



**COVID-19 Update June 10, 2020**

**POST COVID-19 FAQs**

For most employees and employers, the last few months have been a roller coaster of uncertainty, emotion and anxiety. The world seems to be changing before our eyes in such a short period of time. Will life return to what we were used to before COVID-19? Experts predict at least 18 to 24 months of further disruption. We're facing a new normal: new ways of living and doing business.

As organizations and businesses reopen, what questions should we be asking ourselves? What questions do we need to answer? This publication is intended to pose and answer some of these questions. Contact us to discuss these questions and any other questions you may have to maximize your business opportunities and your employee's contributions.

We have not included details regarding the various government support programs in this publication. To find out about the Canada Emergency Response Benefit (CERB), the Canada Emergency Wage Subsidy (CEWS) and much more, please visit:<https://wardanduptigrove.com/covid-19.htm>.

**Table of Contents**

<b>Business Strategy</b> .....	<b>3</b>
1. COVID-19 is changing the way we do business and what our customers need. What are our next steps? .....	3
2. What should we do on the first day back to work? .....	4
3. Should I have new employees start during this declared Emergency?.....	4
4. What is the Work Share Program, and can my business apply?.....	4
<b>Health and Safety</b> .....	<b>5</b>
5. Does Ward & Uptigrove have a checklist of issues we should be considering when re-opening our business?.....	5
6. We need help navigating through our Return to Work (RTW) from COVID-19 issues. Who can help? .5	
7. Our Business is permitted to re-open; how do we know what steps to take to keep our staff safe?....	5
8. What if one of our employees refuses to work because of COVID-19?.....	6
9. What is my responsibility if one employee complains about a co-worker not complying with our workplace COVID protocols?.....	7
10. Should I be screening employees before they return to work? And if so, should it be every day? .....	7
11. What if an employee or customer is suspected of or confirmed to be COVID-19 positive? .....	7
12. What can I do if an employee doesn't comply with our new workplace Health & Safety protocols?....	7
13. What can I do if an employee breaks Public Health directives outside of work? .....	8
<b>Employee Relations and Communication</b> .....	<b>8</b>



14. Managing business during the COVID-19 pandemic has been a challenging and stressful experience. We don't know how our employees feel. How can we be better prepared for next time? ..... 8

15. How should we tell our staff, customers, etc. about our reopening plans? ..... 8

16. Many of our employees are laid off and have substantial accumulated vacation to take when they return to work. We're worried that when we reopen that many staff will want to take vacation and we will be short staffed. What can we do? ..... 9

17. We allowed some of our employees to work from home during the COVID-19 pandemic. Are we required to bring them back to our main work location when we reopen? ..... 9

18. What should you do now that you are reopening, and your employee no longer needs to work at home? ..... 10

19. How do I complete ROE's for employees on leave/layoff? ..... 11

20. Do I have to pay an employee who is absent due to COVID-19 (sick or quarantined?) ..... 11

21. Do we have to return an employee to work who has taken a leave of absence due to COVID-19? .... 11

22. Can an employee opt not to come to work due to COVID-19? ..... 11

23. Can I treat certain employees differently due to COVID-19? ..... 12

**Performance Management, Discipline, Layoffs and Termination ..... 12**

24. We have an employee who was struggling before COVID-19 and now we're reopening and returning our staff to work. We didn't document the poor performance. What are our options? ..... 12

25. What should we do about the staff I laid off due to COVID-19? ..... 13

26. Our employee found another job while laid off. Do we owe them anything? ..... 13

27. My business can't reopen yet. We laid off all our employees on March 17 and the 13-week deadline on June 16 is fast approaching. We may not be able to reopen by June 16. Do the Emergency Order Rules automatically extend the 13-week ESA deadline? What else do I need to know? ..... 13

28. What if we recall some employees and they refuse to come back to work because of the lack of childcare? Are they automatically terminated? ..... 13

