网上直播论坛

“抗疫期间雇主有关责任”

Webinar COVID-19 Employer obligations, options and strategies in Canada

我会荣誉顾问邵威大律师作为合伙人的“Dentons Canada LLP”律师事务所于3月13 号举办了网上直播论坛“抗疫期间雇主有关责任”。由三位分别于渥太华，多伦多和温哥华分行的大律师担任主讲嘉宾。
报名热烈，反应很好。

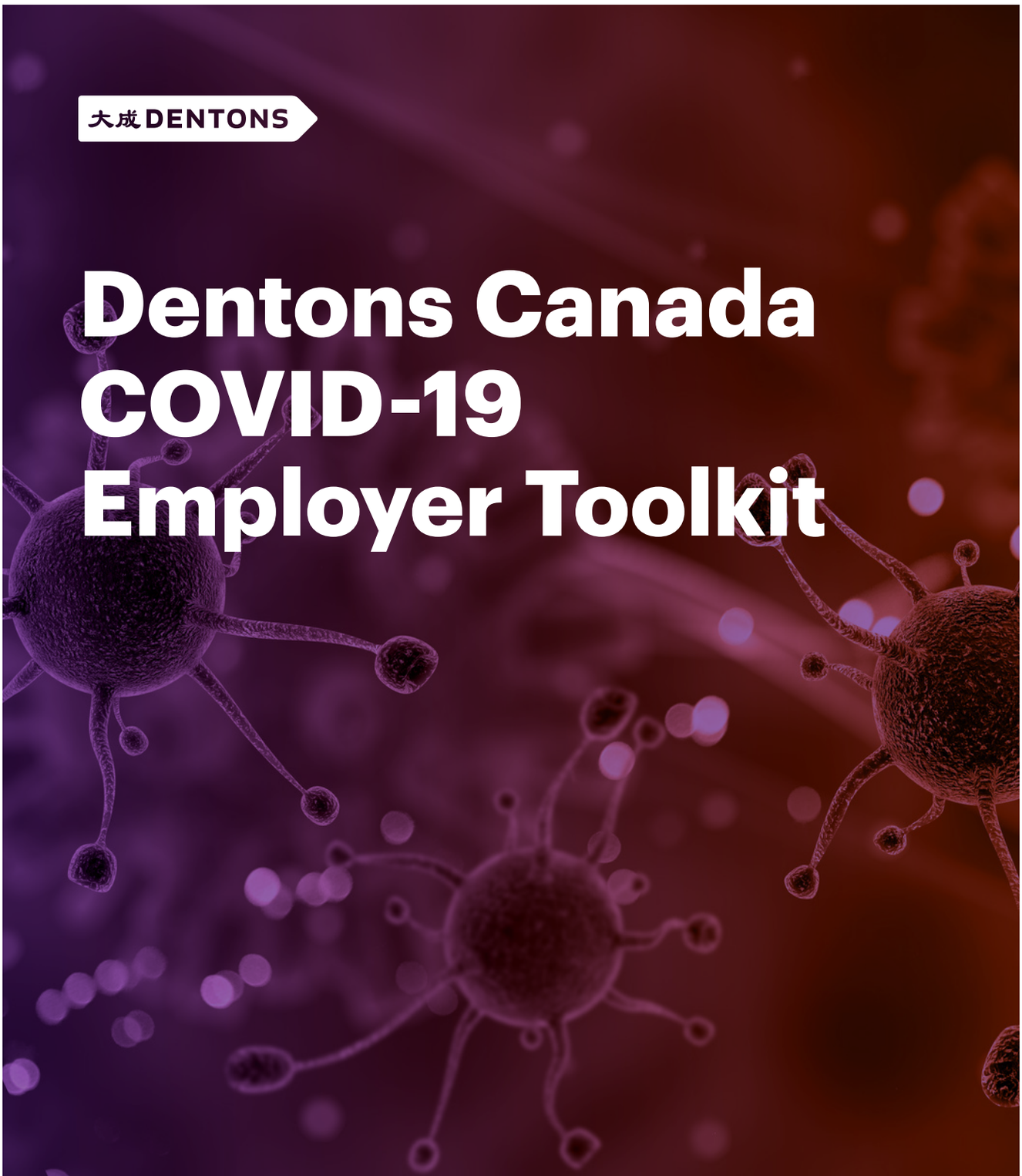
现应广大听众要求，將该论坛的实播主要内容（处理办法清单）发表如下：

Dentons Canada LLP, the law firm Wei Shao (the honorary adviser of our CITPS) works for as a partner hosted a webinar on Match 13 themed "Coronavirus (COVID-19): Employer obligations, options and strategies in Canada".

