



COVID-19

The COVID-19 pandemic is making significant news headlines right now. This raises concerns for employers across all industries, but specifically brings unique concerns for employers in construction where work crews out of town may be impacted by illness or quarantine.

The following general information excerpted from the Harris & Company update for employers (see: <http://harrisco.com/coronavirus-information-for-employers/> for the full update) is a useful starting point for CLR members and their employees just as it would to any employer in the province:

Q: Do employers have any legal obligations relating to infectious diseases in the workplace?

A: Yes. Employers in BC are required under occupational health and safety laws to protect their workers from work-related hazards, including any infectious disease that is found in the workplace that may pose a risk to workers.

WorkSafeBC has published guidance material, '[Controlling Exposure: Protecting Workers From Infectious Diseases](#)', that address an employer's obligations in these circumstances. These include:

- identifying infectious diseases that are, or may be, in the workplace;
- developing and implementing an exposure control plan, when required;
- educating, training and supervising workers on safe work procedures, including hand washing and the proper use of personal protective equipment; and
- telling workers to see medical attention, as required.

In essence, employers must take all reasonable preventative measures, which in the context of coronavirus may include directing employees not to attend work if they are displaying relevant symptoms or there is a reasonable basis for concluding that there is a heightened risk of infection (discussed further below).

Q: Is an employee allowed to refuse to work if they are worried about coronavirus in the workplace?

A: Under BC's occupational health and safety laws, an employee has the right to refuse unsafe work. Broadly, to be entitled to refuse work an employee must have reasonable cause to believe that performing the work would create an undue hazard to the health and safety of themselves or another person. If that is the case, the employee must immediately report the unsafe condition to the employer. An employer then has an obligation to investigate the matter and address the issue in accordance with procedures set out in section 3.12 of the OHS Regulation.

In the context of the coronavirus, any refusal to be perform work should be taken seriously by employers. While the risk of disingenuous refusals to perform work is always possible, given the media attention focused on the issue and misinformation that can circulate in these situations, the prudent course is to respect the refusal pending investigation of the issue and seek to identify arrangements by which the work can be performed which address the risk while that is occurring.

Q: Is it lawful for an employer to prohibit an employee from attending at the workplace if he or she may have been exposed to coronavirus?

- A:** Possibly, although care must be taken so as to reduce the risk of a legal claim (for example, a complaint to the BC Human Rights Tribunal, or an allegation of constructive dismissal).

If an employee discloses that they are suffering symptoms consistent with the coronavirus, as with any other illness, it is reasonable and appropriate to direct the employee to remain away from the workplace until they are well enough to work and do not pose a risk to their colleagues.

If the issue is merely potential exposure to the virus even though the employee is not demonstrating any symptoms at the time, we recommend that employers first have regard to the most up to date guidance published by the relevant Canadian and Provincial government health authorities and centres for disease control regarding requirements to self-isolation or quarantine. In British Columbia, for example, the BC Centre for Disease Control is publishing regularly updated guidance on their [website](http://www.bccdc.ca/about/news-stories/stories/2020/information-on-novel-coronavirus) (<http://www.bccdc.ca/about/news-stories/stories/2020/information-on-novel-coronavirus>). While each situation should be assessed on a case-by-case basis, it is likely to be challenging for employers to defend directing an employee to stay home on the basis of potential exposure due to, for example, travel to or from a given geographic regions if government medical experts have not indicated that isolation is advisable in the event of travel involving that region.

In addition to the above questions, employees living out of town, whether on LOA or in a motel or camp, can pose unique challenges for employers. While some Collective Agreements address employers' obligations when employees are ill, none of them address situations where an employee is not ill, but due to a suspected illness or recent travel, should be quarantined and cannot travel back to their home location to do so. In such cases, it is advisable to consult with your local public health office (as found on the applicable regional health authority website) or Health Link (<https://www.healthlinkbc.ca/> or call 811) for guidance as to quarantine alternatives. Given the complexities around this specific issue please contact CLR for further discussion on how to manage your response.

For employees unable to work due to quarantine or illness some of the union benefit plans may include some sick leave coverage but it is important to note that the Federal Government announced on March 11, 2020, that it was waiving the waiting period for Employment Insurance sickness benefits (see: <https://pm.gc.ca/en/news/news-releases/2020/03/11/prime-minister-outlines-canadas-covid-19-response>). Therefore an illness related ROE would be appropriate to assist employees in accessing this benefit.

If you have any questions please contact your CLR staff representative.