The Coronavirus Guide for Employers: Everyday Measures for the Workplace

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Employers must review their action plan on a daily basis to promote prevention, manage possible or proven contagion among their employees and ensure that business operations continue. Two actions are key:

- Seeking accurate information from public health officials and governments daily;
- Taking this information into account when deciding how to meet your obligations to employees while maintaining operations.

With the stated objective of containing the spread of the coronavirus, each of us is responsible for adapting our behaviours to an evolving set of circumstances, particularly in the workplace. This new reality impacts the responsibilities of employers.

New Directives from The Government of Quebec

On March 12, 2020, the province declared a state of emergency and the Quebec government announced the following:

- All persons returning from abroad or having flu- or cold-like symptoms must voluntarily self-isolate for 14 days;
- Self-isolation is mandatory and paid for all public service employees and all private and public healthcare, education and daycare workers returning from abroad;
- Organizations must cancel all indoor gatherings of more than 250 people and any unnecessary gatherings for the next 30 days[1].

At his press conference, the Premier of Quebec invited private sector employers to take the particular situation facing our society into consideration and to be understanding with employees who must take time off work[2].

With these measures aimed particularly at establishing social distance to slow the spread of the virus, guidelines have been clarified and may serve as a basis for the needs and requirements of both employers and their employees, taking into account the particularities of each workplace.

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Obligations in the Workplace

Employers must take the measures necessary to protect the health, safety and physical well-being of their employees, their clients and the public. Employees are held to the same standards; that is, to preserve their own health as well as that of their colleagues and any third parties they may be in contact with in the course of or in connection with their work.

The *Charter of Human Rights and Freedoms*, the *Act Respecting Occupational Health and Safety*, the *Canada Labour Code* and fundamental principles such as those set out in the Civil Code of Québec provide that individuals must not behave in a way that would cause increased harm to others. They must also act in such a way as not to harm their own health, and, by the same token, that of the people in their workplace.

These principles are well known to human resource managers and are foundational to establishing workplace policies and guidelines.

Policies and Guidelines for Employees

In order to encourage employees to contribute to maintaining a healthy work environment free from contamination risks, employers should diligently inform their employees of their intention to follow government guidelines. Internal guidelines could include the following:

> Cancelling meetings or other non-essential work events that may promote the spread of the virus;
> Reminding employees of their obligation to report any situation that may require them to self-isolate;
> Establishing and informing employees of necessary arrangements should isolation become necessary and telework not be possible;
> Explaining the steps to follow to plan telework and reminding people of the applicable rules under existing policies and employment contracts regarding the confidentiality of business or personal information used in the workplace;
> Informing employees about of a contingency plan to define, among other things, emergency contact persons and information transmission protocols; and instructing employees on how to access workplace premises or organize their work in the event of a containment situation.

Employee Travel and Professional Activities

An employer may cancel any professional activity that could reasonably be expected to pose a risk to the health of its employees, clients or the public.

In so doing, an organization modifies its expectations as to workplace deliverables.

In the current context and further to the government guidelines issued on March 12, 2020, an employer should:

> Prohibit all business travel both to affected or unaffected areas;
> Ask its employees to hold essential meetings by videoconference or other technological means;
> Provide that any other meeting or professional activity in its offices or elsewhere be held in such a way as to reduce the risk of contagion (e.g., videoconferencing, conference calls, observance of hygiene measures and reasonable distances between people).

Isolation of Diagnosed Employees or Preventive Isolation

Further to the recommendations of public health authorities and on the basis of the government guidelines issued on March 12, 2020, an employer should require that any employee returning from abroad proceed to self-isolate for 14 days.

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If the employee shows symptoms before the end of the 14-day isolation period, he or she should contact the services set up by the *Ministère de la Santé* (1-877-644-4545). A nurse may then refer the employee to a designated COVID-19 clinic if necessary. Prior to permitting such an employee to return to work, an employer should be informed of the outcome of these steps and be satisfied that the employee will not pose a risk to colleagues and clients, which may include requesting a medical certificate from the designated COVID-19 clinic if the employee was referred to one.

In the case of business travel at an employer's request prior to the government directives issued on March 12, 2020, any self-isolation period should be paid.

If the travel was personal, the payment and form of remuneration during the self-isolation period depends on certain factors, including:

- At what moment the decision to maintain the departure was made: before or after the government's instructions were issued or an explicit employer policy was implemented;
- Positive or negative diagnosis further to a test;
- Capacity for telework while in isolation.

