

COVID-19 PANDEMIC RESPONSE

Essential Considerations for Employers in the Disability and Developmental Services Sectors

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Cheryl Wiles Pooran, LLB, BA



- Partner, Leader of PooranLaw's Labour and Employment Group
- Dedicated to Disability and DS
- Professor of Health Care Law, Health and Human Rights, York University
- E: cwpooran@pooranlaw.com
- P: 416-860-7572 x. 223

Agenda

1. COVID-19: The Challenge
2. Legal Framework
3. Pandemic Preparation
4. Reporting Requirements
5. Screening, Disclosure and Privacy
6. Self-Isolation and Travel
7. Program Closures
8. Absences Related to Covid-19
9. Managing Stress, Fear and Covid-19 related Discrimination
10. Honouring Excellence

CURRENT INFORMATION ON COVID-19

WHAT DO WE KNOW RIGHT NOW?

COVID-19 – Background

- History:
 - Began in Wuhan, China (December 2019)
 - Hit Ontario, January 25, 2020.
 - WHO has declared pandemic March
 -
- Symptoms:
 - flu-like (fever, cough, and difficulty breathing)
 - mild to severe, potential for serious complications and death

COVID-19 Cont'd

- COVID Specific Challenges

- Long incubation/latency period
- Mild/common symptoms
- Highly contagious

- DS Specific Challenges

- 24-7 operations
- Congregated settings
- Hygiene protocol compliance
- Confinement and social/physical distancing
- Disruption to routines

COVID-19 Cont'd

- Treatment:
 - Treat symptoms, no cure or vaccine
 - Vaccine could take 6-18 months
- Vulnerability:
 - Elderly (60-70+)
 - People with pre-existing health conditions (diabetes, kidney, liver, respiratory, cardio)
 - Pregnant women
- Prevention:
 - Handwashing, hand-sanitizer (60% alcohol), disinfection of surfaces
 - Social distancing
 - Droplet and contact precautions
 - PPE for contact or direct care = surgical mask, eye protection, gloves, and protective gown.

COVID-19 Cont'd

- MOHLTC website has guidance for long-term care homes:
 - http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/2019_long_term_care_guidance.pdf
- MOHLTC also has guidance on home care:
 - http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/2019_home_community_care_guidance.pdf
- Updated PHO guidance on precautions:
 - <https://www.publichealthontario.ca/-/media/documents/ncov/updated-ipac-measures-covid-19.pdf?la=en>
- Toronto Developmental Services Alliance:
 - Update from **Ursula Rehdner**, CEO Aptus Treatment Centre re PHO guidance for DS

LEGAL FRAMEWORK

WHAT LAWS IMPACT RESPONSE?

Legislation

- Emergencies Act (Federal)
- Employment Standards Act (Ontario)
- Human Rights Code (Ontario)
- PHIPA (Ontario) / PIPEDA (Federal)
- Occupational Health and Safety Act (and Regs) (Ontario)
- Health Protection and Promotion Act (Ontario)
- SIPDDA (Ontario)
- WSIA (and Regs) (Ontario)
- Employment Insurance Act (and Regs) (Ontario)

New Legislation

- Federal
 - Emergency Support Benefit for Employees Without EI (for sickness and layoff)
 - Tax benefits for small businesses, parents.
 - Removal of waiting periods for EI
- Provincial
 - New job protected leaves and sick note rules
 - the employer directs the employee not to work
 - the employee is under medical investigation, supervision or treatment for COVID-19
 - the employee is acting in accordance with an order under the *Health Protection and Promotion Act* or is acting in accordance with public health information or direction
 - the employee is in isolation or quarantine
 - the employee needs to provide care to a person for a reason related to COVID-19 such as a school or day-care closure.
 - The legislation will also prohibit employers from asking employees to provide a medical note if they take this leave. If passed, these proposed amendments would apply retroactively to January 25, 2020.

