

**Ajax Pickering Board of Trade**

**Employer Options and Obligations in Addressing  
the Coronavirus / COVID-19**

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# Overview

- Today's webinar will address generally what your employer options and obligations are in regards to COVID-19's impact on your workplace
- It should be noted that, as this is an evolving situation, it is possible that your legal obligations, the government's requirements, and/or government supports may change in the coming days and weeks
- It should also be noted that this webinar speaks to non-unionized employers who are provincially regulated in Ontario
- If you are unionized, your options and obligations as an employer will be further impacted by the collective agreement

# Agenda

- The issues to be covered by this webinar are:
  - 1) What can you ask of your employees to protect everyone's health?
  - 2) What are your options and obligations if an employee needs to be absent because of a self-quarantine and/or family commitments?
  - 3) What are your options and obligations if you need to partially or fully shutdown?
  - 4) How do you communicate this to your employees?

# 1) What can you ask of your employees?

- All employers should require that their employees continue to follow the company's attendance policy
- This policy should deal with when absences should be requested, how absence approval is obtained, what can be required in order to obtain an absence approval (i.e. supporting documentation), etc.
- If your company does not currently have an attendance policy, it is a good idea to confirm it in any COVID-19 communication
- In particular you should note who is the contact person for reporting absences (e.g. the office manager) and how absences are to be reported (e.g. email)

# 1) What can you ask of your employees?

- For employees whose position potentially could be done via telecommuting, you should ensure that they are ready to switch to telecommuting, if need be
- As an employer, you should review the requirements for a telecommuting workforce, including whether your employees have proper hardware at home, whether physical documents have been saved on the company's IT system, whether there is a way for tracking out-of-office hours, etc.

# 1) What can you ask of your employees?

- You can also require that your employees comply with all health recommendations provided by the government
- For example, you can remind employees to frequently wash their hands, tell employees to stay home if self-quarantined, recommend that they follow travel advisories, etc.
- Depending on the nature of your company, you may want to ask more of them than the government requires
- For example, if your employees deal with individuals with a compromised health, then you may require that they stay home with any cold or flu symptoms OR you may require that they self-quarantine after any out of country travel
- If you do require more, you should ensure that it is not discriminatory

## 2) What are your options in regards to absences?

- If an employee advises that they need to absent due to imposed self-quarantine or family obligations, then there are three entitlements you should be mindful of
- First, you should be mindful of any paid sick days or personal days promised to your employees by way of their offer of employment or the employee handbook
- Second, under the Employment Standards Act (the “ESA”), employees are allowed a combined total of 9 unpaid days due to an illness, injury, or medical emergency or a death, illness, injury, or medical emergency of a prescribed family member
- There are currently no paid days under the ESA, except in instances of sexual/domestic violence

## 2) What are your options in regards to absences?

- Further, under the Human Rights Code, an employee is entitled to accommodation (including a leave of absence) in regards protected grounds (e.g. disability and family status), up to the point of undue hardship
- In determining whether the point of undue hardship has been reached, the Tribunal will consider:
  - a) cost
  - b) outside sources of funding, if any
  - c) health and safety requirements, if any.

## 2) What are your options in regards to absences?

- Combined, the ESA and the Human Rights Code provide that, if an employee asks to be absent due to a disability or family obligations, then the following steps should be taken:
  - 1) review supporting documentation/information;
  - 2) determine if accommodation is required;
  - 3) determine what accommodation is required so that the employee can perform their job (e.g. modified hours or tele-commuting); and
  - 4) determine if that accommodation would be beyond the point of undue hardship.
- If the accommodation required would amount to undue hardship, then you should ensure that the employee still receives their minimum ESA entitlements

## 2) What are your options in regards to absences?

- As part of this process, you may require that the employee provides further supporting documents (e.g. a doctor's note or Medical Questionnaire) or relevant information (e.g. alternative childcare options)
- You should be careful though not to ask for information that is not required for you to respond to the accommodation request
- For example, you should not ask “what country did you visit to cause the government to self-quarantine you”

### 3) What are your options in regards to a shutdown?

- As a result of economic hardships or a quarantine, you may need to partially or completely shutdown your business
- For example, you may change your hours of operation, resulting in reduced workforce needs
- Or you may close your physical operations and operate with a reduced staff, via tele-commuting

### 3) What are your options in regards to a shutdown?

- As an employer, you may place your employees on an unpaid layoff for up to 13 weeks in a 20 consecutive weeks period
- There are though, exceptions that allow for the temporary layoff to be extended to not more than 34 weeks in a 52 consecutive weeks period
- For example, employees can be laid off for 34 weeks if you continue to pay for their benefits

### 3) What are your options in regards to a shutdown?

- However, if the company has not confirmed the right to layoff by way of the employment agreement, the employee handbook, or past practices, then the layoff can be claimed to be a constructive dismissal (i.e. effective termination)
- As such, you should seek to confirm your right to layoff before proceeding with any layoff
- If you do layoff an employee and they properly claim constructive dismissal, then you may seek to reduce the employee's claim by recalling them back to work

### 3) What are your options in regards to a shutdown?

- For financial coverage during the unpaid layoff, the employees may ask and be provided with their earned and unpaid sick days and vacation pay
- In addition, the employees should be issued their Record of Employment so that they can apply for EI (which currently does not have a waiting period)

### 3) What are your options in regards to a shutdown?

- If you are not confident in your right to layoff or believe that the shutdown would be brief, then you may wish instead to first simply unilaterally schedule a 1 – 2 week vacation for your employees
- However, the unilateral right to schedule vacations must be confirmed in the employment agreement or employee handbook
- Further, unilateral scheduling must occur on a week long basis (i.e. not a couple of days at a time)
- It is also important to note that employees cannot be required to use vacation days for their sick days

## 4) Communicating the Next Steps

- In order to confirm your rights and to help employee anxiety, you should confirm the health and safety precautions taken by the company
- For example, by way of a mass email or memo you could state:

*In light of developments regarding the coronavirus/COVID-19, we wish to provide some guidance and an update.*

*We are following best practice precautionary measures and ask everyone to do the same. In particular,*

- *Avoid touching your eyes, nose, and mouth with unwashed hands.*

- *...*

*Should you believe you have the virus or have been exposed to the virus, please:*

- *Contact Tele-health Ontario;*

*...*

*If you require time off due to the school closure, we will try to approve your request.*

*If approved for an absence, you may request your earned and unpaid vacation pay.*

## 4) Communicating the Next Steps

- You should also confirm the company's right to lay off in the communication
- For example, you could state:

*Your health and safety is important to us. And the unfortunate reality is that businesses, including ours, will be impacted by this. We may need to reduce hours or temporarily close. If there is reduced hours or a closure, you may be temporarily laid off. During an unpaid layoff, you may use any earned and unpaid sick days. Further, you may request your earned and unpaid vacation pay. You will also be provided with a Record of Employment so that you may apply for EI (which no longer has a waiting period).*

# Questions?

Wilson Vukelich LLP can help ensure that your employment and labour law matters are handled effectively and efficiently, and in a manner that is reflective of new legal developments and obligations. If you have any questions or require further information, please contact:

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