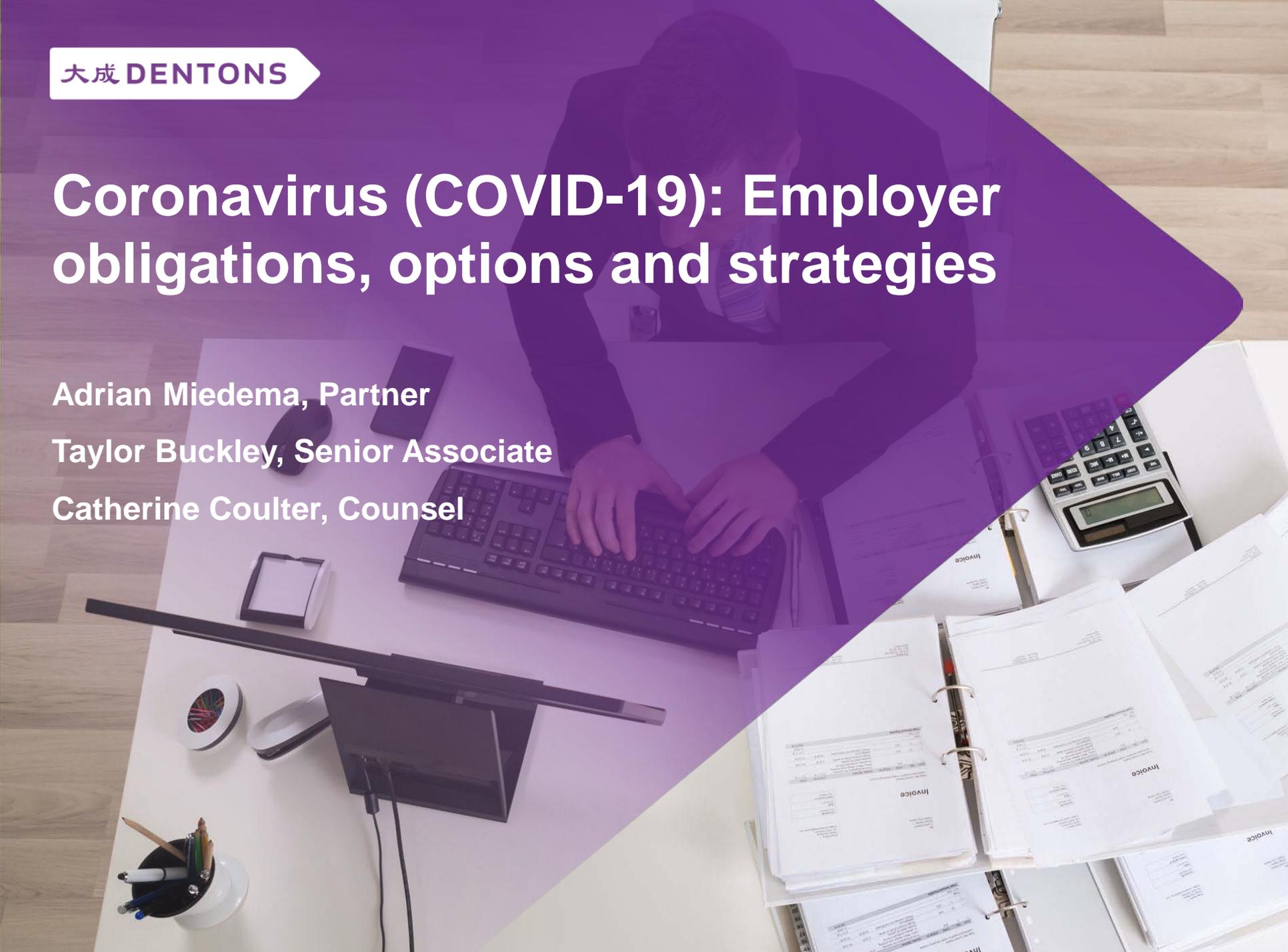


Coronavirus (COVID-19): Employer obligations, options and strategies

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Health and Safety Issues – Employer Obligations and Best Practices

