

## COVID-19 Fact Sheet for Employers

### Q. Am I required to close my business due to COVID-19?

On March 23, 2020, Ontario Premier Ford announced that all non-essential businesses in Ontario must close effective 11:59 p.m. EST on March 24, 2020, for a period of 14 days. The provincial government has released a List of Essential Workplaces that are exempt from the order: <https://news.ontario.ca/opo/en/2020/3/list-of-essential-workplaces.html>

- Note that this order does not prohibit the provision of work and services by entities not on this list either online, by telephone or by mail/delivery.
- Note that teleworking and online commerce are permitted at all times for all businesses.

The Ontario government has released a “Stop the Spread Business Information Line” to provide support to Ontario businesses who have questions about the recent emergency business closure, including the list of exemptions: 1-888-444-3659

On April 3, 2020, Premier Ford announced that, effective 11:59 p.m. on April 4, there will be a closure of all industrial construction except necessary infrastructure projects, such as hospitals. Construction sites that are allowed to remain open will be placed under the highest level of scrutiny possible subject to inspections.

On March 26, 2020, the British Columbia government released a List of Essential Services: <https://news.gov.bc.ca/releases/2020PSSG0020-000568>. Unlike the order in Ontario, businesses that do not appear on the List of Essential Services and that have not already been ordered to close may stay open if they can adapt their services and workplace to the orders and recommendations of the Provincial Health Officer.



**PENINSULA**

On March 27, 2020, the Alberta government announced the immediate closure of non-essential businesses, found here: <https://www.alberta.ca/restrictions-on-gatherings-and-businesses.aspx>. Workplaces that are not otherwise restricted or ordered to close can have more than 15 workers on a work site as long as they follow all public health guidelines, including social distancing measures.

**Q. Are there are any government subsidies available to my business during this time?**

The Federal government will be introducing the Canada Emergency Wage Subsidy to certain employers, as follows:

- To be eligible, employers must show a 30% decline in revenue for month applied for compared to same month last year
- Number of employees is not relevant to eligibility
- Will apply to non-profits, charities, and companies both big and small
- Covers 75% of first \$58,700 earned by employees, up to \$847 a week for March, April, and May
- Backdated to March 15
- Employers must apply each month
- Employers must attest that they are doing everything they can to pay the remaining 25% of employees' income
- Apply online through CRA portal that will launch soon
- Funds will be available in approximately 6 weeks

In addition, the Federal government will be introducing a Temporary Wage Subsidy to small and medium-sized employers, as follows:

- Organizations that do not qualify for the 75% wage subsidy may continue to qualify for the previously announced wage subsidy of 10% of remuneration paid from



**PENINSULA**

March 18 to June 19, up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer

- Available to Canadian-controlled private corporations with less than \$15 million in taxable capital employed in Canada for the preceding taxation year, calculated on an associated group basis
- After subsidy is calculated, employers take advantage by reducing remittances of federal or provincial income tax by the amount of the subsidy
- Employers must still deduct tax, CPP, and EI from employees' wages
- The wage subsidy is considered taxable income for employers
- If employer is eligible for both 10% and 75% subsidy, the amount the employer receives from the 10% subsidy will reduce the amount the employer is otherwise eligible to receive from the 75% subsidy (i.e. employers cannot take both subsidies)
- The Federal government has posted [more detailed eligibility criteria](#) for employers

**Q. One of my employees is returning from an affected area and some of my staff are refusing to come into work as a result. Do I have to give these employees time off work with pay?**

Health and safety legislation gives a worker the right to refuse work that he or she reasonably believes is unsafe to himself/herself or another worker. In the case of a coronavirus-related refusal, you are advised to follow these steps:

1. Speak to the refusing employees to understand the nature of their concern. If the situation cannot be resolved with this discussion, then proceed to step 2.
2. Conduct an internal investigation to determine the validity of the work refusal.



**PENINSULA**

3. If it is determined that there is no objective risk, but the refusing employees maintain their refusal, you must contact the applicable workplace health and safety agency/ministry to perform its own official investigation.
4. If the applicable workplace health and safety agency/ministry confirms the absence of risk and the refusing employees continue to refuse to return to work, then he or she may be disciplined.

**Q. Do I have to accept working from home requests and what do I do if I don't have the right equipment for my staff?**

If the employee is neither symptomatic nor has reason to suspect that they are at elevated risk of having contracted coronavirus, and the employee's request to work from home is based on concern about contracting coronavirus from the workplace, then you may assess the employee's request as a refusal to perform work that they consider to be unsafe according to the steps outlined above.

If the employee is symptomatic or believes that they are at elevated risk of having contracted coronavirus, you may consider whether working from home is a viable option to protect other workers in your workplace. You may have a duty to accommodate an employee who is confirmed to have contracted coronavirus by permitting the employee to work from home and provide the employee with resources to do so if reasonably practicable in the circumstances. You may ask your employees to install relevant software that will allow them to use their personal laptop to facilitate working from home.

