

Coronavirus (COVID-19): Legal update for Canadian employers

March 27, 2020

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British Columbia Update

March 27, 2020

Taylor Buckley, Senior Associate, Vancouver



British Columbia Update

Employment Standards Act amendments and essential services

BC Update: New *Employment Standards Act* job-protected leaves – Sick leave

- Available to employees with 90 consecutive days of employment
- Up to three days of unpaid leave per year for personal illness or injury
- Employers can ask employees to provide reasonable proof of their illness or injury
- This leave brings the BC ESA in line with the employment standards legislation of the other Canadian jurisdictions

BC Update: New *Employment Standards Act* job-protected leaves – COVID-19-related leave

- Available to all employees
- Unpaid leave for as long as any of the following circumstances applies, retroactive to January 27, 2020:
 - Diagnosed with COVID-19 and away from work per medical instructions
 - In quarantine or self-isolation per legal order or guidelines of the BC Centre for Disease Control or federal Public Health Agency
 - Employer has told employee not to work due to concern about exposure to other people
 - Providing care to a child or incapable adult in their day-to-day care due to facility closure
 - Outside of BC and cannot return because of travel or border restrictions
- Employers can ask for reasonable proof of circumstances, but cannot ask for proof in the form of a medical note.
- Government can add to this list as the situation develops

BC Update: New *Employment Standards Act* job-protected leaves – Duties of employer

- Same employer duties as other ESA leaves (may be greater under a collective agreement)
- Employers may not terminate an employee because of an ESA leave
- Employers may not change a condition of employment of an employee who is on an ESA leave without written consent
- Employers must place the employee back into the position held before taking the leave, or a comparable position
- If business operations are suspended or discontinued at the time an ESA leave ends, the employer must comply leave requirements when operations resume
- If an employer reduces operations for genuine business reasons during an ESA leave, it is not a breach if the employee would have been affected in the same manner if they had not taken leave

BC Update: Essential services

- BC released its list of essential services on March 26
- No shutdown order for non-essential businesses has been made (yet), but this list will presumably form the basis for any future shutdown.
- Guidance from the government states that essential services “should and are encouraged to remain open”, but must otherwise follow the Provincial Health Officer’s (PHO) orders and guidance
- The guidance adds that businesses that have not been ordered to close and are not on the essential service list may stay open if they can adapt their services and workplace to the orders and recommendations of the PHO
- <https://www2.gov.bc.ca/gov/content/safety/emergency-preparedness-response-recovery/covid-19-provincial-support/essential-services-covid-19>

Alberta Update

March 27, 2020

Adrian C. Elmslie, Partner,
Edmonton



Alberta Update: New *Mandatory Self-Isolation Requirements*

- As of March 25, Albertans are legally required under public health order to self-isolate for:
 - 14 days if they recently returned from international travel or are a close contact of someone with COVID-19
 - 10 days if they have a COVID-19 symptom (cough, fever, shortness of breath, runny nose, or sore throat) that is not related to a pre-existing illness or health condition

Alberta Update: WCB Premium Deferral

Small, medium and large private sector employers can defer WCB premium payments until 2021.

- For small and medium businesses, the government will cover 50% of the 2020 premium when it is due in 2021
- Large employers will have their 2020 WCB premium payments deferred until 2021, at which time their premiums will be due.
- Employers who have already paid WCB premiums in 2020 are eligible for a rebate or credit.

Alberta Update: Emergency Isolation Support

This is a temporary program to bridge the gap until the Federal Emergency Care Benefit is available in April.

One-time emergency isolation support payment if required to self-isolate or are the sole caregiver of someone in self-isolation and they have no other source of pay or compensation.

Ontario Update

March 27, 2020

Andy Pushalik, Partner, Toronto



Ontario Update

What's an essential business?

Ontario Update: Non-Essential Businesses Closed

- March 23, 2020, the Ontario government ordered at-risk workplaces to close down, effective 11:59 p.m. on Tuesday, March 24, 2020.
- Essential workplaces are able to keep their physical premises open; however, the government has asked that these businesses put into place any and all measures to safeguard the wellbeing of their employees on the front-lines.
- Order does not preclude the provision of work and services by entities not on the list, either online, by telephone or by mail/delivery BUT business' physical premises must remain closed.
- Work-from-home arrangements are permitted.