29. Can I terminate an employee who is asking for time off due to COVID-19? ..... 14

30. What happens if we recall an employee to substantially less hours (say 25 vs 40) than they were working pre COVID-19? ..... 14

31. We have some work for laid off staff but may have to lay them off again in a few weeks. Is this okay? ..... 14

**Policies ..... 14**

32. Do we need to make written policies and procedures? Or can we just talk about it with staff? ..... 14

33. Do I need to do formal training for all staff about our new policies and procedures? ..... 15

34. Given COVID-19, what policies should we review, update and communicate with our staff? ..... 15

## Business Strategy

---

### 1. COVID-19 is changing the way we do business and what our customers need. What are our next steps?

You may need to change your business strategy to adapt to the needs of your staff, customers and the new environment.

- Can you deliver your goods/services in the same way? Can your business adapt in a way that is sustainable in the long term?
- A top priority is ensuring the wellbeing of yourself and your staff. Encourage healthy behaviours, including a good diet, proper sleep, exercise, and staying connected with friends and family.
- Given COVID-19, now is the time to be vulnerable, humble and emphatic. Be honest and transparent. You don't have all the answers, ask for input from your key stakeholders, especially your most important asset; your staff. We're all experiencing an increase in anxiety and stress. Consider doing the small things to help staff be more productive and happier, such as:
  - Give staff a clear purpose for working in your business
  - Train and coach required new skills
  - Provide empowerment, offer trust and give autonomy
  - Set clear expectations
  - Make work/life balance a priority for all
- Analyze your business. What processes in your organization add value to your customers? What are enablers (necessary to run the business but don't add value for your customers)? Which processes are wasteful and should be eliminated?
- Does your technology need to improve given your COVID-19 experience?
- How are decisions made? How are problems solved? Do you need to make changes?
- What is sustainable in the future? Consult your key staff and other stakeholders to help identify which initiatives/changes you should implement.
- Create a written plan for the short, medium and long term with SMART goals.
- The short-term plan should be a reopening plan with numbered stages.
- Communicate the plan as appropriate to staff and key stakeholders

## 2. What should we do on the first day back to work?

Many staff members have not seen each other for several months, so if possible, set aside some time to allow everyone to socialize, catch up and get reacquainted; such as a coffee break social or lunch (try to avoid communal eating such as pot luck or sharing a pizza).

While you have everyone together, take the opportunity to talk to your staff about the following:

- Review the new health and safety protocols.
- Provide the training required for the new health and safety protocols.
- Explain what employees should do if they are sick.
- Share how your business environment has changed because of COVID-19.
- Discuss what new plans you have (or are developing) for the business in the short, medium and long term (see #1 above).
- Reassure staff of the financial viability of your organization.
- Describe what new processes you need your employees to complete.
- Field questions.

You may not have all the answers now but give yourself the opportunity to get back to your staff with a more developed answer at a later date.

Communicate any changes to your business plan and how your associates can contribute.

Consider weekly staff meetings after you reopen to keep the lines of communication open.

Consider what other team building social events and exercises are appropriate given the current restrictions.

## 3. Should I have new employees start during this declared Emergency?

Yes, if you can provide a safe and productive orientation. If you can't, it may be better to wait until you have reopened and established any new business or Health & Safety procedures.

## 4. What is the Work Share Program, and can my business apply?

Work-Sharing is an adjustment program designed to help employers and employees avoid layoffs when there is a temporary reduction in the normal level of business activity that is beyond the control of the employer. The Work Sharing Agreement can be in place for up to 76 weeks.

The employer and the employees (and the union, if applicable) must agree to participate in a Work-Sharing agreement and must apply together. Service Canada has significantly streamlined applications and timelines for approval/implementation.

