

March 16, 2020

To all our clients,

The economic impact of COVID-19 has caused many businesses to enact partial or complete operational shutdowns. Given the uncertainty caused by COVID-19, it is imperative that employers understand the practical and legal considerations surrounding the staffing of their businesses.

The key practical and legal considerations related to partial or complete shutdowns tend to focus on workplace changes, layoffs, employment insurance, and work-sharing. Each are described in further detail below, however, please note that this document is not intended to form legal advice and any specific questions and or issues should be specifically directed to the appropriate legal counsel:

Workplace changes:

- COVID-19 has seen an unprecedented amount of workplace changes as well as a focus on maintaining a healthy workplace.
- Employers have had to ensure that workplaces are cleaned with extra vigour on a continuous basis, that constant communication re: hygiene and social distancing is provided, illness policies are flexible, and that personal/family day policies are flexible.
- Employers have had to ensure that policies surrounding employees refusing work AND requiring employees to work from home are flexible and legal. Generally, employees have the right to reasonably refuse unsafe work and generally, employers have the right to ask employees to work from home.
- Employers have had to ensure that employees are aware of their ability to use paid and unpaid sick leave to compensate for any COVID-19 leaves of absence.
- Any employer planning on terminating an employee with respect to any issue that could be construed to be COVID-19 related is strongly encouraged to reach out to legal counsel and to review the following link from the Ontario Human Rights Commission prior to termination action (http://ohrc.on.ca/en/news_centre/ohrc-policy-statement-covid-19-pandemic). After the announcements made today by the Ontario government, it is strongly recommended that any terminations being reviewed thoroughly with your legal counsel.



Layoffs:

- Layoffs can be described as a period when an employer ceases to provide employees compensation and work.
- A temporary layoff is where the parties treat the employment relationship as ongoing, despite the interruption in pay, with the understanding that compensation and work will resume in the future.
- Layoffs are defined under provincial legislation. In Ontario, a layoff week is a week where the employee earns less than one half of the amount they would earn in a regular week.
- In Ontario, temporary layoffs generally do not require statutory notice. However, they are limited in terms of how long they can last. In Ontario, temporary layoffs cannot exceed 13 weeks out of a period of 20 weeks.
- Employees are not required to be paid while on temporary layoff, unless subject to an agreement that says otherwise. Rather, employees will likely qualify under the new EI eligibility criteria.
- Employers are not required to continue benefit payments to workers on temporary layoff, unless subject to an agreement that says otherwise.
- Specific provisions exist in the various provincial legislation governing changes in an employer's obligations when enacting mass temporary layoffs.
- Employers should consider the subsequent retention of employees on temporary layoff as well as the potential for constructive dismissal claims and the inherent termination obligations accompanying dismissal. As such, employers should communicate with employees in a timely and transparent matter. Temporary layoffs should include communication with respect to recall dates.
- All employees on temporary layoff should receive a Record of Employment.

Employment Insurance:

- Eligible workers should receive support from the Federal Government in the form of regular Employment Insurance Sickness benefits, regular benefits, compassionate benefits and self-employment benefits.
- The Federal Government has summarized their response to COVID-19 in the following link (<https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html>)
- Employees should be encouraged to review the information in the following link and reach out to Service Canada to determine eligibility as follows:
 - Sickness benefits (<https://www.canada.ca/en/services/benefits/ei/ei-sickness/qualify.html>)



- Regular benefits (<https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit/eligibility.html>)
 - Compassionate benefits (<https://www.canada.ca/en/services/benefits/ei/caregiving.html>)
 - Self-employment benefits (<https://www.canada.ca/en/services/benefits/ei/ei-self-employed-workers.html>)
- Regular EI benefits and their 1 week waiting period are generally well understood and considerable information is readily available online and compassionate/self-employed benefits are relatively rare, as such the following will focus on EI sickness benefits only.
 - Generally, EI sickness benefits provide up to the lesser of 55% of an employee's insurable earnings and \$573/week in gross income.
 - EI sickness benefits can be claimed for up to 15 weeks.
 - The EI sickness benefits 1 week waiting period for claims has been reduced to zero. Meaning, a claim due to quarantine or self-isolation of 2 weeks will be fully paid.
 - As of March 11, 2020, a doctor/public health official note will not be required to access EI sickness benefits for the initial 14 day quarantine or self-isolation period. A note will be required for any extensions to the initial 14 day requirement.
 - We recommended reviewing media and the Service Canada EI links above as it is generally accepted that the Federal government may continue to tweak EI programs in response to the pandemic.

Work-sharing:

- Work-sharing is a federal program that allows for eligible employees to receive EI benefits while still being employed.
- Employees must agree to a reduced work schedule for a specified period of time.
- Generally, there must be a minimum reduction of 10% and a maximum reduction of 50% of work and compensation.
- The reduced work schedule must last for a minimum of 6 weeks and up to 76 weeks.
- The employer and employee must apply to participate in the work-sharing program.
- There are specific eligibility requirements for employers, the requirements are summarized in the following link: <https://www.canada.ca/en/employment-social-development/services/work-sharing/eligibility.html>.