

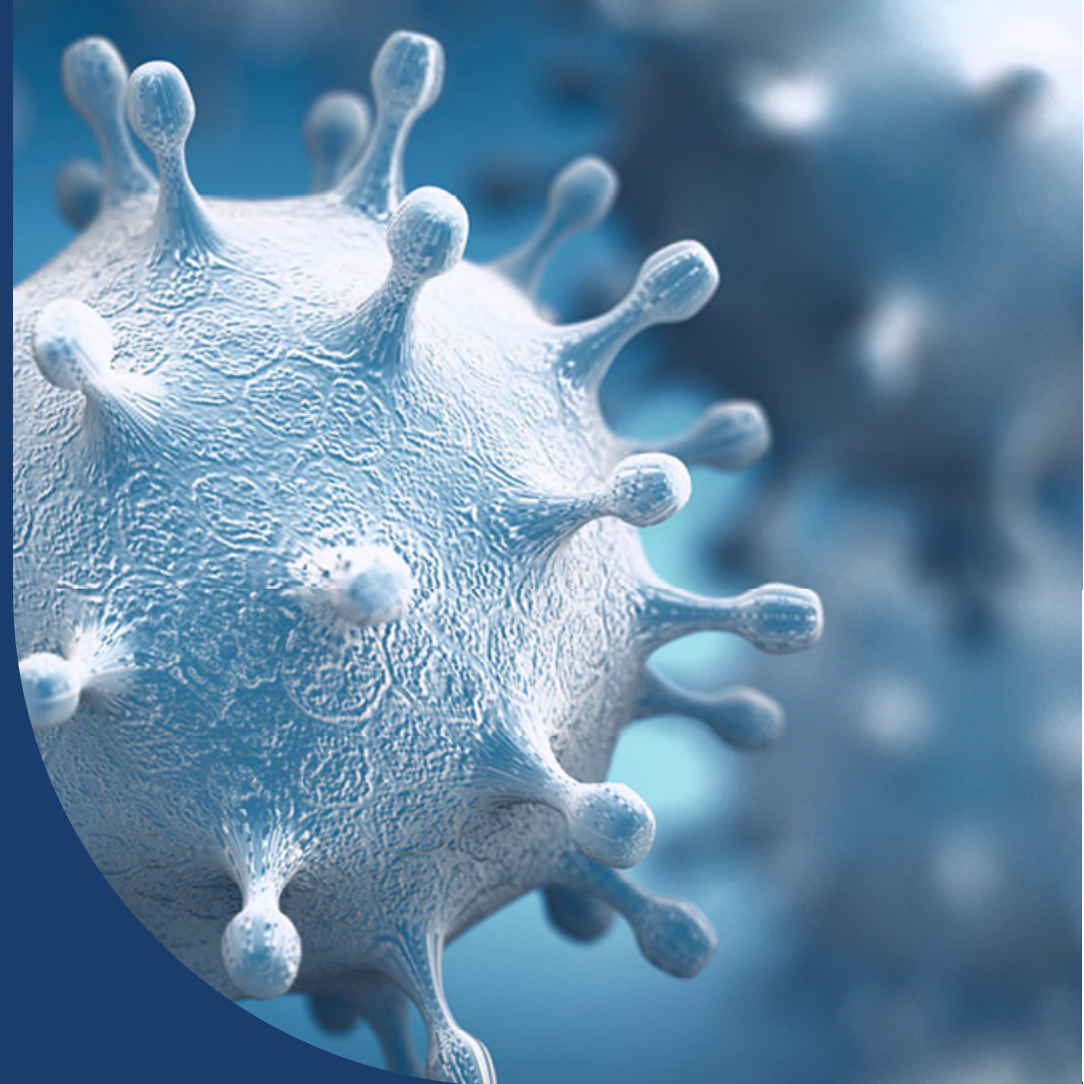
COVID-19 Legal Perspectives

WORKPLACE ISSUES

Presented By

BLG | Canada's Law Firm

April 1, 2020



BLG
Borden Ladner Gervais

Moderator



Dan Palayew

Partner, Labour & Employment

Dan advises clients on issues regarding collective bargaining, injunctions, wrongful dismissal actions, employee terminations, harassment, arbitrations, workplace safety and insurance and workplace privacy. He also acts as an investigator and mediator in complex workplace disputes.