PANDEMIC PREPARATION

KEY ELEMENTS

Evolving Documents

- Significant changes to “Influenza Pandemic Plans” based on unique nature of COVID-19
- Policy/Plan Basics:
 - Decision making protocols
 - Responsibilities of stakeholders
 - Your commitment to match current medical standards.
 - Transmission precautions for different groups.
 - Expectations, entitlements, and treatment of ill employees.
 - Expectations of employees who are not ill or at risk.
 - Care of ill persons supported.
 - Handling of medicine.
 - Communications with families and public.
 - Reserves of supplies and equipment
- Training & Implementation
- Continuous Review

PANDEMIC REPORTING REQUIREMENTS

Reporting: When, to whom?

- **Generally** - Public Health reporting obligations are on Medical Profession
- **SIPDDA** – Serious (Level 2 - 24 hrs)/Enhanced (Level 1 - 1 hour) Serious Occurrences (See updated guide)
 - “Disaster on Premises” includes serious infectious disease
 - Admission to a hospital
 - Death
- **HPPA** – infection in the workplace affecting or likely to affect “resident”
- **WSIB** – lost pay and/or medical attention required – Form 7
- **OHSA**
 - Critical injury reporting (Death or EMS involved) notice to MOL within 48 hours
 - Non-critical (requiring medical attention) union and JHSC – 4 days
 - Illness – 4 days

DISCLOSURE, INFORMATION SHARING AND PRIVACY

Screening, Testing and Information Sharing

Screening:

- Visitors,
- Employees and
- People supported

Key questions:

- Diagnosed or presumptive?
- Symptomatic (fever, new cough, short of breath)?
- Household members/close contact with someone who has been diagnosed?
- Household members/close contact with someone who is symptomatic?
- Travel*?

Collection, Use and Disclosure

- Legal Restrictions Generally
 - OHRC, PHIPA, PEPIDA, Collective Agreement, Common Law
- During Pandemic:
 - Can we screen for travel?
 - Can we require disclosure of personal medical status?
 - Can we require temperature checks?
 - Can we require disclosure of close contact?
 - Can we disclose information to others in the workplace?

CHANGES IN WORK ARRANGEMENTS PROGRAM CLOSURE, AND LAYOFFS

Social Distancing may require:

1. Changes in work arrangements
 - Work from home
 - Staggering schedules
 - Silo-ing
2. Closure of programs with re-deployment
3. Closure of programs with pay, unpaid layoffs or layoff mitigation

SELF-ISOLATION & TRAVEL

Self-Monitoring, Self-Isolation, Isolation

Self Monitoring:

- no symptoms AND a history of possible exposure to the novel coronavirus that causes COVID-19, in the last 14 days.
- 14 days monitoring for symptoms and avoiding crowded spaces

Self-Isolation:

- no symptoms AND a history of possible exposure to the novel coronavirus due to travel outside of Canada or close contact with a person diagnosed with COVID-19
- 14 days at home, avoiding close contact with others

Isolation:

- symptoms, even if mild AND you have been **diagnosed** with COVID-19 or are waiting for the results of a lab test for COVID-19
- at home until cleared and avoiding close contact with others

Conflicting Statement on Travel

Travel Restrictions – Federal Government Directives

- As of March 13, 2020, the Government of Canada has requested Canadians avoid any travel outside of Canada.
- As of March 14, 2020 – Federal Government “advises” travellers to any international destination to self-isolate for 14 days upon return
- As of March 16, 2020,
 - borders are substantially closed to all but Americans and Canadians,
 - anyone, including Canadian citizens and permanent residents, who exhibit symptoms abroad will be restricted from returning to Canada.
 - Trudeau says “you MUST self-isolate for 14 days” post travel

Conflicting Statements on Travel

Travel Restrictions – Provincial

If you have travelled outside of Canada in the last 14 days

- If you have travelled and are not a healthcare worker or another essential service worker, **ask** that you **self-isolate** for 14 days since your arrival in Canada. People who are self-isolating should not go to work. In addition:
- Workers who have travelled and are part of workplaces that are essential to daily living are able to return to work as long as they are asymptomatic. However, they should **self-monitor** for a period of 14 days and identify themselves to their employer so that a plan can be put into place to ensure the protection of those workplaces.