Three lawyers from Ottawa, Toronto and Vancouver branches of Dentons were the guest speakers.

The webinar was received with great enthusiasm and praise.

At the request of large audience, the Tool List (main contents of the seminar) are released as follows:



NOTE: This toolkit has been developed to assist our Canadian clients with some of the employment legal issues they may face in light of the COVID-19 virus. This toolkit is not intended as a substitute for legal advice, but a supplement to it. Each employer will need to create its own policies and plans for its employees, as well as for its business at large, having regard to the nature of its business. It is hoped that this toolkit will provide employers with some of the background information they need to create their own policies and plans, as well as the starting point for some of those documents. If you have any questions, please reach out to one of the members of the Dentons Canada Employment and Labour Law group.

Contacts

Catherine Coulter
Counsel
D +1 613 783 9660
catherine.coulter@dentons.com

Adrian Miedema
Partner
D +1 416 863 4678
adrian.miedema@dentons.com

Taylor Buckley
Senior Associate
D +1 604 648 6522
taylor.buckley@dentons.com

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COVID-19 Employer Plan

Our Company is reviewing the most up-to-date information from public health agencies and government authorities to ensure alignment of our protocols with best practices. This positions us to take appropriate steps to protect the health and safety of all of our people, while continuing to meet the needs of our clients.

With that in mind, we have approved a number of guidelines that are being implemented across the Company, including:

- **Curtailing all non-essential, cross-border travel through the end of March**. We will continue to closely monitor developments and provide further guidance as required, including whether this travel limitation should be continued into April.
- **Requesting that, upon return from any business or personal travel to, or transit through, any high risk location where there has been an outbreak and/or community transmission of COVID-19, employees and contractors ("Employees") must notify their immediate supervisor(s) or <>, and work from home for a period of fourteen (14) days, even if they are not experiencing any symptoms of COVID-19.** If feeling unwell, such colleagues should immediately seek appropriate medical attention.

  The List of COVID-19 High Risk Locations is changing regularly and will not be outlined here. Note that if a location becomes High Risk while Employees are traveling to or through the location, they will become subject to quarantine.

- **Recommending that each Company office that is open during the COVID-19 outbreak implement the following policy with respect to visitor access to the Company's premises**, through clear notices in prominent locations in each office, such as in reception areas:

  "To comply with public health best practices during the COVID-19 outbreak, we respectfully ask that you not enter the these premises if you have travelled to or transited through any high risk location where there has been an outbreak and/or community transmission of COVID-19 within 14 days prior to today, or have other reason for concern. We confirm that all Company personnel are following this same policy."

- ***[Any other items that the Company determines to be useful to include in its Plan, having regard to the attached Checklist at Schedule B]***

The Company has designated key points of contact for any questions relating to working remotely, attendance at Company and client events, essential and non-essential travel, transport to your respective office, and any other questions or concerns you may have at this time. Those individuals are as follows: <>.

As you know, this situation is changing rapidly, and we

- Cover your cough or sneeze with a tissue, then discard the tissue and wash your hands;
- Clean and disinfect frequently-touched objects and surfaces using a regular household cleaning spray or wipe;
- Wash your hands often with soap and water for at least 20 seconds; and encourage you to monitor and consult the World Health Organization, the Public Health Agency of Canada, and the public health agencies in the city in which you reside. Note that most public health agencies, doctor's offices and hospitals are recommending that if Employees are ill, they should contact their local public health agency for telephone screening before attending at a hospital or doctor's office.

Recommended best practices can differ but, in an effort to continue to protect the health and safety of all of our colleagues, we encourage you to follow these recommended actions to help prevent the spread of respiratory diseases:

- Contact a medical provider by phone and stay home if you are sick or feel unwell;
- Avoid close contact with people who are sick;
- Avoid touching your eyes, nose and mouth;
- When not in a position to wash your hands, use an alcohol-based hand sanitizer with at least 60 percent alcohol.

Our priority continues to be protecting the health of our people and limiting business disruption while ensuring we continue to meet our clients' needs. We appreciate your support and urge you to reach out to one of the above contacts if you have any questions.

Checklist of items to consider for a COVID-19 Employer Plan

NOTE: This checklist is not intended to be a complete checklist of all items that a company may need to consider for its Employees when developing a Canadian COVID-19 Plan, nor does it address most of the operational items that companies may need to consider (i.e., supply chain issues; essential service employees; business interruption insurance coverage; corporate and securities reporting). In addition, not everything in this checklist needs to be included in the Plan and, in fact, some items should not be included in the Plan but only considered for internal planning purposes.

