

FAQS FOR FRANCHISORS AND FRANCHISEES: COVID-19 AND THE WORKPLACE

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The spread of the novel coronavirus (COVID-19) has been dominating the news across the globe in recent weeks. It is important for employers to be prepared to respond as COVID-19 continues to develop both in Canada and globally.

The following provides general guidance to franchisors and franchisees in dealing with the potential impacts of COVID-19 in their workplaces. As the situation is fluid, the information below is subject to change. The information below is also of a general nature, and is not meant to replace specific legal advice for your situation. Any employer should seek current and case-specific advice from a legal advisor.

In situations where franchisors or franchisees (and, in particular, single unit franchisees) may find the cost of proper legal advice prohibitive, consideration can and should be given to franchisees of the same franchise system joining together and retaining a single law firm to be paid for collectively and to be used as single source of this critical information for these franchisees. Generally speaking franchisors are not permitted to provide specific direction or direct advice to franchisees on decisions relating to the hiring of franchisee employees and employment terms.

STAY INFORMED AND COMMUNICATE

Q1. Where can franchisors and franchisees get regular updates on COVID-19?

Currently, the most reliable and frequently updated sources of information are the provincial Ministry of Health websites. For example, the Ontario Ministry of Health has been issuing twice daily updates to its site. The Center for Disease Control and the World Health Organization are also issuing updates, but their focus is not on Canadian issues. These sources should be used as supplemental resources but not as a sole source of information. Links to these and other resources are set out in Appendix A.

Q2. Where can franchisors and franchisees get information about upcoming legislative amendments related to COVID-19?

Saskatchewan recently introduced amendments to its employment standards legislation to, among other things, introduce a new public health emergency leave that can be accessed when the World Health Organization has determined that there is a public health emergency and the province's chief medical health officer has also issued an order that measures be taken to reduce the spread of a disease. More detailed information about the amendments can be found [here](#).

Ontario recently introduced amendments to its employment standards legislation that immediately 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. More detailed information about the amendments can be found [here](#).

Alberta announced a 14-day job-protected leave for employees required to self-isolate or caring for a child or dependent adult who is required to self-isolate. While it was initially announced that this leave would be paid, the new legislation confirms that the leave will be unpaid. The Alberta government has announced, however, an emergency payment program for Albertans in self-isolation due to COVID-19 who are not receiving employment insurance. Eligible Albertans will be able to apply online to receive a one-time benefit of \$573 per week for a total of \$1,146 per individual. More detailed information can be found [here](#).

Several other provincial governments have issued statements calling on employers to, for example, refrain from requesting doctor's notes to substantiate employee absences due to illness to help lessen the burden on the healthcare sector. In the days to come, it is likely that other provinces will announce proposed amendments to their employment standards legislation related to COVID-19. Check the "news and media" pages on provincial government websites for press releases detailing any such amendments.

Q3. How can franchisors and franchisees stay on top of the news related to COVID-19?

Given the frequency and volume of new information, every employer should designate a specific member of the management or human resources team to serve as a point person for their COVID-19 risk management project. That person should regularly monitor Health Canada's website and travel notices, as well as the provincial Ministry of Health website for updates, and report back to critical decision makers when it looks like policies need to change or specific action needs to be taken to help mitigate risk.

TAKE STEPS TO ENSURE SAFE AND HEALTHY WORKPLACE

Q4. What should franchisors and franchisees do to protect their workforces from COVID-19?

At this stage, one of the most important steps any employer can take is to communicate with their employees about their expectations reporting for work when they are experiencing flu-like symptoms or after they – or a member of their household – have returned from travel.

Now is also the time to review your work at home, sick leave and workplace safety policies to ensure that your pandemic planning measures are supported by an appropriate policy framework. Employees who are asked to stay home and self-quarantine after potential exposure will want to know if that time will be paid and whether or not they are able to work remotely. If your policies are out of date or do not support working from home, consider issuing a temporary policy update. Point form or lists are fine. The point is to ensure that employees

know what is expected of them and how you will support them if they are required to miss work because of issues related to COVID-19.

Q5. Can employers restrict unnecessary visitors to the workplace?

