

COVID-19 UPDATE – MARCH 18, 2020

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British Columbians, as with people the world over, are in uncharted territory. This crisis is unprecedented. Schools, business and government buildings throughout the country are closed down, multiple provinces have declared states of emergency, and our leaders are holding press conferences to update us on the situation as it develops, seemingly by the hour.

The purpose of this information bulletin is to provide information, and address some of the most common questions we have received. It is current to the morning of **March 18, 2020**, but the pandemic and the responses of federal and provincial governments continue to evolve, and this may impact the accuracy of the information in this bulletin. **If in doubt about whether anything in this document is still current, please do not hesitate to [contact us](#).**

On the Ground:

- **Public Health Emergency:** Yesterday afternoon, B.C. declared the pandemic a public health emergency. As noted by Provincial Health Officer Dr. Bonnie Henry, the emergency declaration allows public health officials and the B.C. government to act faster, and in a more streamlined manner, to respond to this crisis.
- **Cases and Deaths:** As of Dr. Henry's announcement yesterday afternoon, there had been a total of seven deaths due to COVID-19 deaths. The total number of cases in B.C. now exceeds 180.
- **Social Distancing:** British Columbians are being urged to work from home and self-isolate as much as possible. They have also been directed to keep gatherings to fewer than 50 people.
- **Closures:** The list of voluntary and government-directed closures is growing rapidly. As of this date, notable closures include:
 - The B.C. government has directed the following closures:
 - Schools, from kindergarten to Grade 12, and most universities are closed indefinitely. Note that work is being done to provide for online instruction, and this situation continues to evolve.
 - Bars and clubs have been directed to close, and casinos are closed indefinitely.
 - Restaurants and cafes that cannot meet social distancing guidelines, including a minimum required distance between patrons, have been

directed to close (except for takeout options). Those that can meet the applicable guidelines may remain open.

- The College of Dental Surgeons of B.C. has recommended that all elective and non-essential dental services be suspended immediately.
 - A number of ski resorts have voluntarily closed indefinitely or for the remainder of the season.
 - Many municipalities have closed facilities, including community centres, recreation facilities and libraries, indefinitely.
 - Many retail operations have closed their storefronts and are only operating online sales.
- Grocery stores, pharmacies, public utilities and public transportation remain open.
 - **Elsewhere:** States of emergency have been declared in Alberta and Ontario, gatherings have been restricted, and businesses including restaurants and bars have been closed indefinitely.
 - **Travel:** In an address to the country on March 16, 2020, the Prime Minister issued a statement that only Canadian citizens, permanent residents, immediate family members of Canadian citizens, diplomatic staff, air crews and Americans can enter the country. The Prime Minister also stated that international flights will be directed to four airports: Toronto, Montreal, Vancouver and Calgary. Domestic flights and flights to and from the U.S., sun destinations such as Mexico and the Caribbean, and St. Pierre-et-Miquelon continue to operate. However, an official global travel advisory to avoid non-essential travel outside Canada is in effect. The Prime Minister also said that all individuals seeking to fly into Canada, including Canadian citizens and permanent residents, will be subject to screening and, if they show symptoms of COVID-19, they will not be permitted to fly to Canada. Federal and provincial health officials have also recommended that all travellers from outside of Canada self-isolate for 14 days upon their return. While confirmation of certain details is pending, the Canada-U.S. border has been closed to all non-essential travel.

Keeping Workplaces Safe

For those workplaces that do remain open, whether on a full or reduced capacity, employers should be taking all necessary steps to ensure that the workplace remains as safe as possible for employees. Prudent steps include:

- As far as possible, employees should be permitted, encouraged and required to work remotely. Governments at all levels have recommended that if people can work from home, they should.
- For employees who have to be at work, ensure that the following steps are being taken:

- practise social distancing, e.g. have meetings occur over the phone or in small groups, stagger work schedules and lunch and coffee breaks, and encourage employees to work different shifts;
- ensure that work areas, particularly common areas and frequently touched surfaces such as door handles or elevator buttons, are being cleaned and disinfected regularly;
- remind employees of the importance of good hygiene such as proper and thorough hand-washing; and
- require employees who are sick or have travelled out of country recently not to come into work.

