

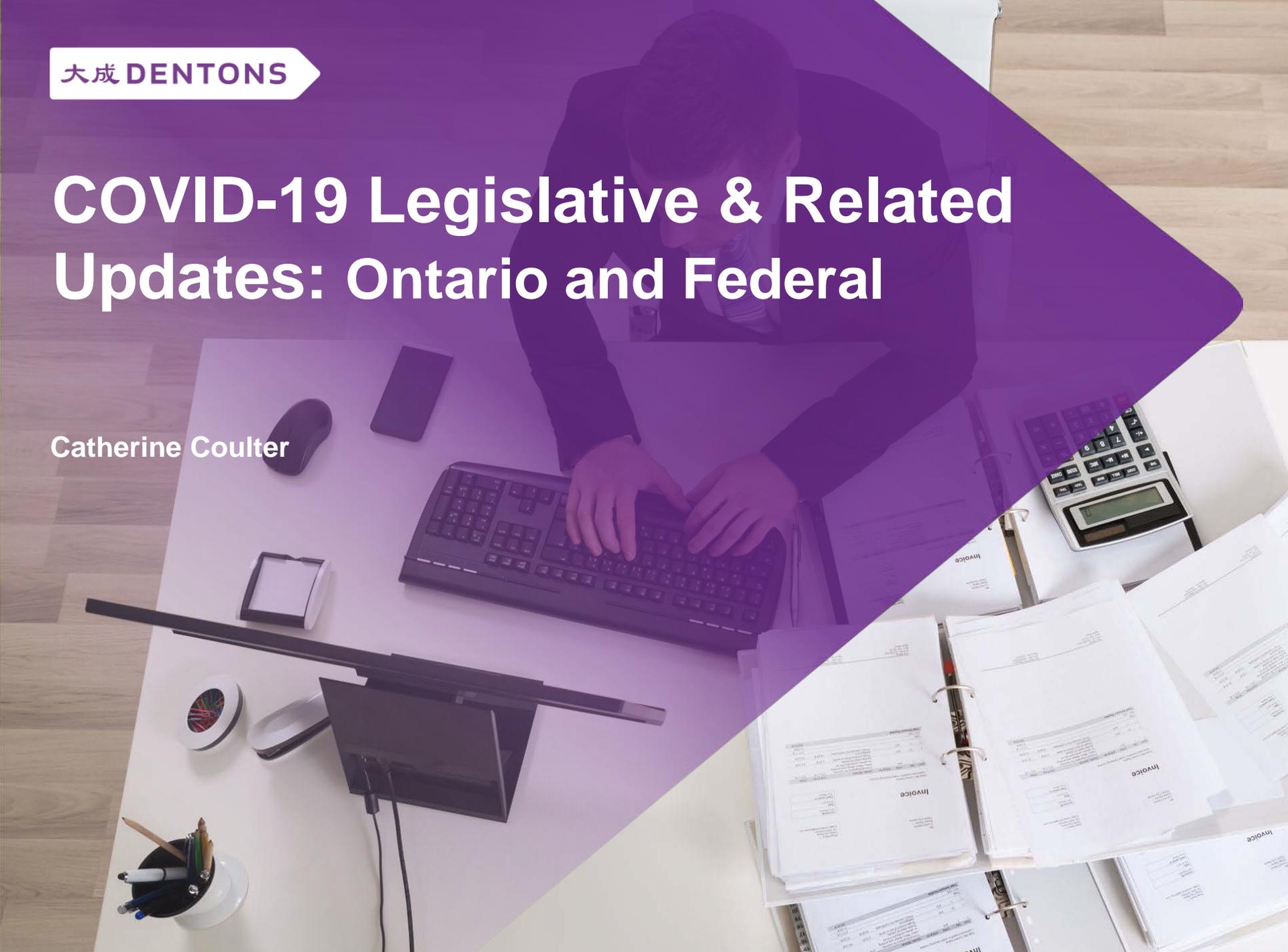
Coronavirus (COVID-19): Legal update for Canadian employers – and your questions answered

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COVID-19 Legislative & Related Updates: Ontario and Federal

Catherine Coulter



1. Government of Canada announcements

- On March 11, 2020, the federal government announced that employees who are ill may be entitled to up to 15 weeks of Employment Insurance (EI) sickness benefits. A medical certificate is usually required. However, on March 13, 2020 the Government of Canada announced that employees who take such a sick leave or are under quarantine will be entitled to Employment Insurance (EI) sickness benefits for a 14 day period, effective immediately, without the usual 7 day waiting period, and without the need for a medical note. If the employee becomes ill while under quarantine or continues to be ill (in either case requiring a longer leave period), the EI benefit will only be continued once a medical certificate has been provided.
- The government also announced that the maximum duration of government approved Work-Sharing (WS) agreements can be extended from 38 weeks to 76 weeks. This only applies to approved government work-sharing agreements, which take time to put in place.

