Work, Lockdown and Curfew: Answers to Your Questions

January 12, 2021

In order to reduce community transmission and preserve everyone's safety and that of our healthcare system, the government requires everyone to make extra efforts, both in their private lives and at work.

The closure of retail businesses, save for some exceptions, is maintained, the lockdown to prevent gatherings continues and a curfew was added on January 9, 2021, to remain in effect until the currently announced date of February 8, 2021[1].

How can employers review their work organization to the extent possible for them while complying with government guidelines?

Here are a few questions and answers to clarify the situation.

With the curfew in effect, do I need to review my work organization and schedules if my activities are not suspended or prohibited?

If you operate an essential retail business, you are required to review your employees' schedules and work hours in order to abide by the curfew and allow your employees to leave your business no later than 7:30 p.m. in order to be home by 8 p.m.

Companies in the construction, manufacturing and primary processing industries must reduce their activities "to pursue only those activities necessary to fulfil their commitments" (our translation):

> To properly measure the scope of this requirement, the guidelines and directives issued by the authorities (including CNESST) must be closely followed.
> However, on the basis of this statement in the Decree adopted on the evening of January 8, 2021, in order to be able to demonstrate the steps taken to comply with directives, companies should review confirmed contracts and orders, agreed-upon delivery dates and inherent production delays to modify work planning (e.g. priority orders to be delivered by February 8, 2021, staff work days and hours, evening and night shifts).
> In its online communications, the Government of Quebec asks not only that activities be reduced to a minimum to complete commitments, but also that shifts be adjusted to limit the staff present at any time on production and construction sites.

Businesses in this situation may require special negotiations to make the necessary adjustments given working conditions, policies or collective agreements in place.

When should I consider temporary layoffs due to a reduction in my activities as a result of the increased lockdown or curfew?

Subject to the provisions of a collective agreement or employment contract (e.g. guaranteed hours of work), an employer may consider reorganizing work and allocating working hours among

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employees by coming to an agreement on temporary working conditions with them to avoid layoffs.

If such an agreement is not possible for legal, organizational or efficiency reasons, layoffs may be considered:

With confirmation of the layoffs as being related to COVID-19, in which case concerned employees can verify their eligibility for the Canada Recovery Benefit or EI benefits depending on the circumstances.
An employer should also document the reasons behind temporary layoffs and, for example, in its determination of who is affected according to the organization's applicable criteria, for recall purposes and analysis of whether or not extending such layoffs is necessary.

How do I protect my essential employees who would have to travel during curfew to get to work or return home?

For each employee required to travel during the 8 p.m. to 5 a.m. curfew, the employer must prepare an explanatory letter (attestation letter) as evidence that the employer's activities are authorized under the applicable directives and that the employee's work is essential to carrying out authorized activities (this includes transporting goods required for such activities).

The attestation letter must include information that could reasonably lead the police to conclude that the employee is allowed to travel during the curfew because that employee qualifies for one of the exceptions provided by the government.

Exceptions are known to be interpreted restrictively.

On the basis of the form letter issued by the government and the purpose of the attestation letter, this letter should include information such as:

The name of the employer and its authorized representative (with letterhead confirming the company's contact information, including its website).
The nature of the employer's activities.
The employee's duties, home address and work contact information.
The employee's work schedule.
The contact information and telephone number of the person available between 8 p.m. and 5 a.m. to provide details to police officers who may stop the employee (this person must be familiar with the employer's authorized activities involving the employee as well as the employee's position and schedule).
The validity period of the attestation and its date of signature.

I operate a retail business that is not identified as an authorized priority business since December 25, 2020. Can I operate and sell goods online and how can my customers retrieve their purchases?

E-commerce is allowed, even for non-essential goods (sales can also be completed by phone).

The key points:

Telework should be maximized as much as possible, with physical presence being limited to only those employees whose presence is essential to the workplace.
Goods can be delivered or picked up at the door without entering a store.
Payment must be made by telephone if a sale is made in this way and without the customer entering the business.

We will follow developments and keep you informed as it is important to keep track of possible—and often frequent changes and adjustments brought to the directives.

The professionals of our Labour and Employment team are available to advise you and answer your questions.

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1. See https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/confinement-in-quebec/ and the January 8, 2021, Order in Council 2-2021 Ordering of measures to protect the health of the population amid the COVID-19 pandemic situation.

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