<https://news.ontario.ca/mohltc/en/2020/3/enhanced-measures-to-protect-ontarians-from-covid-19.html>

Conflicting Statements on Travel

Travel Restrictions – Local (Toronto)

“Travellers who have returned from anywhere else outside Canada, including the United States, **should:** Self-isolate (i.e. stay at home and avoid close contact with others, including those in their home) for a total of 14 days.”

AND

“You will need to stay home and self-isolate if you have...have travelled from anywhere outside of Canada, including the United States, within the past 14 days”

- <https://www.toronto.ca/home/covid-19/covid-19-health-advice/>
- <https://www.toronto.ca/home/covid-19/travel-advice/?/?accordion=returning-from-anywhere-else>

Managing Self-Isolation and/or Travel

1. Communicate expectations and consequences
2. Pay during self-isolation?
3. Don't pay during self-isolation?
4. Pay during some self-isolation?
5. Allow use of sick benefits, vacation, lieu time?
6. Supplement during self-isolation?

ABSENCES DUE TO COVID-19

Potential Reasons for Absence

- Covid-19 Infection (presumptive or confirmed)
- Self-isolation (due to exposure or travel)
- Childcare obligations flowing from school closures
- Care for a family member infected with Covid-19
- Preventive self-isolation due to age or medical fragility
(medical leave due to medical restrictions preventing the employee from working due to risk in the workplace)
- Fear of infection – work refusals

Existing Leaves

- New Covid-19 leaves expected to deal with childcare, self-isolation, illness etc.
- Existing leaves under ESA:
 - Critical illness leave
 - Family caregiver leave
 - Family medical leave
 - Child death leave
 - Sick leave
 - Family responsibility leave
 - Declared Emergency Leave
- Human Rights Related Absence
 - Disability, Family Status, Marital Status, Age
- Consider impact of leaves on layoffs.

Entitlements During Absence

- Legal entitlements based on:
 - statute (at present all unpaid),
 - collective agreement (sick, personal days, STD, LTD),
 - policy/contract (sick, personal days, STD, LTD)
- Statutory Leaves include:
 - Job protection, benefit continuance, seniority accumulation, vacation accrual (unless vacation pay expressed as percentage based on earnings)
- Rules related to Medical Evidence
- Attendance Management Programs
- Exclusions
- To pay or not to pay?

EI Sick Benefits

- **Eligibility:**
 - Employees who are quarantined, “directed to self-isolate”, or ill with COVID-19 may be entitled to EI sick benefits.
 - Must have accumulated 600 insured hours of work in the prior 52 weeks (~12 hours per week).
- **Waiting period:**
 - 1 week waiting period eliminated for sick benefits related to Covid-19 only
 - Could potentially be waived for covid-19 related layoffs as well (not confirmed at this time)
- **Sick Note:** No longer need a medical certificate where quarantined or self-isolated due to law, public health orders, or employer request on public health recommendation.
- **Benefit:** Can receive up to 15 weeks of EI, with the lesser of 55% of earnings or \$573 a week.
- **Sup Plans:** Top ups, registration requirements...

WSIB

Covers:

- “personal injury or illness arising out of and in the course of employment”
- provides compensation where “a worker suffers from and is impaired by an occupational disease that occurs due to the nature of one or more employments in which the worker was engaged.”
- Workers infected with the COVID-19 in the course of employment may be entitled to services and benefits – SARS resulted in claims by healthcare workers

WSIB Says:

“While the nature of some people's work may put them at greater risk of contracting the virus, for example those treating someone with COVID-19, any claims received by the WSIB will need to be adjudicated on a case-by-case basis, taking into consideration the facts and circumstances.”

