



What's New in HR Law

COVID-19: Workplace Pandemic Policies and Continuity Planning

March 9, 2020

Bottom Line

Since our previous update on January 29, 2020: [Coronavirus: Proactive Guidance for Employers](#), there have been several new developments. With over 100,000 confirmed cases of COVID-19 worldwide as of March 6, 2020, the virus is presenting new challenges for employers. While the Public Health Agency of Canada has assessed the public health risk in Canada as low, it is important for Canadian employers to implement a pandemic response plan, including a communicable illness policy and business continuity plan to help minimize the risk and mitigate business losses in the event that COVID-19 becomes more widespread across the country.

Travel Advisories and Affected Regions

Employers should be aware of travel advisories that may affect business operations and business travel. Health Canada has updated its [Travel Health Notices](#) to include:

This update is for general discussion purposes and does not constitute legal advice or an opinion.

[Filion Wakely Thorup Angeletti LLP](#) www.filion.on.ca

Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500, PO Box 44
Toronto, Ontario M5H 2R2
tel 416.408.3221 | fax 416.408.4814
toronto@filion.on.ca

London

620A Richmond Street, 2nd Floor
London, Ontario N6A 5J9
tel 519.433.7270 | fax 519.433.4453
london@filion.on.ca

Hamilton

1 King Street West, Suite 1201, Box
57030
Hamilton, Ontario L8P 4W9
tel 905.526.8904 | fax 905.577.0805
hamilton@filion.on.ca

- China
- Hong Kong
- Iran
- Japan
- Italy
- Singapore
- South Korea

Communication is Key

Employers and employees should stay updated on reliable sources of information about COVID-19, including the [World Health Organization](#), [Health Canada](#) and [Ontario Health](#). Employers should ensure that there is clear communication outlining how they will respond in the event of a more widespread pandemic in the region(s) in which they operate.

It is also a good idea to remind employees of the employer's commitment to providing a safe and healthy workplace, and how each employee has a role to play in contributing to that commitment. This includes:

- staying away from the workplace when employees (or someone close to them) are displaying flu-like symptoms;
- washing their hands often with soap and water where available, or an alcohol-based hand sanitizer;
- covering their mouth when coughing or sneezing, but not with their bare hand;
- avoiding touching their face, and especially their eyes, nose mouth and ears; and
- avoiding contact with individuals who are displaying flu-like symptoms.

Employers should also remind employees of the resources available to them if they develop an illness, such as COVID-19, including:

- leaves of absence under the applicable legislation, employment contract and/or collective agreement;
- financial entitlements under the *Employment Insurance Act* and the *Workplace Safety and Insurance Act*.

Subject to any workplace policy or collective agreement stating otherwise, time off as a result of illness or quarantine can be unpaid.

There have been numerous reports in the media of individuals experiencing racism and harassment as a result of the COVID-19 outbreak. Employers should be aware of their obligations under the relevant occupational health and safety legislation and human rights legislation to maintain a discrimination and harassment-free workplace. In particular, employers should take every reasonable precaution in the circumstances to prevent workplace harassment and discrimination on the basis of race, ancestry, place of origin, colour and/or ethnic origin. Employers should consider monitoring the workplace to ensure that fear surrounding COVID-19

does not give rise to harassment based on these grounds, and remind employees that any such behaviour will not be tolerated.

Check out our [previous update](#) for a detailed discussion of various employee entitlements, and important human rights and occupational health and safety considerations.

Communicable Illness Policy

As part of an employer's pandemic response plan, now is a good time develop a communicable illness policy, or review an existing policy. The communicable illness policy should include:

- sources of reliable information about public health;
- notification procedures for employees if they (or someone close to them) have travelled to a region subject to a Travel Health Notice;
- notification procedures for employees if they (or someone close to them) are presenting flu-like symptoms;
- a requirement that employees stay home and/or away from the workplace in the event that they suspect they have contracted or been exposed to a communicable disease or infection;
- a requirement that employees seek appropriate medical treatment (and comply with any medical recommendations) in the event that they suspect they have contracted or been exposed to a communicable disease or infection;
- an outline of employee entitlements to leaves of absence under relevant legislation, employment contracts and/or collective agreements; and
- an outline of how the employer will address business travel and non-essential meetings during a pandemic.

It is important that these policies are drafted with the employer's obligations under the relevant human rights legislation and occupational health and safety legislation in mind.

While employers and employees may wish to impose quarantines on employees returning from an area under Travel Health Notice, it is important to remember that the risk to Canadians, at present, is still considered by health authorities to be low and, further, that Travel Health Notices are not government directives or authorizations for the imposition of workplace quarantines.

Careful consideration, and a contextual assessment of the employer's workplace, should be undertaken before implementing any workplace requirement. Context will play a key role in determining the appropriate response under any communicable illness policy. An employer's response should keep in mind the nature of the work environment and the degree of interaction that employees have with others including coworkers, the public, suppliers and/or clients. An employer operating in the health care sector and providing care to vulnerable persons will necessarily respond to risk factors differently than an employer operating in an office setting where workers have limited interaction with others. A reasonable and proportionate response, in keeping with any government issued directives and legal obligations, is key.

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Business Continuity Plan

In the event that COVID-19 becomes more widespread in the region(s) in which employers operate, it is also important for employers to have or adopt a business continuity plan. These plans will help mitigate any negative impacts the pandemic may have on business operations, and should:

- identify which individuals will be responsible for overseeing the operation of the Business Continuity Plan;
- identify the events that will trigger the implementation of the Business Continuity Plan;
- identify the roles that are critical to the organization and the individuals that may cover those roles, if necessary;
- identify which department(s) may be shut down in the event that the pandemic begins to have a more widespread impact on public health in Canada, and which department(s) must stay up and running; and
- outline work-from-home arrangements for employees, if appropriate.

Check the Box

As COVID-19 develops and more information becomes available, employers will be faced with evolving challenges. In the face of a pandemic, it is important to be proactive, plan ahead and maintain open lines of communication with employees.

We will continue to monitor COVID-19 as it develops and provide new updates for employers as the situation evolves.

Need more information?

For more information on how you can create a pandemic response plan, contact [Madeline Davis](#) at 416-408-5528, or your regular lawyer at the firm.



management labour and employment law



Toronto

Bay Adelaide Centre
333 Bay Street, Suite 2500,
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Toronto, Ontario M5H 2R2
tel: 416.408.3221
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London, Ontario N6A 5J9
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Hamilton, Ontario L8P 4W9
tel: 905.526.8904
fax: 905.577.0805
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