

Employer Obligations for Returning to Work During COVID-19

June 5, 2020

This FAQ answers some of the most common questions about employer obligations and the duty to accommodate workers in light of the COVID-19 outbreak.

Please note that although the law on accommodations and COVID-19 has not been settled by courts and tribunals, accommodation obligations typically arise where an individual and/or a family member is immunocompromised or immunosuppressed. Alternately, there may be a requirement to provide care to a sick family member. As such, we expect that the employer would be held to the obligations set out below.

What if I believe my workplace is unsafe due to COVID-19?

Employees who believe their employer has not implemented safety measures to make their workspace safe or meet the safety guidelines set out by the government have the right to refuse unsafe work. Read more about COVID-19 and the right to refuse unsafe work: <https://cupe.ca/covid-19-and-right-refuse-unsafe-work>.

What if I am immunocompromised or immunosuppressed?

An employer has a legal duty to accommodate employees with an illness or disability that makes them vulnerable to COVID-19 up to the point of undue hardship. This means that the employer must make adjustments so that employees can continue working in a way that is safe unless it would be unduly costly or unsafe to do so. For example, working from home is a common accommodation for immunocompromised or immunosuppressed employees. If working from home is not possible, attempts should be made to explore the possibility of other accommodations, with an unpaid leave being the last option.

What if schools are closed and my children need childcare?

In each province and federally, human rights legislation prohibits discrimination on the basis of family status. Employers must provide accommodations to allow employees who are responsible for a child to keep working if childcare options are unavailable,

.../2

MARK HANCOCK

National President/Président national

CHARLES FLEURY

National Secretary-Treasurer/Secrétaire-trésorier national

DENIS BOLDOC, PAUL FAORO, FRED HAHN, JUDY HENLEY, SHERRY HILLIER

General Vice-Presidents/Vice-présidences générales

unless it would be unduly costly or unsafe to do so. Family status protection also includes non-biological parents and those who are in a parent-like role.

Once employees have established a need for accommodation, options could include working from home, working a modified schedule, or taking paid leave if available. Employees who work from home may need additional accommodation if they are the primary caregiver during working hours, such as the ability to take irregular breaks, work reduced hours, or modify job duties to allow the employee to work in a position where the disruptions are not problematic. Taking an unpaid leave would be the last option.

What if I have a family member that is affected by COVID-19?

Similarly, the obligation to provide care to elderly parents is also encompassed by family status protections. While courts and tribunals have not considered family status in respect of all family care requirements related to COVID-19, most likely, if an employee lives with a sick family member or cares for family members who are at high risk if they contract COVID-19 (e.g. elderly, immunosuppressed, immunocompromised, or medically vulnerable), the employer has a duty to accommodate the employee unless it would be unduly costly or operationally disruptive to do so. Potential accommodations could include allowing employees to work from home, permitting employees to work alternate hours, allowing employees to take leaves from work, or other flexible options.

What if accommodations are not enough?

If the employee and employer have exhausted all possible accommodations and are unable to find a solution, some collective agreements have a provision to access paid leave for "other reasons" if an employee is prevented from working for a reason outside of their control. In the event of quarantine, employees should avoid using sick days and request paid leave for "other reasons" where possible.

If paid leave is unavailable through the collective agreement, some employees may be entitled to statutory leaves under [employment standards legislation](#). Leaves applicable to parental responsibilities are typically only 3-5 days per year and are usually unpaid. However, several jurisdictions have expanded statutory leaves for employees who are absent from work because they must care for a family member who is affected by COVID-19. The [Canada Labour Code](#) also provides up to 17 weeks of job-protected medical leave.

For employment-related COVID-19 statutory leave changes across Canada, see [Reference Chart: COVID-19 Employment Initiatives and Legislative Changes](#).

Can I refuse work due to fear of exposure to the virus?

Although the pandemic has caused justifiable fear amongst employees about their health, employees cannot refuse work because of fear of potential exposure alone. There must be a link between COVID-19 and the employee's reasonable belief that they

are at risk for injury or illness. A legitimate reason to refuse to work can include situations where the employer has not taken measures to protect employee health and minimize the potential danger.

Can my employer terminate me if I contract COVID-19?

An employer cannot terminate an employee because they have contracted COVID-19. While the issue has yet to be conclusively decided, COVID-19 likely constitutes a disability under provincial and federal human rights legislation, which means that employees who are unable to attend work due to having contracted COVID-19 must be accommodated to the point of undue hardship. An employer may not discipline an employee who is unable to come to work because health officials have ordered them to quarantine or self-isolate due to COVID-19. An employer must accommodate an employee in such circumstances up to the point of undue hardship. Given that contracting COVID-19 is a temporary condition, and the pandemic is expected to be temporary rather than permanent in nature, most employers will be required to accommodate those unable to work due to COVID-19, whether this means the employer must modify working conditions where possible to allow employees to work from home or simply maintain their employment for the duration of the COVID-19-related impact.

:ar/cope491