

BACK TO BUSINESS DURING COVID-19 – WESTERN CANADA LEGISLATIVE UPDATES AND IMPORTANT INFORMATION

Presented by:

John Agioritis

Shandra Czarnecki

Jana Linner

Walter Pavlic, Q.C.

Jean Torrens

CLIENT RESOURCE CENTRE – COVID-19

- Updated regularly with insights, tools and webinars
- Seven key response areas:
 - *Protecting and securing systems and data*
 - *Dispute and risk management*
 - *Workforce and workplace management*
 - *Business efficacy – product and service delivery*
 - *Transactions*
 - *Governance and disclosure, and*
 - *Finance related challenges*

MEET OUR TEAM



John Agioritis
T: (306) 975-7143
jagioritis@mltaikins.com



Shandra Czarnecki
T: (204) 957-4878
sczarnecki@mltaikins.com



Jana Linner
T: (306) 347-8427
jlinner@mltaikins.com



Walter Pavlic, Q.C.
T: (780) 969-3508
wpavlic@mltaikins.com



Jean Torrens
T: (403) 693-4342
jtorrens@mltaikins.com

AGENDA

- Introduction: the current COVID-19 landscape
- Legislative updates
 - *Temporary layoffs*
 - *Group termination*
 - *COVID-19 related leaves*
 - *Pension and benefits considerations*
- Common law implications
- General litigation trends
- Human rights considerations
- Occupational health and safety and employee refusals to work
- Privacy and data

THE CURRENT COVID-19 LANDSCAPE

- Rapidly changing environment for Canadian employers
- The unemployment rate in Canada was **12.3%** in June 2020, a drop of 1.4 percentage points from a record-high of 13.7% in May
- Current National Statistics as of July 20, 2020:
 - *Cases = 110,000*
 - *Recovered = 97,051*
 - *Deaths = 8,852*



CANADA – UNITED STATES BORDER CLOSURE

- The Canada – United States border was closed on March 21, 2020 for all non-essential travel
- These travel restrictions are extended until at least August 21, 2020
- The mutual agreement still allows for the flow of trade and commerce



PROVINCIAL BORDERS

- Canadians are permitted to travel interprovincially for non-essential purposes, subject to each province's border restrictions and self-isolation requirements
 - *Exception: Leisure travelers are prohibited from entering the Northwest Territories*
- Provinces permitting interprovincial travel without self-isolation:
 - *British Columbia, Alberta, Saskatchewan, Ontario, Quebec, Manitoba (from Western Canada, northwestern Ontario, Yukon, NWT, & Nunavut)*
- Provinces requiring self-isolation for 14 days upon entrance:
 - *Nova Scotia, New Brunswick, PEI, Yukon, Nunavut, Manitoba (from all other Eastern provinces)*
- Certain provinces have introduced interprovincial “bubbles”, where residents and those who have already self-isolated for 14 days in the region can travel freely between select provinces:
 - *Nunavut and Northwest Territories starting June 15*
 - *Yukon and B.C. starting July 1*
 - *Atlantic Provinces (Nova Scotia, New Brunswick, PEI, and Newfoundland and Labrador) starting July 3*



ALBERTA EMPLOYMENT LEGISLATIVE UPDATES

ALBERTA EMPLOYMENT LEGISLATIVE UPDATES

The Government of Alberta implemented a number of temporary changes to the *Employment Standards Code* as a result of COVID-19:

- Temporary Layoffs
- Group Termination
- New Quarantine Leaves



BILL 24

- On June 15, 2020, Alberta's Declaration of Emergency lapsed. Thus, all orders made under the Declaration will lapse by mid-August, unless terminated earlier by Minister or Lieutenant Governor in Council
- However, on June 26, 2020, Alberta passed Bill 24, which extends some of the orders

TEMPORARY LAYOFFS

- Through Bill 24, the temporary layoff period has been extended to 180 days. This extended time period applies to employees laid off on or after June 18, 2020, as well as to those already laid off on that date.
- An employer must provide notice of temporary layoffs to individuals, which includes:
 - *A statement that the layoff is temporary;*
 - *The date the layoff begins;*
 - *A copy of section 62-64 of the Employment Standards Code; and*
 - *Any further information required by the Regulations.*

TEMPORARY LAYOFFS

- An employee's employment is deemed terminated if employment doesn't resume within the 180-day period
- Deemed termination can be avoided if, during the layoff period:
 - *The employer (with the employee's agreement):*
 - pays the employee wages or an amount instead of wages;
 - makes payments for the benefit of the employee to the employee's insurance, pension, or other plan; or
 - *A collective agreement sets out the employee's recall rights.*
- Unionized employers should consult their collective agreement to review obligations in the event of a layoff

GROUP TERMINATIONS

- The Alberta government has temporarily removed the group termination notice requirement
 - *Previously, substantial prior notice was required to the Minister of Labour, employees and unions when 50 or more employees are to be terminated:*
 - 8 weeks, if 50 or more but fewer than 100 affected employees;
 - 12 weeks, if 100 or more but fewer than 300 affected employees;
 - 16 weeks, if 300 or more affected employees.
 - *Notice to the Minister of Labour is still required as soon as is practical*
 - *Individual termination entitlements (section 56) remain in effect*
- Note: as Bill 24 does not speak to group termination/layoffs, these provisions will expire on August 14, 2020, unless the government issues an order specifying otherwise

NEW COVID-19 LEAVES

Employment Standards (COVID-19 Leave) Regulation introduced a **quarantine leave**:

- An employee is entitled to unpaid leave for 14 consecutive days if the employee is under quarantine
 - *Quarantine includes any self-isolation/self-quarantine as a result of COVID-19, as recommended by the Chief Medical Officer*
 - *As at June 26, 2020, employees are required to self-isolate for:*
 - 14 days if they recently returned from international travel or are a close contact of someone with COVID-19
 - 10 days if they have a COVID-19 symptom (cough, fever, shortness of breath, runny nose, or sore throat) that is not related to a pre-existing illness or health condition, or if they have tested positive for COVID-19

