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# COVID-19: Workers' Rights

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MAY 28, 2020



# Disclaimer

- ▶ This webinar is for general information purposes only and is not legal advice. It is not intended to be used as legal advice for a specific legal problem.
- ▶ I am only providing information on the law around employment in Ontario. This presentation will not address the rights of employees in Ontario under Federal employment laws.
- ▶ If you have questions about an employment related issue, or other legal matter, please contact your local Community Legal Clinic. Find it here with your postal code: <https://www.legalaid.on.ca/legal-clinics/>
- ▶ Waterloo Region Community Legal Services 519-743-0254.
- ▶ Thank you for your understanding.

# Agenda

- ▶ Common employment law issues:
  - ▶ Temporary Layoffs
  - ▶ Safety Issues
  - ▶ Leaves of Absence
  - ▶ Human Rights Considerations
- ▶ Government benefits:
  - ▶ Canada Emergency Wage Subsidy
  - ▶ EI Work Sharing

# COVID-19

## *Note\**

Government programs and policies are changing quickly these days as the situation with COVID-19 changes day to day.

The information in this presentation may change as the weeks go by, depending on whether new laws or policies are introduced.

# Temporary Layoffs

- ▶ COVID-19 is affecting many businesses and workplaces. Many people are being 'temporarily laid off' (not fired) because business is slow or has been forced to close. That means that the worker won't be working, won't be getting paid, for a period of time, and then expects to come back to work when business picks up.
- ▶ A permanent layoff should be treated the same as a termination of employment
- ▶ **Can I be laid off?**
  - ▶ A temporary layoff is something your boss can do IF you have agreed to be laid off when necessary (usually in a contract you sign) or if you have been laid off in the past and agreed to it (an implied term of an employment agreement)
  - ▶ Many people have not agreed to lay offs but now because of COVID-19, are being laid off anyway
    - ▶ If you are laid off and never agreed to a possible lay off, then you may want to get legal advice about your options.

# Temporary Layoffs

## ▶ **How long can I be laid off for?**

- ▶ The *Employment Standards Act* says that you can be laid off for:
  - ▶ Up to 13 weeks in a 20 consecutive week period; OR
  - ▶ Up to 35 weeks in a 52 consecutive week period IF your boss continues your health benefits or give you another form of compensation.

## ▶ **What if I'm laid off for longer than this?**

- ▶ We don't know how long this situation will last for. It is possible that lay offs will be longer than what the *Employment Standards Act* allows.
- ▶ If this happens, you can either wait to be called back to work and continue to receive government benefits OR you could sue or apply to the Ministry of Labour for your termination pay and end your employment with your employer.

# Safety Issues

- ▶ Workers that are still required to attend at a physical workplace have protections under the *Occupational Health and Safety Act (OHSA)*
- ▶ **What is my employer required to do to keep me safe?**
  - ▶ Employers must:
    - ❑ “take every precaution reasonable in the circumstances for the protection of a worker” [s. 25(2)(h)]
  - ▶ Reasonable precautions may include:
    - ❑ Allowing employees to work from home
    - ❑ Providing hand washing stations and hand sanitizer
    - ❑ Cleaning and sanitizing commonly used surfaces
    - ❑ Rearranging physical workplaces & changing schedules to stagger start-times, breaks
    - ❑ Directing employees not to come into work if they are showing mild symptoms

# Safety Issues

## ▶ **Can I refuse to work if it is unsafe?**

- ▶ In most cases if you are healthy and your work is safe, your boss has the right to require you to come to work.
- ▶ *OHSA* provides workers with the right to refuse unsafe work:
  - ❑ Worker must have reason to believe that the physical condition of the workplace is likely to endanger him or herself
  - ❑ For example, when someone at work has tested positive for the virus, or there are no safety precautions taken at all by your boss even though you asked for them.
  - ❑ Some exemptions apply for specific industries, including: people working in hospitals and long term care homes, paramedics, firefighters, police, corrections workers



# Safety Issues

## ➤ How do I refuse unsafe work?

- Tell your boss/supervisor that you are refusing unsafe work
- Your employer has an obligation to investigate
- If the employer find the work is safe but you are still concerned, you can contact the Ministry of Labour Health and Safety Contact Centre **at 1 877 202-0008** and request a formal inspection of the workplace
- They may do an inspection and can order the employer to make adjustments