Employers facing a longer-term (beyond a year) recovery should consider applying for the Work Share Program. Continued requirements for social distancing could impact the workplace staffing. Recovery to

“normal” may be prolonged for many businesses. For latest news, please visit:

<https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html#h4.07>

## Health and Safety

---

### 5. Does Ward & Uptigrove have a checklist of issues we should be considering when re-opening our business?

Yes, see our COVID-19 Business Re-Opening Worksheet:

[https://wardanduptigrove.com/userContent/documents/News/W&UHR\\_COVID\\_re-opening\\_worksheet.pdf](https://wardanduptigrove.com/userContent/documents/News/W&UHR_COVID_re-opening_worksheet.pdf)

### 6. We need help navigating through our Return to Work (RTW) from COVID-19 issues. Who can help?

Contact Ward & Uptigrove’s Health & Safety Professional, Jennifer Goertzen, at 519-291-3040 ext. 708 or [JenniferG@w-u.on.ca](mailto:JenniferG@w-u.on.ca)

Jennifer can assist you as follows:

- Inspect your workplace to assess COVID-19 risks and recommend physical distancing measures.
- Review your pandemic policies and procedures.
- Assist with any work refusals.
- Advice on appropriate PPE and screening.
- Stagger working hours and work locations to ensure physical distancing.
- Any other Health & Safety challenges you may be facing.

Jennifer can refer any HR issues to one of our HR Professionals.

### 7. Our Business is permitted to re-open; how do we know what steps to take to keep our staff safe?

The Occupational Health and Safety Act governs most employers in Ontario and does require employers to put measures in place to protect the health and safety of their employees. This may include Personal Protective Equipment and policies and procedures to prevent the spread of COVID-19. The province has also increased the number of inspectors and workplace inspections as well as doubled the capacity of Ontario's Health and Safety Call Centre.

The Ontario Government has created 61 new industry specific guidelines for businesses relating to the health and safety requirements for re-opening. You can find them all here:

<https://www.news.ontario.ca/opo/en/2020/04/health-and-safety-association-guidance-documents-for-workplaces-during-the-covid-19-outbreak.html>

The Ontario Ministry of Health and Long-Term Care has also published a number of documents for workplaces with guidance on screening staff, physical distancing, cleaning and sanitizing and health and

safety protocols. They are all available here:

[http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/2019\\_guidance.aspx](http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/2019_guidance.aspx)

Some additional resources from the Ontario Government, including posters and general guidance, are available here: [https://www.ontario.ca/page/resources-prevent-covid-19-workplace?\\_ga=2.144949239.255930133.1588589966-1590533170.1562941038](https://www.ontario.ca/page/resources-prevent-covid-19-workplace?_ga=2.144949239.255930133.1588589966-1590533170.1562941038)

Employers should also consider performing an assessment of the workplace to identify the risk of exposure to both staff and customers. For example: what are the commonly touched surfaces, which staff members are client facing and when, measuring work areas to determine if staff can maintain physical distancing.

Once these risks are identified, then appropriate controls can be implemented to reduce or eliminate the risk. Not all workplaces are the same, and the published guidelines listed above may not cover all the risks in your workplace. Employers have a duty to know the hazards and do everything reasonable to protect the health and safety of their workers. It is important to remember that Personal Protective Equipment (PPE) is the last resort for protection and all other methods including engineering and administrative actions should be considered first. This may include new creative and innovative approaches.

## **8. What if one of our employees refuses to work because of COVID-19?**

People have very different views on COVID-19 depending on their age, health, personality, occupation, etc. Some are very concerned about returning to work during this pandemic and others are more relaxed. During this uncertain time, it is important that you, as the employer, are empathic to all feelings and viewpoints. Talk to those that are concerned, identify their issues and try to accommodate their concerns.

Workers have the legal right to refuse work that they genuinely believe poses a threat to their health and safety. This right includes the condition of the workplace, equipment, violence or contravention of the act that poses a serious and imminent danger (note there are limited rights to refuse work for essential service workers and some industry sectors such as law enforcement, health care, first responders and education).

