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COVID-19: What Canadian Employers Need to Know (Session 2)

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INTRODUCTION

The Situation Thus Far...

- There will be roughly 17,000 reported cases of COVID-19 in Canada by the end of today.
- Things are changing rapidly. What is correct now, may not be correct tomorrow.
- Ontario, Quebec and BC continue to have the most cases of COVID-19, but other provinces and territories are now reporting significant numbers.
- All provinces are adopting unprecedented and expansive measures in response to COVID-19.

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LEGISLATIVE UPDATE

Workplace Legislation

COVID-19



**Employment
Standards**



**Workers'
Compensation**



**Occupational
Health & Safety**



Human Rights

Work Refusals

Occupational Health & Safety / Human Rights

- Essential services employees are increasingly concerned about coming to work. Some employees are refusing to work because they perceive a risk to their own health and safety.
- Employees generally have a right to refuse to work if they have reason to believe that their health and safety is endangered at work. When employees refuse to work, OHS processes should be followed, involving governmental authorities if necessary.
- Before invoking the normal work refusal process, consider whether the employee might have a basis to request the leave as a matter of human rights accommodation, particularly those with disabilities that may have compromised immune systems.

Workers' Compensation Premium Relief

COVID-19 & Workers' Compensation

- In Ontario, the Workplace Safety and Insurance Board announced that employers can defer premium payments until August 31, 2020, without interest or penalties.
- In Alberta, the Workers' Compensation Board announced that the 2020 premiums for all private sector employers will be deferred to 2021. When invoicing resumes, small- and mid-sized employers will have 50% of their 2020 premiums waived.
- In Nova Scotia, the Workers' Compensation Board announced that premium payments can be deferred until July 2020.

Workplace Legislation

COVID-19 & Employment Standards

- Ontario, Alberta, British Columbia, Newfoundland & Labrador, Saskatchewan, and the Federal government have introduced new job-protected leaves in response to COVID-19 (“COVID-19 Leaves”).
- Eligibility criteria for COVID-19 Leaves vary from province-to-province, but employees who cannot work due to COVID-19 are generally eligible.
- Manitoba and New Brunswick have taken a different approach, amending their employment standards legislation to increase the length of temporary layoffs before statutory termination entitlements are triggered.

Workplace Legislation

COVID-19 & Employment Standards

- *All* COVID-19 Leaves:
 - Are available to those who have to quarantine or self-isolate according to directions from public health authorities.
 - Are unpaid (but employees may be eligible for financial benefits such as the Canadian Emergency Response Benefit).
 - Do not require a medical certificate.

Workplace Legislation

COVID-19 & Employment Standards

- **Most** COVID-19 Leaves are available to employees who must provide care and support to a family member for reasons relating to COVID-19 (including taking care of a child due to school closure).
- Remember employment standards legislation establishes only minimum entitlements:
 - employees may be entitled to greater rights or benefits established under individual employment contracts or collective agreements; and
 - employees may be entitled to additional unpaid leave time as a matter of human rights accommodation.

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BUSINESS CLOSURES ACROSS CANADA

Which provinces have ordered the closure of non-essential businesses?

- All provinces have ordered the closure of non-essential businesses.
- However, each province has taken a slightly different approach, but with the common goal of taking the necessary steps to limit the spread of COVID-19 without unduly restricting economic activity.
- If you are unsure as to whether and to what extent you can continue to operate, you should seek informed legal advice.

Each Province is Different, but...

- The following services are generally designated as an “essential business” or “priority service”:
 - Emergency Response Personnel
 - Public Utilities & Telecommunications
 - Essential Healthcare Services
 - Grocery Stores and Food Retailers
 - Pharmacies
 - Restaurants (but not dine-in)
 - Hardware Stores
 - Certain Manufacturers
 - Members of Essential Supply Chains
 - Childcare for Healthcare Workers
- All businesses are generally permitted to continue teleworking and e-commerce.

Distinctions Between the Provinces

- The extent to which the following activities may continue during the pandemic vary widely from province to province:
 - Manufacturing
 - Construction
 - Research
- Some provinces have “three lists”.
- Some provinces regulate “places of business” and others focus on “essential services” or “priority services”.

High Level Overview of Essential Service Orders by Province

Prov.	Duration	Penalties
AB	Indefinite	<ul style="list-style-type: none"> \$1,000 fine per offence. Courts may increase fine to \$100,000 for a first offence and up to \$500,000 for subsequent offences.
BC	Indefinite	<ul style="list-style-type: none"> Up to \$25,000 in fines and 6 month imprisonment.
SK	Indefinite	<ul style="list-style-type: none"> First offence, individual: up to \$75,000 + \$100 per day if the offence continues; first offence, corporation: up to \$100,000 + \$1000 per day if the offence continues. Subsequent offence, individual: up to \$100,000 + \$1000 per day if the offence continues; subsequent offence, corporation: up to \$250,000 + \$5000 per day if the offence continues.
MB	April 14	<ul style="list-style-type: none"> First offence, individual: \$50,000; first offence, corporation: \$500,000. Subsequent offences of a corporation \$1,000,000.
ON	April 13	<ul style="list-style-type: none"> 1-year imprisonment, a fine of up to \$100,000 for an individual, \$500,000 for a director of a corporation, or \$10,000,000 for a corporation.
QB	April 13	<ul style="list-style-type: none"> Fine up to \$6,000, doubles per subsequent offence.
NB	Indefinite	<ul style="list-style-type: none"> Fines ranging from \$240 and \$10,200.
NS	Indefinite	<ul style="list-style-type: none"> First offence, individual: Up to \$2,000 fine, and/or imprisonment of up to 6 months; first offence, corporation: up to \$10,000 fine. Subsequent offence, individual: up to \$10,000, and/or imprisonment of up to 1 year; subsequent offence, corporation: up to \$50,000.
NFLD	Indefinite	<ul style="list-style-type: none"> First offence, individual: \$500 to \$2,500, imprisonment of not more than 6 months, or both; first offence, corporation: \$5,000 to \$50,000. Subsequent offence, individual: \$500 to \$5,000, imprisonment of not more than 6 months, or both; subsequent offence, corporation: \$5,000 to \$100,000.
PEI	Indefinite	<ul style="list-style-type: none"> First offence: fine of \$1,000; second offence: fine of \$2,000; third and subsequent: fine of \$10,000 and/or imprisonment of up to 6 months.