COVID-19 Legal Perspectives: Workplace Issues

Our goal: Answer your questions and help businesses navigate this uncertain and challenging time by addressing common workplace issues and potential impacts.

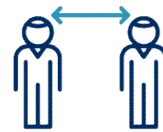
Today's agenda:



What you need to know about temporary layoffs



Constructive dismissal issues in the context of COVID-19



Work refusals for unsafe work



Employment Insurance and the new CERB



New statutory leave for quarantine

Speakers from Labour & Employment

Moderator:



Dan Palayew

Partner



Clifford J. Hart

Partner



Jennifer Fantini

Partner



Katherine Poirier

Partner



Michelle Henry

Partner



Duncan Marsden

Partner

COVID-19 Legal Perspectives: Workplace Issues



Our next webinar will be on
Wednesday, April 8, 2020.

We will be presenting a French webinar for our clients regarding legal perspectives that should be considered during this pandemic.



This session is eligible for CPD credits. Information for logging your time in your respective province will be provided in a follow-up email after the event.

COVID-19 Legal Perspectives

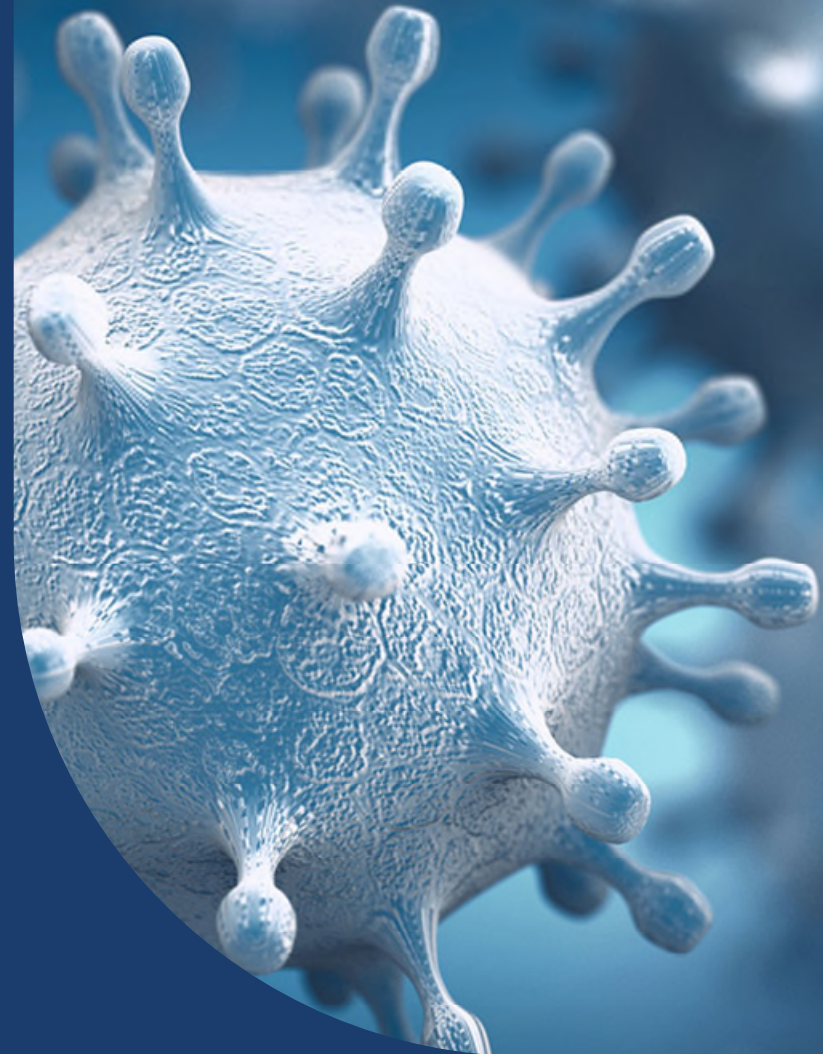
TEMPORARY LAYOFFS

Presented By

Clifford J. Hart

Moderated by Dan Palayew

April 1, 2020



BLG
Borden Ladner Gervais

Speaker



Clifford J. Hart

Partner, Labour & Employment

Clifford provides advice and training to a wide range of private and public sector employers on labour relations and employment law related issues. This includes collective bargaining and collective agreements, unfair labour practices, human rights, discipline and discharge, wrongful dismissal, employment standards and human resources policies and procedures.