If a worker refuses unsafe work, the employer must follow the procedure as described in the Occupational Health and Safety Act: <https://www.ontario.ca/document/guide-occupational-health-and-safety-act/part-v-right-refuse-or-stop-work-where-health-and-safety-danger>.

Remember that risk is subjective, and each person has their own risk tolerance. Employers need to be objective and reasonable when assessing the risk, respect employee concerns, and communicate clearly to employees to explain the measures being taken and how the risk is being reduced.

This is likely to be a recurring issue as we work through the implications of this virus and the messages from health officials and government agencies. There is no “one size fits all” answer. Each case will need to be assessed on its own merit and circumstances. And creative solutions may be required to mitigate the risk and ease the concerns of all parties.

**9. What is my responsibility if one employee complains about a co-worker not complying with our workplace COVID protocols?**

Workers have a duty to report all workplace hazards, of which they are aware; and employers have a duty to address and reduce those hazards/risks. If a worker is reporting a violation of policy or procedure and they are genuinely concerned for the safety and health of themselves and co-workers, then they are complying with the law. General complaints that are not specific in nature can sometimes be a sign of interpersonal conflict. It is important to recognize if the complaint is a valid safety concern or a criticism of a co-worker and address the issue accordingly. Refer to Question 25 to handle a worker that may be violating a workplace policy.

**10. Should I be screening employees before they return to work? And if so, should it be every day?**

The Ontario government and local Public Health Units recommend a procedure for screening employees, clients and visitors to your workplace. Employers need to consider what is reasonable for their business and that still provides adequate protection for staff. It is also important to remember that personal health information of staff and clients is confidential and should be handled with the utmost discretion.

**11. What if an employee or customer is suspected of or confirmed to be COVID-19 positive?**

If an employee is experiencing symptoms, he/she must stay home from work and complete the online assessment from Public Health: <https://covid-19.ontario.ca/self-assessment/>.

Follow all Ministry of Health and local Public Health guidelines as provided to the employee for isolating or testing.

Employers have a duty to report suspected and positive cases and to follow the directives on quarantine and self-isolation. Public Health may contact you, the employer, for information about the workplace, where the employee has worked, and with whom.

The Ministry of Labour must be notified if a worker has been exposed to COVID-19 at work, and a written report with specific prescribed information must be submitted.

A related claim may need to be filed with the WSIB if there is suspicion that the illness is work related.

**12. What can I do if an employee doesn't comply with our new workplace Health & Safety protocols?**

First, consider that there may be underlying reasons why a person violates a policy. Workers have a duty to comply with workplace health and safety policies; however, the first step is to talk with the worker and understand why he/she isn't following the new rules. There could be concerns with the new processes, the PPE may not fit or may cause additional hazards, maybe the rules are misunderstood. You



may enact your workplace disciplinary policy for non-compliance but remember that this is a very scary time for many people and collaborating to develop mutually agreeable solutions shows compassion and builds trust. The employer should revisit their new protocols and ensure that they make sense, they are easy to follow and understand, and that they don't create any new hazards. Remember that you cannot punish a worker for bringing forth a health and safety concern.

### **13. What can I do if an employee breaks Public Health directives outside of work?**

As the employer, you have very limited to no control over what your employees do outside of working hours. However, your policy can set the expectation that all employees follow the guidelines of Public Health when not at work, to ensure the health and safety of everyone in the workplace. If you have confirmed knowledge that an employee may have breached your policies or may have breached Public Health directives, then you may have to assess that risk to your organization and act accordingly. You may want to consider obtaining legal advice before you take any action.

## **Employee Relations and Communication**

---

### **14. Managing business during the COVID-19 pandemic has been a challenging and stressful experience. We don't know how our employees feel. How can we be better prepared for next time?**

Consider a quick and simple survey of your staff regarding COVID-19. Consider questions about:

- Communication
- Technology provided
- Information resources provided
- Wellness and Health & Safety
- Leadership response
- Effectiveness of our work environment

### **15. How should we tell our staff, customers, etc. about our reopening plans?**

Create a positive and upbeat communication to all staff (via email and/or social media) explaining what your plans are for reopening the business. Make sure to send this communication well before reopening.