- Consider who should be on the Company's COVID-19 team. It may be just one person or an entire team (i.e., HR; Joint Health & Safety Committee representative; operations; finance; technology; risk; marketing; communications).
- Ensure team members are kept up-to-date with recent developments in Canada and worldwide (e.g., World Health Organization; Public Health Agency of Canada; travel.gc.ca; local public health agencies in the cities in which you operate).
- Consider the terms of the Company's Occupational Health & Safety Plan, and ensure all team members are familiar with it.
- Consider engaging with a digital health solutions company you can refer your Employees to for matters such as the following: (i) if they have any questions or concerns; (ii) if an assessment of their health is required for the purposes of determining whether they should be quarantined; (iii) if an assessment of their health is required for the purposes of determining whether they can return to work from quarantine; and (iv) if medical certificates are required for certain statutory leaves.
- Consider whether the Company wishes to require all Employees who have a cold or flu to stay home, even if there is no reason to believe they may have COVID-19. It may be helpful in a Plan distributed to Employees to explain that staying home when ill will also help to prevent false positives. Note: Under employment legislation in the Provinces of Ontario, Québec, Alberta and BC, as well as under the federal Canada Labour Code, Employers may request their Employees work from home or remain at home in order to ensure the health and safety of other Employees. While there may be risks of constructive dismissal claims in some situations, those risks are likely relatively small.
- Consider whether the Company wishes to restrict travel for work by its Employees. ***[already included in Plan document]***
- Consider whether the Company wishes to require self-quarantine by Employees who have travelled for personal purposes to areas of concern. ***[already included in Plan document]***
- Consider whether the Company wishes to require Employees who have travelled anywhere for personal purposes (even if to or through low-risk locations), to self-quarantine on their return.
- Consider whether and how Employees will be compensated for all or part of their time away from the office, particularly if they cannot engage in remote work. The Employer may want to keep in mind that Employees may be reluctant to advise that they are ill or to stay home if they are not receiving compensation from some source.

- Statutory leaves of absence; paid company sick leave; Employment Insurance benefits; short-term disability coverage; vacation; unpaid leave; and gratuitous paid leave.
    - Review short-term disability plan to determine: (i) whether Employees with COVID-19 are eligible for STD coverage; and (ii) whether quarantined Employees who may or may not have COVID-19 are eligible for STD coverage.
- Be prepared for possible work refusals under Occupational Health & Safety legislation.
- Be alert to the fact that if COVID-19 leads to a disability for any Employees, the standard duty to accommodate to the point of undue hardship will engage.
- Consider updating any applicable corporate crisis communications system.
- Consider updating emergency contacts information list for Company personnel.
- Consider performing a review of your workplace by function. Determine which functions can work remotely if necessary, and determine which functions are critical to the operation of the business. If it's applicable to your particular workplace, also determine which functions are essential public service functions:
    - Consider whether there are certain job functions that can double up for other job functions.
    - Particularly for essential service employees where many of the functions cannot work remotely, consider how to deal with potential gaps in the system if a number of critical functions are not available to work (i.e., potentially offering extra pay to Employees who wish to take on extra functions?)

Remote work policy

Telecommuting is a work arrangement under which an Employee may perform his or her work at an off-site work location, such as the Employee's residence (the "home work area"), on a full-time or part-time basis. This policy sets out the terms and conditions under which the Company will permit telecommuting, and it applies to and governs any Employee or contractor ("Employee") who telecommutes for the Company, whether or not a separate telecommuting agreement is signed.

I. GENERAL TERMS AND CONDITIONS

A. General. An Employee who is required to telecommute will remain obligated to comply with all Company and departmental rules, policies, practices and procedures, including the safeguarding of confidential information. In addition, the Employee's work status, job duties and responsibilities will remain essentially unchanged except insofar as the Company may require additional duties that arise out of the telecommuting arrangement (including, but not limited to, written reports to the Employee's supervisor regarding work progress).

B. Family arrangements. The telecommuting arrangement is not to be viewed as a substitute for family care arrangements. There must for vacation and sick leave will be handled in the same way as if the Employee was at the office (e.g., prior notification and approval).

D. Compensation. The Employee will continue to receive compensation at the same rates when telecommuting as when scheduled in-office. No additional expenses (i.e., travel allowance) will be compensated.

E. Work hours. In order for a telecommuting arrangement to succeed, it must be a seamless operation. The Employee agrees to be as accessible during the regular telecommuting work day as other colleagues, regardless of work location. In particular, the Employee understands and agrees that he/she may be required to work certain "core hours", during which he/she will be accessible by telephone, email or in the main office. In addition, the Employee understands and agrees that he/she will check in with his/her supervisor at least once per day.