Temporary Layoffs

KEY CONCERNS:

Mitigating risks | Best practices | Differences across Canada

KEY QUESTIONS

1. **What are the differences between how layoffs are treated in a unionized vs. non-unionized environment?**
2. Can you take a standardized approach to layoffs if you have employees across Canada?
3. Some provinces have introduced declared emergency leaves – what are those and can employers put employees on it in lieu of layoffs?
4. What happens if this all goes on longer than anticipated? What are the differences between unionized and non-unionized layoffs?

What are the differences between unionized and non-unionized layoffs?

Key Takeaways

- Look to the Collective Agreement first
- Seniority 'bumping' provisions
- Open negotiation with the Union = fewer grievances
- Non-union = look to the employment agreement, industry, past practices
- Constructive dismissal risk

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Can you take a standardized approach to layoffs if you have employees across Canada?

Key Takeaways

- National approaches recommended
- Approach vs. Procedure
- Province-by-province considerations
- Statutory limits to the duration of layoffs
- When layoffs = terminations
- Mass termination provisions

Temporary Layoffs

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4. What happens if this all goes on longer than anticipated? What are the differences between unionized and non-unionized layoffs?

What are declared emergency leaves and can employers put employees on it in lieu layoffs?

Key Takeaways

- Leaves are employee-driven
- No obligation to inform
- Example: *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020*

Temporary Layoffs

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What happens if this all goes on longer than anticipated? What are the differences between unionized and non-unionized layoffs?