Consider including the following in your staff communication:

- "We are very happy to announce that we're reopening on <a specific date>".
- Refer to the government announcement that allows your business to reopen.
- "Your health and safety is our number one priority". Summarize what Health & Safety protocols will be in place at your workplace to protect your staff when they return. Attach a link to a more detailed document with any applicable detailed policies and procedures.



- Request staff submit personal questions or issues, for example lack of childcare, need for changed hours, concerns about the adequacy of Health & Safety protocols, changed personal circumstances, etc. Please contact us if you need assistance in your response.
- If you have time, personally connect with each employee to see how they are and what's on their mind.

Consider including the following in your customer communication:

- “We are very excited to announce that we’re reopening on <a specific date>. We look forward to helping you with\_\_\_\_/providing you with \_\_\_\_\_”.
- Refer to the government announcement that allows your business to reopen.
- “Your health and safety is our number one priority”. Summarize what Health & Safety protocols will be in place at your workplace to protect customers. Consider posting photos or videos on social media that show your hand sanitizers, cleaning products, signage, barriers, arrows on the floor, staff wearing PPE, etc.

## **16. Many of our employees are laid off and have substantial accumulated vacation to take when they return to work. We’re worried that when we reopen that many staff will want to take vacation and we will be short staffed. What can we do?**

Employers can mandate that their employees take vacation within certain time frames. If there is a shortage of work, you may consider requiring employees to take some paid vacation. However, this may interfere with their ability to collect the Canada Emergency Response Benefit (CERB). If you have a no vacation carry forward rule, you may want to remind employees of that policy and start scheduling vacation time. Paying hourly employees vacation pay with each pay may be a simple solution at this time. Also, remember employees can forfeit vacation time but not vacation pay.

## **17. We allowed some of our employees to work from home during the COVID-19 pandemic. Are we required to bring them back to our main work location when we reopen?**

During COVID-19, working from home became a reality for many employees and employers. While there is not a requirement one way or the other, you should consider the benefits and costs to make the decision that best fits your organization and employees.

### *Benefits of having staff work from home:*

- Minimizes accommodations that are needed in the workplace i.e. physical distancing, increased cleaning, PPE, etc.
- Vacates space at your location for other uses, with potential for reduced in occupancy costs.
- Eliminates time consuming and expensive personal commutes for staff to work, which also has a positive environmental effect of reducing traffic.
- Employees can be more productive at home in the proper environment; with no office distractions.
- Employees often enjoy the flexible scheduling.

*Costs of having staff work from home:*

- Distractions of childcare and other household chores may reduce productivity.
- Less human interaction and team bonding may induce loneliness and/or negatively affect company culture.
- Employers may feel that staff aren't working hard because there is no direct supervision and accountability.
- Costs of establishing suitable workspace at home:  
Ergonomic assessments/Tools/Supplies/Technology/Security/Insurance, etc.
- Employer liability for the health and safety of employees during the course of employment, with minimal control over their actions and work habits (some conditions to liability apply).

If employees work from home, they may be able to deduct certain expenses on their personal tax return. The employer should annually issue a T2200. See the CRA website for more details.