Should employees be unable to report to work (due to their return from abroad, other reasonable grounds to believe that they may be a carrier, or if they or one of their relatives has tested positive), their employer should consider possible avenues under the employment conditions applicable to each particular employee:

- Paid leave or other conditions available under the Act respecting labour standards and working conditions or collective agreements in the organization, which must then be agreed upon with the employee in question and with the union's cooperation, if applicable[3];
- Group disability insurance benefits;
- Record of Employment for sickness and employment insurance sickness benefits;
- Quarantine and employment insurance benefits as a result of forced leave from work[4];
- Record of Employment for leave and caregiving benefits;
- Telework if the employee's tasks can be performed remotely or adapted to do so.

Refusal to work

The *Act Respecting Occupational Health and Safety* allows employees to refuse to perform work if they have reasonable grounds to believe that the performance of said work would expose them to danger for their health, safety or physical wellbeing, or would expose another person to similar danger. This Act also provides for the process by which such refusal must be dealt with.

However, the prevention and management of work refusal situations could likely be greatly facilitated if employees are aware of the actions taken by the employer to prevent contamination and other health risks to those present in the workplace.

For the protection of employees, suppliers and customers, employers must implement the sanitation measures prescribed by government authorities and make any necessary materials available. It must also encourage its employees to follow sanitation instructions and do the following:

- Provide access to dispensers for alcohol-based antiseptics, tissues and waste bins;
- Regularly clean common areas (e.g. meeting rooms, cafeteria, etc.);
- Provide contact information for Info-Santé and the *Ministère de la Santé* for additional information or screening.

According to the government guidelines issued on March 12, 2020, for work premises that can accommodate 250 or more people, the premises must be prepared, or the number of people limited, or those present must be instructed to remain at least two metres away from each other.

Work reorganization

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In order to maintain their activities and provide service to their clientele, some businesses may find it advantageous to alter the way in which their employees work.

In addition to resorting to telework, employers may consider alternative working arrangements to maintain adequate staffing while reducing the risk of spreading the virus:

- Flexible or modified work schedules or staggered working hours (in accordance with the conditions set out in section 53 of the *Act respecting labour standards*);
- Rotating schedules to reduce the number of employees in the workplace at the same time;
- Solicitation of retirees who can fill absences owing to sickness.

Immigration

Currently, Canadian immigration authorities have put in place emergency measures for foreign nationals in Canada or abroad whose applications for temporary residence have been delayed because of the closure of Canadian visa application centres in mainland China (among other locations). Extensions have been granted to help applicants to obtain now hard-to-get documents.

All other applications and all other components of the Canadian program are not affected at this time. No new medical tests for newcomers have been announced and no specific travel restrictions have yet been adopted, with the exception of self-isolation measures for all those arriving from abroad. Health Canada screening officers are present at some Canadian air and land ports of entry, but this measure is still minimally applied at this time.

We expect further restrictions at Canadian ports of entry to be implemented in the coming days as the situation progresses.

The Key: Keep your Information Up to Date

It is important to make sure that the information that you rely on as an employer to make decisions in the current environment is reliable so that your employees can perform their work safely, and for you to continue offering service to your clients.

Prudent HR managers should visit the websites of the competent government authorities to confirm the exact terms of the requirements and guidance that these provide.

Each workplace operates in its own context, and employers would do well to plan for various possible solutions depending on their circumstances and considering their specific workforce and the needs of their clientele.

The events of the last few days have shown that guidelines can change rapidly (even in the course of a day), especially when the spread of the coronavirus suddenly gains speed or following the directives issued by governments to promote “social distancing” as counter the impacts of a possible mass contamination.

The diligent implementation of preventive measures and appropriate action as the situation evolves will help ensure, employers are being responsible while, effectively guarding against future civil or criminal claims.

The members of our Labour and Employment and Business Immigration teams are available to answer any questions you may have about measures you are considering or the solutions you are seeking given the realities of your organization and its activities.

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1. Press release on March 12, 2020.
2. See the same Government of Quebec press release.
3. Employee and union cooperation may be necessary if working conditions need to be adjusted at the employer's request, which may wish to offer paid leave to cover part of the isolation period.
4. The federal government recently amended the conditions applicable to quarantine to suspend the one-week waiting period before Employment Insurance benefits are paid..

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