Adrian Miedema, Partner

March 13, 2020



OHS Legislation

Key employer obligations:

- All reasonable precautions
- Communicate hazards
- Train

OHS Legislation

Key employer obligations:

- Reasonable precautions, communicate hazards, train:
 - Written plan (engage safety committee)
 - Educate on infection prevention (hand washing, etc.)
 - Require employees to stay home if sick
 - Require employees to stay home if travel to affected area
 - Require employees to report location of travel
 - Post signs – screen entrants
 - Personal protective equipment (PPE)
 - Regular cleaning
 - Disinfectants available
 - Engage third-party medical advisor: take advice from experts

OHS Legislation

Violations of OHS legislation:

- Compliance orders
- Charges and fines
- Possible civil lawsuits (e.g. SARS class action)

OHS Legislation

Duty to report?

- Ontario: must report “**occupational illness**” to Ministry of Labour, health and safety committee and union within 4 days

OHS Legislation

Work refusal

- Permitted if worker “has reason to believe” (Ontario), “reasonable grounds” (Quebec, Alberta), “reasonable cause to believe” (B.C.) in danger
- Some exceptions (e.g. Ontario: emergency, hospital and certain other workers where is inherent in work or refusal would endanger others)
- Retaliation prohibited
- Practically: employer likely loses if work refusal. Process takes too much time during emergency. Best to satisfy workers that appropriate protections in place.

Workers' Compensation Legislation

Duty to report occupational disease to WCB?

- B.C.: yes (3 days)
- Ontario: Yes (3 days)
- Alberta: Yes (72 hours)
- Quebec: no, but may be advisable

Workers' Compensation Legislation

Duty to report occupational disease?

- If in doubt if work-related: likely best to report
- Court lawsuit may be prohibited if work-related
- Also advisable to report to local public health unit

Employee privacy in a pandemic

Taylor Buckley, Senior Associate

March 13, 2020



Employee Privacy in a Pandemic

Legislation Overview

- *Personal Information Protection and Electronic Documents Act (PIPEDA)*
– Federal, ON, QC, SK, MB, NL, NS, PEI, YT, NWT, NU
- *British Columbia Personal Information Protection Act (BC PIPA)*
- *Alberta Personal Information Protection Act (AB PIPA)*
- *Québec Act Respecting the Protection of Personal Information in the Private Sector*

***Until a public health emergency is declared,
privacy legislation applies in the ordinary course***

Employee Privacy in a Pandemic

General Privacy Principles

- Generally, organizations may collect, use and disclose personal information about employees only with meaningful (i.e., informed) consent
- The purpose for the collection must be reasonable
- Organizations that collect personal information must take appropriate measures to protect that information
 - The more sensitive the information, the greater the protection
- Once personal information is no longer required, the organization should no longer keep it

Employee Privacy in a Pandemic

Consent Exceptions

- **Employee Consent Exception** – PIPEDA, BC PIPA and AB PIPA permit collection of employee personal information without consent if (1) it is collected only for managing the employment relationship and (2) the employees are notified in advance that the information will be collected
 - General privacy principles otherwise apply
- **Emergency Consent Exceptions** – Organizations can generally disclose personal information without consent in emergency situations
 - Disclosure necessary for medical treatment and consent cannot be given
 - Disclosure is clearly in the person's interest and consent cannot be obtained in a timely manner
 - Disclosure is for the purpose of contacting the next of kin or a friend of the injured or sick person
- **Legal Authorization Exception** – Personal information may be collected or disclosed without consent when required by law

Employee Privacy in a Pandemic

If a Public Health Emergency is Declared

- A declared public health emergency triggers emergency powers for governments
- Legislation can be overridden – including privacy legislation
 - Public bodies are authorized to collect and disclose personal health information about employees
- Other rights and protections for illness-related personal information may apply
- For instance, under the *Quarantine Act* – Employees who report suspected infected individuals can request to have their name withheld from their employer