**18. What should you do now that you are reopening, and your employee no longer needs to work at home?**

Legally, if your employment agreement (in writing or implied) states that your employee normally works at the office, you can't unilaterally tell the employee to stay working at home. If you do, you may have constructively dismissed your employee if the work location is deemed a significant condition of employment. We suggest you consider the following:

- a) Has having the employee work at home benefited your business?
  - Was the employee been productive; getting their work done accurately and on time?
  - Were you able to supervise effectively?
  - Where there any technology or computer issues? How did the virtual communication work?
  - How could working from home be improved? Do you need a working from home policy?
  - Was it a positive experience for your business you would like to continue?
  - How do you track hours for payroll and overtime?
- b) Check in with your employee and ask if he/she liked the experience.
  - Was their workspace at home efficient and effective?
  - Did they feel lonely and not part of the team?
  - What suggestions would they have?
- c) Review your findings from the above discussions.
  - Is the consensus that both parties benefitted from the experience and you both want it to continue? If so, document in writing the new work location, related arrangements, policy, etc. Both parties should sign and date.
  - If the conclusion is that it's better that the employee work at your location, implement a proper Return To Work (RTW) plan with appropriate COVID-19 protocols.
  - If there is no consensus or definitive conclusion, keep talking until you come to an agreement on how to proceed.

### 19. How do I complete ROE's for employees on leave/layoff?

Please visit the following link for full instruction on completing a Record of Employment (ROE):  
<https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/roe-guide.html>.

### 20. Do I have to pay an employee who is absent due to COVID-19 (sick or quarantined?)

Employers are not obligated to pay employees who are absent due to COVID-19; however, does your business offer: paid sick or personal time off work or short-term disability benefits? If so, your policy may enable employees to use paid time off. Check with your short-term disability provider to better understand how employees may qualify for benefits due to absence related to COVID-19.

### 21. Do we have to return an employee to work who has taken a leave of absence due to COVID-19?

On March 19, the Ontario Employment Standards Act changes for job protected leave received Royal Assent. The *Employment Standards Act* will be changed (retroactive to January 2020) to include a Job-Protected Leave of Absence related to COVID-19; we advise all employers to treat returning employees similar to that of maternity leaves; where the employee is entitled to return to the same/similar job/pay and seniority and benefits entitlements continue to accrue during the leave.

Employees must notify their employer as soon as possible if they need to take this leave. No evidence is required at this time. This unpaid leave is for employees who are not able to work because they are:

- Being treated or tested for COVID-19
- Following an order from Public Health
- Following an order under the Health Protection and Promotion Act
- In isolation or quarantine
- Directed not to work by their employer

### 22. Can an employee opt not to come to work due to COVID-19?

Employers should be respectful of an employee's request for time off and to understand their reasons for the request. Reasonable requests should be considered. Also refer to the guidelines for an unpaid Job Protected Leave under the *Employment Standards Act* in #16. If an employee exercises their right to leave under the ESA, employers must allow them to leave and return them to work. If an employee has been advised by Public Health to self-isolate or quarantine themselves, they are legally obligated to follow these orders. Employers may not ask for a doctor note for absences related to COVID-19. For additional details, please visit <https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave#section-3>.

### 23. Can I treat certain employees differently due to COVID-19?

The Ontario Human Rights Code prohibits discrimination against employees for several grounds, including disability, family status, race, colour, creed, religion and so on. Employers should be careful to ensure treatment of employees is not punitive due to the COVID-19 virus. Employers should ensure all employees are treated with respect and dignity.

Visit this link for the OHRC's latest statement:

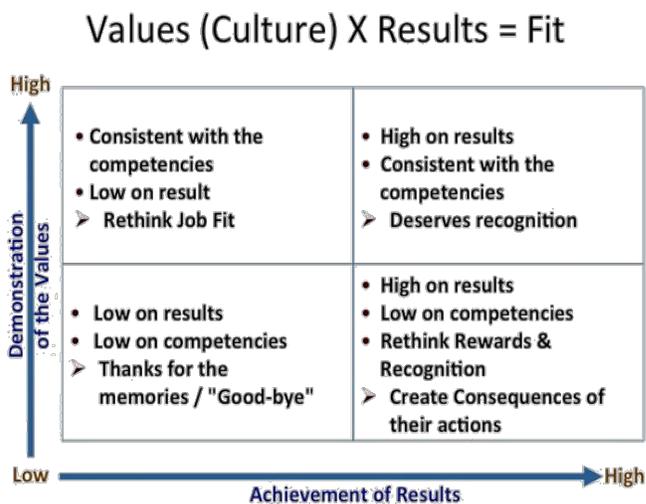
[http://ohrc.on.ca/en/news\\_centre/ohrc-policy-statement-covid-19-pandemic](http://ohrc.on.ca/en/news_centre/ohrc-policy-statement-covid-19-pandemic).