F. Meetings. During the period of telecommuting, unless otherwise approved by the Employee's supervisor, all meetings are required to take place by phone or a web-based video meeting option.

II. TELECOMMUTING EQUIPMENT

be a designated person present to provide primary child or family care during Employee work hours if dependents are present in the household premises. The Company expects the Employee will make family care arrangements as needed, and that such obligations will not interfere with the Employee's work obligations and safety obligations. The Employee may undertake occasional emergency family care obligations, but only with prior written departmental approval.

C. Work schedule. The Employee acknowledges and agrees that compliance with any work schedule set by the Company is necessary to ensure maximum accessibility. The Employee must obtain prior written supervisor approval for working anything other than the scheduled hours per day, including any overtime. Requests

AND SUPPLIES

A. Telecommuting equipment. The Company will provide the necessary software and make arrangements for connections to the office. The Employee is responsible for the cost of the hookup and monthly maintenance of high speed internet connectivity.

It is understood that any equipment that the Company loans to the Employee is the sole and exclusive property of the Company and is subject to the same business use restrictions as if it were on-site. The Employee shall be liable for the condition of the equipment, except for normal wear and tear, and for damages caused by unauthorized use of such equipment.

B. Unauthorized use of Company property. The equipment, supplies and other property provided by the Company is provided exclusively for use in providing services to the Company and its clients. It may not be used by any person not employed by the Company (including household members), except as may be required for business-related reasons.

C. Return of Company property. The equipment, supplies and other property provided by the Company should be returned within 24 hours of any request by the Company.

D. Software. Company-owned software may not be duplicated except as formally authorized. The Employee agrees to comply with all Company practices and procedures regarding data security. The Employee is required to regularly use any recommended Company-provided anti-virus software, and to not use any external software or visit any websites that might allow viruses to be imported into the Company's environment.

E. Computer use. The Employee acknowledges and agrees that he/she remains bound by the terms and conditions of any Company computer use policy when telecommuting, and/or when using any Company equipment (including, but not limited to, computers and cell phones).

F. Data security. The Employee is responsible for safeguarding all Company data, equipment, confidential information and trade secrets. It is the responsibility of the Employee to ensure that all Company information is not accessible to others. In particular, and without limiting the generality of the foregoing, it is agreed that the Employee is responsible to: (i) adhere to any Company passwords, email encryptions, firewalls and/or biometric ID access; (ii) keep hard copies of Company confidential information in locked filing cabinets when not in use; and (iii) execute and agree to be bound at all times by any Company Confidential Information and Intellectual Property Agreement.

III. SAFETY

A. Designated work area. The Employee should maintain a designated work area at home and must certify that this work area is safe before the telecommuting arrangement begins. The Employee should only work in this designated work area. No individuals, including family, friends or work associates, should have access to this work area during designated hours of work unless authorized beforehand.

B. Maintenance of work area. The Employee shall maintain the home work area free of safety hazards and other dangers, and shall use and maintain equipment and supplies in a safe and an appropriate manner.

C. Employer liability. The Company assumes no liability for injuries that occur to the Employee during the course of employment in their home work area. In addition, the Employee expressly waives any claims against the Company for any injuries to third parties at the home work area, including the Employee's family, and the Employee undertakes to indemnify the Company for any such third party claims. Notwithstanding the foregoing, in the event of any workplace accident at the home work area, it should be immediately reported to the Company.

Select employment standards legislative summary for employers

ONTARIO

Sick Leave	
Eligibility (length of service)	2 consecutive weeks.
Length of Leave	Up to 3 days per calendar year.
Purpose	For illness, injury or medical emergency of the Employee.
Documentation	Medical note may be required if "reasonable in the circumstances".
Compensation	None.

Family Responsibility Leave	
Eligibility (length of service)	2 consecutive weeks.
Length of Leave	3 days per calendar year.
Purpose	Due to illness, injury, medical emergency or urgent matter relating to a defined family member.
Documentation	Not permitted. Employer can only ask for the name of the relative, their relationship to the Employee, and a statement that the absence was due to the relative's illness, injury or medical emergency.
Compensation	None.

Family Caregiver Leave	
Eligibility (length of service)	None. All Employees are eligible, regardless of length of service.
Length of Leave	Up to 8 weeks per calendar year.
Purpose	Care for defined family member for whom a qualified health practitioner has issued a certificate stating that they have a serious medical condition.
Documentation	Medical certificate.
Compensation	None.

