

PUBLICATION

Employer's Obligations to Employees in Response to COVID-19

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We empathize with the many small and medium sized owner-operated businesses in Calgary who were being hit hard by the economy and now have more burden to bear with the COVID-19 pandemic.

We would like to offer our support and encouragement to strive to maintain local economic activity while still respecting one's own health and financial well-being.

We would also like to offer practical advice for employers in these challenging times. Employers and employees must work together to get through this. The following serves to clarify the specific obligations in response to the COVID-19 outbreak.

Employees are entitled to a safe workplace, free from health or safety risks. This means that employers must require employees stay home if they are exhibiting symptoms of COVID-19 or have been in contact with those who have or may have.

Employers can and should ask their employees to go home and self-isolate, until they have not had symptoms for 14 days, if they have been in direct contact with an individual who has tested positive for COVID-19, and they must be paid. Employers cannot require someone to stay home without paying them to do so. Short-term disability, or other sick leave policies, could govern this time off, which may require involvement with your insurer.

If an employer is in a position where they need to mandate that an employee take the time as vacation time but cannot agree on a mutually satisfactory start date for their vacation, then the employer will have to give them two weeks' written notice of their vacation start date, and the employee must take the vacation at that time.

Employers can and should restrict business travel, and they can recommend restrictions on personal travel, with the caveat that if they travel for personal reasons to a known or determined high-risk zone, then they will be under a 14-day quarantine upon their return home that will not be paid. As of this writing, the Government of Canada has recommended the avoidance of international travel.

The option to withhold pay is available to employers if the previously mentioned two weeks' notice is in place, enabling them to impose vacation.

In the case of illness, the disability policy you have in place is what governs. If you don't have short-term disability insurance, then the employee might not get paid.

Employers can ask employees to be tested for COVID-19 but there should be a reason for the request, such as contact with an infected person, returning from a high-risk area, or attending an event where infected persons were known to be. If there is no reason for the request, it may be deemed unreasonable, and healthcare providers may also not provide the test. As an employer, you should not require the employee to get tested without strong reasons, due to the stress on health care.

Employers can ask employees if they have tested positive for COVID-19, and if they test positive, then are required to stay away until healthy/cleared by a physician.

Employers have a duty to provide a safe and healthy workplace, as do co-workers, and if one fails to do so, there could be ramifications in the form of litigation or Occupational Health & Safety complaints.

If flu-like symptoms appear, the individual should immediately advise their health care provider, and supervisor. If they do not have one, they can call Health Link at 811.

Other measures to put into place include:

- Reminders to those who are ill to stay home
- Reminders to wash hands
- Making tissues and hand sanitizer available
- Implementing more thorough cleaning of high traffic surfaces and premises
- Arranging virtual client meetings rather than in-person meetings

Employers are well advised to ask their workers to stay away from anyone they know that has been to one of the infected countries, for at least 14 days following their return.

Posting all of this within your workplace and/or sending correspondence to your employees will not only protect their health but assist in preventing a possible lawsuit.

Please also note there are lay-off provisions in the *Employment Standards Code* which pertain to a temporary cessation of work for 59 days or less, within a 120-day period. If the employee has been with you for under two years, the notice requirement is one week, and if two years or more, then it is two weeks. They must be recalled on the 60th day, or it becomes a termination.

Please note that the information and advice set out herein is not based upon medical information but is based upon legal analysis, and this information is constantly changing.

If you have any questions about your obligations or rights as an employer, please [contact](#) any of our Employment lawyers.