When Not to Report to Work

The following employees should not be allowed to report to work, and should be required to self-isolate for a 14-day period, consistent with government recommendations:

- employees who have been diagnosed with COVID-19;
- employees who have symptoms consistent with COVID-19;
- employees who are living with or in an intimate relationship with someone who has COVID-19;
- employees who are caring for someone who has been diagnosed with COVID-19;
- employees who have received a recommendation from a Canadian government agency, health authority or public health official to self-isolate due to COVID-19 concerns; and
- employees arriving from outside of Canada.

Dealing with Layoffs and Terminations

In the coming days and weeks, and whether directly as a result of COVID-19 or indirectly through, for instance, a reduced demand for products and services, a number of businesses are going to come under increasing pressure.

Many employers will be forced to temporarily curtail their operations and to consider layoffs of employees on an indefinite basis. A temporary layoff is defined in the B.C. *Employment Standards Act* as either 13 weeks in a 20-week period, or a period of time that exceeds an employee's right to recall where such a right exists.

However, layoffs do come with risk. In the absence of a contractual right of layoff, employee agreement or industry practice, non-unionized employees who are laid off may elect to treat the temporary layoff as a constructive dismissal and demand termination pay.

That said, given the unique nature of this situation, we are of the view that employers may be able to:

- distinguish the present circumstances from a conventional layoff, and instead treat the situation as a health-related and/or government–mandated leave;
- utilize the doctrine of frustration of contract to insist on temporary curtailment and advance a defence against claims of constructive dismissal and demands for termination pay; and
- rely upon the exemption in s. 65(1)(d) of the *Employment Standards Act* related to individual or group termination obligations on the basis that it has become impossible for the employment contract to be performed.

Broadly speaking, “frustration” arises when an event occurs that is outside the control of either party to the contract and renders performance of the contract impossible. When a contract has become frustrated, the contract is brought to an end, and the parties are released from obligations to perform the contract. The statutory exemption in s. 65(1)(d) follows similar logic. A careful analysis will be required in the context of the particular employment situation. This will depend on matters such as the nature of the employment relationship, the sector in which the employer and employee operate, government directives and the ultimate impact of the pandemic.

This is a complicated assessment which is going to be highly fact-dependent. **Employers who are considering curtailment of operations, whether permanent or temporary, are strongly encouraged to reach out to legal counsel prior to taking any such steps.**

Other Options

Employers considering options other than permanent or temporary curtailment of operations may wish to take into account such things as:

- having employees take time off and utilize banked overtime, vacation time (note that the B.C. Employment Standards Branch has confirmed that employers can force employees to take vacation) or sick days (these options should be made available to any employee who is self-isolating);
- whether employees would be prepared to volunteer for temporary unpaid leave (possibly in exchange for something like benefits continuation for the duration of the leave); or
- whether it would be appropriate to implement reductions in compensation or hours of work (keeping in mind the risk of claims of constructive dismissal).

Employment Insurance and Other Measures to Support Employees

In light of the Prime Minister’s press conference this morning, and in order to ensure that our information is as up to date as possible, we will be addressing changes to the federal



Employment Insurance (EI) program, as well as other measures being implemented to support workers, in a separate information bulletin.

Further Resources

It is critically important to base actions on reliable evidence and facts. Recommended sources include:

Canada

- Health Canada: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html>
- Canada's Public Health Officer: <https://www.canada.ca/en/public-health/corporate/organizational-structure/canada-chief-public-health-officer.html>
- Travel advisories: <https://travel.gc.ca/travelling/advisories>

British Columbia

- B.C. Centre for Disease Control: [http://www.bccdc.ca/health-info/diseases-conditions/coronavirus-\(novel\)](http://www.bccdc.ca/health-info/diseases-conditions/coronavirus-(novel))
- B.C. Ministry of Health: <https://www.healthlinkbc.ca/health-feature/coronavirus-covid-19>

International

- World Health Organization (WHO): <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>
- WHO situation reports: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports/>

Please note that this information bulletin is current to the morning of **March 18, 2020**. As this situation is evolving rapidly, we urge you to remain informed to the greatest extent you can. To understand how the information contained in this bulletin might apply in the context of your particular business or operation, please do not hesitate to contact the individuals listed below.

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