Employee Privacy in a Pandemic

Privacy Principles Applied

- Think about what information is necessary and useful – have a reasoned basis for collecting information
 - This will vary from workplace to workplace
- Provide notice or, if you are in QC, get consent
- Give information about why you are collecting information and how it will be used
- Assure employees that their information will be protected (and protect it)
- Collect the information discreetly and respectfully, respond to the information respectfully
 - Only share the information with necessary personnel
- Do not keep information indefinitely

Employment related business continuity issues: Keeping the lights on in the event of a pandemic

Catherine Coulter, Counsel

March 13, 2020



1. Applicable Statutory Leaves

(a) Ontario (*Employment Standards Act, 2000*)

Sick Leave	
Eligibility (length of service)	2 consecutive weeks
Length of Leave	Up to 3 days per calendar year
Purpose	For illness, injury or medical emergency of the employee
Documentation	Medical note may be required if “reasonable in the circumstances”
Compensation	None
Family Responsibility Leave	
Eligibility (length of service)	2 consecutive weeks
Length of Leave	3 days per calendar year
Purpose	Due to illness, injury, medical emergency or urgent matter relating to a defined family member
Documentation	Not permitted. Employer can only ask for the name of the relative, their relationship to the employee, and a statement that the absence was due to the relative’s illness, injury or medical emergency
Compensation	None

Applicable Statutory Leaves, con't.

(a) Ontario, con't. (*Employment Standards Act, 2000*)

Family Caregiver Leave	
Eligibility (length of service)	None. All employees are eligible, regardless of length of service
Length of Leave	Up to 8 weeks per calendar year
Purpose	Care for defined family member for whom a qualified health practitioner has issued a certificate stating that they have a serious medical condition
Documentation	Medical certificate
Compensation	None
Family Medical Leave	
Eligibility (length of service)	None. All employees are eligible, regardless of length of service
Length of Leave	Up to 28 weeks in a 52 week period
Purpose	Care for defined family member for whom a qualified health practitioner has issued a certificate stating that there is a significant risk of death within a period of 26 weeks
Documentation	Medical certificate
Compensation	Application may be made for Employment Insurance benefits

Applicable Statutory Leaves, con't.

(a) Ontario, con't. (*Employment Standards Act, 2000*)

Critical Illness Leave	
Eligibility (length of service)	6 months
Length of Leave	Up to 37 weeks in a 52 week period for a critically ill child; up to 17 weeks in a 52 week period for a critically ill adult
Purpose	To provide care or support to a critically ill defined family member whose life is at risk
Documentation	Medical certificate

Applicable Statutory Leaves, con't.

(b) Federal (*Canada Labour Code*)

Medical Leave	
Eligibility (length of service)	None. All employees are eligible, regardless of length of service
Length of Leave	Up to 17 weeks
Purpose	For personal illness or injury, organ or tissue donation, or medical appointments during working hours
Documentation	If medical leave of absence is 3 days or longer, the employer may require that the employee provide a certificate issued by a health care practitioner
Compensation	None
Compassionate Care Leave	
Eligibility (length of service)	None. All employees are eligible, regardless of length of service
Length of Leave	Up to 28 weeks
Purpose	Care or support for a defined family member for whom a health care practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks.
Documentation	Medical certificate
Compensation	None

Applicable Statutory Leaves, con't.

(b) Federal, con't. (*Canada Labour Code*)

Critical Illness Leave	
Eligibility (length of service)	None. All employees are eligible, regardless of length of service
Length of Leave	Up to 37 weeks to care for a critically ill child; up to 17 weeks for a critically ill adult.
Purpose	Care for or support a critically ill family member defined family member for whom a health care practitioner has issued a certificate that states that the family member is critically ill and requires the care and support of one or more of their family members.
Documentation	Medical certificate
Compensation	None

Applicable Statutory Leaves, con't.

