
Meat & Poultry Ontario

COVID-19 Webinar April 28, 2020



FAQs During COVID-19

April 28, 2020



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AGENDA

- Legal Considerations
- Tools
- Frequently Asked Questions
- Developing a Policy

Legal Considerations- ESA

- New Emergency Leave: Declared Emergencies and Infectious Disease Emergencies
 - Replaces prior Emergency Leave, Declared Emergencies
 - Provides a job protected leave to an employee where employee is unable to work due to COVID-19 related issues
 - Retroactive to January 25, 2020
 - In effect indefinitely

Legal Considerations - ESA

- Leave available where employee is:
 - not performing work because of a declared emergency
 - under medical investigation, supervision or treatment for COVID-19
 - acting in accordance with an order under the *Health Protection and Promotion Act*
 - in isolation or quarantine in accordance with public health information or direction

Legal Considerations - ESA

- Leave available where:
 - Employer directs the employee not to work due to a concern that COVID-19 could be spread in the workplace
 - Employee needs to provide care to a person for a reason related to COVID-19 such as a school or day-care closure
 - Employee is prevented from returning to Ontario because of travel restrictions

Legal Considerations - ESA

- Infectious disease emergency leave to care for a wider range of individuals than qualify for family medical leave
- Employer not permitted to require medical note, but may ask for other evidence reasonable in the circumstances, when reasonable
 - Written confirmation of daycare closure, evidence of flight cancellation
- In addition, ensure you comply with other leave entitlements under any CBA

Legal Considerations - ESA

■ Other ESA unpaid leaves that may apply:

Sick Leave

Family Responsibility Leave

Family Medical Leave

Family Caregiver Leave

Critical Illness Leave

Legal Considerations - EMCPA

- Under *Emergency Management & Civil Protection Act* government may issue sweeping orders
- Essential v. non-essential businesses
- Can amend other laws and override collective agreements
- All Orders in Council expire after 14 days unless withdrawn or renewed

Legal Considerations - EMCPA

- Broad exemptions, including:
 - Healthcare
 - Grocery, pharmacy
 - Supply chain for essential business
 - Manufacturing
 - Restaurant and food service (for takeout only)
 - Select construction projects
- See Government of Ontario website for full list

Tools for Responding to Work Shortage or Mandated Closure

- Leave of absence
- Reduction in hours or wages
- Work-Sharing
- Canada Emergency Wage Subsidy
- Temporary layoff

Temporary Layoff

- ESA allows for temporary layoff of up to 13 weeks in a consecutive 20 week period
- Can go up to 35 weeks in 52 week period if:
 - Pension or benefit contributions continued
 - Employee receives SUB payment (or other “substantial” payment) during layoff period
 - Employee agrees to layoff
 - CBA provides recall rights for this period

Temporary Layoff

- If layoff extends further, can trigger employee entitlement to termination pay
- Employee is entitled to severance pay if layoff extends beyond 35 weeks in a 52 week period
- ESA does not require any specific information be contained in a layoff notice

Temporary Layoff

- A layoff may trigger a constructive dismissal
 - Courts have held, unless an employment contract/other agreement includes an express or implied right to lay off an employee an employer has no right to do so
 - Courts may take a different view in current economic climate
 - Consider risk mitigation initiatives
 - Regardless, failure to return may limit damages

Employer liabilities that could arise during lay-offs and/or terminations?

- Unionized
- Employment agreements
- Non-unionized without EA:
 - Termination notice or pay in lieu thereof
 - Severance pay
 - Common law reasonable notice
 - Salary, length of service, position, age, comparable jobs

FREQUENTLY ASKED QUESTIONS

*Can employer require an employee to advise of:
(i) symptoms; (ii) contact; or (iii) having
travelled outside of Canada?*

■ Yes

- OHSA obligation to take reasonable steps to protect workers
- Employer can require an employee to work from home or remain home
- Seek advice
- Keep up to date on most recent science

Can employer implement a “temperature check” screening protocol?

- In certain circumstances, yes
- Balancing of rights
- Least intrusive means to achieve the objective
- Adequate steps to protect the privacy of the individual and the information

What should an employer do if an employee has a presumptive or confirmed case of COVID-19?

- Employee will be required to self-isolate for 14 days by public health officials
- Place employee on medical leave of absence and issue ROE
- Comply with reporting requirements if diagnosis is confirmed (not presumptive)
- Conduct an investigation

Can employer require an employee to advise if diagnosed with COVID-19?