NEW COVID-19 LEAVES

- On April 6, 2020, the Government of Alberta created a temporary job-protected leave for employees who have family responsibilities due to:
 - *a child of the employee affected by daycare or school closures as a result of COVID-19; or*
 - *a family member who is under quarantine.*
- The length of the leave is flexible and linked to guidance from the Chief Medical Officer
- This leave will remain available to employees until August 14, 2021



NEW COVID-19 LEAVES

- Employers are allowed to request “documentation reasonable in the circumstances, at a time that is reasonable in the circumstances, that the employee is entitled to the leave”, but the employer cannot require an employee to provide a medical certificate
- Waiver of the 90-day employment eligibility requirement
- Other leave rules remain in place for circumstances outside of COVID-19:
 - *ESC section 53.97: 16-week unpaid leave for long-term illness or injury*
 - *ESC section 52.982: regular five-day unpaid personal and family responsibility leave*

OTHER TEMPORARY CHANGES

The April 6, 2020 ministerial order (18.2020) also announced:

- Removal of requirements to provide:
 - *24-hour proper written notice for employers to change shifts; and*
 - *two weeks notice for employers to change work schedules for employees under an averaging agreement*
- Streamlined process for employers, a group of employers or an employer association to apply or amend Employment Standards variances and exemptions
- Ministerial Order 18.2020 is in force until August 14, 2020 or earlier, if terminated by the Minister or Lieutenant Governor in Council

BILL 32

- On July 7, 2020, the Government of Alberta introduced Bill 32, the *Restoring Balance in Alberta's Workplaces Act*, which proposes several key changes to Alberta's labour and employment legislation, including:
 - **Temporary layoffs:** *The temporary layoff period will be extended from 60 days to 90 days within a 120-day period. Following the 90-day period, a temporary layoff will be deemed a termination. Specific timing requirements for temporary layoff notices will be removed.*
 - **Group termination:** *Group termination rules will be simplified so there is only one set of rules that will be applicable for all terminations of 50 or more people within a four-week period.*
- Bill 32 also proposes certain amendments as they relate to:
 - *Final pay deadlines*
 - *Overpayment recovery*
 - *Rest periods*
 - *Holiday pay calculations*
 - *Deviation from rules through collective agreements*

TEMPORARY EMPLOYEE CONSIDERATIONS

- Quarantine leave and personal and family responsibility leave, as well as layoff provisions apply to temporary employees
- Temporary employees do not have a right to termination notice or wages in lieu if:
 - *employed under an agreement by which the employee may elect to either work or not work;*
 - *the employee has been employed by the employer for 90 days or less;*
 - *the employee is employed for a task for a period not exceeding 12 months on completion of which the employment terminates.*
- Group termination notice is not required if the employees are employed on a seasonal basis, or for a definite term or task

PENSION & BENEFITS CONSIDERATIONS

- **Waiver of 1% minimum employer contributions for DC Plans:** effective May 5, 2020, the Canada Revenue Agency will waive the requirement for employers with defined contribution plans to contribute at least 1% of the total pensionable earnings of all active members for the remainder of 2020
 - *The requirement will only be waived if the plan is amended to suspend accruals under the plan for the year, meaning that there will be no employer or employee contributions made to the plan after the amendment*
- **Extension of election deadlines to credit eligible periods of reduced pay:** CRA is extending the deadline for plan members to elect to have the eligible period of reduced pay credited as pensionable service under the plan until June 1, 2020
- Note: these changes are applicable to all Canadian jurisdictions

PENSION & BENEFITS CONSIDERATIONS

- **Restriction on transfers:** The Alberta Superintendent has issued a reminder to all plan administrators to comply with the *Employment Pension Plans Act (Alberta) (EPPA)*, which states that administrators must not transfer assets out of the pension fund if the transfer would impair the solvency of the plan
- **Extension of filing deadlines:**
 - *Extension of the deadline to issue annual statements to active or retired members that are due to be issued between March 31 and prior to July 1, 2020, by an additional 180 days*
 - *Extension of the deadline to issue a plan summary or member-driven event disclosure statement (e.g., termination statement) that is due to be issued between March 31 and prior to July 1, 2020, by an additional 90 days*

PENSION & BENEFITS CONSIDERATIONS

- **Regulatory Amendments:** on June 24, 2020, the Alberta government amended the EPPA Regulations to include the following changes:
 - *A temporary suspension of unfunded liability and solvency deficiency payments until the end of 2020 for defined benefit or target benefit plans, upon approval by the Superintendent, which approval may be retroactive but cannot begin any earlier than June 24, 2020;*
 - *An increase to the limit of funding excess to reduce or eliminate contributions for a single fiscal year of a plan, subject to approval by the Superintendent, which approval may be retroactive but cannot begin any earlier than June 24, 2020; and*
 - *Clarification and confirmation that a statement, notice, document or other record or information required or permitted under the EPPA may be provided, sent, delivered or filed by electronic means*



COMMON LAW IMPLICATIONS

CONSTRUCTIVE DISMISSAL

- Constructive dismissal can arise during a layoff period, even where a layoff is permitted under provincial legislation
 - Courts have held that a temporary layoff constitutes constructive dismissal if the employment contract does not provide for the right to temporarily lay off employees
- Given the extensive number of layoffs in the western provinces and the fact that layoffs are due to government-mandated business closures, it will be interesting to see how (un)successful this argument is in court

CONSTRUCTIVE DISMISSAL

- Many businesses have implemented salary reductions or hour reductions
 - *Unilateral changes resulting in substantial alteration to terms of employment agreement are part of the test for constructive dismissal claims*
- Constructive dismissal claims may also arise due to unaddressed safety concerns

