FTR Now

Update: COVID-19 – Questions and Answers for Employers

Date: March 14, 2020

As information relating to COVID-19 is rapidly developing, we have updated the questions and answers employers will want to know about from our earlier publication. See as well our revised *FTR Now* Update on COVID-19 for Employers: Health Authorities Ask All Travellers Returning from Outside Canada to Self-Isolate.

Updated as of March 14, 2020.

Q: Can an employer require an employee who does not appear to be ill but has recently returned from a country outside Canada to self-isolate?

A: **As of March 14, 2020, the** Public Health Agency of Canada **has listed all countries outside of Canada as Level 3 Risk and has asked that travellers returning to Canada self-isolate for 14 days upon return.** On March 13, 2020, Toronto Public Health implemented the same measures.

In these circumstances, it is reasonable for you to require employees who have returned from a country outside Canada to remain away from the workplace and work remotely (if possible) or on an unpaid leave for 14 days and recommend that they self-isolate in order to ensure that they do not have COVID-19. Employers should consider permitting employees to access any paid entitlements (e.g. vacation or sick leave) to help employees minimize wage loss during their period of self-isolation.

While no general quarantine notices have yet been issued, note that the government of Canada is recommending that all cruise ship travel be avoided: if there is an outbreak of COVID-19 on the ship, persons returning to Canada must go into mandatory isolation for 14 days.

Note as well that on March 14, 2020, the Canadian Minister of Foreign Affairs stated in a tweet: “We recommend that Canadian travellers return to Canada via commercial means while they remain available.”

Q: What does “self-isolate” or “self-monitor” mean?

A: Public Health Ontario has published helpful guides on the measures people should take who are in self-isolation or who are advised to self-monitor. Employers should provide the Guides to employees who are directed to self-isolate and remain away from the workplace or who are directed to self-monitor for symptoms 14 days after exposure.

Public Health has also published a helpful guide on cleaning and disinfecting practices.

Q: Can an employer restrict employee travel?

A: You can place restrictions on an employee’s business-related travel.

The question of leisure travel is more problematic. It is possible – in some limited circumstances – that you could have a legitimate interest in trying to limit leisure travel, particularly where the travel could have a negative impact on business operations. However, a better approach would be to share with employees the new travel health advisories regarding any travel outside Canada and have employees who are travelling outside Canada self-isolate for 14 days upon their return to Canada.

Q: Should employers be communicating with their employees about the possible risks of COVID-19?

A: Yes. You are encouraged to communicate with employees to assure them that you are addressing the situation, are taking steps to best ensure a safe workplace and are actively monitoring and responding to developments as they occur.

Q. Is there any employment insurance (EI) relief for employees who are required to self-isolate?

A: On March 11, 2020, the federal government announced it will be waiving the mandatory one-week waiting period for COVID-19-related EI sickness benefit claims. This mirrors the action the government took during the SARS outbreak. The announcement did not specify what evidence will be necessary in order to qualify for the waiver, and appears not to cover precautionary self-isolation. The one-week waiver does not apply to employees who are out of work due to temporary lay-offs or store closures.

The government has indicated that it is exploring additional income support measures for those who would not qualify for EI sickness benefits.

Q: Can an employee insist on wearing protective equipment – for example, a face mask?

A: This answer depends on the reasonableness of the risk to the employee in question. Where, for example, an employee has direct contact with individuals known to have, or likely to have, contracted the COVID-19 (for example, a healthcare worker), this could likely be considered a “reasonable precaution.” Employers should ensure that such workers receive instruction regarding the proper use of a mask.

If an employee does not have this type of heightened risk, and has duties that involve interactions only with fellow employees or the general public, protective equipment is likely unwarranted at this time. Employees should be reminded of effective hand washing techniques and other preventative measures.

There may also be accommodation considerations that come into play with an employee who requests to use a face mask or other protective equipment at work. These requests should be addressed in the same manner as any request for accommodation in the workplace.

You should continue to monitor the situation and abide by any public health guidelines for protective equipment in the workplace.

Q. Does the World Health Organization’s declaration of the COVID-19 as a pandemic change the way in which employers should respond?

A: No. The declaration of COVID-19 as a pandemic signals to the world that continued spread is likely, and that countries should prepare for the possibility of widespread community transmission. The increased profile of the issue may increase the number of questions raised in the workplace. For the moment, the pandemic declaration should not affect how employers are responding or communicating regarding the virus.

Q. Where can I find further information on the COVID-19?

A: For further information on the COVID-19, please see:

- Public Health Ontario
- World Health Organization
- Public Health Agency of Canada (24-hour hotline: 1-800-454-8302)
- Ontario Ministry of Health The 2019 Novel Coronavirus (COVID-19)
- Government of Canada Employment and Social Development Canada (COVID-19)

If you require further information on this decision, please contact Sarah Eves at 416.864.7254, Nadine Zacks at 416.864.7484, Jodi Gallagher Healy at 519.931.5605, Carey O'Connor at 416.864.7020, Amanda Cohen at 416.864.7316, or your regular Hicks Morley lawyer.