Key Takeaways

- Hitting the thresholds
- Need to recall employees
- Further layoffs

COVID-19 Legal Perspectives

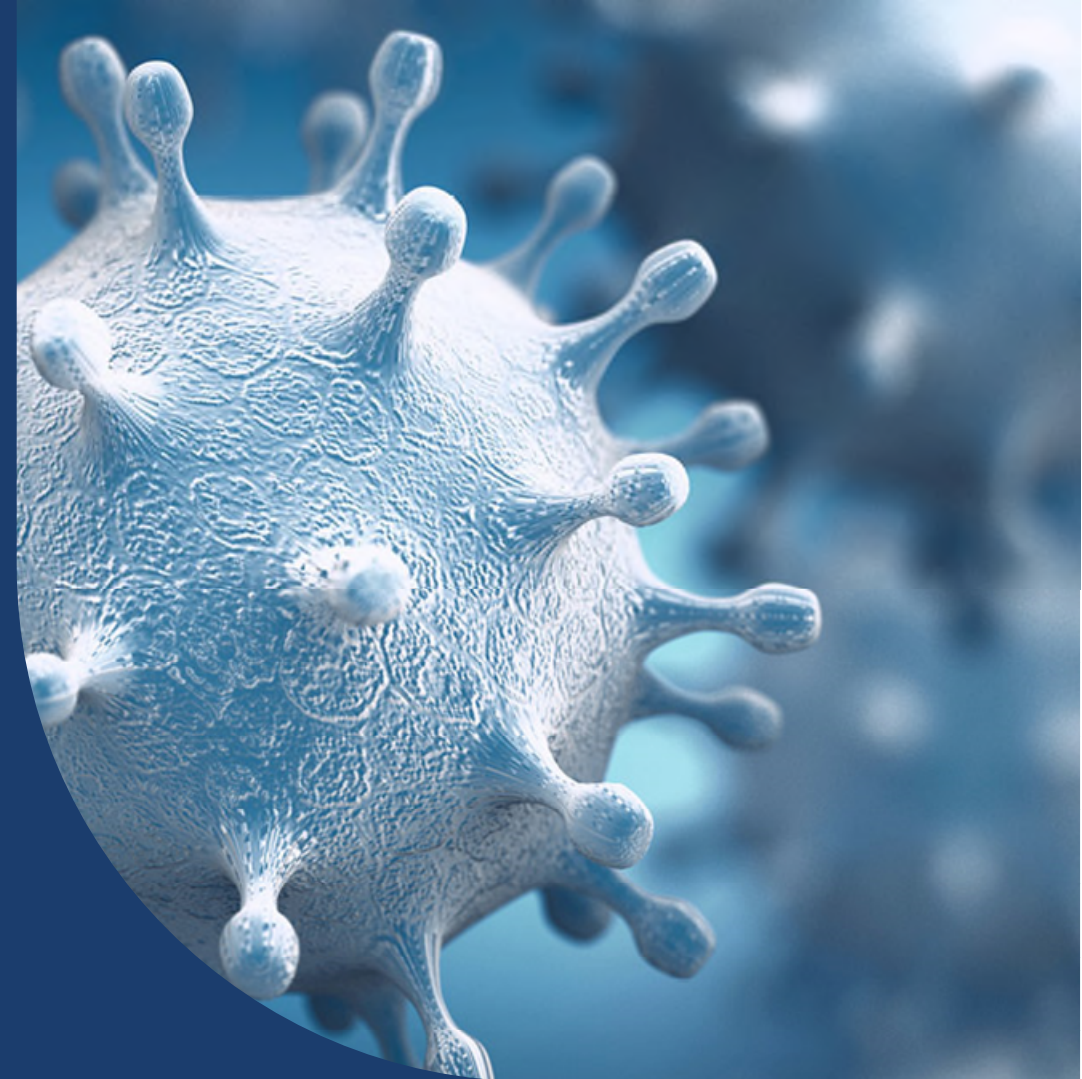
CONSTRUCTIVE DISMISSAL CLAIMS

Presented By

Jennifer Fantini

Moderated by Dan Palayew

April 1, 2020



BLG
Borden Ladner Gervais

Speaker



Jennifer Fantini

Partner, Labour & Employment

Within her practice, Jennifer advises public and private sector employers with respect to: employee discipline and termination, wrongful dismissal, employment policies and contracts, employment standards and human rights issues.



Constructive Dismissal Claims

KEY CONCERNS:

Common issues | Mitigating risks | Practical issues

KEY QUESTIONS

1. **What are the most common constructive dismissal issues arising from COVID-19?**
2. How should employers mitigate the risks of constructive dismissal?
3. What are the practical issues and challenges?

What are the most common constructive dismissal issues arising from COVID-19?

Key Takeaways

- Temporary layoffs
- Reductions in pay (with or without a corresponding reduction in hours)
- Other: Transferring employees, changing hours of work, requiring remote work, etc.

Constructive Dismissal Claims

KEY CONCERNS:

Common issues | Mitigating Risks | Practical issues

KEY QUESTIONS

1. What are the most common constructive dismissal issues arising from COVID-19?
2. **How should employers mitigate the risks of constructive dismissal?**
3. What are the practical issues and challenges?

How should employers mitigate the risks of constructive dismissal?

Key Takeaways

- Introduce changes on a temporary basis
- Seek employee consent/agreement
- Obtain consent in writing
- Messaging is important

Constructive Dismissal Claims

KEY CONCERNS:

Common issues | Mitigating risks | Practical issues

KEY QUESTIONS

1. What are the most common constructive dismissal issues arising from COVID-19?
2. How should employers mitigate the risks of constructive dismissal?
3. **What are the practical issues and challenges?**

What are the practical issues and challenges?

Key Takeaways

- Predicting and communicating the anticipated length of the change
- What to do if an employee does not consent
- Ensuring favourable outcomes for the employee