COMMON LAW REASONABLE NOTICE

- Financial difficulty and down markets are usually little help to employers:
 - *Existing case law says that economic circumstances of an employer do not impact the calculation of reasonable notice*
 - *On the other hand, market conditions such as unemployment rates are a factor in assessing reasonable notice periods*
 - *Mitigation may be more difficult*
- It will be interesting to see if and how the common law adjusts as a result of COVID-19



MANITOBA EMPLOYMENT LEGISLATIVE UPDATES

MANITOBA EMPLOYMENT LEGISLATIVE UPDATES

The Government of Manitoba implemented a number of temporary changes to the *Employment Standards Code* as a result of COVID-19:

- Temporary Layoffs
- New Public Health Emergency Leave



TEMPORARY LAYOFFS

- Prior to the pandemic, layoffs longer than eight weeks within a 16-week period were deemed terminations under *The Employment Standards Code* (Manitoba)
 - *Unless the employer, by agreement with the employee, continues to:*
 - Pay wages to the employee, or make payments in the place of wages, or
 - Make payments for the benefit of the employee to a pension plan or group or employee insurance plan or, where the employee has a pension plan and a group or employee insurance plan, to both
- Currently, the period between March 1, 2020 and when the provincial state of emergency is lifted is not counted toward that eight-week limit

TEMPORARY LAYOFFS

- The state of emergency is currently set to expire on August 13, 2020
- Time on layoff before March 1, 2020 and following the expiration of the state of emergency counts towards the eight weeks

GROUP TERMINATIONS

- The Manitoba government has yet to make any changes to the group termination provisions
- If an employer is terminating the employment of 50 or more employees in a four-week period, the employer is required to provide to the Minister of Labour and affected employees advance written notice, as follows:
 - *at least 10 weeks in advance of termination if 50 to 100 employees will be effected;*
 - *at least 14 weeks in advance of termination if 101 to 299 employees will be effected; or*
 - *at least 18 weeks in advance of termination if 300 or more employees will be effected.*

PUBLIC HEALTH EMERGENCY LEAVE

- Employees are entitled to an unpaid public health emergency leave under *The Employment Standards Code* (Manitoba) if any of the following circumstances apply:
 - *The employee is under medical examination or treatment related to COVID-19 or is in quarantine, isolation or self-isolation at the directive of a health officer or health professional*
 - *The employee is providing care to a “family member” as a result of COVID-19 (including care relating to school and daycare closures)*
 - *The employer directs the employee not to work because the employer is concerned about the employee’s COVID-19 related exposure to others*
 - *The employee is directly affected by travel restrictions and cannot reasonably be expected to travel to their workplace*

PUBLIC HEALTH EMERGENCY LEAVE

- The leave is retroactive to March 1, 2020
- There is no minimum length of time that an employee must be employed in order to be entitled to the leave
- There is no prescribed duration of the leave – it concludes once the circumstances necessitating the leave no longer apply
- Employers can request the employee to provide reasonably sufficient notice and proof of the circumstances necessitating the leave
- However, employers cannot request a note from a medical practitioner, nurse practitioner or registered nurse as reasonably sufficient proof

OTHER CHANGES AS A RESULT OF COVID-19

- In addition, the ability to request medical documentation for certain leaves has been temporarily suspended retroactive to March 1, 2020
- During the period of suspension, an employer cannot request a medical certificate in respect of an employee taking maternity leave, compassionate care leave, unpaid leave for organ donation, leave related to critical illness, or long-term leave for serious injury or illness, as well as public health emergency leave

TEMPORARY EMPLOYEE CONSIDERATIONS

- Temporary employees are subject to provincial employment standards regarding layoffs, public health emergency leave, termination notice/wages in lieu of notice and group terminations
- Except that, if a temporary employee is not regularly assigned to perform temporary work for at least 12 hours a week, then the employee is not entitled to termination notice or wages in lieu of notice

PENSION & BENEFITS CONSIDERATIONS

- **Restriction on transfers:** The Manitoba Superintendent of Pensions has issued a reminder to all plan administrators that if the pension plan's solvency position has declined since the last actuarial valuation report, administrators must take the necessary steps to assess whether future transfers would impair, or further impair, the solvency of the plan.

PENSION & BENEFITS CONSIDERATIONS

- **Extension of filing deadlines:** Manitoba has extended the filing deadlines for annual information returns. The new filing deadlines are between June 30 - August 31, 2020, depending on the plan's fiscal year-end dates.
- **Actuarial valuation reports:** Manitoba is allowing plan administrators to elect to have a plan reviewed prior to the statutorily required review date.



GENERAL LITIGATION TRENDS

LITIGATION TRENDS

First Wave:

- Class actions
 - *Travel industry (air carriers and cruise ships)*
 - *Failure to take proper steps to prevent exposure to COVID-19 (jails, nursing homes, etc.)*
- Insurance-related claims
 - *Business interruption insurance*
 - *Property claims, commercial liability claims, travel interruption*
- Consumer protection
 - *e.g. for not refunding payments relating to purchases that cannot be fulfilled*

LITIGATION TRENDS

Second Wave:

- Contractual disputes
 - *Transactions, supply contracts, leases*
- Big issue will be whether COVID-19 amounts to *force majeure*
- “Material adverse change” clauses (M&A transactions)

Third Wave:

- Securities litigation (for example, issuers misrepresenting long-term impact of COVID-19 on securities)



SASKATCHEWAN EMPLOYMENT LEGISLATIVE UPDATES

SASKATCHEWAN EMPLOYMENT LEGISLATIVE UPDATES

There are a number of provisions and changes to consider in light of COVID-19:

- Temporary layoffs
- Notice of group termination
- New Public Health Emergency Leave



CHANGES TO TEMPORARY LAYOFFS

- During a public emergency period, plus the two weeks following the date on which the public emergency period is no longer in force, Saskatchewan employers are exempt from the sections of *The Saskatchewan Employment Act* respecting layoffs
- Unionized employers should consult their collective agreement to review obligations in the event of a layoff