Yes. Access to the workplace should be based on operational necessity and all visitors should be required to sign in and indicate with whom they are meeting. This will allow you to notify impacted individuals in the event that one of your visitors or one of your employees is later tied to COVID-19.

Q6. Can employers restrict employee business travel?

Yes. An employer can restrict business travel. Employers should continue to consult the Public Health Agency of Canada's (PHAC) website: [Coronavirus disease \(COVID-19\): Travel advice](#) for up-to-date travel notices concerning risk. The PHAC recommends the avoidance of non-essential travel. Further, given the recent border closures and travel bans imposed by the federal government, franchisees should refrain from requesting that employees travel outside the country or by airline for business purposes. Franchisees and franchisors should also consider advising employees that if they or any member of their household returns from an impacted region or travels by airline, they must refrain from reporting to the place of work for a period of 14 days, during which time they must remain symptom-free.

Q7. Are employers required to supply personal protective equipment?

At this time, there is no general requirement for non-healthcare employees to wear respirators or other personal protective equipment. Health authorities have stated that for healthy individuals, the use of a mask is not recommended for preventing the spread of COVID-19. As such, employers need not supply such personal protective equipment to employees.

However, health authorities have been very clear that proper, frequent handwashing is one of the best defences against the spread of any infectious disease, including COVID-19. All employers should consider posting reminders in the workplace regarding hygiene protocols and also providing greater access to hand sanitizers and sanitizing wipes.

Q8. Can an employer prevent public-facing employees from wearing masks or respirators?

As health authorities have not deemed the use of surgical masks and respirators necessary to protect health and safety at this time, employers have discretion as to whether to allow their employees to wear them. In making the decision, employers may weigh employee concerns about transmission of the virus and their own interest in limiting fear and in not causing client or customer concern. In conducting this exercise, employers should be sensitive to the fact that some employees may have a strongly held belief that wearing a mask will prevent them from becoming ill.

Q9. Can franchisors or franchisees require employees to self-isolate?

Under occupational health and safety legislation, Canadian employers are required to ensure the safety of their workplaces. In light of this duty and given the highly contagious nature of COVID-19, an employer can require employees to self-report travel by airplane or to affected regions, when they have been diagnosed with COVID-19, or have flu-like symptoms and require them to self-isolate as a health and safety precaution. Employees who refuse to comply can be subject to disciplinary action up to and including termination of employment.

Q10. Are employers legally required to pay employees who cannot work due to self-isolation or quarantine?

Employers who are struggling with this question must start with their employment policies and contracts of employment. If your employees are eligible for paid personal days or paid sick days, a self-isolation or self-quarantine would qualify them for use of those entitlements. Employees may also ask about using accrued vacation time to help cover their time away from work. Unless your vacation policy or employment agreements say otherwise, it is up to the employer to decide when employees can take paid vacation. We strongly recommend using that discretion to say “yes” to such requests. However, in the absence of paid sick or personal days or accrued vacation, there is currently no requirement for employers to pay employees who are unable to work.

Q11. What to do if someone comes to work when they are supposed to be in self-isolation?

Act immediately. Escort that person off the premises and ask them to confirm each area of your office or workspace that they were physically present in and each person they made contact with before you were notified of their presence. Then wipe down every surface they touched with bleach wipes or other disinfectant and keep people away from their workstation until it can be thoroughly cleaned and disinfected. If they made physical contact with anyone in the workplace, send that person home as well and ask them to self-isolate.

Q12. What to do if someone who you need in the workplace refuses to come to work due to safety concerns?

First, ask them to explain why they are concerned. Do they have immune-compromised people in their household? Or are they simply concerned that they will come into contact with an infected person on their commute or in the workplace? The refusal to come to work could be treated as both a work refusal under applicable occupational health and safety legislation or as a request for accommodation on the basis of disability or family status. Either way, it is critical to understand the basis of their concerns, so you can decide whether or not you are able to accommodate them and, if so, under what terms. However, please keep in mind that the messaging from our federal and provincial governments has been consistent – the best path to containment is for people to stay at home. If your employees can perform some or all of their duties at home, you should make every effort to allow them to do so.

Q13. If one of your employees is quarantined or diagnosed with COVID-19, what information can employers share and with whom?