Ontario Update: Non-Essential Businesses Closed

- Penalties for non-compliance:
 - Fail to comply with an order made during a declared emergency;
 - Obstruct any person exercising a power in accordance with an order made during a declared emergency; and
 - Obstruct any person performing a duty in accordance with an order made during a declared emergency.
- Businesses who have questions about closures of at-risk workplaces or how emergency measures impact their business or employment can call the Stop the Spread Business Information Line at 1-888-444-3659

Federal Update

Amendments to Canada Labour Code and the creation of the Canada Emergency Response Benefit (CERB)

Amendments to *Canada Labour Code*

- COVID-19 Leave of Absence
 - Up to 16 week job-protected leave of absence if employee is unable or unavailable to work for reasons related to COVID-19
 - Employee must provide written notice to employer of the reasons for the leave and length of the leave they intend to take
 - Employer may require employee to provide a written declaration in support of the reasons of the leave of absence and for any change in the length of that leave
 - Employee is entitled, on written request, to be informed in writing of every employment, promotion or training opportunity that arises during the period when the employee is on a leave of absence and for which the employee is qualified, and on receiving that request, the employer must provide the information to the employee
 - Benefits must continue during leave

Canada Emergency Response Benefit (CERB)

- Provides workers who lose their income as a result of the COVID-19 pandemic with a \$2,000 payment every four-weeks for a period of up to 16 weeks, and will be available from March 15, 2020 until October 3, 2020

Canada Emergency Response Benefit (CERB)

- CERB available to workers who:
 - must stop working due to COVID-19 and do not have access to a paid leave or other income support;
 - are quarantined, sick or taking care of someone who is sick with COVID-19;
 - are working parents that must stay home without pay to care for children that are sick or need additional care because of school and daycare closures;
 - still have their employment but are not being paid because there is currently not sufficient work and their employer has asked them not to come to work; or
 - are wage-earners and self-employed individuals, including contract workers, who would not otherwise be eligible for Employment Insurance.

Canada Emergency Response Benefit (CERB)

- Canadians cannot receive EI regular and sickness benefits and CERB at the same time
- Government hopes to open application portal by April 6, 2020
- Canadians will begin to receive CERB payments within 10 days of application

Canada Emergency Response Benefit (CERB)

	EI	CERB
Maximum Amount of Benefit	\$573.00 / week	\$2,000.00 / month
Maximum Length of Benefit	45 weeks	4 months

Québec Update

27 March 2020

Arianne Bouchard , Senior
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Québec Update : Prohibition of gatherings

- On March 22, the Government of Québec has prohibited indoor and outdoor gatherings.
- This prohibition is subject to some exceptions, including :
 - those required in a workplace that is not subject to a Québec government suspension, provided that the employees maintain as far as possible a minimum distance of 2 metres between them; and
 - in a public space in order to obtain a service or goods such as stores and government services and that is not subject to a Québec government suspension, provided that the customers maintain as far as possible a minimum distance of 2 metres between them.

Québec Update : Minimization of non-priority services and activities

- On March 23, the Government of Québec has ordered the minimization of all non-priority services and activities.
- This measure is in force between March 25 to April 13, inclusively.
- Businesses who does not abide by these rule could be found liable to a fine of \$1,000 to \$6,000 for a first offence and \$2,000 to \$12,000 in case of second or subsequent offences.

Québec Update : List of Priority Activities and Services

- [Priority health services and social services](#)
- [Public security services](#)
- [Government services and other priority activities](#)
- [Maintenance and operation of strategic infrastructure](#)
- [Priority manufacturing activities](#)
- [Priority commercial enterprises](#)
- [Media and telecommunications services](#)
- [Banking, financial and other services](#)
- [Construction sector services](#)
- [Building maintenance and upkeep services](#)
- [Priority services in the field of transportation and logistics](#)

Québec Update : Minimization of non-priority services and activities

- Businesses involved in the production of inputs or raw materials necessary for priority sectors are themselves considered as operating priority activities, but only to the extent required to deserve their clientele in the priority sectors.
- Non priority businesses, excluding retail stores, can maintain minimal operations to ensure the resumption of their activities.
- Both priority and non priority businesses must conduct their activities and provide services bearing in mind the directives issued by public health authorities.
- All businesses can always engage in teleworking and e-commerce.

Thank you



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