CHANGES TO TEMPORARY LAYOFFS

- During the public emergency period and two weeks following the date on which the public emergency period is no longer in force, an employer is **not** required to provide notice or pay in lieu of notice when laying off employees
- By the end of the two-week period, any employees who have not been scheduled to work with the employer are deemed terminated
- Employees who are deemed to be terminated are entitled to statutory pay instead of notice, calculated from the date on which the employer laid off the employee

NOTICE OF GROUP TERMINATION

- During the public emergency period, employers are exempt from providing the required notice both to employees whose employment will be terminated, and to the union that is the bargaining agent of any such employee
- However, the employer must provide the required notice to the minister as soon as reasonably possible after termination

PUBLIC HEALTH EMERGENCY LEAVE

- On March 17, 2020, the Government of Saskatchewan retroactively amended *The Saskatchewan Employment Act* to create a new **Public Health Emergency Leave**.
- To qualify for the leave:
 - *The employer, a medical practitioner, the government, or the Chief Medical Health Officer must direct the employee to isolate themselves; or*
 - *The employee must be required to provide care and support to the employee's child or family member who is affected by a direction or order of the government or order of the Chief Medical Officer.*

PUBLIC HEALTH EMERGENCY LEAVE

- Employees are entitled to their regular wages and benefits if they are authorized to work from home during the leave period
- Employees are entitled to the leave for as long as the conditions are satisfied and an order by the Chief Medical Health Officer is in effect
- Employees required to provide critical public health and safety services are not entitled to this statutory leave of absence



OTHER CHANGES AS A RESULT OF COVID-19

- Medical note is not required for COVID-19 medical issues
- Waiver of the 13-consecutive week employment eligibility requirement for COVID-19 medical issues
- Additional contractual entitlement to sick days may also be found in applicable employment agreements, collective agreements or workplace policies

OTHER CHANGES AS A RESULT OF COVID-19

- Other statutory leave rules remain in place for circumstances outside of COVID-19
 - *SEA section 2-40(2)(b)(i): 12 days in a calendar year, in the case of illness or injury that is not serious*
 - *SEA section 2-40(2)(b)(ii): 12 weeks in a period of 52 weeks, in the case of serious illness or injury*

TEMPORARY EMPLOYEE CONSIDERATIONS

- Public Health Emergency Leave and layoff provisions apply to temporary employees
- Temporary employees do not have a right to termination notice or wages in lieu, or to group termination notice if employed under an agreement by which the employee may elect either to work or not to work for a temporary period when requested to work by the employer

PENSION & BENEFITS CONSIDERATIONS

- **Restriction on transfers:** Effective April 16, 2020, the Financial and Consumer Affairs Authority (FCAA) has temporarily frozen all transfers or payments out of defined benefit plans, as the Superintendent of Pensions has determined that transfers or payments from defined benefit plans would impair the solvency of pension funds.
- **Extension of filing deadlines:**
 - *Extension of the due date for all plans required to file their annual information return between March 31 and July 31, 2020, by three months.*
 - *Extension of the deadline to provide annual statements to members by three months for all plans required to provide members with annual statements between March 31 and July 31, 2020.*

PENSION & BENEFITS CONSIDERATIONS

- **Suspension of contributions to a defined contribution plan:** effective May 6, 2020, the Superintendent will allow a plan amendment to suspend employer contributions under the following circumstances:
 - *The amendment must suspend both employer and member contributions;*
 - *The amendment must be on a go-forward basis only; and*
 - *The suspension of employer contributions is a temporary measure, so the amendment must set out the time period for the suspension.*
- The FCAA will not terminate a plan solely because the plan has been amended to temporarily suspend employer and member contributions for a period that lasts no longer than December 31, 2020



HUMAN RIGHTS CONSIDERATIONS

HUMAN RIGHTS CONSIDERATIONS

- All Human Rights legislation in Western Canada prohibits discrimination on a number of protected grounds, including:
 - *Family Status*
 - *Mental and Physical Disabilities*
- Employers have a duty to reasonably accommodate employees with respect to these protected characteristics in relation to COVID-19 to the point of undue hardship
 - *Undue hardship depends on the circumstances of each case but may be found to occur if, for example, the accommodation would create health and safety risks for others or would be inordinately expensive*

FAMILY STATUS

- Generally, family status is defined as the status of being related to another person by blood, marriage, or adoption
- An employer is required to provide accommodation to the point of undue hardship in situations where family status interferes with an employee's ability to perform the duties of their position
- An employer may be required to accommodate employees caring for children affected by school and daycare closures, or ill or self-isolated family members due to COVID-19
 - *The presence of an immunocompromised individual at home who does not require the employee's care may not trigger the duty to accommodate*

TESTS FOR FAMILY STATUS

Alberta:

(1) a family status relationship exists;

i.e., the child is under the employee's care and supervision, and the childcare obligation engages the individuals' legal responsibility for the child (as opposed to a personal choice)

(2) adverse treatment has occurred; and

(3) the adverse treatment was due, at least in part, on the employee's family status.

Manitoba and Saskatchewan:

(1) a child is under his or her care and supervision;

(2) a childcare obligation engages the individual's legal responsibility for that child, as opposed to a personal choice;

(3) reasonable efforts were made to meet those childcare obligations through reasonable alternative solutions, and that no such alternative solution is reasonably accessible; and

(4) the impugned workplace rule interferes in a manner that is more than trivial or insubstantial with the fulfillment of a childcare obligation.