If an employee is quarantined, other employees may be advised that “an employee” has been quarantined, however the identity of the quarantined employee should not be disclosed except on a “need to know” basis. Employees with whom the employee’s identity has been shared because they “need to know” should be reminded that they are prohibited from disclosing the information for unauthorized purposes. An employee would need to know if their colleague had been diagnosed with COVID-19 if they worked in particularly close proximity to them or had a habit of commuting together or travelling together for work. If the coronavirus outbreak is declared a public emergency, the privacy rights of individuals may be outweighed by the importance of the public’s safety. In these circumstances, it may become necessary to identify employees who are quarantined.

Q15. Can employers ask employees to work remotely?

Yes. Where possible, employees should be permitted to work from home, and receive their regular rate of pay and benefits. Doing so may help decrease the spread of COVID-19 among your employees.

Q16. How do employers monitor employees who work remotely?

Employers should have a written policy which governs employees who are required to work remotely and addresses such things as working hours, productivity, remote meeting protocols, etc. To the extent that employees are not equipped to work from home (e.g. require access to laptops, cell phones, etc.), employers should consider making plans to equip these employees with the tools they will need to work remotely.

BE MINDFUL OF HUMAN RIGHTS LAWS

Q17. What discrimination issues should employers be aware of related to COVID-19?

Under provincial and federal human rights legislation, discrimination in employment on the basis of ethnicity, race, ancestry, or place of origin is prohibited. Employers are prohibited from discriminating against employees because of an association, perceived or otherwise, with an affected country or area. All workplace policies pertaining to COVID-19 should be applied uniformly to all employees and job applicants regardless of their ethnicity, race, ancestry, or place of origin.

Employers should also be mindful of the fact that anyone who does contract COVID-19 will likely be viewed as having a disability within the meaning of human rights legislation and will be entitled to accommodation on that basis.

An employee who has care-giving responsibilities should be accommodated to the point of undue hardship, which might include staying home. These care-giving responsibilities which relate to the *Code* ground of family status could include situations where another family member is ill or in self-isolation, or where their child's school is closed due to COVID-19.

Employees who have caregiving responsibilities as a result of a family member contracting COVID-19 may be eligible for statutory leaves of absence under provincial employment standards legislation. For example, in Ontario, employees may be eligible for family responsibility leave, family medical leave or a family caregiver leave under the *Employment Standards Act, 2000*. Employees will be entitled to use personal sick leave if they contract the virus themselves. Employers are entitled to ask for reasonable documentation to support each of these leaves, but we do not recommend overburdening the health care system by requiring employees to present doctor's notes to justify a leave. Other provinces have similar entitlements under their employment standards legislation.

[Here](#) is a link to the Ontario Human Rights Commission's policy statement on COVID-19. Employers operating in other jurisdictions should visit the websites of the human rights commissions in their respective jurisdictions and review any policy statements released in those jurisdictions about COVID-19.

Q18. Can employers require employees to disclose a COVID-19 diagnosis?

As a rule, employers are advised not to ask employees for particulars of any health issues that are keeping them out of the workplace. However, employers are entitled to reasonable information required to allow them to appropriately manage any return to work and to address potential safety issues arising from the illness. As COVID-19 is engaging public safety issues, employers can require employees to disclose if they have been diagnosed with COVID-19. This will allow you to notify other potentially affected individuals and ask them to refrain from reporting to work to prevent further transmission.

Q19. Should employers require doctors notes to substantiate employee requests for sick days?

To reduce the potential risk of abuse of paid sick leave by employees who decide to self-quarantine but are unable to work remotely due to the nature of their job, employers may require documentary proof (e.g., copies of travel documents confirming a recent trip to a high-risk area) as a condition of receiving payment. Public health authorities and several provincial governments have called on employers to refrain from asking for doctors notes to substantiate employee's absences due to illness to relieve the burden on the healthcare system. Ontario's provincial government has indicated that it will pass legislation prohibiting employers from requesting doctors' notes to support requests for time away from work to self-isolate or care for household members who are impacted by COVID-19. Human rights commissions generally take the position that medical information should only be requested when necessary and reasonable in the circumstances. As such, employers should ensure that any requests for doctors' notes are consistent with these recommendations.

