Legal update

Better safe than sorry: useful information for employers on coronavirus outbreak

February 2020
Employment and labour

Since the first cases were reported to the World Health Organization on December 31, 2019, the coronavirus has been declared a global emergency and indeed an issue of pressing concern in the workplace. As of now, a limited number of cases have been reported in Canada, namely in Ontario and British Columbia. As a result, employers in Quebec are looking at what impact the coronavirus may have on their operations, how best to manage employees in the circumstances, and what they can do to help prioritize health and safety in the workplace and at large.

Managing absenteeism

In Quebec, employers can expect to manage five types of absences:

- Employees infected with the coronavirus;
- Employees who must take care of an immediate family member infected with the coronavirus;
- Employees who refuse to report to work for fear of being exposed to the virus at work or during transit to work;
- Employees absent from work due to a preventive withdrawal, pregnancy or the perception that the workplace is now a high-risk zone according to their specific medical condition; and
- Employees in "quarantine" after being in contact with coronavirus-positive individuals. Quarantine may be requested by the employer to limit the risk of contamination or by a health care professional, as part of a medical protocol.

Employees absent due to the above-mentioned reasons may be entitled to:

- Sick leave with pay or short-term disability benefits, if provided by a collective agreement or contract contemplating a leave of absence policy;
- 26 weeks of unpaid sick leave under the Act respecting labour standards (ARLS), the first two days being paid to employees with three months of uninterrupted service;
• 10 days of unpaid family or parental matter leave to take care of a sick child or another family member as contemplated under the ARLS, the first two days being paid to employees with three months of uninterrupted service;

• For federally regulated employees, the *Canada Labour Code* (*Code*) provides five personal days of leave to, amongst others, treat an illness or carry out responsibilities related to the health or care of any family member, the first three days being paid to employees with a minimum of three months of service; and

• For federally regulated employees, the *Code* provides a medical leave of absence without pay of up to 17 weeks as a result of, amongst other, personal illness.

As mentioned, employers may also have to deal with an employee's refusal to work for fear of contracting the coronavirus. A right of refusal may be exercised under the *Act respecting occupational health and safety* if a worker has reasonable grounds to believe performing particular work would expose him or her to danger to his or her health, safety or physical well-being or would expose another person to a similar danger. To date the *Commission de la santé et de la sécurité du travail* (Quebec's occupational health and safety commission) has not issued any directives regarding such possibility in the context of the coronavirus.

For federally regulated employers, Part II of the *Code* also provides for an employee’s right to refuse to work in dangerous situations. And since September 1, 2019, employees may now refuse overtime under Part III of the *Code* to tend to family-related obligations, which can include taking care of a family member.

Importantly, if employees are asked not to come to work, employers should consider whether they will be compensated during their absence.

**Preventive measures in the workplace**

In addition to absenteeism, employers must be mindful of their obligations under Quebec’s *Act respecting occupational health and safety*, which includes taking necessary measures to protect the health and ensure the safety and physical well-being of workers, including concerning the spread of a contagious virus such as the coronavirus. Likewise, federally regulated employers are required under Part II of the *Code* to "ensure that the health and safety at work of every person employed by the employer is protected." Consequently, employers should consider the following:

• **Encourage employees and visitors to adopt adequate hygiene practices:** This can include putting up posters in strategic locations promoting adequate hygienic habits. For instance, this could include posters showing proper hand washing methods in bathrooms and signs encouraging employees to cover their mouths when coughing. Another good practice could be planning for more frequent cleaning of potentially virus-contaminated surfaces in the workplace (doorknobs, elevator knobs, shared telephones).

• **Respond to symptomatic employees and visitors properly:** If an employee is exhibiting typical symptoms of the coronavirus, or is asymptomatic but has been in contact with an infected person, he or she should not be allowed access to the workplace and should be sent home and advised to seek medical advice as soon as possible.

• **Offer training:** Ensure management and employees are familiar with the main symptoms of the coronavirus, and what to do should they exhibit those symptoms in the workplace.

• **Protect privacy:** Employers are limited in the scope of medically related questions they can ask employees. If questions are posed to employees, they should be narrow and focused on ensuring health and safety in the workplace. Moreover, it is important that employee information in this regard be kept safe, and thereafter destroyed within a reasonable timeframe.
• **Be aware:** Employers should be mindful of how day-to-day practices may be modified in the interest of prevention. For instance, if an employee or a visitor in the workplace has travelled to a high-risk area, an employer could request the employee self-quarantine and seek medical attention.

**Conclusion**

It is still too early to know the impact the coronavirus will have on employers in Canada. What is clear, though, is employers can help prevent and manage the spread of the virus by engaging in sound practices that prioritize the health and safety of those in the workplace. As this situation evolves, employers and employees alike would be wise to follow all directives from Canadian and Quebec public health authorities.


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**Footnote**

1 Although coronavirus designates the family of viruses that includes the common cold, and viruses such as SARS and MERS, this term has been used in to designate the new virus named “2019-nCoV”. For the purposes of this bulletin, we shall refer to this virus as “coronavirus.”

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