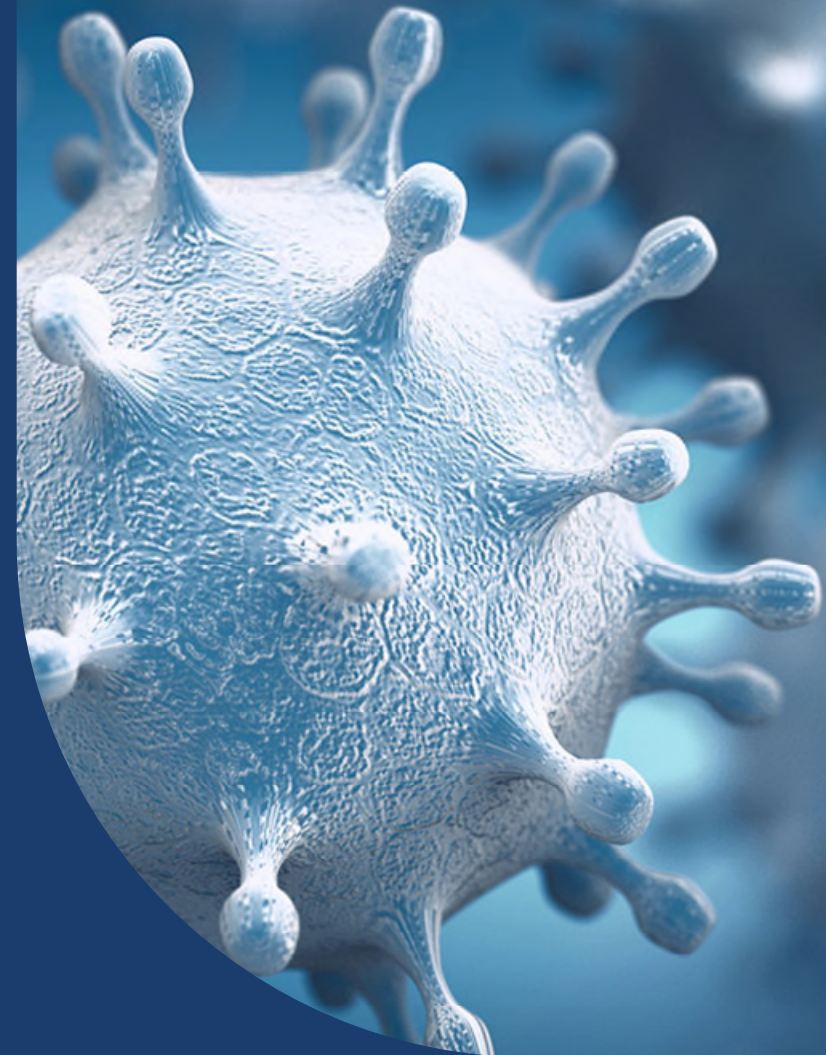
COVID-19 Legal Perspectives

WORK REFUSALS FOR
UNSAFE WORK

Presented By

Katherine Poirier
Moderated by Dan Palayew

April 1, 2020



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Borden Ladner Gervais

Speaker



Katherine Poirier

Partner, Labour & Employment

Katherine's practice focuses on workers' compensation and health and safety. She provides guidance and representation to organizations facing sensitive issues and crises, including severe workplace accidents and complex harassment matters.



Work Refusals for Unsafe Work

KEY CONCERNS:

Understanding work refusals | Work refusals in the current context | Accessibility

KEY QUESTIONS

1. **What happens if an employee refuses to work out of fear of COVID-19?**
2. How can organizations prevent work refusals relating to COVID-19?
3. Is work refusal accessible to all workers?

What is the work refusal right and how is it exercised?

Key Takeaways

- Right to refuse to carry on work
- Would put themselves, or other persons in the workplace, in danger
- Must rely on reasonable grounds
- Worker must advise their supervisor

Work Refusals for Unsafe Work

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3. Is work refusal accessible to all workers?

How can organizations prevent work refusals relating to COVID-19?

Key Takeaways

- Distinction with refusal based on the worker's own health condition
- Implement all precautions recommended by Public Health Authorities
- Keep employees informed
- Designate a knowledgeable point person

Work Refusals for Unsafe Work

KEY CONCERNS:

Understanding work refusals | Work refusals in the current context | Accessibility

KEY QUESTIONS

1. What happens if an employee refuses to work out of fear of COVID-19?
2. How can organizations prevent work refusals relating to COVID-19?
3. **Is work refusal accessible to all workers?**

Is work refusal accessible to all workers?