UNDERSTAND RULES RESPECTING TEMPORARY LAYOFFS AND TERMINATION

Q20. Can employers lay people off due to lack of work?

A. Right to implement lay-offs

Lay-offs are distinct from terminations in that they are a temporary suspension of active duty, during which time the employee does not come to work and is not paid, but their employment is not terminated and they retain the right to be recalled to their former position.

In all jurisdictions in Canada, the ability to implement lay-offs depends on your whether you have a written contract of employment with your employees (or collective agreement, if applicable) that specifically confers on the employer a right to temporarily lay off. If the contract or collective agreement confers the right to implement temporary lay-offs, then you can do so in accordance with the time limits in applicable employment standards legislation.

If you don't have a written contract of employment with employees, or the contract does not expressly permit temporary lay-offs, then implementing a temporary lay-off could trigger claims of "constructive dismissal". The phrase "constructive dismissal" refers to a situation where, while an employer has not expressly terminated an employee, the employee alleges that the employer's actions amount to a repudiation of his or her employment contract, triggering termination entitlements. From a practical standpoint, given the uncertain times, even where the employer does not have an express contractual right to implement lay-offs, employees may nevertheless decide to accept the lay-off in an effort to retain their jobs, rather than triggering their own terminations by claiming constructive dismissal.

B. Permitted length of layoffs

The permitted length of a layoff is determined by applicable employment standards legislation. In many provinces, the permitted length of lay-off changes depending on whether or not you continue benefits coverage or provide other payments to the employees while they are on lay-off. Employers who are able to provide continued benefits coverage or supplemental income to the employees on lay-off will be able to extend the temporary lay-off for a longer period than those who do not.

If an employee is laid off for a period longer than the layoff period permissible under applicable employment standards legislation, the employer is considered to have terminated the employee's employment. As such, franchisees should be mindful of the total length of each layoff to ensure the employment of the workers on layoff is not inadvertently terminated (triggering the obligation to provide employees with their termination entitlements).

Most provinces impose additional obligation on employers who layoff or terminate large groups of employees within a short period of time. Employers are encouraged to seek jurisdiction and case-specific advice before laying off employees to ensure such lay-offs are carried out in accordance with applicable law.

Q21. Do employer-instituted layoffs or terminations entitle employees to employment insurance benefits?

Employment Insurance (EI) benefits provide financial support to eligible workers who lose their job through no fault of their own. Employees who lose their job or are temporarily laid off as a result of COVID-19 may be eligible for these benefits.

EI sickness benefits provide financial support to eligible workers who are unable to work for medical reasons. Eligible employees receive 55 per cent of their insurable earnings to a maximum of \$573 per week for up to 15 weeks. Employees who contract COVID-19 and are unable to work during the period of illness may be eligible for these benefits.

For more information about EI benefits and eligibility requirements visit the [government of Canada's website](#).

Q22. Do employer-instituted isolations entitle employees to employment insurance benefits?

The federal government has introduced a new Emergency Care Benefit, providing workers with up to \$900 bi-weekly for up to 15 weeks if they must stay home related to COVID-19 and do not have access to paid sick leave. This benefit will be administered through the Canada Revenue Agency (CRA) and provide income support to the following groups:

- Workers (including self-employed workers) who are quarantined or sick with COVID-19 or who have been directed to self-isolate but do not qualify for EI sickness benefits.
- Workers (including self-employed workers) who are taking care of a family member who is sick with COVID-19, such as an elderly parent, but do not qualify for EI sickness benefits.
- EI-eligible and non EI-eligible working parents who must stay home without pay because of children who are sick or who need additional care because of school closures.

For Canadians who lose their jobs or face reduced hours as a result of COVID-19 and are not eligible for EI, the federal government is also introducing an Emergency Support Benefit to be delivered through the CRA. The monetary amount that workers will receive through the Emergency Support Benefit has not yet been disclosed, but the government has advised that it is investing up to \$5 billion into the program.

Applications for the Emergency Care and Emergency Support Benefits will open in April 2020. Canadians may apply for benefits through their CRA MyAccount or My Service Canada Account or by calling a toll-free number that has not yet been made public.