Family Medical Leave	
Eligibility (length of service)	None. All Employees are eligible, regardless of length of service.
Length of Leave	Up to 28 weeks in a 52-week period.
Purpose	Care for defined family member for whom a qualified health practitioner has issued a certificate stating that there is a significant risk of death within a period of 26 weeks.
Documentation	Medical certificate.
Compensation	Application may be made for Employment Insurance benefits.

Critical Illness Leave	
Eligibility (length of service)	6 months.
Length of Leave	Up to 37 weeks in a 52-week period for a critically ill child; up to 17 weeks in a 52-week period for a critically ill adult.

Purpose	To provide care or support to a critically ill defined family member whose life is at risk.
Documentation	Medical certificate.
Compensation	Application may be made for Employment Insurance benefits.

Emergency Leave, Declared Emergencies: In addition, in the event that the Ontario government declares an emergency under the *Emergency Management and Civil Protection Act*, Employees will be entitled to an unpaid leave for such period of time as the emergency has been declared, to care for a defined family member.

ALBERTA

Long-term Illness and Injury Leave	
Eligibility (length of service)	90 days.
Length of Leave	Up to 16 weeks per calendar year.
Purpose	For illness, injury or quarantine of the Employee.
Documentation	Medical certificate.
Compensation	None.

Personal and Family Responsibility Leave	
Eligibility (length of service)	90 days.
Length of Leave	5 days per calendar year.
Purpose	For the health of the Employee.
Documentation	None.
Compensation	None.

Compassionate Care Leave	
Eligibility (length of service)	90 days.
Length of Leave	Up to 27 weeks.
Purpose	Care for seriously ill family member with significant risk of death within 26 weeks.
Documentation	Medical certificate.
Compensation	None.

Critically Ill Childcare	
Eligibility (length of service)	90 days.
Length of Leave	Up to 36 weeks.
Purpose	To provide care or support to a critically ill child family member under the age of 18 (part of Critical Illness Leave).

Documentation	Medical certificate.
Compensation	None.

Critical Illness	
Eligibility (length of service)	90 days.
Length of Leave	Up to 16 weeks.
Purpose	To provide care or support to a critically ill adult family member.
Documentation	Medical certificate.
Compensation	None.

BRITISH COLUMBIA

Critical Illness or Injury Leave	
Eligibility (length of service)	No minimum.
Length of Leave	36 weeks within a period of 52 weeks (family member under 19); 16 weeks within a period of 52 weeks (family member 19+).
Purpose	To care for a family member whose health has significantly changed due to critical illness or injury, with the result that the life of the family member is at risk.
Documentation	Medical certificate.
Compensation	None.

Family Responsibility Leave	
Eligibility (length of service)	No minimum.
Length of Leave	5 days.
Purpose	To meet responsibilities related to the care or health, and in the case of a child, education, of an immediate family member. A crisis or emergency is not required.
Documentation	Employers are entitled to reasonable proof, after the event, that the request for a leave was valid.
Compensation	None

Compassionate Care Leave	
Eligibility (length of service)	No minimum.
Length of Leave	27 weeks within a period of 52 weeks.
Purpose	To care for a family member with a serious medical condition with a significant risk of death within 26 weeks.
Documentation	Medical certificate.
Compensation	None.

Bereavement Leave	
Eligibility (length of service)	No minimum.
Length of Leave	3 days.
Purpose	To grieve, attend a funeral, and take care of issues relating to the death of an immediate family member.
Documentation	Employer may request proof of death and nature of the relationship.
Compensation	None.

FEDERAL (CANADA LABOUR CODE)

Medical Leave	
Eligibility (length of service)	None. All Employees are eligible, regardless of length of service.
Length of Leave	Up to 17 weeks.
Purpose	For personal illness or injury, organ or tissue donation, or medical appointments during working hours.
Documentation	If medical leave of absence is 3 days or longer, the Employer may require that the Employee provide a certificate issued by a health care practitioner.
Compensation	None.

Compassionate Care Leave	
Eligibility (length of service)	None. All Employees are eligible, regardless of length of service.
Length of Leave	Up to 28 weeks.
Purpose	Care or support for a defined family member for whom a health care practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks.
Documentation	Medical certificate.
Compensation	None.

Critical Illness Leave	
Eligibility (length of service)	None. All Employees are eligible, regardless of length of service.
Length of Leave	Up to 37 weeks to care for a critically ill child; up to 17 weeks for a critically ill adult.
Purpose	Care for or support a critically ill defined family member for whom a health care practitioner has issued a certificate that states the family member is critically ill, and requires the care and support of one or more of his/her family members.
Documentation	Medical certificate.
Compensation	None.