## Performance Management, Discipline, Layoffs and Termination

### 24. We have an employee who was struggling before COVID-19 and now we're reopening and returning our staff to work. We didn't document the poor performance. What are our options?

Your strategy with these employees will depend on a few factors, including whether or not you are returning straight back to business as usual, or whether you are taking a hard look at your business now and want to make some changes based on how your business functioned pre-COVID-19.

This could include a reduction in staff either temporarily while the business recovers, or permanently if you've identified efficiencies or overlaps. It will also depend on what the nature of the performance concerns were pre-COVID-19. Consider charting the performance of all your employees using this graph:



- If you need to permanently downsize, the employees with low demonstration of values and low results (bottom left) should be considered the first to end employment, followed by those with high results, but low behaviours, attitude and demonstration of company values (bottom right). As with all terminations of employment, you will want to assess any risks around the termination of any employee including wrongful/constructive dismissals, potential human rights claims or others. We strongly recommend touching base with your HR or Legal advisor to discuss any permanent job loss surrounding COVID-19.

If you decide to keep all employees on and return them to work, once the business is back into full operation, you'll want to pull these employees aside individually and have that difficult conversation (documented)



about performance pre-COVID-19, your expectations going forward and how you will monitor and measure progress.

## **25. What should we do about the staff I laid off due to COVID-19?**

On Friday, May 29, 2020, the Ontario government published a new regulation under the Employment Standards Act, 2000 (ESA) that is intended to provide temporary relief from the ESA's termination and severance provisions for employers whose operations have been shut down or otherwise curtailed by COVID-19 – O. Reg. 228/20, Infectious Disease Emergency Leave (IDEL Regulation). This temporary relief will remain in place while declared emergency is in place (now at least until June 30<sup>th</sup>, 2020) and up to 6 weeks following the end of the declared emergency (August 11<sup>th</sup>, 2020).

This new regulation deems certain employees not to be considered on layoff but rather the IDEL retroactive to March 1<sup>st</sup>, 2020, and some actions not to be considered constructive dismissal. For more details see the attached briefing from Hicks Morley:

<https://hicksmorley.com/2020/05/31/ontario-government-provides-temporary-relief-from-esa-termination-and-severance-provisions-in-response-to-covid-19/>

## **26. Our employee found another job while laid off. Do we owe them anything?**

No. Be sure to get the resignation in writing and issue a ROE Code E.

## **27. My business can't reopen yet. We laid off all our employees on March 17 and the 13-week deadline on June 16 is fast approaching. We may not be able to reopen by June 16. Do the Emergency Order Rules automatically extend the 13-week ESA deadline? What else do I need to know?**

On May 29<sup>th</sup>, 2020, the government temporarily amended the ESA to deem those that have been on layoff since March 1/20 to now retroactively be on the Infectious Disease Emergency Leave (IDEL) for the entire period of their absence from the workplace.

As a result, legally they were never on layoff and there is nothing to extend and no forced recall or termination.

The IDEL extends to the end of Ontario's state of emergency (most recently extended to June 30<sup>th</sup>, 2020) plus 6 weeks. At this point, the IDEL will end on August 11<sup>th</sup>, 2020 and if still unable to recall staff, you may need to put employees on a fresh 13-week layoff or recall them.

