer.*

**We also note that the Ontario government announced today that they will be passing legislation to provide employees with job protection with respect to several COVID-19 related absences. We will keep you updated as this legislation is tabled and as we have more information. Check out the Ontario new release [here](#).**

### **2) We have lost too much upcoming business and must temporarily close the business. Can we lay off our employees without pay? If so, what is the process?**

*You can lay off employees without pay if this is set out in your employment contracts or collective agreement. If the right to temporarily lay an employee off is not in the contract, and you lay an employee off, they will have a right to assert that they have been terminated and are entitled to termination entitlements.*

*To lay an employee off you simply need to tell them you are temporarily laying them off and file an ROE indicating that you've laid them off.*

*A layoff can only last for 13 weeks in a period of 20 weeks or less than 35 weeks in a period of 52 weeks, with certain conditions. Layoffs that go on for longer than these time frames will be considered terminations and the employee will be entitled to termination entitlements.*

*If your contracts do not contain the right to layoffs, but you'd like to do this, there may be a workaround, but we suggest that you contact us for legal advice.*

### **3) We need to permanently fire some of our employees for financial reasons related to the outbreak. Can we provide a discounted termination package because of the global medical crisis situation?**

*You can never provide less than the Employment Standards Act minimums when terminating an employee without cause. The law does not allow a discount to minimum entitlements because of economic circumstances.*

**We also note that the Ontario government announced today that they will be passing legislation to provide employees with job protection with respect to several COVID-19 related absences. We will keep you updated as this legislation is tabled and as we have more information. Check out the Ontario new release [here](#).**

***This legislation would mean that in some circumstances employers will not be able to terminate employees without violating the law. Job protection will be available for the following reasons:***

- ***The employee is under medical investigation, supervision or treatment for COVID-19.***
- ***The employee is acting in accordance with an order under the Health Protection and Promotion Act.***
- ***The employee is in isolation or quarantine.***
- ***The employee is acting in accordance with public health information or direction.***
- ***The employer directs the employee not to work.***
- ***The employee needs to provide care to a person for a reason related to COVID-19 such as a school or day-care closure.***

#### **4) What is the difference between a layoff and termination?**

*A layoff is temporary and anticipates that the employee will be recalled to work. A layoff does not sever the employment relationship. An employee does not get anything from the employer in the event of a layoff, which is unlike a termination.*

*An employer only has the right to lay off an employee if this is set out in the contract or the collective agreement.*

*A termination is permanent and entitles an employee to various termination entitlements, such as notice, continuation of benefits and potentially severance pay.*

*Employees may be eligible for EI in both circumstances.*

## **Vacations, Sick Days, EI, Benefits and Time Off**

#### **5) Can I require our employees to use up their sick leave and vacation days if we must temporarily close the business during the outbreak?**

*Yes! Employers have the right to schedule vacations and can require employees to take vacation when it suits their needs. If you have employees sitting on a bunch of unused vacation days, you can require that they take that time now. If you offer paid sick time you can also require employees to use this time up.*

#### **6) My employee is calling in sick, but I suspect they are just scared of going out in public. Can I either force them to come in or docket their pay?**

*In general, unless you have a paid sick leave policy, you do not have to pay employees for time they do not work. So yes, you can dock their pay or tell them that their days absent will be counted as sick days.*

**The Ontario government [announced today](#) that they will be tabling legislation to amend the Employment Standards Act to provide job protection to employees who need to stay home for a COVID-19 related reason. Employers will not be able to require a note from employees who claim one of these reasons.**

**7) Is there government funding or benefits to supplement for employees unable to work during this outbreak?**

*Eligible employees can go on EI benefits. Employees who are laid off or terminated may be entitled to regular EI benefits and employees who are ill or in quarantine may be entitled to EI sickness benefits. The government has waived the mandatory one-week EI waiting period for those in quarantine or self-isolation.*

*The government has announced that income support for those who are affected but not sick is being explored.*

*In all cases, eligibility for EI depends on an employee's contributions and sufficient insurable hours.*

**8) Do group benefits usually cover a virus outbreak like this? Can employees claim Short Term Disability benefits?**

*Entitlement to Short Term Disability benefits will depend on the policy and be up to the benefits provider. In some cases, where employees are very sick, we expect that they would be eligible but this will be case dependent.*

**9) Will worker's compensation (WSIB) cover time off required by someone who has contracted the virus?**

*Workers compensation covers workers for workplace injuries and illnesses that arise out of work. Therefore, if the employee contracted the virus in connection with their work, they may be eligible for coverage. In Ontario, the [Workplace Safety and Insurance Act, 1997](#) provides compensation for employees who suffer "personal injury or illness arising out of and in the course of employment" and where "a worker suffers from and is impaired by an occupational disease that occurs due to the nature of one or more employments in which the worker was engaged".*

