

COVID-19 HR RELATED FAQ'S – ONTARIO

Updated August 7, 2020

Please note – as this is an evolving situation, we will endeavour to update information as it becomes available from verifiable sources

Q: What if my employee refuses to come in to work?

A: Employees have the right to refuse work under provincial health and safety legislation if the work is likely to endanger their health or safety (note – in Ontario, firefighters, police officers and hospital workers are exempt). As an employer, you have a duty to investigate the claim and work to resolve these concerns. In the event it cannot be resolved, provincial legislation requires that you, as an employer, must notify a Ministry of Labour of this refusal. **You cannot discipline an employee who refuses to work due to health and safety concerns.**

For more information visit: <https://www.ontario.ca/document/guide-occupational-health-and-safety-act/part-v-right-refuse-or-stop-work-where-health-and-safety-danger>

Q: I've tried all options however my business is really struggling, and I cannot afford to keep my staff, what can I do?

A: In the province of Ontario, you can choose to implement a **temporary layoff** for 13 weeks with potential of extension of up to 35 weeks if you, as an employer, continues to pay for group benefits. If an employee is laid off for a period longer than a temporary layoff as set out above, the employer is deemed to have terminated the employee's employment and the employee will then be entitled to termination pay. If an employee is laid off longer than the 13- or 35-week periods above, the employer is deemed to have terminated the employee's employment. If the current employment contracts do not have a provision for layoffs, the employees can accept layoff (get benefits and be recalled before the end of the layoff period or extension or they can possibly challenge constructive dismissal and be entitled to ESA notice as at minimum). If this is the case, in each instance they are short tenured and notice and termination pay would likely be 1 week notice and 1-2 weeks closure due to circumstances.

Under new employment standards regulations (retroactive to March 1, 2020):

- An employee is not considered to be constructively dismissed under the ESA if their employer temporarily reduces or eliminates their hours of work or wages for COVID-related reasons.
- An employee is not considered to be laid off if their employer temporarily reduces or eliminates their hours of work for COVID-related reasons. This means the layoff clock stops ticking towards becoming a termination of employment.

For more information visit: <https://www.ontario.ca/document/your-guide-employment-standards-act-0/termination-employment#section-3>

Q: Is there a job-protected leave available to those dealing with COVID-19 related issues in Ontario?

A: The Employment Standards Act, 2000 was recently amended to include an unpaid, job-protected Infectious Disease Emergency leave. This leave is available to employees who are not performing the duties of their position for certain reasons related to COVID-19, including:

- personal illness, quarantine or isolation in specified circumstances
- concern by the employer that the employee may expose other individuals in the workplace to COVID-19
- to provide care or support to certain family members for a reason related to COVID-19, including school or day care closures
- due to certain travel-related restrictions

The leave is retroactive to March 1, 2020 and will expire six weeks after the declared emergency ends. The regulatory amendments do not include employees represented by a trade union. The leave entitlements for COVID-19 are retroactive to January 25, 2020. Employers cannot require employees to provide medical notes to prove they are eligible for the leave. Employers cannot threaten, fire or penalize an employee in any other way because the employee took or plans on taking an infectious disease emergency leave.

For more information visit: <https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>

Salopek & Associates are currently working with Ontario-based clients on drafting messages to staff around COVID-19 that is specific to their business and workplace. Policies are being reviewed with respect to Sick Time, Paid Time Off, Leaves of Absence and Working from Home. Questions are being asked about Business Emergency Response Plans. Salopek is available on an On-Call basis to answer your questions. Give us a call!

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