

Top 10 Work Refusal Questions for Employers and Employees during the COVID-19 Pandemic

COVID-19 | Employee | Employer | Employment Agreements | Employment Standards Amendment Act | Litigation | Litigation & Dispute Resolution | Workplace Safety and Insurance Board (WSIB)

6 April 2020

The global spread of COVID-19 has impacted employers and employees across the globe, and Canada is no exception. Soma Ray-Ellis, Chair – Employment and Labour Law Group has prepared the ten most relevant questions that employers and employees need to understand in this COVID-19 work reality we now find ourselves in.

1. What basic rights to Canadian workers have regarding their safety at work during the COVID-19 pandemic?

Canadian workers have three basic rights:

- i. the right to know if there is an unsafe work condition that they are being exposed too including if anyone has tested or been exposed to COVID-19;
- ii. the right to refuse unsafe work;
- iii. the right to participate in the employer's investigation of the unsafe work condition.

2. What do employees do if they feel unsafe at work during COVID-19?

- a. the employee should file a complaint with the employer detailing the unsafe work condition with as much detail as possible including pictures, video, etc.;
- b. the employer is required to investigate with the worker (if possible) to try and remedy a reasonable complaint of unsafe work condition;
- c. if the situation is not remedied and the employee remains concerned the complaint should be sent to the joint health and safety committee of the employer and if that does not resolve it, a complaint can be filed with the Ministry of Labour.

3. Can an employer penalize an employee for filing a complaint?

An employer cannot take reprisal action against an employee for filing an unsafe work refusal or filing a complaint that is made in good faith.

4. What does an employer who 'cannot reprise' against an employee during an unsafe work refusal (COVID-19 pandemic), against an employee mean?

A reprisal includes but is not limited to:

- i. Discipline, suspension, termination, wage reduction, or withholding of wages, intimidation, coercion, or threatening to impose a penalty etc.

5. Where do you employees file complaints for reprisals?

Reprisals are typically filed with the labour board of the province.

6. Do all employees have the right to refuse unsafe work during COVID-19?

No, not all workers have the right to refuse unsafe work because inherent in certain positions are unsafe work conditions. For example healthcare workers, police officers, firefighters, workers in correctional institutions, have inherent safety issues and are not able to refuse unsafe work that are part of their normal duties.

7. Are healthcare workers limited to doctors and nurses?

No, any worker employed in workplaces like hospitals, nursing homes, sanitariums, homes of the aged, psychiatric institutions, mental health centres, or rehab facilities, residential group homes, etc., are likely to be seen under the broad umbrella of healthcare workers and would be considered essential and ordinarily exposed to inherent dangers at their workplaces.

8. What should an employer (classified as being essential) do during a pandemic to ensure their workplace is safe?

There should be an analysis by all employers (classified as essential) regarding work that can be done remotely. For workers who need to come into the workplace, there should be:

- i. enhanced sanitization and rules regarding social distancing;
- ii. protective equipment is to be provided by the employer for employees who ordinarily use them when working with the public;
- iii. there should be physical separation with barriers whenever possible separating workers from the public;
- iv. there should also be stringent rules for self-isolation and quarantine for sick workers and those caring for sick loved-ones or returning from travel.

9. What should an essential worker do if they are suffering from or exposed to the COVID-19 virus?

Employees should not attend work and advise the employer immediately. Employees in this situation are protected from termination and other forms of reprisal and can apply for the Canada Emergency Response Benefit (CERB), along with being entitled to sick days or any additional items noted in their employment/collective agreement.

10. Can employees who are suffering from COVID-19 apply for WSIB?

Illnesses resulting from COVID-19 will only be covered by WSIB if the illness was contracted at the workplace, the employee will have to show that is the case to qualify for WSIB.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

Author



Soma Ray-Ellis

Chair – Employment & Labour Group

416.865.6709

srayellis@grllp.com



Bay Adelaide Centre — East Tower
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Phone: 416.865.6600
Fax: 416.865.6636
contactGR@grllp.com