■ Yes

- Typically diagnosis v. prognosis
- Pandemic – reasonable to require proactive disclosure
- Disclosure limited to the extent necessary to protect
- Immediately track individual's recent work pattern

What should an employer do if an employee lives with someone who has a presumptive or confirmed case of COVID-19?

- Direct employee to self-isolate for 14 days
- Issue an ROE if employee cannot work from home
- Ask employee to advise employer if they are diagnosed with a presumptive or confirmed case of COVID-19

Is an employer required to report a confirmed case to Public Health or the MOL?

- Reporting will fall to the medical practitioner treating the patient
- MOL position is an employer should provide notice of an occupational injury
- A condition that results from exposure in a workplace
- If unsure contact counsel

Is an employer required to pay an employee off work ill with COVID-19?

- Subject to sick leave plan, CBA requirement or change in legislation, not required to pay
- Can allow an employee to access accrued vacation pay
- Can allow an employee to access self-funded sick benefits, even if not ill

Can an employee refuse to work due to a fear of contracting COVID-19

- *Bona fide* belief a “physical condition” in the workplace constitutes a risk
- Usually in respect of machinery or equipment, but may include COVID-19
- JHSC
 - Investigate what is claimed to be causing the risk
 - Potential requirement to report to the MOL

If an employee refuses to return to work following a layoff, what are my rights?

- Assess if there is *Bona fide* belief a “physical condition” in the workplace constitutes a risk
- Usually in respect of machinery or equipment, but may include COVID-19
- JHSC
 - Investigate employee’s rationale
 - Potential requirement to report to the MOL
- Culpable v. non-culpable response

Can an employer tell other employees about a co-worker's COVID-19 diagnosis?

- Medical information subject to specific privacy concerns
- Unique circumstance may warrant some disclosure to protect health and safety
- Disclosure should avoid identifying information, limit information to what is necessary

What income replacement benefits are available to an employee?

- Initially, employee laid off for COVID-19 reasons would access EI ‘regular’ benefits and employee off due to quarantine, self-isolation or illness would access EI ‘sickness’ benefits
- Only available to employees who met eligibility requirements (*e.g.*, minimum hours of insurable employment) and had ‘paid in’ to EI system
 - Many workers excluded from EI

What income replacement benefits are available to an employee?

- In March 2020, Federal Government introduced Canada Emergency Response Benefit
- \$500 per week paid in four-week blocks, available for up to sixteen weeks if individual not working for COVID-19 related reasons
- Replaces EI benefit entitlement for this period, and applies to a broader category of workers

Is COVID-19 covered by the Workplace Safety and Insurance Act?

- Yes, but worker must establish COVID-19 diagnosis was the result of work-related exposure
 - WSIB will consider whether the nature of worker's employment created a risk of contracting disease to which public is not normally exposed
 - If **yes**, persuasive evidence the workplace significantly contributed to illness
- Cost of a COVID-19 claim is not attributed to employer but cost of all claims will be shared across the Schedule

Is COVID-19 a 'disability' under the Human Rights Code?

■ Possibly

- ❑ A “disability” is generally considered to have longer term impact, but associated “stigma” and rarity suggests COVID-19 could be a disability
- ❑ Human Rights Commission has issued guidance indicating the answer is “yes”
- ❑ May wish to treat any confirmed case of COVID-19 as a disability and accommodate the employee

DEVELOPING A COVID-19 WORKPLACE POLICY

COVID-19 Policy

- If you haven't already, formulate and distribute your policies
- Task someone (or a team) in your organization with ownership to (a) monitor COVID-19 developments and (b) administer your organization's COVID-19 response policy

What should an employer include in a COVID-19 policy?

■ Communication

- How will the employer communicate with employees or business partners?
- Does the employer have the information and technology required for efficient communication (*e.g.*, mass text)

What should an employer include in a COVID-19 policy?

■ Reporting

When must an employee report exposure or suspected exposure to COVID-19?

To whom must the employee report and how: HR, Public Health, *etc.*?

■ Self-isolation/isolation

When, for how long, and to whom to report?

What should an employer include in a COVID-19 policy?