Key Takeaways

- Limited in most jurisdictions if would immediately endanger life, health, safety or physical well-being of others
- Or if the conditions are inherent to the type of work

COVID-19 Legal Perspectives

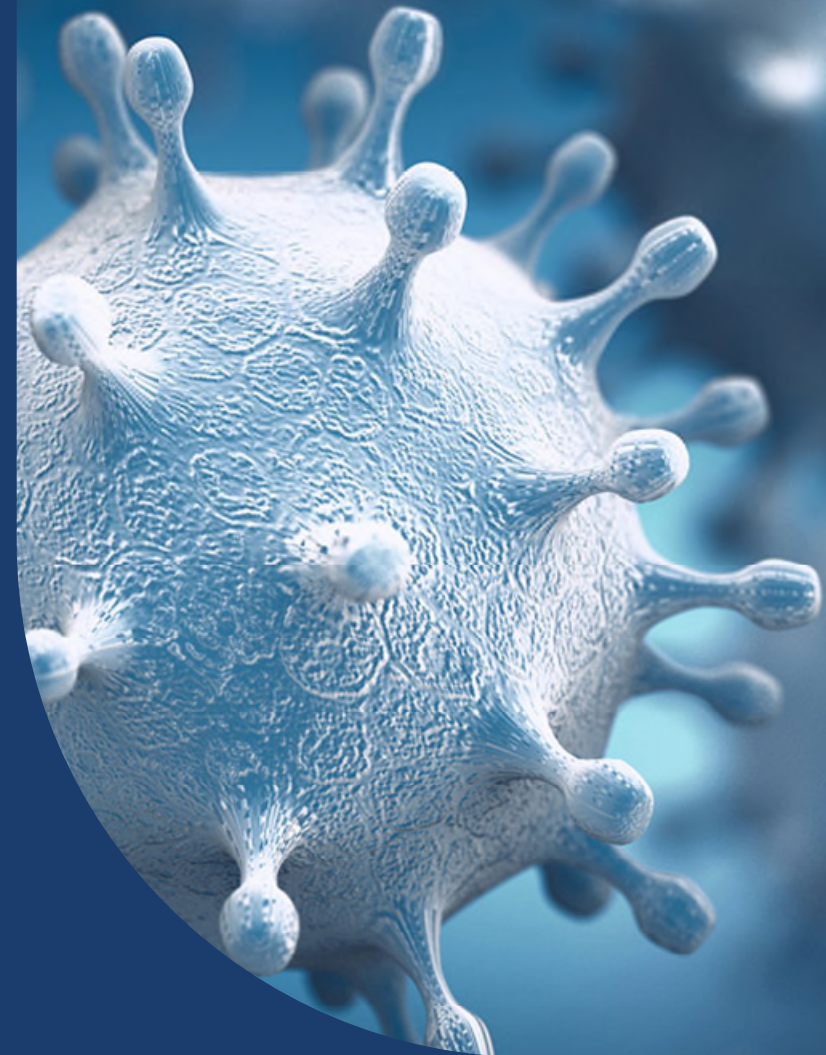
EI AND THE NEW CERB

Presented By

Michelle Henry

Moderated by Dan Palayew

April 1, 2020



BLG
Borden Ladner Gervais

Speaker



Michelle Henry

Partner, Labour and Employment

Michelle advises employers on employment-related matters, including restructuring, contracts and terminations, investigations and discipline, workers' compensation and occupational health and safety. Michelle represents employers in employment-related disputes, including wrongful dismissals and constructive dismissals.



EI and the New CERB

KEY CONCERNS:

Financial assistance for employees | Qualifying for the benefits | Maximizing the amounts employees receive

KEY QUESTIONS

1. **What EI benefits are available to employees?**
2. Can employers top up employees' EI payments?
3. Can employees work reduced hours while receiving EI?
4. Who is entitled to the new Canada Emergency Response Benefit?

What benefits are available to employees?

Key Takeaways

- Employment insurance benefits
- Employees who qualify receive 55% of earnings to a max of \$573 a week
- **Regular benefits:** available to individuals who lose their jobs through no fault of their own and have worked for the required number of insurable employment hours.

What benefits are available to employees?

