

COVID-19 – EMPLOYER CONSIDERATIONS & PLANNING FOR WORK DISRUPTION

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Introduction

Although Health Canada reports that the risk of contracting the Novel Coronavirus (COVID-19) remains low, the virus has become a global health concern and has been officially classified as a pandemic by the World Health Organization.

At the time of publication, the virus has spread to over 100 countries, including Italy, Iran, South Korea, Japan, France, Spain, Australia, Thailand, Taiwan, the United States, and Canada. The number of people diagnosed with COVID-19 now exceeds 106,000 with over 3,800 confirmed deaths. So far in Canada, there are more than 90 reported cases of COVID-19 and one reported death. This number will likely increase as the virus spreads and detection measures become more readily available.

Understandably, Canadian businesses are very concerned about the impact COVID-19 will have on their employees, operations, partners, customers and suppliers. Accordingly, we recommend that employers implement a range of measures to protect their employees and operations from the uncertain impacts of COVID-19.

As the impact of COVID-19 is evolving rapidly and new information is available daily, management should constantly monitor and re-evaluate their risk mitigation strategies and adjust accordingly. This practice guide is intended to help businesses identify potential issues and suggest risk mitigation steps related to the COVID-19 outbreak and the potential for economic and operational disruption.[\[1\]](#)

Current Measures

Operations

- a. Review or develop a workplace pandemic plan (“**Plan**”)

We recommend employers review their existing Plan or develop one if it does not exist. This Plan should detail how the employer will deal with the impact of COVID-19 on its workforce and operations.

Where applicable, employers should work in connection with their health and safety committee. Where the workplace is unionized, employers should carefully review all obligations under any applicable collective agreement(s) and consult with the union(s) when reviewing or developing the Plan.

Below are some elements we recommend employers consider when developing a Plan:

- **Legal obligations:** the Plan should stipulate employers' legal obligations, which we set out in our previous [bulletin](#);
- **Risk management** in the workplace: employers should set out protocols that have been put in place to control infection in the workplace, such as:
 - Encouraging employees to stay at home and seek medical treatment if they have symptoms of respiratory illness (i.e. fever, coughing, shortness of breath, etc). Employees should be directed to contact their doctor or local public health unit if they believe they have been exposed to COVID-19.
 - Encouraging employees to practice good hand hygiene and providing them with soap and alcohol-based hand sanitizer. Employees should be instructed to wash their hands often with soap and water for at least 20 seconds and to sneeze and cough into tissues or their sleeve.
 - Increasing the cleaning of all the frequently touched surfaces in the workplace such as doorknobs and workstations.
 - Encouraging greetings without shaking hands, having telephone or video conferences rather than in-person meetings, and permitting "work from home" arrangements where applicable.
 - Identifying and managing employees who are or may be infected. We strongly encourage employers to carry out this process in a manner that is consistent with all applicable employment standards, human rights, health and safety, and/or privacy laws. If you need assistance with privacy concerns please contact a member of McMillan's Privacy Law Group.
- **Business continuity:** the Plan should outline strategies that will be implemented to ensure the continuation of business during any COVID-19 outbreak. These include:
 - Making contingency plans for the continuation of critical operations of the business that may be understaffed as a result of COVID-19 and reviewing resources, particularly remote IT services, to ensure that it can handle an increased number of remote users.
 - Identifying functions that can be performed remotely and putting in place contingency plans for functions that cannot be done off-site. Security measures should also be put in place to guard against potential privacy and confidentiality issues when employees are working remotely.
 - Stipulating how employees will be accommodated (depending on their needs) and how the accommodation arrangements will be documented during any COVID-19 outbreak.
 - Creating re-entry plans for employees who have recovered and are returning to work.

- Determining whether your organization can cancel scheduled vacations / leaves of absence due to staff shortages, or require employees to take vacations or paid / unpaid leaves to ensure sufficient staffing.
- Considering whether employees can be cross-trained.
- Addressing and investigating work refusals.
- **Communications protocol:** the Plan should have a communications protocol that employers will follow when communicating with its employees and clients.

Employers must ensure any Plan is customized to suit operational needs and flexible enough to accommodate employees' needs during a COVID-19 outbreak. The Plan should be consistent with public health recommendations and all applicable employment standards, human rights, health and safety, and privacy laws. For assistance with reviewing or developing a Plan, please contact a member of McMillan's Employment and Labour Relations Group.

b. Restrictions on travel

Employers are encouraged to:

- Cancel business travel to affected countries. Currently, affected countries include China (mainland), Hong Kong, Iran, Italy, Japan, Singapore and South Korea. Employers are encouraged to monitor the list of affected countries [here](#).
- Require employees to self-quarantine for a period of 14 days if they have travelled to or been in close contact with an individual who has travelled to any of the affected countries.
- Require employees who may not have travelled to an affected country but suspect they may be infected to seek medical attention and follow all applicable medical recommendations with respect to returning to work.
- Develop protocols for providing service to customers or clients who recently travelled to affected countries.