*If, for example, your employee is infected because they are a nurse caring for infected people they could be eligible for WSIB coverage.*

## **Accommodations, Discrimination & Privacy**

**10) Do I have to accommodate childcare issues, such as school and daycare closures?**

**The Ontario government [announced today](#) that they will be tabling legislation to amend the Employment Standards Act to provide job protection to employees who need to stay home for a COVID-19 related reason, including to care for their children for COVID-19 related reasons, such as school or daycare closures.**

***The legislation is not law yet, but if passed (and we expect it will) will be retroactive to January 25, 2020. This law would mean that employees who are not able to work because of COVID-19 caregiving responsibility cannot be terminated. This will provide broader protection than those of current Human Rights legislation.***

*Human Rights legislation protects the rights of parents via the protected ground of family status. Accommodating childcare issues is tricky, but generally, employees need to act reasonably with respect to how they manage their parental responsibilities. Normally, this means that while a parent may want to stay home with their child or work in a location close to their daycare etc., it may not be reasonable for them to do so. They are expected to explore all reasonable options. An employer does not necessarily have to accommodate an employee's preference.*

*In our current situation, it is unclear whether parents will have options other than caring for their children themselves and missing work to do so. Parents should be encouraged to explore options that would allow them to keep working, like placing their kids with grandparents etc. Where these options are really not available, employers likely do need to accommodate employees with childcare issues.*

*However, employers do not need to pay employees who are not working. If your employee ends up having to take two weeks off to deal with a school or daycare closure and is unable to work, their leave will be unpaid.*

### **11) Do I have to accommodate an employee who does not want to perform their usual public-facing role?**

*Not without good reason. While employers have an obligation to protect their employees' health and safety, in many cases this can likely still be done while maintaining a public-facing role. Employers should provide their employees with recommended safeguards, such as hand sanitizer, breaks for hand washing etc.*

***Based on our understanding of forthcoming changes to the Employment Standards Act legislation, if an employee asserts a need to not perform their current role or stay home, they likely do not need to provide a doctors' note.***

### **12) What are the human rights issues we need to watch out for during this crisis?**

*Employers need to be aware of any actions they are taking that could be construed as discriminatory. For example, firing all their Italian employees, just because they are Italian.*

*If concerns are legitimate, such as an employee has just returned from Italy and there is a real risk, then asking the employee to stay home for two weeks would likely not be construed as discriminatory.*

*Employers also need to be mindful of tendencies to discriminate against parents who may be less available to participate in work, as well as discriminating against sick employees.*

### **13) What are our legal obligations if an employee contracts COVID-19?**

*Employers have an obligation to provide a safe workplace for employees. If an employee contracts COVID-19, you should contact public health for direction regarding what to do. It's likely that additional precautions will need to be taken to ensure that the rest of the workforce is safe, such as additional cleaning or social distancing.*

**14) Are we allowed to tell the team that one of our employees has contracted COVID-19?"**

*In these circumstances, employee privacy rights need to be balanced with the employer's obligation to maintain a safe working environment for the whole team. While in general, an employer is not entitled to reveal private health information, advising others that they need to take precautions may trump the individual rights in these circumstances.*

*One way to avoid this difficult balance act is to ask for the infected employee's permission to share their diagnosis with the rest of the team. If the employee refuses, we recommend you speak to a lawyer and public health about what to do.*

## **Business Operation Concerns**

**15) Must we allow public-facing employees to wear surgical masks?**

*In most cases, this is likely a reasonable measure and minimally impactful to the employer. Employers have a duty to protect an employee's health and safety if an employee feels more comfortable wearing a face mask there is likely not a good reason to disallow this.*

**16) Can we prohibit employees or the public from coming into the office?**

*In the case of the public, most businesses are entitled to close if they wish to. However, it would be discriminatory to selectively allow members of the public to access the business if the determinations were made based on a prohibited ground. For example, not allowing people who look Asian access to a business would be a violation of human rights law.*

*In the case of employees, you can prohibit them from coming into the office, but should be aware that if it is not possible to make alternate arrangements for these employees to work from home, and/or to keep paying them, you could be temporarily laying them off or terminating the employees - even where that is not the intention.*

**17) Can an employer be held responsible if someone in the workplace contracts COVID-19?**

*Generally no. However, employers do have an obligation to ensure that the workplace is safe. If employers do not take reasonable precautions to do so, they could face liability under health and safety legislation.*