Key Takeaways

- **Sickness benefits:** provide up to 15 weeks of income and is available to eligible claimants who are unable to work because of illness, injury or quarantine
- Employees must accumulate 600 insurable hours to qualify
- Waiting period has been waived

EI and the New CERB

KEY CONCERNS:

Financial assistance for employees | Qualifying for the benefits | Maximizing the amounts employees receive

KEY QUESTIONS

1. What EI benefits are available to employees?
- 2. Can employers top up employees' EI payments?**
3. Can employees work reduced hours while receiving EI?
4. How does the work sharing program work?

Can employers top up employees' EI payments?

Key Takeaways

- Registered Supplementary Unemployment Benefits Plan
- Amounts paid under a SUB plan registered with Service Canada are not deducted from EI benefits
- An employer can compensate an employee up to 95% of their regular weekly earnings under a SUB Plan

EI and the New CERB

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Financial assistance for employees | Qualifying for the benefits | Maximizing the amounts employees receive

KEY QUESTIONS

1. What EI benefits are available to employees?
2. Can employers top up employees' EI payments?
- 3. Can employees work reduced hours while receiving EI?**
4. Who is entitled to the new Canada Emergency Response Benefit?

Can employees work reduced hours while receiving Employment Insurance?

Key Takeaways

- Employees can work while receiving Employment Insurance
- If it is not under a work sharing plan, employees will not receive their full Employment Insurance entitlement

How does the work-sharing program work?

Key Takeaways

- Employers may implement a federal WS program in which employees agree to work reduced hours while receiving EI benefits
- WS programs require a three-party agreement
- Streamlined measures undertaken by Service Canada aim to reduce the processing time to 10 calendar days

EI and the New CERB

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Financial assistance for employees | Qualifying for the benefits | Maximizing the amounts employees receive

KEY QUESTIONS

1. What EI benefits are available to employees?
2. Can employers top up employees' EI payments?
3. Can employees work reduced hours while receiving EI?
4. **Who is entitled to the new Canada Emergency Response Benefit?**

Who is entitled to the new Canada Emergency Response Benefit?

Key Takeaways

- Government of Canada has indicated that it will be up to \$2000 per month
- The benefit is intended to cover a 16-week period, unless otherwise specified in the regulation
- Available to workers who are at least 15 years of age and who have an income of at least \$5000 in 2019, or in the 12-month period preceding their application

Who is entitled to the new Canada Emergency Response Benefit?

Key Takeaways

CERB is available to workers who:

- Must stop working due to COVID-19 and do not have access to income support
- Are sick, quarantined, or caring for someone who is sick with COVID-19
- Must stay home without pay to care for their children due to the closure of schools and childcare facilities
- Not otherwise be eligible for EI