Communications

Employers should assign appropriate person(s) to serve as a point of contact for all employees and public authorities. These person(s) will be in charge of answering employee questions relating to COVID-19 and the implementation of the Plan.

When answering employee questions, employers are strongly encouraged not to share information regarding affected employees. When communicating leave of absence decisions, employers are advised to limit information to confirming that an employee is on leave and their expected date of return. If employers wish to

provide more information, we recommend that they obtain express consent from the affected employee(s).

Assigned person(s) will also be responsible for keeping track of updates on COVID-19 from public authorities and making this information available to employees. They will also be in charge of making information available to public authorities when required to do so.

We recommend employers notify employees about the information they are required to share with public authorities. Currently, federally regulated employers have an obligation to report actual / suspected worker cases of COVID-19 to local government and health officials. This obligation does not apply to provincially regulated employers.

Finally, assigned person(s) should be given authority to make emergency decisions if the need arises.

Contingency Measures to Manage Absences And Economic Disruption

In an attempt to mitigate risk or in the event that an employer's workforce becomes seriously affected, or if the economic impacts of COVID-19 become such that an employer has to reduce its costs or temporarily restructure its workforce, employers should consider certain measures in their contingency and pandemic plans. This could involve considering the core aspects of the business which must be continued, identifying aspects of the operation that could be temporarily closed, identifying internal and external dependencies, and/or identifying plans for employees.

Where the workplace is unionized, employers should carefully review their obligations under the applicable collective agreement(s) and consult with the union(s) when reviewing or developing contingency measures.

a. Remote Work Considerations

Employers may choose to modify business activities to reduce face-to-face contact, allow for flexible worksites and reduce travel. For example, teleconference and videoconference meetings could be used instead of face-to-face meetings. Employers should also ensure their communications and information technology infrastructure can accommodate a large number of employees working from home.

b. Rotating Shifts

In an effort to protect the workforce and to prevent all employees from falling ill at the same time, employers could consider implementing rotating shifts. Rotating shifts are also ideal from a business continuity perspective, as they allow operations to continue despite a reduced workforce.

c. Shift Cancellations

If shift cancellations are required due to reduced operations, employers should be mindful of their

requirements under applicable employment standards legislation and collective agreements. Employers can also consider reducing work weeks or hours of work for employees, either on a fixed or rotating basis, and allowing employees to use vacation time or other paid time to address the economic conditions.

d. Temporary Layoffs and Location Closures

Temporary layoffs are allowed under various employment standards legislation across Canada. Nevertheless, employers should be mindful of certain limitations imposed by these legislative provisions and seek guidance on how to interpret them. For employers with a unionized workforce, the applicable collective agreements should be reviewed to determine the proper process to follow.

e. Business Closure – Mass Termination

In the event of permanent business closure, there are rules respecting notice obligations for mass terminations under the applicable employment standards legislation. Legal advice should be obtained so that employers understand their obligations if there has to be a permanent discontinuance of all or part of a business.

It is important for employers to understand their legal obligations and to document any actions they are taking carefully so as to avoid legal and employee relations issues as they manage through the crisis. Even temporary measures as set out above could lead to a constructive dismissal claim from an employee, so it is important for employers to have canvassed the options to determine the best path forward. For assistance with how to deal with scheduling, layoff and business closure, please contact a member of McMillan's Employment and Labour Relations Group.

Conclusion

Although we do not yet know whether COVID-19 will evolve to become a global pandemic, employers must continuously monitor and adapt their Plan to mitigate risk and be prepared to respond quickly. In doing so, employers must carefully balance their obligations to provide employees with a safe and healthy workplace, while respecting individual employee rights under all applicable employment standards, human rights, privacy, and health and safety legislation.

Aside from adequate planning, the best way for employers to deal with the outbreak is to adopt a proactive approach based on constant and clear communication with all stakeholders, especially employees.

For assistance in monitoring recent developments regarding COVID-19, please refer to:

- [World Health Organization](#)
- Government of Canada [Travel Advice and Advisories](#)
- Public Health Agency of Canada [website](#) or information hotline: 1-833-784-4397

- Medical Officer of Health for your city or province
- Government of Canada Coronavirus disease [Awareness resources](#)

To learn more, please contact any of the members of McMillan's Employment and Labour Relations Group for information and/or assistance.

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[1] This practice guide provides high-level guidance based on legal requirements, but does not constitute legal or business advice. Businesses should seek qualified legal advice based on their specific facts and circumstances.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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