Government of Canada announcements, con't.

- On March 18, 2020, the federal government announced an Emergency Care Benefit for individuals who do not qualify for EI and who fall ill with COVID-19, who have to self-isolate, who have to stay home to care for a family member who has COVID-19, or who have to stay home to care for children affected by school and daycare closures. Eligible individuals will be able to receive up to \$900 bi-weekly), for a period of 15 weeks. Application for the benefit will be available in April, and employees will need to provide an attestation of eligibility every 2 weeks.
- Also announced is a COVID-19 Emergency Support Benefit to assist individuals who lose their job and do not qualify for EI (ie. insufficient insurable hours in the 52 weeks prior). Self-employed individuals will also be eligible to receive this benefit. Further details in relation to the Emergency Support Benefit have not yet been provided.

Government of Canada announcements, con't.

- Employers of small businesses will be provided with a temporary wage subsidy up to 10% of their employees' salaries for a period of three (3) months.
- The maximum subsidy will be \$1,375 per employee and \$25,000 per employer. Businesses will be able to benefit immediately by reducing their remittances of income tax withheld on employee remuneration. Employers benefiting from this measure will include corporations that are eligible for the small business deduction, as well as non-profit organizations and charities.

2. Government of Ontario announcements

- On March 16, 2020, it was announced that the Ontario government will be tabling legislation to amend the *Employment Standards Act, 2000* (ESA”). It is contemplated that it will provide job protection for employees unable to work because:
 - the employer directs the employee not to work
 - 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* or is acting in accordance with public health information or direction
 - the employee is in isolation or quarantine; or
 - the employee needs to provide care to a person for a reason related to COVID-19 such as a school or day-care closure.

Government of Ontario announcements, con't.

- The proposed legislation will also prohibit employers from asking employees to provide a medical note if they take the above-noted leave.
- If passed, these proposed amendments will apply retroactively to January 25, 2020.

3. Still unknown...

- Employers that have registered a Supplemental Unemployment Benefit (SUB) plan with Service Canada may top up EI coverage while an employee is on sick leave. If a SUB plan has not been registered with Service Canada, EI top-ups are currently only permitted for employees on Pregnancy Leave, Parental Leave, Family Medical Leave, and Critical Illness Leave. Unfortunately, for employers that provide a top-up to EI coverage for a non-approved leave or where there is no SUB plan in place, the government will claw back payments from the employee. It is hoped that as part of its response to the COVID-19 outbreak, the Federal Government will amend its legislation to provide for EI top-ups for other leaves, although no such amendment has yet been made public.
- Although government approved Work-Sharing (WS) agreements can be extended, no steps have yet been taken to open up WS arrangements to all employers, without the need for federal government approval.

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COVID-19 Legislative updates for Alberta

Cristina Wendel



Employment Standards (COVID-19 Leave) Regulation

- On March 13, 2020, Premier Jason Kenney announced that the government would be amending the *Employment Standards Code* to provide for paid, job protected leave for employees who are either sick with COVID-19 or are required to self-isolate.
- The amendments were issued on March 17, 2020: *Employment Standards (COVID-19 Leave) Regulation*.
- The Regulation provides that an employee is entitled to 14 consecutive days of unpaid, job protected leave if the employee is under quarantine.
- “Quarantine” is defined to include any self-isolation and self-quarantine as a result of COVID-19, as may be recommended or directed by the Chief Medical Officer.