Q23. If an employee contracts COVID-19 at work, is the employee covered by workers' compensation?

Possibly, but the assessment of whether the employee is entitled to compensation would be assessed on a case-by-case basis. Workers compensation boards will have to assess whether COVID-19 is an occupational

disease (e.g. it was caused by and arose out and in the course of employment.) We also note that, depending on the province, employers may be required to report the case of COVID-19 to their Ministry of Labour. For example, the Ontario government has recently clarified that it considers cases of COVID-19 in the workplace to be occupational illnesses within the meaning of the province's *Occupational Health & Safety Act*. As such, they must be reported to the Ministry of Labour and the employer's joint health and safety committee within four days of the employer learning of the incident.

Q24. What is the federal government doing to help small businesses with the financial impact of COVID-19?

To support small businesses facing revenue losses and to help prevent job losses, the federal government will provide a temporary wage subsidy for a period of 90 days. The subsidy will be equal to 10% of remuneration paid during that period, up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer. Employers that will be eligible to participate in the wage subsidy program will include corporations eligible for the small business deduction as well as non-profit organizations and charities.

Q25. Are there any other programs available to employees to reduce the impact of COVID-19?

The Work-Sharing Program is an adjustment program designed to help eligible employers avoid layoffs when there is a temporary reduction in the normal level of business activity that is beyond the control of the employer. Employees agree to work a reduced schedule by sharing the available work for the duration of the work-sharing agreement and receive EI benefits as income support.

The federal government has implemented the following temporary measures relating to the Work-Sharing Program to support employers and employees affected by the downturn in business caused by COVID-19:

- **Duration of Work-Sharing Program.** A work-sharing agreement must have a minimum duration of six weeks and, as a result of COVID-19, may last up to 76 weeks (normally the maximum duration is 38 weeks).
- **Waiting Period.** Employers must normally serve a waiting period equal to the number of weeks of the previous work-sharing agreement, up to a maximum of 38 weeks, before they are eligible to begin a new work-sharing agreement involving the same employees. The government has waived the mandatory waiting period so that employers with a recently expired agreement may immediately apply for a new agreement. Note that although the waiting period *between* work-sharing agreements has been waived, employers are still required to apply for a work-sharing agreement at least 30 days in advance of the requested start date of the work-sharing agreement.
- **Recovery Plan.** A recovery plan, outlining the steps an employer will take during the period of the work-sharing agreement to alleviate the work shortage and return the work-sharing unit to normal working hours, must be submitted with all work-sharing applications. The government has advised that it will ease the recovery plan requirements for the duration of the work-sharing agreement.

More information about the Work Sharing program can be found [here](#).

Appendix A

Government of Canada Resources

- [Canada's COVID-19 Economic Response Plan](#)
- [Public Health Agency of Canada – Coronavirus Disease \(Covid-19\) Information](#)
- [Coronavirus \(Covid 19\) Information](#)
- [Travel Health Notices](#)
- [Flu Prevention and Risks](#)

Provincial Resources

- [British Columbia – Novel Coronavirus Information](#)
- [Alberta – Coronavirus Information](#)
- [Saskatchewan – COVID-19 Information](#)
- [Manitoba – Coronavirus Information](#)
- [Ontario – Covid-19 Information](#)
- [Quebec – Coronavirus \(Covid-19\)](#)
- [New Brunswick – Coronavirus Information](#)
- [Prince Edward Island – Coronavirus Information](#)
- [Nova Scotia – Novel Coronavirus \(COVID-19\) Information](#)
- [Newfoundland – COVID-19 Information](#)

Municipal Resources

- [City of Toronto – Novel Coronavirus Information](#)
- [City of Vancouver – COVID -19 \(Coronavirus\) Information](#)
- [City of Calgary – Response to Coronavirus Information](#)
- [City of Montreal – Coronavirus \(COVID-19\) Information](#)
- [City of Halifax – Coronavirus Disease \(COVID-19\) Information](#)

International Resources

- [World Health Organization – Coronavirus \(Covid-19\) Information](#)
- [US Centers for Disease Control – 2019 Coronavirus Information](#)

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