TESTS FOR FAMILY STATUS

British Columbia:

- (1) a change in a term or condition of employment imposed by an employer; and*
- (2) that change results in a serious interference with a substantial parental or other family duty or obligation.*

PHYSICAL DISABILITY

- Human Rights legislation prohibits discrimination on the basis of physical or mental disabilities, and such persons must be accommodated up to the point of undue hardship
- Refusals to work because of personal health concerns potentially trigger protection under Human Rights legislation
- Generally, transient conditions such as stress, cold and the flu are not recognized as disabilities and thus do not trigger the duty to accommodate on the basis of physical or mental disability

PHYSICAL DISABILITY

- However, many provincial Human Rights Commissions have released statements during the pandemic indicating that employees with COVID-19 (real or perceived) may fall within the realm of a disability for the purposes of Human Rights legislation
- In this connection, negative treatment of employees who have, or are perceived to have COVID-19, which is unrelated to legitimate reasons of public health and safety, may be found to be discriminatory and prohibited under the applicable Human Rights Legislation
- Note that these statements are subject to the recognized Human Rights jurisprudence, and such statements deviate from the general approach taken with respect to the meaning of a disability



B.C. EMPLOYMENT LEGISLATIVE UPDATES

B.C. EMPLOYMENT LEGISLATIVE UPDATES

The B.C. government has not made significant updates to the *Employment Standards Act* as a result of COVID-19:

- Temporary layoffs
- New quarantine leaves



TEMPORARY LAYOFFS

- There is no general right to temporary layoffs under the B.C. *Employment Standards Act*. However, employers have been applying a practical approach in light of COVID-19
- “week of layoff” defined under the *ESA* as week during which an employee earns less than 50% of their wages (averaged over last eight weeks)
- “temporary layoff” is defined under the *ESA* as layoff up to 24 weeks in any period, ending on or before August 30, 2020, of 28 consecutive weeks
- Temporary layoffs are only permitted if:
 - *It is expressly provided for in the employment agreement;*
 - *It is implied by a well-known industry practice; or*
 - *It is agreed to by the employee.*

TEMPORARY LAYOFFS

- Layoffs that fall outside these circumstances are considered terminations requiring notice or pay in lieu of notice in accordance with section 63 of the *ESA* (and section 64 if a group termination) **unless**:
 - *The closure or reduction in hours of an employer's business resulting in the temporary layoff is directly related to COVID-19 and there is no way for the employee to perform the work in a different way (i.e., working from home).*
- If layoff is directly related to COVID-19 the “impossible to perform” exception outlined in section 65 of the *ESA* may apply
- Each situation must be addressed on a case-by-case basis. Businesses that have been indirectly affected by COVID-19 may not fall within this exception
- Unionized employers should consult their collective agreement to review obligations in the event of a layoff

GROUP TERMINATIONS

- The British Columbia government has not made any changes to the group termination provisions in light of COVID-19
- If an employer terminates 50 or more employees at a single location within any two-month period, notice must be provided to the Minister and each employee whose employment will be terminated.
- The employer must give written notice of group termination to each employee in accordance with the following:
 - *for 50-100 employees, the group notice requirement is eight weeks;*
 - *for 101-300 employees, the group notice requirement is 12 weeks; and*
 - *for 301 or more employees, the group notice requirement is 16 weeks.*

NEW COVID-19 LEAVES

Amendments made to the B.C. *Employment Standards Act* on March 23, 2020 introduced **COVID-19 related leave**:

- An employee is entitled to unpaid leave for as long as the below circumstances apply:
 - *The employee has been diagnosed with COVID-19 and is acting in accordance with the instructions of a medical health officer, medical practitioner, nurse practitioner or registered nurse*
 - *The employee is in quarantine or self-isolation in accordance with order or guidelines from various public agencies*
 - *The employer asks the employee to stay home from work due to concerns about the employee's exposure to others*
 - *The employee is providing care to an eligible person, including because of the closure of a school or daycare*
 - *The employee is outside the province and cannot return because of travel or border restrictions*

NEW COVID-19 LEAVES

- COVID-19-related leave amendments retroactive to January 27, 2020.
- B.C. employees are required to self-isolate for 14 days if:
 - *They have been contacted by their regional health authority because they are contacts of a confirmed case*
 - *Returning from anywhere outside of Canada, including the United States*
 - *If they develop symptoms of COVID-19*
- Employers can request the employee to provide reasonably sufficient proof of the circumstances requiring COVID-19 related leave
- Employers cannot request a note from a medical practitioner, nurse practitioner or registered nurse as reasonably sufficient proof

NEW COVID-19 LEAVES

- An illness or injury leave was introduced on March 23, 2020
- Employees who have worked for an employer for at least 90 consecutive days are entitled to three days of unpaid leave each year for personal illness or injury
- At the employer's request, the employee is required to provide to the employer sufficient proof that the employee is entitled to the leave

TEMPORARY EMPLOYEE CONSIDERATIONS

- Provisions regarding layoffs and COVID-19 related leave apply to temporary employees. However in order to take illness or injury leave, an employee must have worked for the employer for 90 consecutive days
- A temporary employee is not entitled to termination notice or wages in lieu, or to group termination notice if the employee is:
 - *Employed under an arrangement by which the employer may request the employee to come to work at any time for a temporary period, and the employee has the option of accepting or rejecting one or more of the temporary periods; or*
 - *employed for specific work to be completed in a period of up to 12 months*

PENSION & BENEFITS CONSIDERATIONS

- **Suspension of contributions to a defined contribution plan:** the British Columbia Financial Services Authority (BCFSA) has advised that a plan administrator may reduce the level of employer or employee contributions to a defined contribution plan on a going forward basis by filing a plan amendment:
 - *Such amendments cannot be retroactive*
 - *If employer contributions are suspended, employee contributions (if any) must also be suspended.*
 - *If the suspension of contributions results in benefits ceasing to accrue under the plan, the administrator must apply to the Superintendent in accordance with section 95 of the Pension Benefits Standards Act (British Columbia) to avoid termination and windup of the plan*