Personal Leave	
Eligibility (length of service)	None. All Employees are eligible, regardless of length of service.
Length of Leave	Up to 5 days in every calendar year.
Purpose	Treating the Employee's illness or injury; carrying out responsibilities related to the health or care of any of the Employee's family members; carrying out responsibilities related to the education of any of their family members who are under 18 years of age; addressing any urgent matter concerning themselves or their family members.
Documentation	Documentation that is reasonable in the circumstances to support the reasons for the leave.
Compensation	If the Employee has 3 consecutive months of continuous employment, the first 3 personal leave days are paid at the Employee's regular rate.

Bereavement Leave	
Eligibility (length of service)	None. All Employees are eligible, regardless of length of service.
Length of Leave	Up to 5 days within the period starting on the date of the death, and ending 6 weeks after the day on which the funeral, burial or memorial service occurs.
Purpose	Following the death of a defined immediate family member.
Documentation	Medical certificate.
Compensation	If the Employee has 3 consecutive months of continuous employment, the first 3 personal leave days are paid at the Employee's regular rate.

QUÉBEC

Long-term Illness and Injury Leave	
Eligibility (length of service)	None (but in the case of an employee with at least three months of service, the first two days (sickness or family responsibility) taken annually shall be remunerated).
Length of Leave	Up to 26 weeks over a period of 12 months.
Purpose	Sickness.
Documentation	Medical certificate may be required.

Family Responsibility Leave	
Eligibility (length of service)	None (but in the case of an employee with at three least months of service, the first two days (sickness or family responsibility) taken annually shall be remunerated).
Length of Leave	Up to 10 days over a period of 12 months.
Purpose	Fulfil obligations relating to the care, health or education of the employee's child or the child of the employee's spouse, or because of the state of health of a relative* or a person for whom the employee acts as a caregiver.**

Documentation	None.

Compassionate Care Leave	
Eligibility (length of service)	N/A
Length of Leave	Up to 36 weeks over a period of 12 months if the if the seriously ill person or accident victim is a minor child and up to 16 weeks over a period of 12 months in other cases.
Purpose	Allow the employee to stay with a relative or a person for whom the employee acts as a caregiver because of a serious illness or a serious accident.
Documentation	Medical certificate / Document from a professional working in the health and social services sector and governed by the Professional Code attesting the employee is acting as a caregiver.

Critically Ill Childcare	
Eligibility (length of service)	N/A
Length of Leave	104 weeks.
Purpose	Allow the employee to stay with a minor child because of potentially fatal illness.
Documentation	Medical certificate attesting of the potentially fatal illness.

*** "Relative"** means, in addition to the employee's spouse, the child, father, mother, brother, sister and grandparents of the employee or the employee's spouse as well as those persons' spouses, their children and their children's spouses.

The following are also considered to be an employee's relative for the purposes of family responsibility leave, compassionate care leave and critical illness leave :

i. a person having acted, or acting, as a foster family for the employee or the employee's spouse;

ii. a child for whom the employee or the employee's spouse has acted, or is acting, as a foster family;

iii. a tutor or curator of the employee or the employee's spouse or a person under the tutorship or curatorship of the employee or the employee's spouse;

iv. an incapable person having designated the employee or the employee's spouse as mandatary; and

v. any other person in respect of whom the employee is entitled to benefits under an Act for the assistance and care the employee provides owing to the person's state of health.

** To be considered as acting as a caregiver for someone the employee must obtain a natural caregiver certificate. Such certificate must be issued by a professional working in the health and social services sector, in particular:

- occupational therapist
- nurse
- physician
- speech therapist
- physiotherapist
- psychologist
- psychoeducator
- midwife
- marital or family therapist
- physical rehabilitation specialist
- social worker

WorkSafeBC is currently advising Employers and

ALBERTA

workers that special precautions for COVID-19 are not required, beyond the recommended measures to prevent common respiratory viruses like influenza.