## **28. What if we recall some employees and they refuse to come back to work because of the lack of childcare? Are they automatically terminated?**

If an employee has a legitimate reason for not returning to work (a prohibited ground under the Ontario Human Rights Code (HRC)) their employment is not terminated. They are likely entitled to a job protected leave (for example Declared Emergency leave). You, as the employer, have an obligation under HRC to accommodate.

You should amend the original ROE from code A (lack of work) to N (statutory leave) and ask the employee to keep in touch. The employee will stay on this leave until such time as they are able to return to work.

### **29. Can I terminate an employee who is asking for time off due to COVID-19?**

No, employers cannot terminate employees who miss work due to COVID-19. The Province of Ontario has announced (March 16<sup>th</sup>, 2020) that they will make amendments to the Employment Standards Act providing Job Protection for Employees who must miss work due to COVID-19 either due to being ill, required to self-isolate or stay home to watch their children as a result of school closures. Employers risk having employees reinstated if they terminate an employee who misses time off due to COVID-19.

### **30. What happens if we recall an employee to substantially less hours (say 25 vs 40) than they were working pre COVID-19?**

The new regulation announced on May 29<sup>th</sup>, 2020 deems actions such as reduction of hours, reduction of pay and temporary layoffs not to be a constructive dismissal under the ESA (see further detail in the article included in #16). However, common law risks outside of ESA still exist for the employer. Given the current high unemployment rate, the 25 hours may be welcomed. Be aware that by returning an employee to work, they may become ineligible for the Canada Emergency Response Benefit (CERB) if they earn greater than \$1,000 during a four-week application period (after the first application period).

### **31. We have some work for laid off staff but may have to lay them off again in a few weeks. Is this okay?**

If this happens within the time period where the new regulation is still in effect (currently 6 weeks beyond June 30<sup>th</sup>, 2020), the employee would be deemed to be on an IDEL, not a layoff. Be aware that by returning an employee to work, they may become ineligible for the Canada Emergency Response Benefit (CERB) if they earn greater than \$1,000 during a four-week application period (after the first application period). Additionally, you cannot collect the 75% Canada Emergency Wage Subsidy (CEWS) for employees that are “without pay for 14 consecutive days” within a payroll period.

## **Policies**

---

### **32. Do we need to make written policies and procedures? Or can we just talk about it with staff?**

Discussing the potential risks with your staff and the measures and protocols you have put in place to reduce or eliminate those risks is an effective way to engage them in the process and increase buy-in. However, having written documents demonstrates that you are serious about your new procedures, provides staff with the ability to review and reference them if they have questions or forget the new way of doing business. It is also tangible proof that you have these protocols in place, in the event an inspector makes a visit to your workplace.



### **33. Do I need to do formal training for all staff about our new policies and procedures?**

You don't need a formal training session in the sense of a sit-down classroom session with a test. However, all staff must be trained in the new procedures that they will perform, as well as all the protocols you have implemented to keep them safe. Remember, that legislation provides workers with the right to know about the hazards in the workplace and requires employers and supervisors to tell workers about those hazards and the measures used to control them. One suggestion is to have staff meetings with a small number of people (you may have to have several meetings to ensure physical distancing) or have a virtual training session in which you review the new policies and procedures and staff have the opportunity to ask questions. Having staff sign an attendance sheet or other virtual method of recording their attendance is recommended.

### **34. Given COVID-19, what policies should we review, update and communicate with our staff?**

- Sick Leave/Paid Time Off (identifies paid and/or unpaid absence from work due to illness)
- Return to Work (helps you return employees in a healthy and safe manner)
- Work Refusals (Right to refuse unsafe work under the Occupational Health and Safety Act)
- Travel for Work (Provide guidelines to ensure safe travel for work)
- Work from Home (Ability for your employees to work from home as appropriate)
- Pandemic protocol
- Layoffs/Reduction of Business (What to do if you experience a slowdown in business)
- Accommodation
- Bereavement
- Personal Protective Equipment
- Hygiene Procedure
- Evacuation Plan
- Employee Assistance Programs as an additional resource for employees