What Happens if You're Forced to Close?

In Ontario, for example...

- Allow employees who can be productive at home to work from home.
- Employees who cannot work due to the declared emergency or the infectious disease designation are likely entitled to a Declared Emergency Leave (DEL) or an Infectious Disease Emergency Leave (IDE).
- Subject to leave entitlements, collective agreements, and individual employment contracts, temporary layoffs and without cause terminations are possible, but should be carefully considered and administered.
- In any event, if there is an interruption in earnings, Records of Employment must be issued.

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BURNING QUESTIONS?!

Burning Questions

This week's list of burning questions...

1. How does this new wage subsidy work?

2. What supports are available for your employees?

3. What's new with the Work-Share program?

4. What's new with the SUB program?

5. I'm hearing temporary layoffs are illegal... should I still be considering them?

6. Should we recall those employees we've already temporarily laid off in light of the new wage subsidy?

7. Can we reduce base pay or incentive compensation? How should we do that?

8. Can we force employees to take vacation? How should we do that?

Burning Questions

How does this new wage subsidy work?

- *The legislation still needs to be passed by Parliament.*
- *What the government hopes to pass:*
 - 75% of pre-crisis wages (of the first \$58,700) – to a maximum of \$847/week, per employee – for 3 months.
 - Open to: individuals, taxable corporations, partnerships with eligible employers, non-profits and registered charities (excludes public sector entities).
 - 30% revenue reduction, compared to the same month last year.
 - Employers are encouraged to top-up.
 - Penalties for abuse.

Burning Questions

What supports are available for your employees?

- **Employment Insurance Regular Benefits**

- Eligible employees who have been temporarily laid off or lost their jobs due to business slowdowns or mandatory shutdowns at no fault of their own are eligible to receive a maximum of \$573 per week for up to 45 weeks.

- **Employment Insurance Sickness Benefits**

- Eligible employees who are quarantined or sick due to COVID-19 are eligible to receive a maximum amount of \$573 per week for up to 15 weeks.

- **Canada Emergency Response Benefit**

- Temporary income support, for eligible workers who have stopped or reduced hours of work due to COVID-19, in the form of a taxable benefit in the amount of \$2,000 a month up to 16 weeks.

- **Certain provinces may also administer their own benefits.**

Burning Questions

What's new with the Work-Sharing Program?

- **Purpose:** To help employers avoid layoffs when there is a temporary reduction in business activity that is beyond the control of the employer.
 - Tripartite agreement—employer, employees and federal government.
 - Employees must agree to reduced hours of work by at least 10% (1/2 day) to 60% (3 days).
 - Eligible employees will receive difference in *regular* EI benefits while working the temporarily reduced schedule.
 - e.g., max of \$573 / # of days off per week

Burning Questions

What's new with the SUB Program?

- **Purpose:** To top-up an employee's EI benefits when they are unemployed due to a temporary work stoppage, training, illness, injury or quarantine.
- To set up a SUB Plan, employers must file **2** documents:
 1. registration form; and
 2. copy of the proposed SUB Plan.
- *Online submission* → sub-psc@servicecanada.gc.ca
- SUB plans are deemed registered on the date of filing/receipt.

Burning Questions

I'm hearing temporary layoffs are illegal... should I still be considering them?

- Temporary layoffs are not always a breach of contract.
 - Employment contract
 - Collective agreement
 - Consistent practice
 - Quebec
- Otherwise sending someone home without pay is a material change to a fundamental term of employment → constructive dismissal.

Burning Questions

Should we recall those employees we've already temporarily laid off in light of the new wage subsidy?

- **It depends...**

- Are you certain your business will qualify?
- How much work do you have for them? Any?
- Can you/will you top them up?
- Does it make sense from a cash-flow perspective?
- Risk aversion?
- Public relations?

Burning Questions

Can we reduce base pay or incentive compensation? How should we do that?

- **First:** Look at your contracts, collective agreements, past practices (no exception for Quebec this time).
- **Second:** Is it going to be a material change to a fundamental term?
 - Base salary reductions → Yes.
 - Everything else → Maybe.
- **Third:** Understand the risk and do it the right way.

Burning Questions

Can we force employees to take vacation? How should we do that?

- **First:** Look at your contracts, collective agreements, past practices, and vacation policies.
- **Second:** Consider the employment standards legislation and understand the risk.
 - Ontario: full weeks.
 - Are there notice requirements for forced vacations?
 - Is the risk financial or *procedural*?
 - At least consider the constructive dismissal risk (special cases).
- **Third:** Understand the risk and do it the right way.



Questions

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