Employment Standards (COVID-19 Leave) Regulation

- In order to be eligible for the leave, the employee under quarantine:
 - does not have to have been employed for 90 days by the employer; and
 - does not have to provide a medical certificate to the employer.
- The employee under quarantine is not required to give any written notice or any notice to the employer of the date the employee intends to return to work.
- The Minister may extend the leave if the Chief Medical Officer recommends that it is necessary.
- This does not affect the employee's right to the 16 weeks long-term illness or injury leave under the Code.
- The Regulation is deemed to be effective as of March 5, 2020.

Legislative Updates in Quebec

Alessandra Pecoraro



Recommended Measures

The Government of Quebec recommends employers take the following measures to limit the spread of the virus:

- Be flexible with employees' work schedules to allow to practice social distancing :
 - If possible, allow employees to begin work earlier or later than scheduled to limit crowds in public transit during peak hours.
 - Splitting work teams in two and alternating days/weeks in which those teams work from the office and work from home.
 - Stagger work schedules in shifts to limit contact and limit the number of employees who use common areas simultaneously, such as cafeteria or the break room.

Recommended Measures Con't.

- Encourage employees to work remotely : As much as possible, employees who can work from home should be permitted and encouraged to do so. Many employers are not giving employees a choice and making working from home mandatory.
- Avoid asking employees' for a doctor's note if they have to self-isolate : to reduce overcrowding in hospitals and clinics. For questions or concerns, call the hotline : 1-877-644-4545.

Economic and Fiscal Measures

The Government has taken the following economic and fiscal measures to ease the burden on Employers during this pandemic :

Targeted Groups	Measures	Eligibility
<ul style="list-style-type: none">• Employees• Self-employed persons	<p>Temporary Aid for Workers Program (TAWP COVID-19): Financial assistance of 573\$ per week for a period of 14 days (which can be extended to 28 days if necessary).</p> <p>The registration form is available online.</p>	<p>For employees who are in isolation for one of the following reasons:</p> <ul style="list-style-type: none">• They have contracted the virus or present symptoms• They had contact with an infected person• They have returned from travelling abroad <p>AND</p> <ul style="list-style-type: none">• Who have not received compensation from their employer• Who do not have private insurance• Who are not covered by another government program, such as EI from the federal government <p>The order to self-isolate must come from the governments, whether federal or provincial, or another responsible authority.</p>

Economic and Fiscal Measures Con't.

The Government has taken the following economic and fiscal measures to ease the burden on Employers during this pandemic :

Targeted Groups	Measures	Eligibility
For businesses whose liquidity is affected by the repercussions of COVID-19	<p>Concerted Temporary Action Program for Businesses (CTAPB):</p> <ul style="list-style-type: none">• A loan guarantee is the preferred form of financing. Financing can also take the form of an investment loan from the Government through Investissement Québec• Minimum funding amount is 50 000\$• To apply: call Investissement Québec at 1-844-474-6367	<ul style="list-style-type: none">• Available to businesses operating in Quebec, including cooperatives.• They must show that their cash flow issues are temporary and stems from :<ul style="list-style-type: none">- a problem involving the supply of raw materials or products (whether goods or services)- An inability, or substantially decreased ability, to deliver goods, products or services.

Economic and Fiscal Measures Con't.

- Payment on instalments and taxes due between March 17 and July 31 is suspended.
- If the tax due date is between March 31-July 31, the employer will not be required to pay such tax until after July 31.

Health and Safety Issues – Employer Obligations and Best Practices

Adrian Miedema



OHS Legislation

Key employer obligations:

- All reasonable precautions
- Communicate hazards
- Train

OHS Legislation

Duty to report?

- Ontario: must report “**occupational illness**” to Ministry of Labour, health and safety committee and union within 4 days

OHS Legislation

Work refusal

- Permitted if worker “has reason to believe” (Ontario), “reasonable grounds” (Quebec, Alberta), “reasonable cause to believe” (B.C.) in danger
- Some exceptions (e.g. Ontario: emergency, hospital and certain other workers where is inherent in work or refusal would endanger others)
- Retaliation prohibited
- Practically: employer likely loses if work refusal. Process takes too much time during emergency. Best to satisfy workers up-front that appropriate protections in place.

Workers' Compensation Legislation

Duty to report occupational disease to WCB?

- B.C.: yes (3 days)
- Ontario: Yes (3 days)
- Alberta: Yes (72 hours)
- Quebec: no, but may be advisable

Taking an employee's temperature?

- Is it legal?

Thank you



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