PENSION & BENEFITS CONSIDERATIONS

- **Funding:** If a defined benefit plan or target benefit plan wishes to extend the amortization periods for unfunded liabilities and/or solvency deficiencies, it can make an application to the Superintendent. The Superintendent will consider such requests on a case-by-case basis. The application must include a description of the circumstances and any other information, including financial statements, required by the Superintendent to make a determination.
- **Extension of filing deadlines:**
 - *Annual member statements – extended by 60 days*
 - *Termination statements – extended by 30 days*
 - *Annual Information Returns and Financial Statements – extended by 60 days*
 - *Actuarial valuation reports and actuarial information summaries – extended by 90 days*



PRIVACY & DATA

PRIVACY LEGAL FRAMEWORK

- Privacy laws apply to collection, use and disclosure of personal information (PI)
- PI = essentially any information about an identifiable individual
- Range of sensitivity of PI (name vs. health)
- Oversight, enforcement and consequences of non-compliance

PRIVACY LEGAL FRAMEWORK

Provincial Legislation

- Each western province has different privacy legislation
- Note that OHS specific legislation and regulations may impact disclosure, reporting, and record retention requirements
- Privacy, OHS and Public Health Legislation must be carefully scrutinized to assess what you can say, what records you can keep and who to tell about an infected employee or suspected case

Best practice: seek informed consent of workers prior to disclosing personal health information, subject to required disclosure under occupational health and safety legislation

KEY PRIVACY PRINCIPLES

- Accountability
- Identifying purpose
- Consent
- Limiting collection
- Limiting use, disclosure and retention
- Accuracy
- Safeguards
- Openness
- Individual access
- Challenging compliance

PRIVACY TIPS & TOOLS

- What information can we collect, use or disclose?
- Is collection, use and disclosure in compliance with privacy laws?
- Is privacy compliance program up-to-date?
- Privacy tools:
 - *Privacy reviews*
 - *Privacy impact assessments*
 - *Privacy policies and related documents (consent, acknowledgement, contracts, etc.)*
 - *Incident response plans*
 - *Other*



FEDERAL EMPLOYMENT LEGISLATIVE UPDATES

FEDERAL EMPLOYMENT LEGISLATIVE UPDATES

The Federal Government has implemented a number of temporary changes to the *Canada Labour Code* as a result of COVID-19:

- Extension of Layoff Periods
- New Leave Related to COVID-19



EXTENSION OF LAYOFF PERIODS

- Prior to the pandemic, employees could be laid off for up to three months, or up to six months if a recall date is provided in a written notice at the time of the layoff. After these time periods, the layoff is deemed a termination under the Canada Labour Standards Regulations.
- Currently, in response to COVID-19, these time periods have been temporarily extended.

EXTENSION OF LAYOFF PERIODS

These extensions are as follows:

- **Employees laid off for a period of three months or less:**
 - *by six months for employees laid off prior to March 31, 2020*
 - *to December 30, 2020 for employees laid off between March 31, 2020 and September 30, 2020*
- **Employees laid off for more than three months with a fixed recall date or a fixed period within six months:**
 - *by six months or until December 30, 2020, whichever occurs first, for employees laid off prior to March 31, 2020*
 - *to December 30, 2020 for employees laid off between the period of March 31, 2020 and September 30, 2020, where the fixed date or fixed period specified in the written notice occurs before December 30, 2020*
 - *until the recall date where the fixed date or fixed period specified in the written notice occurs on or after December 30, 2020*

GROUP TERMINATIONS

- The Federal Government has yet to make any changes to the group termination provisions.
- If an employer intends to terminate the employment of 50 or more employees within any four-week period, at least 16 weeks' advance written notice must be given to the Minister of Labour.
- Employers are also required to give notice of individual termination or pay in lieu of notice, as well as the group termination of employment notice to each individual employee identified as part of the group affected.
- The employer, along with employee representatives, must establish a joint planning committee immediately upon providing a notice of group termination of employment.

LEAVE RELATED TO COVID-19

- On March 25, 2020, the Federal Government enacted Bill C-13, which establishes a job protected leave for federally-regulated employees who are unable to work for reasons related to the COVID-19 pandemic.
- Employees working in a federally-regulated workplace are entitled to up to 24 weeks of unpaid, job-protected leave if they are unable or unavailable to work due to COVID-19. For example, employees may take this leave if they are:
 - *Quarantined or asked to self-isolate as a result of COVID-19*
 - *Required to provide care to a family member as a result of COVID-19, or*
 - *Otherwise unable to work for reasons related to COVID-19*

LEAVE RELATED TO COVID-19

- To take this leave, employees must:
 - *Provide their employer with written notice, as soon as possible, of the reason for the leave and the length of leave they intend to take, and*
 - *Notify their employer in writing, as soon as possible, of any changes to the length of the leave*
- While they are on leave, employees may have access to the Canada Emergency Response Benefit.
- Note: This leave is temporary and is not retroactive. On October 1, 2020, this leave will be repealed.

OTHER CHANGES AS A RESULT OF COVID-19

- In response to the COVID-19 emergency, as a temporary measure, employees are not required to provide a medical certificate to take the following leaves:
 - *Medical leave*
 - *Compassionate care leave*
 - *Leave related to critical illness (note: employees also not required to provide documentation in support of the reasons for the leave or change in the length of the leave)*
- On September 30, 2020, medical certificate requirements will be reinstated