If working from home is simply not an option given the nature of the employee's work responsibilities, you may consider placing the employee on a medical leave of absence – consult applicable employment standards legislation and the employee's group benefits policy for information on the employee's potential entitlements while on medical leave of absence. If the employee is not entitled to statutory or group insurance benefits,



**PENINSULA**

employers should consider continuing to pay employees who have volunteered to self-quarantine due to suspected or actual symptoms of coronavirus.

**Q. One of my employees has self-isolated after returning from an affected area. Is the employee right to do this?**

If your employee has returned from an affected area, it's likely that they've been advised not to visit his or her family doctor, pharmacy, or hospital in case they have coronavirus. In this case, you will have to implement leave entitlements according to applicable employment standards legislative requirements and/or the employee's employment agreement and company policies.

If the employee is asymptomatic, you may also provide the employee with the option to work from home and conduct meetings remotely (e.g. via telephone or video conference).

**Q. One of my employees is off sick because of the coronavirus. Do the normal statutory sick leave entitlements apply?**

In the event an employee does contract coronavirus, the employee may be entitled to a leave as set out in the applicable employment standards legislation.

Refer to the following links for additional information on statutory leaves:

- Federal: <https://www.canada.ca/en/services/jobs/workplace/federal-labour-standards/leaves.html>
- Alberta: <https://www.alberta.ca/employment-standards.aspx>
- British Columbia: <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards>
- Ontario: <https://www.labour.gov.on.ca/english/es/>

Recent legislative developments

*Federal*



## PENINSULA

On March 11, 2020, Prime Minister Justin Trudeau announced that the federal government is going to waive the mandatory one-week waiting period for employees to receive Employment Insurance (EI) Sickness Benefits. For a quarantined employee to be eligible for EI, a doctor, medical health professional or public health official must have imposed or recommended the quarantine.

On March 25, 2020, the federal government passed the *COVID-19 Emergency Response Act*, which amends the Canada Labour Code to provide a job-protected leave of absence of up to 16 weeks for federally-regulated employees who are unable or unavailable to work for reasons related to COVID-19.

### *Ontario*

On March 19, 2020, the Ontario Legislature passed the *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020* to provide job-protected leave to employees in isolation or quarantine due to COVID-19, or those who need to be away from work to care for children because of school or day care closures or to care for other relatives. The Act provides job protection for employees unable to work for the following reasons:

- The employee is under medical investigation, supervision or treatment for COVID-19.
- The employee is acting in accordance with an order under the *Health Protection and Promotion Act*.
- The employee is in isolation or quarantine in accordance with public health information or direction.
- The employer directs the employee not to work due to a concern that COVID-19 could be spread in the workplace.
- The employee needs to provide care to a person for a reason related to COVID-19 such as a school or day-care closure.



**PENINSULA**

- The employee is prevented from returning to Ontario because of travel restrictions.
- The job protected leave starts on the date that the employee is unable to work as listed above for as long as the employee is not performing those duties.

An employee will be able to take this leave to care for the following individuals:

- The employee's spouse.
- A parent, step-parent or foster parent of the employee or the employee's spouse.
- A child, step-child or foster child of the employee or the employee's spouse.
- A child who is under legal guardianship of the employee or the employee's spouse.
- A brother, step-brother, sister or step-sister of the employee.
- A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
- A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
- A son-in-law or daughter-in-law of the employee or the employee's spouse.
- An uncle or aunt of the employee or the employee's spouse.
- A nephew or niece of the employee or the employee's spouse.
- The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
- A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
- Any individual prescribed as a family member for the purposes of this section.

Employees are not required to provide a medical note. However, an employer may require the employee to provide other evidence that is reasonable in the circumstances, at a time that is reasonable in the circumstances. This could include such requests as a note from the daycare or for evidence that the airline cancelled a flight, but not a medical note.



**PENINSULA**

These measures are retroactive to January 25, 2020, the date that the first presumptive COVID-19 case was confirmed in Ontario.

### *Alberta*

On March 17, 2020, Alberta introduced the *Employment Standards (COVID-19) Regulation*, which contains the following provisions:

- all employees will be entitled to 14 days of unpaid leave if they are required to self-isolate or self-quarantine due to COVID-19 (this is extended from the prior requirements of a 5 day unpaid leave for personal health or family responsibilities);
- employees that are required to self-isolate or self-quarantine due to COVID-19 will not have to provide a doctor's note to support their absence from work;
- there is no service requirement to be eligible for this leave;
- employees can still get 16 weeks of unpaid long-term illness and injury leave under s. 53.97 of the Employment Standards Code;
- employees will not be required to provide their employer with a proposed intended date of return to work whether they have taken leave under the 14-day leave or the 16-week leave;
- the Minister may extend the 14-day leave period if the Chief Medical Officer recommends doing so; and
- the Regulation is retroactive to March 5, 2020, which means that it applies to leaves taken since that date

Employees may also be able to receive benefits through the recently announced federal Emergency Care Benefit.