(b) Federal, con't. (*Canada Labour Code*)

Personal Leave	
Eligibility (length of service)	None. All employees are eligible regardless of length of service.
Length of Leave	Up to 5 days in every calendar year
Purpose	Treating the employee's illness or injury; carrying out responsibilities related to the health or care of any of the employee's family members; carrying out responsibilities related to the education of any of their family members who are under 18 years of age; addressing any urgent matter concerning themselves or their family members.
Documentation	Documentation that is reasonable in the circumstances to support the reasons for the leave.
Compensation	If the employee has 3 consecutive months of continuous employment the first three personal leave days are paid at the employee's regular rate.
Bereavement Leave	
Eligibility (length of service)	None. All employees are eligible regardless of length of service.
Length of Leave	Up to 5 days within the period starting on the date of the death and ending 6 weeks after the day on which the funeral, burial or memorial service occurs
Purpose	Following the death of a defined immediate family member.
Documentation	Medical certificate
Compensation	If the employee has 3 consecutive months of continuous employment the first three personal leave days are paid at the employee's regular rate.

Applicable Statutory Leaves, con't.

(c) Alberta (*Employment Standards Code*)

Long Term Illness and Injury Leave	
Eligibility (length of service)	90 days
Length of Leave	Up to 16 weeks per calendar year
Purpose	For illness, injury or quarantine of the employee
Documentation	Medical certificate
Compensation	None
Personal and Family Responsibility Leave	
Eligibility (length of service)	90 days
Length of Leave	5 days per calendar year
Purpose	For the health of the employee
Documentation	None
Compensation	None
Compassionate Care Leave	
Eligibility (length of service)	90 days
Length of Leave	Up to 27 weeks
Purpose	Care for seriously ill family member with significant risk of death within 26 weeks
Documentation	Medical certificate
Compensation	None

Statutory Leaves, con't.

(c) Alberta, con't. (*Employment Standards Code*)

Critically Ill Childcare	
Eligibility (length of service)	90 days
Length of Leave	Up to 36 weeks
Purpose	To provide care or support to a critically ill child family member under the age of 18 (part of Critical Illness Leave).
Documentation	Medical certificate
Compensation	None
Critical Illness	
Eligibility (length of service)	90 days
Length of Leave	Up to 16 weeks
Purpose	To provide care or support to a critically ill adult family member
Documentation	Medical certificate
Compensation	None

Applicable Statutory Leaves, con't.

(d) British Columbia (*Employment Standards Act*)

Critical illness or injury leave	
Eligibility (length of service):	No minimum.
Length of leave:	36 weeks within a period of 52 weeks (family member under 19); 16 weeks within a period of 52 weeks (family member 19+).
Purpose:	To care for a family member whose health has significantly changed due to critical illness or injury, with the result that the life of the family member is at risk.
Documentation:	Medical certificate.
Compensation	None
Family responsibility leave	
Eligibility (length of service):	No minimum.
Length of leave:	5 days.
Purpose:	To meet responsibilities related to related to the care or health, and in the case of a child, education, of an immediate family member. A crisis or emergency is not required.
Documentation:	Employers are entitled to reasonable proof, after the event, that the request for a leave was valid.
Compensation	None

Applicable Statutory Leaves, con't.

(d) British Columbia, con't. (*Employment Standards Act*)

Compassionate care leave	
Eligibility (length of service):	3 months of uninterrupted service
Length of leave:	2 days
Purpose:	To care for a family member with a serious medical condition with a significant risk of death within 26 weeks.
Documentation:	Medical note
Compensation	Paid
Bereavement leave	
Eligibility (length of service):	No minimum.
Length of leave:	3 days.
Purpose:	To grieve, attend a funeral, and take care of issues relating to the death of an immediate family member.
Documentation:	Employer may request proof of death and nature of the relationship.
Compensation:	None

Applicable Statutory Leaves, con't.