OTHER CHANGES AS A RESULT OF COVID-19

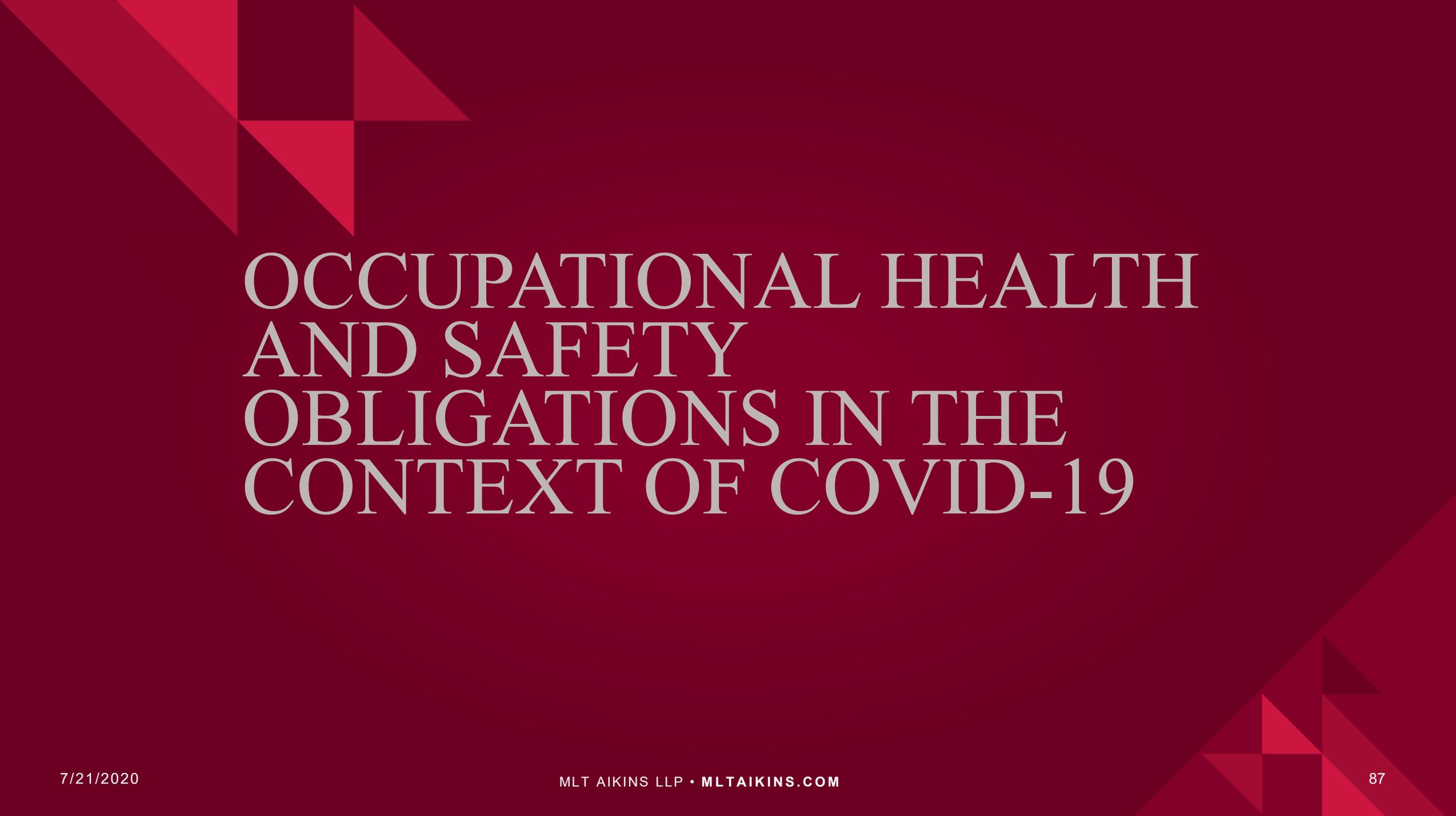
- Effective October 1, 2020, employees will be permitted to take a medical leave of absence under the Code for up to 16 weeks where the leave is for the purpose of quarantine. At present, this leave does not have a scheduled end date and may be an indefinite addition to the Code in light of recent experience.

PENSION & BENEFITS CONSIDERATIONS

- **Freeze on transfers:** full freeze on portability transfers and annuity purchases related to defined benefit provisions of federally-regulated pension plans. The freeze is intended to be temporary in nature and has been implemented to protect the benefits of plan members and beneficiaries in light of the impact of current financial market conditions on the funded status of pension plans.
- **Extension of filing deadlines:**
 - *Extension of the deadline for filing annual information returns, certified financial statements and actuarial reports and actuarial information summaries by three months.*
 - *Extension of the deadline for issuing annual statements to members and former members and spouses or common-law partners by three months, although it is recommended that administrators notify recipients of the expected delay.*

PENSION & BENEFITS CONSIDERATIONS

- **Defined Benefit Contribution Relief:** From May 27, 2020 until December 30, 2020, the amounts of any solvency special payments that become due are to be reduced to zero and will not become due after December 30, 2020. The amounts of any solvency special payments made from April 1 until May 27 may be deducted from the plan's required current service (or normal cost) contributions and/or going concern special payments in the period beginning on May 27, 2020



OCCUPATIONAL HEALTH AND SAFETY OBLIGATIONS IN THE CONTEXT OF COVID-19

RELEVANT OCCUPATIONAL HEALTH AND SAFETY LEGISLATION

Saskatchewan

- *The Saskatchewan Employment Act, Part III*
- *The Occupational Health and Safety Regulations, 1996*
- *The Occupational Health and Safety (Prime Contractor) Regulations*
- *The Mines Regulations*

British Columbia

- *Workers Compensation Act – Part 3*
- *Occupational Health and Safety Regulation*
- *OHS Policies*
- *WorkSafeBC Standards*

Manitoba

- *The Workplace Safety and Health Act*
- *Workplace Safety and Health Regulations*
- *Operation of Mines Regulation*

Canada

- *Canada Labour Code – Part II*
- *Canada Occupational Health and Safety Regulation*
- *Various other OHS regulations relating to Aviation, Coal and Maritime Operations*

Alberta

- *Occupational Health and Safety Act*
- *Occupational Health and Safety Regulation*
- *Occupational Health and Safety Code 2009*

OHS OBLIGATIONS TO PROTECT THE WORKPLACE

- Owners/employers are obliged to provide a safe plant/workplace, training, information, supervision to workers
- Typically, a “reasonably practicable” standard applies to this obligation
- **If an employer suspects that an employee is at a material risk of contracting/spreading COVID-19, an employer may consider taking the following measures:**
 - **Disclosure:** Require certain disclosure from employees to self-monitor and assess their risk level (e.g. recent travel and symptoms)
 - **Removal from the Workplace/Quarantine:** Remove the individual from the workplace or request that they be voluntarily quarantined within the workplace
 - **Medical Confirmation:** Keep employee out of the workplace pending medical confirmation of their fitness to return to work
 - **Testing:** Employers can consider symptomatic testing for COVID-19 provided it is not discriminatory or in violation of human rights. Need to consult OHS and privacy legislation and be conscious of privacy concerns.