WSIB Alternatives:

- Don't usually cover “illnesses” - predominantly apply to “accidents” (check your plan)
- Don't prevent law suits – SARS resulted in numerous lawsuits

Work Refusals

- Right to refuse work under *OHSA* s. 43 where...
 - a) the physical condition of the workplace or a part thereof is likely to endanger them, or
 - b) where a piece of equipment is in contravention with the *OHSA* and is likely to endanger them.
- Exemptions in regs for health care and residential care in DS (unlikely to apply to home care or day supports)

Exemptions from Right to Refuse

- Circumstances under s. 43(1) where right to work is limited for prescribed employees:
 1. when a circumstance that would normally ground a work refusal (e.g. physical conditions) is **inherent in the work** or is a normal condition of their employment; OR
 2. when **refusal to work directly endangers life, health or safety of another person.**

Managing Staffing Shortages

- Shift Premiums + (Caution for attendance bonuses –)
- Clear expectations
- Vocal appreciation
- Temp. staffing (contracts are key and note ESA obligations)
- Balance incentives to work against discouraging staff who are sick from working

MANAGING STRESS, FEAR AND COVID-19 RELATED DISCRIMINATION

Stress and Fear

Canadian Mental Health Association:

1. Have a plan
2. Communicate
3. Empathize
4. Reassure – as best you can
5. Understand
6. Recognise this is not quite “business as usual”

Human Rights Considerations

- Anxiety no excuse for discrimination
- Employees may be targeted by ethnic discrimination
- Ensure messaging is clear in relation to expectations on respect, non-discrimination, human rights etc.

SHOUT OUT EXCELLENCE

Honour your Staff

- Shine a light in dark times
- No media or political recognition for dedicated, hard-working, self-sacrificing DS staff
- Consider options for letting them feel the love during the crisis – not just after it has passed:
 - Premiums
 - Bonuses
 - Food
 - Entertainment
 - Breaks
 - Verbal, written, private and public praise

Useful Links and Resources

- Toronto Public Health Resources
 - <https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/staff-directory-divisions-and-customer-service/toronto-public-health/>
 - <https://www.toronto.ca/home/covid-19/>
- Public Health Agency of Canada
 - <https://www.canada.ca/en/public-health.html>
 - <https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html>
- Public Health Ontario
 - <https://www.publichealthontario.ca/en/diseases-and-conditions/infectious-diseases/respiratory-diseases/novel-coronavirus>

Useful Links and Resources

- IPAC Canada's PPE and Protective Measures Recommendations
 - <https://www.publichealthontario.ca/-/media/documents/ncov/updated-ipac-measures-covid-19.pdf?la=en>
- PHO Long-Term Care Home Fact Sheet
 - <https://www.publichealthontario.ca/-/media/documents/ncov/factsheet-covid-19-preparedness-long-term-homes.pdf?la=en>
- PHO Routine Practices and Additional Precaution Resources for Infection Prevention and Control
 - <https://www.publichealthontario.ca/en/health-topics/infection-prevention-control/routine-practices-additional-precautions>

Useful Links and Resources

- PHO's Recommended Steps for Putting On and Taking Off PPE ("Donning and Doffing")
 - <https://www.publichealthontario.ca/-/media/documents/rpap-recommended-ppe-steps.pdf?la=en>
- PHO's Best Practices for Environmental Cleaning for Prevention and Control of Infections in All Health Care Settings 3rd Ed
 - <https://www.publichealthontario.ca/-/media/documents/bp-environmental-cleaning.pdf?la=en>
- MOHLTC's COVID-19 Screening Checklist
 - http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/2019_screening_guidance.pdf

Useful Links and Resources

- MOHLTC's COVID-19 Guidance for Long-Term Care Homes
 - http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/2019_long_term_care_guidance.pdf
- MOHLTC's COVID-19 Guidance for Home and Community Care Providers
 - http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/2019_home_community_care_guidance.pdf
- WSIB COVID-19 Updates
 - <https://www.wsib.ca/en/novel-coronavirus-covid-19-update>

Useful Links and Resources

- MOL's Guide to OHSA
 - https://www.labour.gov.on.ca/english/hs/pubs/liveperformance/g_l_live_refuse.php
- Ontario Human Rights Commission Statement on COVID-19 and Human Rights Law
 - http://www.ohrc.on.ca/en/news_centre/ohrc-policy-statement-covid-19-pandemic
- Service Canada's EI SUB Program Guide
 - <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/supplemental-unemployment-benefit.html>

