

# COVID-19: Questions and answers

## Employment Standards and Occupational Health and Safety

Updated July 8, 2021

### Contents

Public Health Emergency Leave .....	1
Layoff Provisions .....	2
Protection for Workers Accessing Federal Recovery Benefits .....	5
COVID-19 Vaccination Leave .....	6
Occupational Health and Safety .....	7

As the state of emergency has been lifted in Saskatchewan and the public health orders are no longer in place, several regulatory and legislative amendments will no longer be in effect for COVID-19.

The information below is intended to assist employers and employees as the province moves to recovery from the pandemic.

A [recorded webinar](#) about changes to public health emergency leave, temporary layoff provisions, as well as job protection for absence from work due to illness or injury and vaccination leave is also available.

### Public Health Emergency Leave

**Does the public health emergency leave still apply now that the province has lifted the state of emergency and public health orders?**

Once the orders have been removed and the restrictions are no longer in place, employees will not be able to access the unpaid public health emergency leave.

**What if I contract COVID-19, or am asked to self-isolate as a close contact? Will I still be able to receive this leave?**

Employees will continue to be entitled to job protection if they contract COVID-19 for up to 12 days in a calendar year or 12 weeks in 52, depending on the seriousness. This also applies if the employee must care for a member of their immediate family who is ill.

**What about sick workers? Do they still have job protection?**

If a worker is ill, then *The Saskatchewan Employment Act* protects the employee from discriminatory action during absences for either 12 days or 12 weeks, depending on the severity of the illness. Severity may depend on the impact of this illness on the employee.

Eligible workers will also continue to have job protection when away from work and applying for/receiving the Canada Recovery Caregiver Benefit and Canada Recovery Sickness Benefit up until September 25, 2021, according to the current rules for those benefits. Visit [www.canada.ca](http://www.canada.ca) for current information.

## What about freelance workers, contract workers and gig workers?

The *Saskatchewan Employment Act* does not apply to self-employed individuals such as freelance workers, independent contractors or business owner operators.

## What options will workers have now if they need to care for a child or family member as a result of COVID-19?

Currently until September 25, 2021, eligible workers will have job protection to be able to access the Canada Recovery Caregiver Benefit and Canada Recovery Sickness Benefit.

## Layoff Provisions

### Now that the state of emergency has been lifted and the public health orders removed, do the temporary layoff provisions stay in effect?

No. Employers will have 14 days once the orders are lifted to schedule employees back to the workplace or they would need to terminate the working relationship and provide pay instead of notice.

### What happens at the end of the two weeks following the end of the public emergency?

An employer may continue to lay off employees without notice for maximum of two weeks following the end of the public emergency period. The employee would be entitled to pay instead of notice if they have not been scheduled to work after the two weeks.

### What is the two additional weeks for?

The additional time is a “grace period” to allow employers whose operations have been restricted and their employees time to prepare to return to work. Employers are required to inform employees of their work schedule no later than the end of the two weeks. Employees must still be provided at least one week of notice of their first scheduled shift.

Employees who have not been scheduled are considered terminated and pay instead of notice is due within 14 days. Pay instead of notice is calculated from wages previous to the date the employee was first laid off.

### Can employers return employees earlier than the two-week grace period?

Employers and employees may agree to an earlier return, once restrictions are lifted.

Employees are entitled to one week of advance of a schedule. Employees may agree to less notice if they want to return to work sooner.

### If my employer doesn't reinstate me how much pay instead of notice will I get?

If you have worked more than 13 weeks prior to the temporary layoff and you are laid off for more than two weeks following the public emergency period, you will be entitled to pay instead of notice based on your service with that employer including the temporary layoff period. The pay instead of notice varies from one week if you have worked more than 13 weeks but less than a year, up to eight weeks if you have worked more than 10 years.

Length of Service	Notice by Employer
13 weeks to 1 year	1 week
1 year to 3 years	2 weeks
3 years to 5 years	4 weeks
5 years to 10 years	6 weeks
More than 10 years	8 weeks

### **What earnings will be used to determine my pay instead of notice?**

The pay instead of notice will be based on the greater of the earnings during the period of notice, or the normal earnings for the period of notice. If the employee's wages vary, it will be the average weekly wage for the 13 weeks worked prior to the layoff multiplied by the number of weeks of notice entitlement.

### **Do employees need to be returned to the same position with the same hours and rate of pay?**

Workers generally must be returned to work under the same terms and conditions that they had prior to the layoff. A layoff is not a break in employment; it is a temporary break in work.