OTHER OHS ISSUES TO CONSIDER IN THE CONTEXT OF A PANDEMIC

- **Personal protective equipment** – Consider the workplace and the type of equipment needed. Consider WHO, PHAC and other relevant standards
- **Investigation** – obligations to investigate and document occurrence
- **First aid** – obligation to provide prompt and appropriate first aid
- **Travel issues** – remote work locations, work-related travel, transporting infected individuals
- **Remote work locations** – access, supply chain, shift rotation, outbreak response
- **Prime contractor directions** – obligation to comply with prime contractor's directions
- **Contract rights to exclude workers**
- **Contract rights to require workers to do their tasks**

EXPOSURE CONTROL/PANDEMIC CONTROL PLANS

Generally

- Employers would be well-suited to create a comprehensive exposure control or pandemic control plan to eliminate or reduce the risk of contracting diseases like COVID-19 in the workplace.
- Should cover infectious materials or organisms, biological hazards and communicable diseases. Review OHS-specific legislation for particular requirements to create an exposure control plan or biological hazard monitoring program
- The plan will be a compilation of policies, safe work procedures, training and information requirements, first aid requirements and investigatory/reporting requirements
- Provincial OHS legislation and regulations drive the need to have these plans in place, in a manner that is tailored to the particular workplace at issue

REPORTING

Be Careful!

OHS and workers' compensation legislation in all four western provinces may generate reporting requirements.

- **Consider workers' compensation legislation** – Has there been an injury arising out of the course of employment?
- **Consider OHS legislation** – Is this a serious injury, fatality or reportable event?
- **Consider public health legislation** – Do the public health orders in place or legislation require you or the worker to disclose?

WORK REFUSALS

All four western provinces have procedures surrounding work refusals in the context of a dangerous condition or unusually dangerous work.

The process should be assessed as adhered to when responding to a worker's refusal

- May not be able to assign other employees to the task unless an investigation is conducted and proper reasons are given in writing
- Will be a case-by-case assessment of the facts and context
 - *Have there been confirmed positives in the workplace? What does the worker do? What is the physical layout of the workplace? What interaction does the worker have with those who may have COVID-19?*

WORK REFUSALS

Saskatchewan – *The Saskatchewan Employment Act* – Part III, Division 5

- Right to refuse to perform work that is “unusually dangerous” to the worker’s health or safety (or others). Refusal triggers investigation by employer and OHC

Manitoba – *The Workplace Safety and Health Act, s. 43*

- Right to refuse to do work that constitutes a “danger” to the worker’s health or safety (or others). Workplace safety and health committee and employer investigate the refusal
- https://manitoba.ca/asset_library/en/coronavirus/workplaces-right-to-refuse-dangerous-work.pdf

Alberta – *The Occupational Health and Safety Act – Part 4*

- Right to refuse to do work that constitutes a “danger” to the worker’s health or safety (or others) or creates a “dangerous condition”. Workplace health and safety committee and employer investigate the refusal

British Columbia – *The Occupational Health and Safety Regulation, s. 3.12 and 3.13*

- Right to refuse to do work that constitutes a “undue hazard” to the worker’s health or safety (or others). Workplace health and safety committee investigates and employer investigate the refusal

Canada – *Canada Labour Code, Part II, s 127.1 [Internal Complaint Process] and s. 128*

- Right to refuse to do work where: (i) the operation of a machine constitutes a danger to the employee or another employee; (ii) a condition exists in the place that constitutes a danger to the employee; (iii) the performance of the activity constitutes a danger to the employee or another employee.

WORK REFUSALS

Case law

- SARS case law – If the employee has limited contact and proximity to others (in particular potential carriers of a virus), an argument exists that the work requested to be performed is unlikely to be a danger to the employee
 - *Cole v Air Canada* (2006)
 - *Caverly v Canada (Human Resources Development)* (2005)
 - *Chapman and Canada (Customs and Revenue Agency)* (2003)
- WHO guidelines, Health Canada Guidelines and Provincial Guidelines will be considered
- Context specific

MLT AIKINS CLIENT RESOURCE CENTRE – COVID-19

<https://www.mltaikins.com/service/covid-19-resource-centre/>

- Updated regularly with insights, tools and webinars
- Seven key response areas:
 - *Protecting and securing systems and data*
 - *Dispute and risk management*
 - *Workforce and workplace management*
 - *Business efficacy – product and service delivery*
 - *Transactions*
 - *Governance and disclosure*
 - *Finance related challenges*

THANK YOU

John Agioritis, Partner
T: (306) 975-7143
F: (306) 975-7145
jagioritis@mltaikins.com

Shandra Czarnecki, Partner
T: (204) 957-4878
F: (204) 957-4412
sczarnecki@mltaikins.com

Jana Linner, Partner
T: (306) 347-8427
F: (306) 352-5250
jlinner@mltaikins.com

Walter Pavlic, Q.C. Partner
T: (780) 969-3508
F: (780) 969-3549
wpavlic@mltaikins.com

Jean Torrens, Partner
T: (403) 693-4342
F: (403) 508-4349
jtorrens@mltaikins.com

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