# Safety Issues

## ▶ **Can I get in trouble if I refuse to work?**

### ▶ Right to refuse without Reprisal

- ❑ Employers cannot threaten, discipline or terminate an employee for exercising these rights
- ❑ Can bring a claim to the Ontario Labour Relations Board for a reprisal 'without undue delay'

## ▶ **What if I get COVID-19 from work?**

- ▶ It will depend on the scenario but Workplace Safety and Insurance Benefits (WSIB) may be available – you may wish to file a claim with the WSIB
- ▶ Contact the Workers Health and Safety Legal Clinic for more information at 1-877-832-6090

# Leaves of Absence

- ▶ **Will my job be protected if I need to be off work for COVID-19 related reasons?**
  - The ESA provides workers with a number of job-protected unpaid leaves of absence, for which workers can apply for various government benefits like Employment Insurance

# Leaves of Absence

- ▶ The **Infectious Disease Emergency Leave (IDEL)** is available for an employee who:
  - ❑ Is under medical investigation or treatment for COVID-19;
  - ❑ Is in quarantine, isolation or is subject to a control measure from public health, or the Government of Ontario or of Canada (including those required to self-isolate after returning from travel);
  - ❑ Is directed to self-isolate by their employer due to a concern about exposure in the workplace;
  - ❑ Is providing care to a family member, including caring for children whose school or daycare was closed because of COVID-19;
  - ❑ Is directly affected by travel restrictions related to the designated infectious disease and who cannot reasonably return to Ontario.
- The worker should give the employer notice (ideally in advance)
- The worker may be required to provide some reasonable evidence of their need to take the LOA
- But employers cannot require an employee to provide a certificate from a physician or nurse as evidence

# Human Rights Considerations

## ▶ **Does COVID-19 count as a disability under the *Human Rights Code*?**

- ❑ The Ontario Human Rights Commission (OHRC) has issued a policy statement indicating that yes, COVID-19 would count as a disability
- ❑ An employer cannot discriminate against you as a result of a disability and must accommodate you up to the point of undue hardship

## ▶ **I'm immunocompromised**

- ❑ Your employer has a duty to accommodate you, you should speak with your employer and your medical service provider about the appropriate workplace accommodation for you

## ▶ **I am healthy, but I live with someone who is immunocompromised**

- ❑ There are Code protections for family status and marital status and your employer may need to accommodate you

# Government Benefits

- ▶ If you have been let go, laid off, or are at home self-isolating or sick because of COVID-19, there are options for you.
- ▶ The Government of Canada has programs to help workers out of work because of COVID-19

# Canada Emergency Wage Subsidy

- ▶ You might work for an employer who is eligible for this program.
- ▶ This MIGHT apply if you are working for an eligible employer and have reduced hours/pay because of COVID-19.
- ▶ The Canadian government helps employers avoid temporarily laying off employees by giving them a 75% wage subsidy for a 3 month period. This benefit should be passed on to the workers.
  - ▶ The subsidy is on the first \$58,700 earned by each employee (so, it results in up to \$847 per week to help an employee with reduced hours).

# EI- Work Sharing Program

- ▶ This program provides EI income support to certain employees who agree to work less hours and share the available work with others at the workplace, because of COVID-19.
- ▶ It helps employers avoid temporarily laying off employees.
- ▶ **Who is eligible?**
  - ▶ Employers and their employees who agree to participate in the program.
  - ▶ Employer must be able to demonstrate a decrease of at least 10% in sales or production levels because of COVID-19; and a decrease of employee hours between 10% and 60% because of COVID-19
  - ▶ **NOTE: there is a large additional criteria list for this program. Please talk with a lawyer and your employer if you want your employer to consider it.**



# Additional Resources

- ▶ Steps to Justice:
  - ▶ <https://stepstojustice.ca/covid-19-employment-and-work>
- ▶ Community Legal Clinics
  - ▶ Legal Aid Ontario funded legal clinics in south west Ontario now offer employment law services
  - ▶ Waterloo Region Community Legal Services **519-743-0254**
- ▶ CRA Information website:
  - ▶ <https://www.canada.ca/en/department-finance/economic-response-plan/covid19-individuals.html>
- ▶ Law Society Referral Service
  - ▶ Findlegalhelp.ca
  - ▶ 1-855-947-5255