Legal update

COVID-19 in 12 questions: Update and status report for Quebec employers

March 2020
Employment and labour

Since our last publication on the subject, the situation surrounding COVID-19 and its spread continues to cause many concerns for Quebec employers. Given the development of the phenomenon and the issues it raises, for the purposes of this update we have identified the most frequently asked questions and our team’s recommendations on the subject.

1. Can an employer, on its own initiative, require the quarantine or isolation of its employees?

   • Employers have an obligation to ensure the health and safety of their employees and of the workplaces in which they perform their tasks;

   • Given this obligation, it is our view that an employer could require the isolation of employees who exhibit symptoms of the illness or pose a risk of contagion to their fellow employees, provided that the employer’s decision is based on reasonable grounds;

   • In any event, we recommend that employers carefully monitor and assess any special situations arising from employee exposure to the virus or the presence of symptoms. Where appropriate, preventive measures should be imposed, such as isolation or obtaining medical opinions confirming that employees are fit to work and that they pose no risk of contagion;

2. In the event of forced quarantine by government authorities, should the leave from work be paid?

   • In such circumstances, a claim for disability insurance where such a plan is part of the working conditions or a claim for employment insurance should be considered;

   • As regards disability insurance, since only a few cases have been documented, it is difficult to identify a trend. However, it is our view that such preventive measures will limit the duration and number of absences, which should serve as an incentive for insurers to accept such claims. Preventative discussions should be held between employers who are parties to such insurance contracts and group insurers in order to come up with a concerted approach and have answers to employees’ questions on this subject;
• With respect to employment insurance, we are eagerly awaiting confirmation of the new rules in place. The federal government has announced that the one-week waiting period before collecting employment insurance benefits will be abolished for employees who contract COVID-19. According to preliminary information that has been released, to be eligible for this measure, employees will have to either provide a medical certificate or demonstrate that they are following the recommendations of provincial or federal health authorities;

• Sick leave provided for by law or pursuant to company policy or a collective agreement could also be taken in such circumstances;

• Piecemeal arrangements could also be considered to allow for early vacations, for example;

• Otherwise, other than sick leave or other statutory leave or pursuant to company policy or a collective agreement, it is our view that employers are not under a legal obligation to continue to pay salaries or wages in such circumstances for the full duration of an employee’s absence;

3. If the employer requires quarantine, must it continue to pay the quarantined employee?

• In such circumstances, a claim for disability insurance or employment insurance could be considered (see previous question for greater detail);

• Otherwise, excluding sick leave or other statutory leave or pursuant to company policy or a contract (including a collective agreement), it is our view that employers are not under any legal obligation to continue paying salaries or wages in such circumstances for the full duration of the absence provided that the quarantine is based on legitimate reasons and is intended to protect the workplace;

• However, this will involve a case-by-case analysis based on the reasons for the employer’s decision and the circumstances of each situation. Our team is available to assist you should such a situation arise;

4. In the event of voluntary self-quarantine, must the employer continue to pay the employee during his or her absence?

• In such circumstances, a claim for disability insurance or employment insurance could be considered (see question 2 for greater detail);

• If such claims are refused, it is our view that employers are not under any obligation to continue paying self-quarantined employees. The taking of sick or personal leave could, however, be considered;

• Such voluntary isolation could also be regarded as a refusal to work, so additional checks should be made to validate the reasons for and legitimacy of the decision to self-quarantine. Failing this, disciplinary action could be considered;

5. Can employees be absent from work to care for a family member who has the virus?

• As a general rule, an employee may take time off to care for a family member for a specified minimum number of days, which varies according to the applicable law (10 for provincially regulated businesses, 5 for federally regulated businesses;

• However, we recommend issuing a clear directive requiring employees with a family member affected by the virus to proactively disclose this information so that appropriate preventive measures can be taken, including quarantine or working from home, if feasible, or obtaining a medical certificate confirming that despite the
employee’s contact with someone affected by the virus, the employee is fit to work and does not pose a risk of contagion;

6. Can an employer ban work-related trips?

- As a general rule, yes. Many employers have already applied such a measure, unless such trips have received prior authorization;

- We recommend issuing clear directives that all work-related trips require prior authorization and should be confined to strictly necessary situations. Consideration should also be given to setting-up an internal oversight committee to review such matters;

7. Can an employer ban personal trips?

- At present and according to the directives issued by public health authorities, we do not believe that such a ban is possible;

- However, we recommend that employers issue clear directives requiring employees to inform the employer in advance of any foreign travel for personal reasons and the itinerary of the trip in order to determine if preventive measures, such as isolation on return or working from home, should be taken, if feasible;

8. Can an employer prohibit employees who may be carriers of the virus or who have virus-related symptoms from entering its establishment?

- Given the nature of its obligations, we believe that an employer must effectively prohibit access to its establishment if it has reasonable grounds to believe that an employee has been in contact with one or more persons who are carriers of the virus and that there is a risk of contagion or that the employee has virus-like symptoms;

- In such a case, we recommend that the employee should be allowed to return to work only upon presentation of a medical certificate confirming that the employee is fit for work and poses no risk of contagion;

9. Can an employee refuse to work for fear of contracting the virus?

- The law gives employees the right to refuse to work if they have reasonable grounds for believing that the work they do will expose them to a danger to their health, safety or physical well-being or could expose another person to such a danger;

- In such a case, an inspector may be called upon to decide the matter and determine the legitimacy of the employee’s exercise of the right of refusal;

- From our research we are unable to confirm the direction that will be taken by the relevant adjudicative bodies where such refusals are exercised on the basis of the risk of contagion. However, it is our opinion that this is not a prima facie reason for refusing to perform the work, especially if preventive measures have been put in place and can be demonstrated;

10. What are the main preventive measures to be taken?

- Key public health recommendations should be followed and be the subject of reminders. For full details, consult the Government of Quebec website dedicated to COVID-19: https://www.quebec.ca/sante/problemes-de-sante/a-z/coronavirus-2019/#fc41503 (this website is available in French only at present);
• Employers should facilitate compliance with such measures by making hygiene materials available to employees and by ensuring that all recommendations are followed;

• Employers should pay special attention to the presence of symptoms or the identification of at-risk cases so that preventive measures can be taken as quickly as possible;

11. Can an employee assert his or her right to privacy and refuse to disclose certain information to a third party?

• By law, an employer may require the disclosure of certain personal information that is necessary to conduct its business;

• We believe that given the exceptional nature of the current situation, employers could require the disclosure of certain information otherwise considered confidential, including, in particular, the itinerary of personal trips taken recently and/or to be taken;

• However, various measures should be put in place to ensure that the confidential information is protected and that such information is only consulted if necessary and by those who need such information to make decisions;

12. Any other practical recommendations?

• We recommend the establishment of a dedicated coronavirus issues management committee in each organization to ensure consistency in decision making, timely and effective follow-up and adequate communication;

• When the situation permits, encourage working from home;

• Put in place widely disseminated hygiene measures and ensure that they are followed;

• Limit unnecessary gatherings and meetings and encourage the use of technology;

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