- If workers could be exposed to influenza at work, the Employer must develop and implement an exposure control plan (ECP) that identifies the workers at risk of exposure and the controls required to protect them. The risks and controls will be unique to each worksite and work environment, and the required controls may range from simple hand washing and cough/sneeze etiquette, to more extensive measures requiring administrative and engineering controls, as well as personal protective equipment.
- ECPs should include: statement of purpose and responsibilities; risk identification and assessment; risk control; education and training; and written procedures, hygiene facilities, health monitoring and documentation.
- WorkSafeBC expects the following written procedures, hygiene facilities, health monitoring and documentation during a pandemic flu:
    - **Written procedures** if the complexity of the procedure and risks involved, or the size of the workplace, merit instructions being written. For example, written procedures might be required for a hospital isolation ward, but not in a small workplace of low risk, as long as worker education and training addresses basic issues of worker protection.
    - **Hygiene facilities** to permit proper hand washing whenever needed.
    - **Decontamination procedures** in some higher-risk workplaces.
    - **Monitoring** for possible symptoms of pandemic influenza.
    - **Documentation** of training and education, and of exposure to the virus when performing work activities, including identifying workers who are in positions with exposure risk.
- *Employees* are responsible for safety as well, which includes reporting exposures. Employees may refuse work if they have *reasonable cause* to believe it will put them or others at risk.
- Under Alberta's *Occupational Health and Safety Act* ("OH&S Act"), Employers and supervisors must ensure, as far as reasonably practicable, the health and safety of workers at work. Additionally, Employees have an obligation to take reasonable care and to cooperate with their Employer to ensure the health and safety of both themselves and others at work. Additionally, workers ill with COVID-19 may be considered a hazard, pursuant to Alberta's *Occupational Health and Safety Code* ("OH&S Code"). Under Part 2 of the OH&S Code, Employers in Alberta must perform hazard assessments to identify existing and potential hazards at work, and eliminate the hazards wherever possible. When elimination is not possible or reasonable, then the hazard must be controlled. In order to control the hazard, an Employer may implement administrative controls that change the way people work, including by alternative work arrangements. The Employer must also prepare a report of the results of the hazard assessment, and the methods used to control or eliminate the hazards identified. Therefore, the OH&S legislation in Alberta creates an obligation on an Employer to require Employees to stay home, or to enable workers to make alternative work arrangements, if they are ill or are potentially ill with COVID-19, in order to ensure the health and safety of others in the workplace.
- The OH&S Act gives workers the right to refuse to work if they believe, on reasonable grounds, that the work constitutes a danger to the worker's health and safety.
- A worker who refuses to work must promptly report the refusal and the reasons to their Employer or supervisor. Where there is a valid work refusal, an Employer must initiate an investigation into the concerns, and adopt measures to eliminate or reduce the workplace danger, and then take any necessary action to remedy the dangerous condition. The Employer must not reprimand the Employee for exercising their refusal rights.
- If a worker has refused to work, and the work refusal is valid, the worker is entitled to the same wages and benefits they would have received had the worker continued to work.

Select occupational health & safety legislative summary for employers

ONTARIO

Inspector, who will investigate the work refusal

- Employers must protect their workforce from the risk of transmission of COVID-19. Employers have a general obligation under the Ontario *Occupational Health and Safety Act* to take "every precaution reasonable in the circumstances for the protection of a worker." This includes protecting Employees from the transmission of infectious diseases, such as the flu and COVID-19, in the course of employment. If an Employee is demonstrating symptoms of COVID-19, recently travelled to a hotspot for COVID-19, or is in contact with someone who is diagnosed with COVID-19 or who recently travelled to a hotspot for COVID-19, then the Employer should likely require the Employee to stay away from work to protect the Employer's other Employees (which may include vulnerable or immunocompromised persons, or care for / live with vulnerable or immunocompromised persons).
- Employees will be able to refuse work if exposure to COVID-19 in the workplace is likely to endanger them. Employees are entitled to refuse work if they have a reason to believe the physical condition of the workplace is likely to endanger them. The ability for an Employee to refuse work will depend on whether there is a reason to believe that the physical condition of the workplace exposes the Employee to COVID-19. However, note that there are special rules for Employees of hospitals, group homes and ambulance services who are not entitled to refuse work if it would directly endanger the life, health or safety of another person. An Employer must investigate any workplace refusal. If after the investigation and any steps taken to alleviate the Employee's concern, the Employee still refuses to perform the work, then the Employee or Employer must notify an Occupational Health and Safety and issue a decision. During both investigations, the worker must remain in a safe place as close as possible to their workstation, and available to the inspector or Employer for the purposes of the investigation. Importantly, the time for the completion of both investigations is considered work and must be paid at the Employee's regular rate. Further, all other Employees will need to be informed of the workplace refusal by a joint health and safety committee member who represents workers, a health and safety representative, or a worker selected by the union or the workers to represent them.
- Employers should report cases of COVID-19 in the workplace. Employers must report to the Ministry of Labour if a worker has an occupational illness. Occupational illnesses include a condition resulting from exposure in a workplace to a biological agent. If an Employee contracts COVID-19 in the course of his or her employment, the Employer should notify the Ontario Ministry of Labour, Training and Skills Development, the joint health and safety committee, or health and safety representative, and the trade union (if any), as well as the Workplace Safety and Insurance Board.

