



The COVID-19 Pandemic

A Guide for Employers

COVID-19 has brought with it unprecedented challenges for employers in Alberta. As of March 17, 2020, twenty-three additional cases have been confirmed in our province, bringing the total number of cases in Alberta to 97. As a result, the Alberta Government has instituted a number of aggressive measures to combat the spread of the virus, including: the closure of schools and child care facilities, instituting a prohibition on any organized gatherings of 50 or more people, including at sports arenas, conferences, and weddings; 50% capacity seating at pubs and restaurants, and several proposed emergency legislative amendments.

The situation is evolving rapidly, and employers are being forced to respond quickly to unique and challenging circumstances. In these uncertain times it is essential that employers are aware of their rights and obligations with respect to their employees. Accordingly, Parlee McLaws' Labour and Employment team has prepared the following general outline to provide employers with some general information that may be of assistance during the COVID-19 Pandemic.

Critical Employer Rights and Obligations During the COVID-19 Pandemic

Health & Safety

First and foremost, the most important obligation for an employer is to take all reasonable and practicable steps to ensure a safe work environment for everyone in their workplace. There are several strategies specific to COVID-19 that we are recommending to our clients:

Social Distancing and Hygiene Policies

A critical contribution employers can make to public safety is to institute, educate, and enforce workplace policies that inhibit the spread of the virus. Alberta Health has advised that the most effective strategies are relatively simple:

- employers should encourage those employees that remain at work to adhere to a strict policy of social distancing,
- enhance cleaning practices (especially in high traffic areas);
- increase sanitization stations; and
- remind employees to wash their hands often, use hand sanitizer or sanitizing wipes often, sanitize workstations, and to consciously avoid touching their faces.





Alternate Working Arrangements

Employers should consider making alternative arrangements for their employees in order to minimize contact between coworkers. Examples of effective arrangements include: facilitating remote access to work computers to allow employees to work from their homes, holding meetings via teleconference instead of in person, and reprioritizing tasks or work schedules to limit personal contact.

Self-Isolation and Quarantine

Effective March 12, 2020, Alberta Health is recommending that all employees returning from travel outside Canada should self-isolate for 14 days when they return. For those employees returning from Italy, Iran, or China's Hubei province and that returned before March 12, 2020, it is recommended they should still self-isolate until two weeks have passed since their return, even if they are feeling well. Returning travelling employees should immediately self-isolate if they: a) had contact with someone who has tested positive for COVID-19; b) were in a health care facility during their travels; or c) have any symptoms, such as cough or fever.

COVID-19 Leave per the Alberta Government

The Alberta Government has created a 14-day, unpaid, job-protected leave for all employees that are required to self-isolate as a result of their own symptoms or the need to care for a family member already infected with COVID-19. Unlike regular types of leave under the Employment Standards Code, to be eligible for COVID-19 leave an employee does not require a medical note, nor do they need to have worked for an employer for more than 90 days to qualify.



Business Interruptions - Shift Changes, Layoffs, Terminations

Shift Changes

Under the Employment Standards Code, an employer is obligated to provide at least 24-hours written notice before changing an employee's scheduled shift to another one. While the Code provides for relaxed notice periods for layoffs in the event of unforeseen circumstances, there is no exception within the Code for this notice requirement.

Layoffs

The Employment Standards Code allows an employer to temporarily lay off an employee for up to a period of 60 days by giving that employee written notice of the layoff. Typically, an employee must be provided with 1-2 weeks' notice of the intended layoff (unless the employee is subject to a collective agreement). However, notice must only be provided as soon as practicable in the event of 'unforeseen circumstances', and the COVID-19 pandemic would almost certainly qualify as being unforeseen.

An employer must be aware of two critical legal elements in laying off an employee:

1) the Code mandates that an employee must resume work within 60 days (unless they receive salary or benefits payments during the layoff period), or the employee will be deemed 'terminated', which would trigger severance obligations; and

2) in the absence of explicit provisions within an employment contract allowing a layoff there is risk an employee may advance a claim for 'constructive dismissal' despite an employer's best intentions. Therefore, we highly recommended that any layoffs be discussed with Parlee McLaws' Labour and Employment law team beforehand to assess any potential risk.

Terminations

Despite the economic uncertainty and pressure put on employers during this pandemic, permanent terminations must still be approached with caution. Any 'without cause' termination is still subject to statutory and common law 'reasonable notice' periods, and failure to appropriately terminate an employee may expose an employer to future civil litigation. It is highly recommended that an employer consult with Parlee McLaws' Labour and Employment team before undertaking any terminations at this time.

Reducing Hours of Work

Reducing employees' days or hours of work is likely an attractive option for many employers dealing with the impacts of the COVID-19 virus. However employers should cautious when taking this step as reducing days and / or hours of work will obviously have a corresponding effect on employees' income and making unilateral changes to an employee's income can result in constructive dismissal.

That said, the Government of Canada has announced a number of programs and measures to support Canadians whose income is affected by the COVID-19 virus in one way or another. While the details of these measures / programs are still somewhat unclear, the availability of various forms of support likely mitigates some of the risk associated with reducing days and / or hours of work. Still, this kind of step should only be taken by an employer in consultation with legal counsel.

Get the Advice You Need to Navigate the COVID Winter

The rapid spread of COVID-19 across the world has employers facing unprecedented challenges. More than ever, it is imperative that employers are equipped with the knowledge and advice they need to protect their people and their businesses. Parlee McLaws LLP is committed to using our extensive experience, resources, and expertise to guide employers through what lies ahead.

If you have any questions or concerns regarding the unique needs of your business in these trying times, do not hesitate to contact our offices at the addresses listed below.

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