

# Re-opening Post COVID-19: Employment Law Considerations

June 4, 2020

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# Agenda

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1. Ensuring health and safety
2. Returning employees to work
3. Managing employees who do not return

# Health and Safety Concerns

# Remember the Basics

- Normal health and safety obligations still apply
  - Take all reasonable steps to ensure employee safety
  - Work with JHSC or H&S representative

# Implement New Safety Measures

- Consider guidance from public health officials
- Consider sector specific guidelines
- Consider recommendations of industry regulators

# Implement and Update Policies

- Update existing policies and implement new policies
  - PPE requirements
  - Social distancing requirements
  - Handwashing/sanitation standards
  - Staggering of lunch/break periods
  - Sick leaves and medical notes
  - Working from home
  - Etc.

# Address Employee Concerns

- Employee concerns may be resolved internally
- Unionized employees can grieve
- Employees can contact Ministry of Labour (or equivalent)
  - Report unsafe work conditions
  - Refuse to perform unsafe work

# Manage Work Refusals Related to COVID-19

- Each jurisdiction has its own process and requirements
- Ontario
  - Generalized fear of COVID-19 is typically insufficient
  - Typically, employee must be at workplace, performing work



# Returning Employees to Work

# Recalling Non-Union Employees – Recall Plan

- Consider phased ramp-up
- Identify essential business functions and employees
- Use non-discriminatory criteria
- Document the plan

# Recalling Non-Union Employees – Notifying Employees

- Provide written notice
- Identify return date (no notice obligation in Ontario)
- Explain updated safety policies/measures and training
- Direct employee to respond to notice within timeframe

# Recalling Union Employees

- Review collective agreement
- Comply with recall procedure
- Explain updated safety policies/measures and training

# Employees Who Do Not Return

# Recurring Themes

- Be proactive and engage in dialogue with employee
- Clearly warn employee of potential consequences
- Be prepared to adapt
- Document the process

# Employees Who Do Not Respond

- Employee may be AWOL
- Follow-up
- Inquire about reasons for continued absence
- Warn about abandonment / termination for cause

# Employees Claiming Wrongful/Constructive Dismissal

- Employees may send a demand letter or file a claim
  - Improperly laid off
  - Changes to compensation
  - Changes to work schedule, physical workplace, etc.
- Immediately contact legal advisor
  - Comply with deadlines
  - Implement strategy to defeat the claim or mitigate



# Employees Who Prefer to Receive Benefits

- Employees may not want to work for their income
- Generally no right to refuse work to receive benefits
- Inquire and confirm reasons for refusal to return
- Consider informing employee about abandonment

# Employees with Health and Safety Fears

- Employee may be scared to return
- Satisfy employee's fears
- Employee can initiate work refusal
- Be strategic in choosing battles

# Employees Who Want to Work from Home

- Employee may like working from home
- Generally no right to insist on working from home
- Terms of employment likely required physical attendance

# Employees Entitled to Employment Standards Leave

- Specific leaves re: COVID-19
- Ontario - Infectious Disease Emergency Leave
  - Available in specific circumstances related to COVID-19
  - Cannot require medical certificate, only reasonable evidence
  - No limit to number of days
  - Can be taken in part days, full days, multiple days
  - Cannot threaten, fire or penalize

# Employees Entitled to Family Status Leave

- Employee may require accommodation due to:
  - Child care obligations
  - Elder care obligations
- Consider:
  - Employment standards leave
  - Human rights legislation

# Employees Entitled to Family Status Leave

- Family member at issue
- Nature of need at issue
- Nature of work

# Employees Entitled to Family Status Leave

1. Engage in dialogue
2. What are employee's obligations and needs?
3. What is employee looking for?
4. What are employee's duties? How are they impacted?
5. Offer accommodation?
6. Maintain contact as circumstances change

# Employees Entitled to Disability Leave

- Employee may require accommodation due to disability
- Consider:
  - Employment standards leave
  - Human rights legislation



# Employees Entitled to Disability Leave

- Engage in dialogue with employee
- Be flexible in need for medical documentation
- Temporary accommodation may be appropriate

# Questions / Contact

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