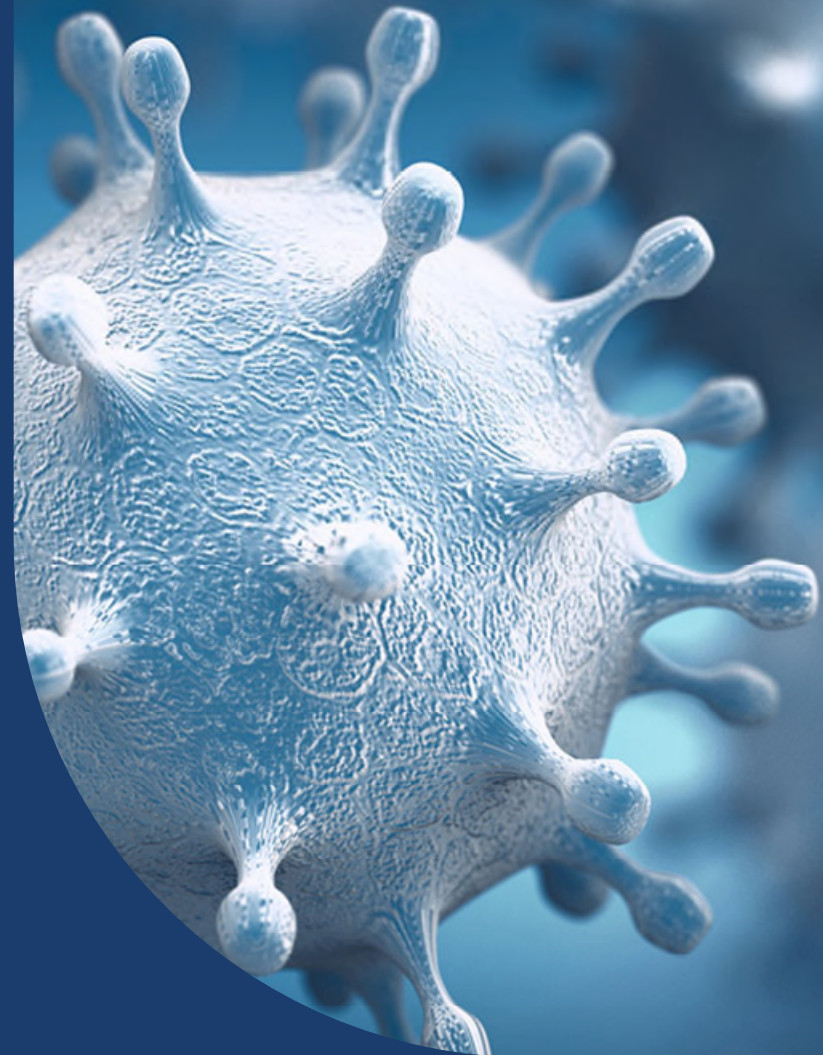
COVID-19 Legal Perspectives

NEW STATUTORY LEAVE
FOR QUARANTINE

Presented By

Duncan Marsden
Moderated by Dan Palayew

April 1, 2020



BLG
Borden Ladner Gervais

Speaker



Duncan Marsden

Partner, Labour & Employment

Duncan provides advice to clients on dismissal procedures, dispute resolution, managing downsizing and other cost-saving exercises, employment litigation and corporate due diligence. He advises on all aspects of employment-related documentation, as well as workers' compensation, discrimination law, termination tax issues and the interpretation of employment contracts and policies.



New Statutory Leaves for Quarantine

KEY CONCERNS:

New quarantine leaves | Federal and Provincial leaves

AGENDA

1. **What type of leaves are available to be taken?**
2. What are the NEW quarantine leaves that have been introduced?

What type of leaves are available to be taken?

Key Takeaways

- Critical Illness Leave
- Family Responsibility Leave
- Family Caregiver Leave
- Compassionate Care Leave
- Bereavement Leave

New Statutory Leaves for Quarantine

KEY CONCERNS:

New quarantine leaves | Federal and Provincial leaves

AGENDA

1. What type of leaves are available to be taken?
2. **What are the NEW quarantine leaves that have been introduced?**

Provinces that have made no changes

Key Takeaways

The provinces below have no quarantine leave yet:

- Québec
- Nova Scotia
- NWT
- Nunavut
- PEI

Ontario - Infectious Disease Emergency Leave

Key Takeaways

- Unpaid leave
- For as long as employee is not performing duties because of an emergency declared
- No medical note required (although other reasonable documents could be)

Alberta - Quarantine Leave

Key Takeaways

- Up to 14 days
- Unpaid leave
- Job protected

Key Takeaways

- Unpaid job protected leave
- For as long as someone is unable to work due to one of the specified reasons:
 - Has COVID-19
 - Needs to quarantine

Federal - Quarantine Leave and COVID-19 Leave

Key Takeaways

- Up to 16 weeks unpaid leave
- As a result of quarantine/COVID-19
- Quarantine Leave - Certificate by a health care practitioner not required
- Leave related to COVID-19 - May require an employee to provide a written declaration in support of the reasons for the leave of absence

Thank you to our speakers

Moderator:



Dan Palayew

Partner



Clifford J. Hart

Partner



Jennifer Fantini

Partner



Katherine Poirier

Partner



Michelle Henry

Partner



Duncan Marsden

Partner

COVID-19 Legal Perspectives: Workplace Issues

BLG helps you respond and prepare for what's next.
For additional questions or to connect, visit:

BLG.COM

Additional sources of information:

The BLG COVID-19 Insights page:
www.blg.com/insights/covid-19

Connect on LinkedIn:
www.blg.com/linkedin



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