■ Work from Home

- ❑ Is this possible given nature of the work, technology, legal considerations, etc.?
- ❑ If not, what if anything can be put into place to facilitate this? Can this be done proactively?
- ❑ What are the expectations of an employee working from home?
- ❑ If an employee cannot work from home, what is the impact on the employee's status in the workplace?

What should an employer include in a COVID-19 policy?

■ Return to Work

- When and how?

- Medical evidence (will the employer pay)?

■ Business Travel

- Reporting: when and to whom?

- Will there be no obligation to travel for business?

- What is “non-essential” travel?

What should an employer include in a COVID-19 policy?

■ Personal Travel

- Reporting: when and to whom?

■ Visitors to the Workplace

- Visitors' log

- Pre-screening questions and steps

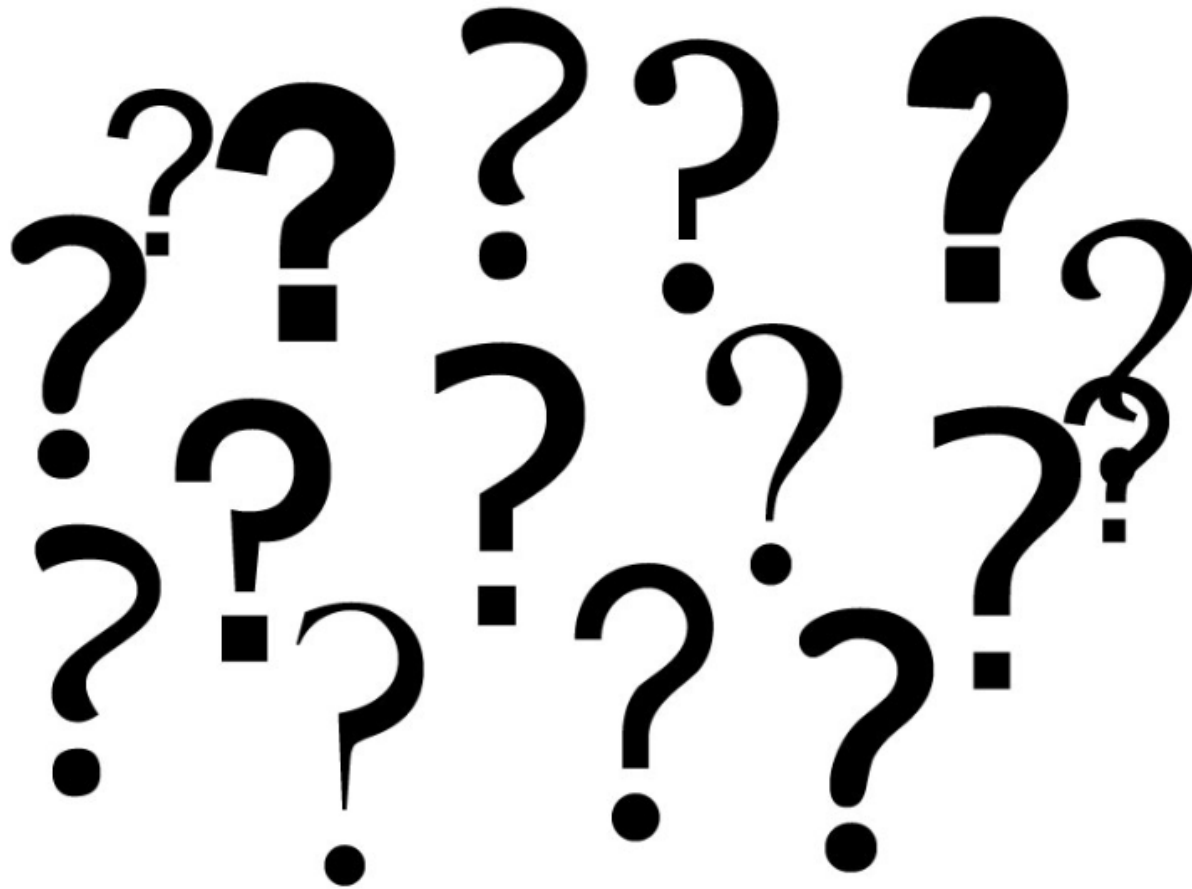
- Privacy considerations

What should an employer include in a COVID-19 policy?

■ Internal Reporting and No Reprisal

- Encourage internal reporting and reinforce that there will be no-reprisal for doing so.

Questions?





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