If the terms are going to change, the employer should give the employee advance notice of the change. Even with advance notice, an employee may not accept the change and believe they have been terminated. The employee may then decide to pursue a claim for pay instead of notice on the basis that their contract has been unilaterally broken without notice. Employers or employees may need legal advice for these situations.

### **The public emergency layoff provisions no longer apply, but I am not re-opening or unable to resume business do I still have to schedule employees back?**

While this is difficult, employees who are not scheduled by the end of the two weeks following the lifting of restrictions and state of emergency are entitled to pay instead of notice.

### **Can an employer reassign an employee to another position or other duties after a layoff, but maintain same rate of pay?**

Possibly, if the employee agrees to the change or the employer provides proper notice of the change. However, this can depend on the amount of change and the employment contract, as a minor change or reassignment may be reasonable or it may be allowed in the contract. Legal advice may be required.

### **Do the employees need to be brought back to work based on how long they have been with the employer?**

There are no requirements to bring the most senior employees back first; however, employers must keep in mind that the temporary layoff provisions only allow a layoff for the duration of the public emergency period, plus two weeks. If the employee is not scheduled for work after two weeks following the public emergency, pay instead of notice would be owing to the employee.

### **Was my employer allowed to lay me off?**

The *Employment Standards Regulations* were amended to exempt employers from notice or pay instead of notice of layoffs during a public emergency period and for two weeks after.

Now that the orders of the chief medical health officer and the state of emergency (i.e. the public emergency period) have been lifted, this exemption only applies for two more weeks. At the end of these two weeks, employers must apply regular layoff minimum requirements – providing notice or pay instead of notice for layoffs that exceed six consecutive work days.

### **What if staff refuse to return to work?**

Employees are required to return to work. However, we encourage employers to listen to and address employee concerns with returning to work, especially if they are about health and safety. If employees don't return to work as directed or "scheduled", they may end up being considered as having abandoned their job and therefore, resigned.

**If an employer has seasonal staff, do they have to bring them back within 14 days of the orders being removed?**

There is no requirement to recall seasonal staff.

**Can workers that have been temporarily laid off decline to return to work when their employer contacts them? If they do will they be considered terminated?**

When an employer is reopening, the employer has the same right to schedule and require employees to be at work as they have always had, including before the layoff. Employers minimally have to provide a schedule one week (7 calendar days) in advance.

Workers should be aware that failure to return when directed by their employer may be considered a resignation from employment. The employer should provide warning if the employer takes such action and ensure the schedule is clearly communicated.

**What if I am unable to reach my employees at the contact information I have for them and therefore cannot schedule them back to work?**

Employers must show reasonable attempts to contact employees and provide a schedule no later than 2 weeks following the end of the public emergency period. Therefore, keeping a record of contact attempts is strongly recommended to address any misunderstandings or complaints about lack of notice of contact.

**What's required for proper notice of a work schedule?**

*The Saskatchewan Employment Act* requires that the schedule must be personally given to the employee, posted in the workplace, posted online to a website the employee has access to, or provided in any other manner that is customary, or consistent with how the employer notified employees of their schedules prior to the layoff.

**What's required in a work schedule?**

Schedules must include the time when work begins and ends, and when any required meal break begins and ends; and must cover at least one week at a time. Schedules must be given to employees one week in advance of the start of the schedule.

**Can my employer provide me a different schedule than what I had before the layoff?**

Employees are entitled to a scheduled return from layoff with the same employment arrangement in place before. The employer may provide you with the scheduled return or pay instead of notice, ending your employment.

**Do employees have to be physically at work after the two-week period following the lifting of all the provincial public health measures and the state of emergency?**

No, they have to be notified of their schedule no later than after the two-week period. Depending on the employer's plan, and the normal one week of scheduling notice, some employees may be back no later than a week after the two-week period. Some may be back sooner if they agree and are ready.

**My employer has a two week scheduling rotation? When would I be expected back at work?**

If your employer gives you two weeks of advance notice at the end of the two-week grace period, you will be back to work in the 3rd week following the grace period.

## **Can my employer require I show proof of a negative COVID-19 test or vaccination before I am allowed to return to my workplace?**

Having a COVID-19 test or getting a vaccine are considered personal health information and unless there are established policies and procedures in place you cannot be required to be tested or vaccinated and do not have to show proof of either to your employer.