BRITISH COLUMBIA

- WorkSafeBC states that Employees diagnosed with COVID-19 should be encouraged to stay home.
- Exposures at work must be reported and may be claimed under workers' compensation legislation. Exposures that are unrelated to work are not covered under the regime.
- Employers are obligated to provide a safe and healthy workplace under workers' compensation, and occupational health and safety legislation.

- If an Employee becomes ill at work with COVID-19, the Employer has an obligation to report the illness of the Employee to the Workers' Compensation Board ("WCB") within 72 hours. In the past, the WCB has considered the Norwalk virus, influenza, and SARS to be occupational diseases.

FEDERAL (CANADA LABOUR CODE)

- Federal Employers have a general responsibility under the *Canada Labour Code* to protect the health and safety of Employees at work. If there is a risk that Employees will be exposed to coronavirus while working, then Employers must identify and assess the risk, and implement controls through a hazard prevention program. Accordingly, federal Employers should likely prevent Employees from coming into the workplace if the Employees are demonstrating symptoms of COVID-19, recently immediately inform the Minister, and the workplace committee, or the health and safety representative of its decision, and the continued refusal. The Minister will then determine whether further investigation is needed and issue a decision.
- The federal government has issued a notice related to Employer occupational health and safety obligations, and COVID-19. The notice states that if there is a confirmed case of COVID-19 or an Employee refusal to work in connection with COVID-19 (even if it is resolved internally), the Employer should immediately advise the federal Labour Program at 1-800-641-4049. If an Employee contracts COVID-19 in the course of his or her employment, the Employer should also report the illness to the Federal Workers' Compensation Service.

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travelled to a hotspot for COVID-19, or are in contact with someone who is diagnosed with COVID-19 or who recently travelled to a hotspot for COVID-19. Federal Employers should also stay informed on the recommended precautions from the Canadian government and act in accordance with those precautions.

- Federal Employees have the right to refuse work in certain circumstances, including with respect to COVID-19. In particular, federal Employees can refuse to work if they have reasonable cause to believe that a condition exists at the workplace that constitutes a danger to him or her. Accordingly, the ability for an Employee to refuse work will depend on if there is a reasonable cause to believe that they could contract COVID-19 from the workplace. Federal Employers must immediately investigate any refusal to work that is reported to them, create a written report setting out the results and take immediate action to protect the Employees from any danger that is determined to exist. If the Employee continues to refuse the work, the Employee must report it to the workplace committee, or health and safety representative, who then must also investigate the matter and provide a written report to the Employer. If the Employee still refuses to perform the work, then the Employer must

- Employers are obligated to provide a safe and healthy workplace under Québec's *Act Respecting Occupation Health and Safety* (the "Act"), and article 2087 of Québec's *Civil Code*. Given this obligation, an Employer has a right to send an ill Employee home if he or she presents themselves at work with any of the symptoms associated with COVID-19. An Employer can also demand that an Employee work remotely, as long as the Employee has been provided with the tools to do so.

- Although the Act does not provide for any specific steps that an Employer must take in case of an outbreak, the Institut National de santé publique du Québec (INSPQ) has recommended that Employers take a number of preventive steps to minimize such risk in the workplace:

    i. Reminding Employees of respiratory etiquette and hand hygiene by creating or updating HR policies or memos to be communicated to all;

    ii. Encouraging sick Employees to stay home (some Employers have sent out a memo to their Employees stating they will be lenient with sick days to ensure they stay home);

    iii. Performing routine environmental cleaning of the workplace and stocking up on supplies, such as hand sanitizer and disinfecting wipes;

    iv. Asking Employees to inform the Employer if they are going to travel, have travelled or have been in contact with someone who has travelled to a high-risk location before they enter the workplace;

    v. Restricting all business travel for Employees;

    vi. Preparing a contingency plan in case of mandatory quarantine.

- Section 12 of the Act provides the right for an Employee to refuse to work when he or she has reasonable grounds to believe that the performance of a particular task would expose him or her to health, safety or physical well-being dangers.

- To exercise the right of refusal, the Employee must have reasonable grounds to believe that the tasks he or she is required to perform are likely to harm his or her health, or that of another person.

- An Employee who wants to exercise his or her right of refusal must immediately notify his or her Employer.
- When an Employee exercises his or her right of refusal, he or she is deemed to be at work, and can claim wages even if not actually working. If the fact that an Employee has exercised his or her right of refusal prevents other Employees from performing their work, they are all deemed to be at work. They must all receive their wages even if they are not actually working.
- The Act prohibits an Employer to take reprisals against an Employee who has exercised his or her right of refusal.

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