

COVID-19

LATEST UPDATES FROM SEIFERLING LAW MARCH 19, 2020

Since we sent out our document yesterday morning, a number of you have reached out with questions, and our Province has declared a state of emergency on March 18, 2020. In addition, on March 17, 2020, the Government of Saskatchewan passed new legislation that gives employers rights, in certain conditions, to send workers home without notice and without pay, for the period of the COVID-19 threat. We have tried to provide the responses to some of the more common questions below, as well as an outline of the changes to the *Saskatchewan Employment Act*. The key change at this point is the availability of public health leave – an unpaid leave that does not require notice or pay in lieu of notice.

CHANGES TO THE SASKATCHEWAN EMPLOYMENT ACT EMPLOYER POWERS IN A PUBLIC HEALTH SITUATION

On March 17, 2020, the Government of Saskatchewan changes the laws in Saskatchewan regarding labour and employment. From an employer point of view, one of the changes is very important.

Under the changed law, employers have the right to send employees home, without notice, for an unpaid public health leave, if one of the two following conditions have been met:

- 1) The World Health Organization has declared a public health emergency and the Chief Medical Health Officer for the province of Saskatchewan has issued an order declaring that the public health emergency applied to Saskatchewan, and individuals in Saskatchewan must take measures to prevent or reduce the spread of disease; or
- 2) The Chief Medical Health Officer issues an order declaring that a disease present in Saskatchewan is sufficiently harmful to the public health that and individuals in Saskatchewan must take measures to prevent or reduce the spread of disease.

Once one of the conditions above is met, then an employer has the power to direct employees to isolate themselves to prevent or reduce the spread of disease. The Government, medical professionals, and the Chief Medical Health Officer also have the power. The changes also give the employee the right to stay home to care for a child, if they make such a request of the employer.

Based on the State of Emergency declared by the Province of Saskatchewan on March 18, 2020, Saskatchewan businesses likely have the ability to send employees home, on an unpaid leave, without the usual layoff notice that applies in Saskatchewan.

CAN I SEND MY EMPLOYEES HOME? IF SO, DO I HAVE TO PAY THEM?

Based on the state of emergency declared yesterday, it appears that employers in Saskatchewan do have the ability to send their employees home immediately, on an unpaid public health leave.

If the employee requests to stay home, to care for a child, then the leave is unpaid.

If the employer requests that the employee stay home, and they are not going to work from home, the leave is unpaid.

However, if the employee has been authorized by the employer to work from home, the employee must be paid their regular wages.

We strongly encourage employers to arrange for work-from-home options, if at all available for the employer, to keep the economy going to the extent possible. We recognize that some businesses have been required to close by government, but for those that still have the option, and can arrange for some form of work from home, we encourage that approach.

I HAVE HEARD THAT SOME BUSINESSES ARE REQUIRED TO CLOSE

It is true that the government has required certain businesses to close, or to limit operations. Here is a list of the businesses that are required to close, in whole or in part, by order of Government, and the Chief Medical Health Officer:

- 1) **Restaurants, bars, and event venues.** Restaurants, bars, and event venues may continue to operate, but they can only operate at the lesser of (i) 50% of capacity, or (ii) 50 people. The Government has stressed that these businesses need to choose the lesser number (50% or 50 customers) to ensure the 1-2 meter distance between all patrons. Any venue that is licensed by the Saskatchewan Liquor and Gaming Authority will now have the indefinite ability to sell alcohol as an offsale.
- 2) **Gyms and Fitness Centers.** Gyms and fitness centers are required to close completely by government. A number of gyms and fitness centers are taking steps to offer online programming, equipment, and at-home workouts, but they have been required to close by government.
- 3) **Casinos and Bingo Halls.** Casinos and bingo halls are closed until further notice from Government.

The Saskatchewan Government has also stated that it will implement a work-from-home policy for all non-essential government workers, which will be phased in starting March 23, 2020.

For employers and workers in these situations, they are now under a Government-ordered public health leave, which is an unpaid leave until further notice from the Government.

WHAT ABOUT PARENTS WITHOUT DAYCARE COVERAGE?

As noted above, in the sections on changes to the law, and sending employees home, based on the declaration of a state of emergency, employees have the right to an unpaid public health leave to care for children. The care for children is an increasing concern, as some daycares have been shut down, and the Government has stated that there will be more announcements regarding daycares in the near future.

At this point, what we can tell you is that an employee who states that they are required to provide care for their child, based on a loss of daycare, would be entitled to an unpaid public health leave.

If the employee is in a position where they have requested to work from home, we encourage employers to work with their employees, and determine whether their job can be performed from home. If the job can be performed from home, then the employee would continue to be paid. If not, then the unpaid public health leave applies.