## **As an employer, when are the public emergency group termination notice exemptions over?**

Immediately after the end of the public emergency period, employers are to provide notice to employees, unions and the Minister of Labour Relations and Workplace Safety of group termination in accordance with the regular provisions in The Saskatchewan Employment Act. There is no two-week grace period, as with the public emergency layoff provisions.

## **Can my employer require me to get the COVID-19 vaccination?**

Employment standards does not regulate vaccination. While this is largely a common law matter, employers are required to take reasonable precautions to ensure a safe and healthy workplace. Seek legal advice for assistance.

## **Under the employment standards provisions of *The Saskatchewan Employment Act*, can an employer terminate an employee if the employee chooses not to receive the vaccine?**

Employment standards provisions in *The Saskatchewan Employment Act* do not prohibit termination for this reason. Employers should consult their lawyer on other possible obligations.

## **Can an employer terminate me without notice for not getting vaccinated?**

Employers may only terminate employees with 13 weeks of employment without notice for just cause. Whether failure to get vaccinated is just cause or not, depends on a number of factors like all terminations, such as the employment contract, the nature of the work itself, and any employee medical conditions requiring accommodation. Employers are encouraged to seek legal advice in these cases.

## **Protection for Workers Accessing Federal Recovery Benefits**

### **Even though the orders have been lifted can an employee who needs to be off work to look after a child still apply for the federal caregiving benefit? Is their job still protected?**

Yes. Eligible workers will also continue to have job protection when away from work and applying for/receiving the Canada Recovery Caregiver Benefit and Canada Recovery Sickness Benefit up until September 25, 2021.

### **If am away from work but I am denied recovery benefits, am I still protected?**

Yes, as long as it's reasonable that you believed you were eligible. However, you must return to work if you find out you are not eligible. There is no protection if you are absent from work for reasons not relating to accessing these federal benefits.

### **Do I have to inform my employer of the reasons for my absence from work while I access these benefits? Can my employer require me to provide medical evidence?**

While you need to tell your employer why you are away from work; your employer cannot require you to provide medical evidence or evidence of your application for benefits.

### **Do I have to notify my employer that I will be away from work?**

Yes – however, the employer can't take discriminatory action against you if you aren't able to provide advance notice. You are required to provide as much notice as possible before you are away and when you return.

### **Do I have to notify my employer in advance of my return to work after accessing the federal sickness or caregiving programs?**

Yes, you must inform your employer in advance of your return to work. You should provide as much notice as reasonably possible.

If you have specific questions regarding leaves and layoffs, please contact Saskatchewan Employment Standards 1-800-667-1783 or email [employmentstandards@gov.sk.ca](mailto:employmentstandards@gov.sk.ca).

## **COVID-19 Vaccination Leave**

### **With the orders lifted, are workers still able to access the vaccination leave?**

Upon request to an employer, workers are able to take a minimum of three consecutive hours of paid time off to receive a COVID-19 vaccine during work hours. Employers can provide more than three hours off if they feel it is warranted to receive the vaccine. The COVID-19 vaccination leave is only applicable to one dose.

Each employer needs to have conversations with their staff about what is a reasonable time away for a vaccination. The three hours is a minimum amount of time, however an employer can allow for more than three consecutive hours leave if it is warranted.

### **Will government reimburse employers for having to provide paid time for employees to receive the vaccine during work hours?**

There will not be a cost recovery program associated with this new regulation.

### **Can an employer request that a worker show proof of having had a COVID-19 vaccine?**

No, workers cannot be required to show proof of a COVID-19 vaccine.

### **Can you provide an example of when more than three hours of leave would be warranted?**

An example would be where a worker is required to travel from a remote location to receive a vaccination.

### **What if an employee has a medical condition that prevents the employee from being vaccinated for COVID-19?**

If an employee has a medical condition that prevents the employee from getting the vaccine, that condition may be considered a disability. Under employment standards provisions in The Saskatchewan Employment Act, the employer would then be required to reasonably accommodate the employee.

### **Are employers responsible for paid time off if the worker has a reaction to the vaccine and needs to stay home or be hospitalized?**

No. If a worker needs to be away from the office as a result of a reaction to the vaccine they will need to use sick leave or other leave options that may be available to them.

### **Most of the vaccines require two shots, can employees use paid time off for a minimum of three hours each time or is it a cumulative amount of time?**

The paid time off is for one vaccination shot.

**Can workers who have had their first shot before the special COVID-19 vaccination leave legislation came into force (March 18, 2021) now take paid time to receive a second dose of the vaccine?**

Yes. In this circumstance upon request, workers would be entitled to a minimum of three consecutive hours of paid time off to get their second dose if vaccinated during work hours.