**18) Do we need to negotiate with the union workplace closures and other steps taken to address the outbreak?**

*Your collective agreement may address temporary closures, temporary layoffs or “force measure” type situations. In general, employers cannot take unilateral action that violates the collective agreement and the union should be engaged in determining measures to address the outbreak.*

## Remote Working

### 19) Do you have a Remote Working Policy we could use?

*Yes - [click here](#) for a template you can adapt to your workplace.*

### 20) What are some remote working best practices to consider?

- a) *Privacy - if employees are taking confidential information home how will you ensure that this is kept confidential?*
- b) *Connectivity - how will you ensure that employees are available and working? Set expectations around responsiveness, connectivity, ways of communicating and hours of work.*
- c) *Cost - who is going to pay for costs that might be incurred in working from home? These could include things like phone, internet, office furniture etc.*

*You may also wish to explore the following resources regarding working remotely:*

[How to remote work well](#)

[Remote Workers: Pros. Cons and Tips](#)

[Tech in the Workplace - The Remote Worker](#)

### 21) My employee is requesting they work from home. Must I allow this?

*If your employee has a job that is conducive to working from home, then it's a good idea to allow them to do so. If their job requires them to be in the workplace and there is no work that can be done from home, then you do not have to allow them to work from home. However, based on what we understand to be forthcoming changes in the law you could not terminate them for not coming in, should they provide a reason that will give them job protection under the new legislation - they are self quarantined for example. Employees will not have to provide a medical note.*

*Where working from home is an option, see the above tips and policy. It's a good idea to implement a policy and ensure that exceptions around availability, privacy and connectivity are clear so that the employee doesn't just end up “working” from home but is actually able to be productive.*

### 22) My employee has very young children at home and I doubt they can focus in a home office. What can I do?

*In a situation like this, an employer cannot rely on their assumptions that the employee cannot be productive at home. It would be reasonable for the employer to ask the employee if arrangements have been made for the care of their children to allow them*

*to work. If the employee does not have a plan - for example, they plan to care for a toddler while doing their desk job - it may be reasonable to reduce their hours or ask them to take a leave. However, employers need to be aware of human rights protections for family status and tread carefully.*

## Travel

### 23) Can we ban all work-related travel until further notice?

*Yes. There is no contractual or legal reason to prevent a business from banning travel during a global health crisis.*

### 24) Do we have to reimburse employees who incurred costs on an upcoming conference that has been cancelled?

*As long as the expenses were business connected, they should likely be reimbursed. If the employee tacked a family trip to Disney onto a conference attendance, you do not have to cover the cost of the cancelled Disney trip. In some cases cancellation policies may exist or “force measure” or “act of God” type contractual clauses may be triggered. Read the fine print.*

### 25) Can we ban all personal travel to impacted countries?

*Yes, you can make it a temporary condition of your employees’ employment that they not travel to impacted countries.*

### 26) My employee (and/or their family) recently travelled to a country known for a higher level of virus outbreaks. Can I force them to stay at home? Can I make it unpaid?

*If requiring an employee to stay home seems like a reasonable measure to protect the health and safety of the workplace this may be acceptable. Where an employee can work from home they should be allowed to do so.*

*Employers should tread carefully however and try not to overreact. Prohibiting employees from working and requiring them to take unpaid leaves could be discriminatory where certain groups are targeted or where the measures are not reasonably justified.*

*We expect that what is reasonably justified will change as the situation with the outbreak changes. If asking an employee to stay home is justified, and they are not able to work from home, the leave can generally be unpaid.*

## Resources

### 27) What are some trusted resources we can share with my employees?

- a) *Canada Public Health:*  
<https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html#faq>
- b) *Ontario Public Health:*  
<https://www.publichealthontario.ca/en/diseases-and-conditions/infectious-diseases/respiratory-diseases/novel-coronavirus>
- c) *UN News:*  
<https://news.un.org/en/events/un-news-coverage-coronavirus-outbreak>
- d) *World Health Organization general info:*  
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>
- e) *WHO Q&A on coronaviruses:*  
<https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>
- f) *Government of Ontario News Update:*  
<https://news.ontario.ca/opo/en/2020/03/premier-ford-announces-job-protection-for-workers-during-the-covid-19-situation.html>
- g) *Government of Ontario COVID-19 Information and Updates:*  
<https://www.ontario.ca/page/2019-novel-coronavirus>
- h) *City of Toronto Response to COVID-19:*  
<https://www.toronto.ca/home/covid-19/>