

## COVID-19

LATEST UPDATES FROM SEIFERLING LAW  
MARCH 20, 2020

To continue with our updates, today we tackle a couple of questions regarding the public health leave, as well as getting into the issues of employment insurance, and other coverage which has been announced by the federal government.

### PUBLIC HEALTH LEAVE QUESTIONS

As set out in our update yesterday, the Government of Saskatchewan passed new laws that create a public health leave in certain circumstances, such as where the Chief Medical Health Officer of the Province has stated that a global emergency applies in Saskatchewan. With the declaration on March 18, 2020 of a state of emergency, employers can now rely on public health leave, to send employees home to self-quarantine. Here are some of the questions that have come up:

***Do I have to send all of my employees home at once, or can I do it in phases?***

You can do it in phases. There is nothing in the change to the law that prevents you from using a phased approach. In fact, the Government of Saskatchewan is using a phased approach to sending all non-essential employees to work from home, starting March 23, 2020.

***How does this affect unionized workplaces?***

Unionized workplaces are affected the same way by the legal changes as non-union workplaces. However, if you are doing a phased process, you will likely want to consider items from your applicable collective agreement, such as seniority rights, in deciding who will be sent home.

***Do I have to take all of my employees back?***

Yes, you have to take all employees back who are placed on public health leave. This is a protected leave, which means that you retain job security. If you are permanently eliminating positions, or if you are unable to take employees back, then you are no longer covered by public health leave (see below).

***When do I have to take employees back?***

The public health leave can continue until the Chief Medical Health Officer deems that COVID-19 is no longer a public health threat. In this case, that would likely be the time when the Province of Saskatchewan lifts the "state of emergency" declaration.

***What if my workplace is essential?***

Some services, such as medical, pharmacy, grocery stores, logistic and supply chains (ie: transportation), are considered essential for the operation of the economy. Some of the jobs in those workplaces cannot be done from home (ie: truck driver, or grocery cashier). However, to the extent possible, we still recommend that employers authorize people to work from home, where possible to limit personal interactions, although many of the essential workplaces would not allow for work from home.

## ***What if I cannot take employees back, or the layoff is permanent?***

If you cannot take the employees back at the end of the public health leave, or if you know that the layoff is permanent (ie: a termination of employment), then you are not covered by the “protected leave”, and you would be looking at either layoff notice (for temporary layoffs, which still have a return date), or pay-in-lieu of notice (commonly called severance) for permanent position eliminations. You should talk to a lawyer about the specific obligations for your workplace, if you are looking at permanent eliminations, or long-term temporary layoffs.

## ***Do employees need to go back to the position they held prior to the leave?***

This one is a bit tricky. Generally, the answer is yes, but, if your business was required to make some changes to positions, or the way it does business, then returning employees to a similar position would likely be acceptable. You will always be able to run your workplace, and make decisions about your workplace, which includes making sure that you are able to operate, but you should make sure that you return employees to their own job, or as similar a job as possible.

## ***Do I have to pay my employees during the leave? How about continuing benefits?***

Employees will be paid their “regular wages” during a public health leave, if the employer authorizes them to work from home. Otherwise, the public health leave is unpaid. As we have stated in previous updates, we encourage employers to authorize their employees to work from home wherever possible (even if that means somewhat lower production, which is not always the case), but we recognize that some jobs cannot be performed from home, which means that the leave is unpaid.

With respect to benefits, the answer is that the employer can continue benefits, but is not required to do so, unless the employer has a contractual obligation to continue benefits during a leave. If the employer is not going to continue benefits for the period of the leave, the employee should be offered the option to pay for and continue benefits on their own. Any benefits that are suspended would have to be reinstated upon return to work. We strongly encourage employers to continue benefits, if at all possible.

## ***What can I do to help my employees, if I am not paying them?***

The best support you can offer your employees, if you are unable to have them work from home, or continue to pay them, is assistance in submitting employment insurance (EI) applications, or work with them on other applications (see below). You can also issue them an ROE which states “sickness/illness” based on the requirement to quarantine.

## EMPLOYMENT INSURANCE AND OTHER GOVERNMENT PROGRAMS

On March 18, 2020, the Federal Government announced a number of programs to assist workers, and parents, in the time of COVID-19. Some of the changes apply to EI, and others are directed at new benefits. There are also some programs for employers.

Some of these programs still require formalization by government, and some are short on details, but here is an overview of what was announced:

- 1) **Employment Insurance (EI).** The government announced that it will waive the one-week waiting period for individuals in quarantine who apply for EI sickness benefits. This is a temporary measure in effect as of March 15, 2020. There is also no medical certificate required to apply for EI sickness benefits.

- 2) **Emergency Care Benefit.** The Emergency Care benefit is a new benefit of up to \$900 every two weeks, administered by the Canada Revenue Agency, which is intended for people who do not qualify for EI sickness benefits, including self-employed workers (ie: people who run their own small business). This benefit has also been announced to be accessible to parents who are required to stay home with children (based on school and daycare closures), and people who are caring for sick family members, such as a parent. The application for this benefit will start sometime in April 2020.
- 3) **Emergency Support Benefit.** This is for workers who are not eligible for EI, and are facing unemployment, or reduced hours. This also includes an "EI work sharing program", which appears to be a top-up benefit for workers who agree to reduce their hours to assist their employers.
- 4) **GST Credit.** For "low or modest" income families, there is a one-time special payment, which would double the GST credit. This will be available in May 2020.
- 5) **Child Care Benefit.** There will be an additional \$300 per child available as an enhancement to the federal child care benefit. This will be provided as part of the May 2020 payment.
- 6) **Moratoriums or delays on certain payments.** The government has also announced delays, or moratoriums, on certain payments, such as taxes, tax filing dates, utilities, mortgages, and Canada student loans (six month interest free moratorium). Some of these measures (tax filing deadlines) apply to both employees and employers.
- 7) **Canada Temporary Wage Subsidy.** The Canadian government has announced that it will provide a temporary wage subsidy of up to 10% of total wages (to maximums of \$1,375 per employee or \$25,000 per business) to cover a period of three months. This is for small employers (corporations eligible for the small business deduction, non-profits, and charities).
- 8) **Access to Credit.** The federal government has announced that it will provide access to credit for small and medium sized businesses, through Export Development Canada (EDC) and Business Development Bank of Canada (BDC). The Bank of Canada has also cut its interest rate to 0.75%.

As employers, we encourage you to look into these programs, both for yourself as an employer, as well as for your employees, to provide assistance in applying. We expect that there will be a significant processing time, and backlog, with EI Canada, so we would encourage employees to apply as soon as reasonably possible.