**If a worker receives paid time for their first dose of the vaccine, can employers require a worker to take sick leave or vacation time to receive a second shot?**

Employers and workers should discuss options to determine the best way for workers to get a second dose as currently the paid time off is for one dose only.

**Can workers split the three-hour minimum time between the two shots?**

The current regulations indicate that the leave is for three consecutive hours not a total of three hours.

**Can employers determine when a worker gets time off for a vaccination?**

Workers are required to request time away. Workers and employers must work together to arrange a mutually acceptable time to ensure operational requirements are met in the workplace.

**If a worker is only part time are they still entitled to paid time off for getting vaccinated?**

Yes. Workers who are part time employees are still able to request time off to receive the COVID-19 vaccine during work hours.

**Will a worker be entitled to paid time for receiving the vaccine outside of working hours?**

Under the COVID-19 vaccination leave a worker being vaccinated outside work hours would not be entitled to reimbursement.

**If a worker already received a COVID-19 vaccination and had to take personal time or other leave can they now claim the cost of time back to the employer?**

No. The paid time off for a minimum of three consecutive hours only begins when the regulations come into force which is March 18, 2021.

## **Occupational Health and Safety (OHS)**

**With the orders lifted, do employers still need to limit exposure to COVID-19 for workers?**

Under *The Occupational Health and Safety Regulations, 2020*, employers must take every reasonable precaution to protect the health and safety of workers.

**Do I have to wear a mask in the workplace after I get vaccinated?**

Workplaces will continue to follow any public health orders issued by Chief Medical Health Officer. Additional measures may be implemented by employers to address hazard in the workplace to protect the health and safety of the workers. Employees have a duty to follow these measures and use any protective equipment as provided by their employer.

**Now that the orders are removed do I still require an exposure control plan? Can the Ministry of Labour Relations and Workplace Safety still require me to show an exposure control plan to an officer?**

Now that the public health orders have been lifted, not all employers are required to have a COVID-19 exposure control plan. Employers must have a competent person conduct a hazard assessment to determine if they are required to develop a COVID-19 exposure control plan for their workplace.

## **When would a workplace need a COVID-19 exposure control plan?**

If a worker works with an infectious material or organism or needs to be vaccinated against an infectious material or organism that is an infectious disease hazard then section 6-22 of *The Occupational Health and Safety Regulations 2020*, for exposure control plans would apply. Some examples where a plan may still be required could include hospitals, dental offices, police, EMS, firefighters, corrections workers and other workplaces.

## **Can I request proof from employees that they have been vaccinated?**

In a majority of cases the employer cannot request personal medical information such as status of vaccination from a worker. However, in exceptional circumstance where there is a high risk of transmission to a vulnerable client population, employers may have the ability to access limited information. Employers should consult a lawyer to make a determination.

## **Can a worker refuse work because of COVID-19?**

Workers have the right to refuse to do any specific job or task which they have reasonable grounds to believe is unusually dangerous. An unusual danger could include:

- A danger that is not normal for the job (e.g., repairing a roof in dangerous winds);
- A danger that would normally stop work (e.g., operating a forklift with a flat tire); or
- A situation for which you are not properly trained, equipped or experienced to do the work assigned (e.g., cleaning windows on a tall building with no fall protection equipment or training).

## **Can a worker be fired for refusing unusually dangerous work?**

No. Workers cannot be fired or disciplined for using this right.

## **What are the steps for a worker to refuse unusually dangerous work?**

If your supervisor/employer asks you to perform a specific job or task that you have grounds to believe is unusually dangerous, follow these steps:

1. The employee informs their employer/supervisor that they are refusing work because of a health or safety concern pursuant to section 3-31 of *The Saskatchewan Employment Act*. The supervisor asks the employee what task or tasks they are refusing and why they believe the work is unusually dangerous. It is helpful if this is documented in writing.
2. The employee should not leave the worksite without their employer's permission.
3. If the worker and supervisor cannot resolve the concern to the worker's satisfaction, they contact their workplace occupational health committee (OHC).
4. The OHC investigates the refusal to determine if there are reasonable grounds to refuse the work. The OHC's decision must be a unanimous vote for or against the refusal.
5. If the refusal cannot be resolved within the workplace, contact the Occupational Health and Safety Division at the Ministry of Labour Relations and Workplace Safety by calling 1-800-567-7233.
6. An occupational health officer will investigate the refusal and provide a written decision on the matter.

For specific occupational health and safety questions please contact 1-800-567-7233.