(e) Quebec (*Act Respecting Employment Standards*)

Long Term Illness and Injury Leave	
Eligibility (length of service)	None (but in the case of an employee with at least months of service, the first two days (sickness or family responsibility) taken annually shall be remunerated)
Length of Leave	Up to 26 weeks over a period of 12 months
Purpose	Sickness
Documentation	Medical certificate may be required
Compensation	None
Family Responsibility Leave	
Eligibility (length of service)	None (but in the case of an employee with at least months of service, the first two days (sickness or family responsibility) taken annually shall be remunerated)
Length of Leave	Up to 12 days over a period of 12 months
Purpose	Fulfil obligations relating to the care, health or education of the employee's child or the child of the employee's spouse, or because of the state of health of a relative* or a person for whom the employee acts as a caregiver**
Documentation	None
Compensation	None
Compassionate Care Leave	
Eligibility (length of service)	N/A
Length of Leave	Up to 16 weeks over a period of 12 months and up to 36 weeks over a period of 12 months if the if the seriously ill person or accident victim is a minor child.
Purpose	Allow the employee to stay with a relative or a person for whom the employee acts as a caregiver because of a serious illness or a serious accident
Documentation	Medical certificate / Document from a professional working in the health and social services sector and governed by the Professional Code attesting the employee is acting as a caregiver
Compensation	None

Applicable Statutory Leaves, con't.

(e) Quebec, con't. (*Act Respective Employment Standards*)

Critically Ill Childcare	
Eligibility (length of service)	N/A
Length of Leave	104 weeks
Purpose	Allow the employee to stay with a minor child because of potentially fatal illness.
Documentation	Medical certificate attesting of the potentially fatal illness
Compensation	None
Critical Illness	
Eligibility (length of service)	N/A
Length of Leave	Up to 27 weeks over 12 months
Purpose	Allow the employee to stay with a relative, other than his minor child, or a person for whom the employee acts as a caregiver because of a potentially fatal illness
Documentation	Medical certificate attesting of the potentially fatal illness / Document from a professional working in the health and social services sector and governed by the Professional Code attesting the employee is acting as a caregiver medical certificate
Compensation	None

2. Remote Work

- If you don't currently have a remote work policy, now is a good time to implement one in case it's needed
- Ensure that your corporate IT systems can support an increased employee population working remotely
- Consider whether there are going to be issues with providing laptops or other required devices to everyone who needs them, since there may be supply chain issues with obtaining additional devices
- Consider outlining things like maintaining confidentiality over work documents, and employees assuming occupational health and safety requirements for themselves when working from home

3. Other Considerations

- Be attuned to potential mental health issues due to fear, financial stress and isolation.
- Be attuned to potential discrimination in the workplace with respect to employees under disability or employees of certain countries.
- Lengths and terms of temporary layoffs vary from province to province. In Ontario, for example, they can last for up to 13 weeks in any period of 20 consecutive weeks with no obligations, or up to 35 weeks in any period of 52 consecutive weeks with the obligation to continue benefits.
- Employees can apply for Employment Insurance coverage while they're on a temporary layoff, perhaps making things helpful for employees who have no paid leave entitlements.

4. COVID-19 Plan

Items for Consideration:

- Who should be on the Company's COVID-19 Operations Team?
- Whether or not the Company wishes to hire an independent third party digital medical provider when it comes to making decisions about whether: (a) those with a cold or the flu should remain at home; and/or (b) those who have been home sick or under quarantine can return to work.
- Consider whether the Company wishes to require **all** employees who have a cold or flu to stay home, even if there is no reason to believe that they may have COVID-19.
- Consider whether employees will be compensated for all or part of any time away from the office, whether they are ill, under quarantine, or looking after someone else. Consider compensation plans if they can work as well as if they are unable to work.

COVID-19 Plan, con't.

- Consider how the Company wishes to deal with things like flow of individuals in and through workplace premises.
- Consider whether the Company wishes to restrict travel for work by its employees.
- Consider whether the Company wishes to require self-quarantine by employees who have travelled for personal purposes to areas of concern.
- Consider updating the Company's crisis communications system and emergency contacts information for personnel.
- Consider performing a review of the Company's workplace by function. Determine which functions can work remotely if necessary, and determine which functions are critical to the operation of the business. If it's applicable to the particular workplace, also determine which functions are essential public service functions.

Thank you



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