### *British Columbia*

On March 23, 2020, the BC Legislature enacted Bill 16 amending the Employment Standards Act as follows:



**PENINSULA**

- Introducing a new unpaid leave of absence for employees who are unable to work due to COVID-19. Leave applies in following circumstances:
  - Employee diagnosed with COVID-19 and is acting in accordance with medical direction
  - Employee in quarantine or self-isolation in accordance with:
    - (i) an order of the provincial health officer,
    - (ii) an order made under the Quarantine Act (Canada),
    - (iii) guidelines of the British Columbia Centre for Disease Control, or
    - (iv) guidelines of the Public Health Agency of Canada
  - Employer has directed the employee not to work out of concern for employee's exposure to other employees
  - The employee is providing care to an eligible person, including because of the closure of a school or daycare or similar facility
  - The employee is outside the province and cannot return to British Columbia because of travel or border restrictions
  - Other situations to be prescribed in the *Regulation*
- Leave lasts as long as situation described above justifying the leave lasts
- Employer may request reasonably sufficient proof, but may not request a medical certificate
- The leave is retroactive to January 27, 2020. If an employer already terminated an employee on or after January 27, 2020 for one of the reasons listed above, the employer must offer the employee re-employment in the same or a comparable position (unless a situation to be prescribed in the Regulation applies).
- Introducing a new unpaid sick leave in the amount of 3 days per year for employees with 90+ days of service (this sick leave is not just for COVID-19; it will exist in the ESA indefinitely)

**Q. My employee has plans to travel abroad for personal reasons and I've already approved their annual leave, can I stop them from going?**

No. While you can justify cancelling business travel, you might put yourself at risk of indirect discrimination claims if you stop employees travelling to a specific location for personal reasons.

However, if an employee plans to travel to a high-risk area, you may advise employees in advance of their trip that they will be required to self-quarantine for up to 14 days on return from the travel, or provide medical clearance that they have not contracted coronavirus prior to returning to work within 14 days of their return.

It is recommended for employers to send out regular updates to employees regarding the latest updates on the coronavirus and advise employees to be vigilant in monitoring travel advisory.

**Q. My employee is suffering from the symptoms of coronavirus. What should I do?**

If your employee exhibits flu-like symptoms (e.g., runny nose, sore throat, body pain), advise him or her to stay home and rest. If the employee exhibits the signs while at work, you can instruct the employee to return home, but ensure compliance with minimum reporting pay requirements.

The employee should then call the health line in their province or their personal doctor to discuss and assess the situation.

You are advised to implement leave entitlements according to the employment standards discussed above and consider any group benefits that the employee may be eligible to.



**PENINSULA**

**Q. My business is at risk of exposure to coronavirus. If I decide to temporarily close my business, do I still need to pay my staff?**

Workplace closures may be considered in exceptional circumstances and should be based on a risk assessment. This may be the case if many employees must be off to prevent the spread of coronavirus.

An employer who chooses to shut down operations due to coronavirus can temporarily lay off its staff. If an employer chooses this route, the following steps should be taken:

- Communicate to employees that the layoff is temporary in nature.
- Input the requisite information to the temporary notice letter linked to on the Coronavirus Toolkit page.
- Issue the Record of Employment (ROE) coded “A”.

The parameters of temporary layoffs are set out in applicable employment standards legislation. Layoffs may only be permissible if employees’ written employment agreements provide for temporary layoffs or if the employees consent to a temporary layoff. Refer to applicable employment standards legislation for employer obligations regarding temporary layoffs.

Other things to keep in mind:

- An employer is not required to pay employees while they are on a temporary layoff.
- If an employer provides employees with employee benefits (i.e. medical and dental), then those benefits must continue during the temporary layoff.
- While there is a risk that an employee might claim constructive dismissal if there is no contract of employment that contemplates the temporary layoff, given the climate, the risk is limited and justifiable.
- If an employee is laid off for a period longer than a temporary layoff as set out in applicable legislation, the employer is considered to have terminated the



**PENINSULA**

employee's employment. Generally, the employee will then be entitled to termination pay.

**Q. Can I make my employees use hand sanitizer?**

No, you cannot make your employees use hand sanitizer. However, you can promote good hygiene practices by putting up posters regarding hand hygiene techniques and procedures, encouraging employees to wash their hands regularly, and having hand sanitizers readily available.

**Q. Some of my employees want to wear masks in the workplace. Should I let them?**

You cannot stop your employees from wearing masks in the workplace. However, you can inform your employees that, according to public health officials, wearing masks does not prevent individuals from contracting the virus. You are not obligated to provide masks to your employees.

**Final thoughts:**

- Educate and update employees
- Review and rely on policies
- Use public health resources
- Keep legal obligations in mind, i.e. – human rights, employment standards, privacy, employment insurance, occupational health and safety
- Continue to monitor and be prepared to adapt
- If necessary, create task force/working group
- Update emergency contact information/systems