



## **COVID-19 Comprehensive Update – What We Know So Far**

The 2019 Novel Coronavirus or COVID-19 pandemic has had an unprecedented impact on the Canadian workforce. At the time of most recent publication, there are 412 confirmed cases of COVID-19 in Ontario and that number is expected to grow. The provincial government has declared a State of Emergency, schools and business across the province are closed, and there is considerable uncertainty regarding the responsibilities and obligations of employers during this crisis.

There is a lot of new information coming out every day. Our intent with this publication is to provide Ontario employers up to date relevant information regarding their existing and new obligations to employees. We also want to highlight new federal and provincial directives and initiatives that impact the workplace.

Please note that the information provided here is for general informational purposes only and does not constitute legal advice. Due to the changing nature of the pandemic, information regarding COVID-19 is subject to change. We will continue to monitor developments closely and will update this page as the situation evolves. This version was published at **4:00 pm on Sunday March 22, 2020.**

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## Most Recent

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## What is New from the Provincial Government?

- Ontario Government Suspends Limitation Periods and Filing Deadlines

On March 20, 2020, the Ontario Government filed Ontario regulation 73/20 under the Emergency Management and Civil Protection Act. The Regulation retroactively suspends limitation periods effective March 16, 2020. It also extends and “period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, be suspended for the duration of the emergency”

- Status of Ontario Courts and Tribunal Proceedings

**Supreme Court of Canada:** The Supreme Court of Canada has rescheduled hearings scheduled for March 24, 25 and 26. All other currently scheduled hearings remain on the agenda until further notice. Parties may seek adjournments or request to appear via teleconference or videolink. The Court will continue to issue judgments on applications for leave and on appeal for the time being.

**Ontario Court of Appeal:** The Court of Appeal will suspend all scheduled appeals for a period of 3 weeks (until April 3, 2020). During this period, urgent appeals will be heard based on either the written materials or remotely. Parties on non-urgent appeals that were scheduled between March 17 and April 3, 2020 can request that their appeal be heard in writing.

**Ontario Superior Court:** The Ontario Superior Court of Justice operations will be suspended until further notice. The Court will continue to hear urgent matters during this emergency period where immediate and significant financial repercussions may result if there is no judicial hearing. All criminal, family and civil matters scheduled to be heard on or after Tuesday March 17, 2020 are adjourned. This includes all telephone and videoconference appearances scheduled prior to March 17, 2020, unless the presiding judicial officer directs otherwise. In the weeks ahead, the Court will finalize a plan to resume regular operations including the establishment of a Return to Operations Scheduling Court, where matters that have been adjourned will be rescheduled.

**Human Rights Tribunal of Ontario:** In-person hearings are postponed and rescheduled to a later date. Where feasible, alternative hearing options such as written and telephone hearings will be considered to minimize disruption to hearings across the organization. In addition, all front-line counter services will be closed until further notice.

**Ontario Labour Relations Board:** The Ontario Labour Relations Board is cancelling all in-person hearings scheduled to and including March 27, 2020. The Board will continue to assess the need for cancellation of hearings scheduled after

March 27th. The parties may make submissions to the Board with respect to rescheduling their adjourned hearing to be held instead by telephone or in writing. The Board will continue to receive applications, responses and any other submissions in accordance with its Rules of Procedure. The Board's front-line reception area will be closed to the public for walk-in inquiries; however such inquiries may be made by phone, fax or electronic submissions.

**The Workplace Safety and Insurance Appeals Tribunal:** The WSIAT is postponing all in-person hearings that were scheduled from March 16, 2020 until April 3, 2020. Where feasible, alternative hearing options such as written and telephone hearings will be considered to minimize disruption. Parties who wish to schedule a written or telephone hearing can send a request to the WSIAT by mail, courier or fax.

The WSIAT reception area, the Ontario Workplace Tribunals Library, the Ian J. Strachan Conference Centre and the Hamilton Hearing Centre are now closed to the public. The WSIAT will continue to receive forms, evidence and submissions in accordance with its Practice Directions. These documents may be submitted by mail, courier or fax. No hand deliveries.

### ■ Ontario Government Revises Declared Emergency Leave

On March 19, 2020 the Ontario Government passed [Bill 186](#), the *Employment Standards Amendment Act (Infectious Disease Emergencies)*. The Bill eliminates the existing Declared Emergency leave and replaces it with a new Emergency Leave: Declared Emergencies and Infectious Disease Emergencies ("Infectious Disease Leave")

The legislation will apply retroactively to January 25, 2020 (when the first presumptive case of COVID-19 was confirmed in Ontario) and will provide job-protected leave to the following workers:

- employees under medical investigation, supervision or treatment for COVID-19
- employees acting in accordance with an order under the *Health Protection and Promotion Act*
- employees in isolation or quarantine or subject to a control measure (which includes but is not limited to self-isolation);
- employees directed by the employer not to work due to a concern that COVID-19 could be spread in the workplace
- employees who need to provide care to a person for a reason related to COVID-19 such as a school or day-care closure
- employees prevented from returning to Ontario because of travel restrictions
- Other reasons as may be prescribed

Employers are **not** permitted to ask for a medical note if employees choose to take infectious disease emergency leave. However, the employer may require employees who take the leave to provide other evidence that is reasonable in the circumstances, at a time that is reasonable in the circumstances. This could include requests for a note from the daycare or for evidence that the airline cancelled a flight but cannot include a medical note.

An employee will be able to take declared or infectious disease emergency leave to care for the following individuals:

- The employee's spouse.
- A parent, step-parent or foster parent of the employee or the employee's spouse.
- A child, step-child or foster child of the employee or the employee's spouse.
- A child who is under legal guardianship of the employee or the employee's spouse.
- A brother, step-brother, sister or step-sister of the employee.
- A grandparent, step-grandparent, grandchild or

step-grandchild of the employee or the employee's spouse.

- A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
- A son-in-law or daughter-in-law of the employee or the employee's spouse.
- An uncle or aunt of the employee or the employee's spouse.
- A nephew or niece of the employee or the employ-

ee's spouse.

- The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
- A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
- Any individual prescribed as a family member for the purposes of this section.

The Amendment allows the government to among other things, make regulations designating an infectious disease, setting the date entitlement to emergency leave begins, exempting a class of employees from entitlement to emergency leave or even extending entitlement to infectious disease emergency leave when it would otherwise end. As of March 20, 2020, the government issued [Ontario Regulation 66/20](#) listing "diseases caused by a novel coronavirus" including COVID-19 as designated infectious diseases. It also deemed the regulation to come into effect on January 25, 2020. No exemption regulation has been issued.

### Who is Eligible for the Infectious Disease Emergency Leave?

Most full-time and part-time provincial employees in Ontario are covered by the provisions in this legislation, including students, temporary help agency assignment employees, and casual workers. As noted, the government may publish regulations exempting some employees from all or parts of the leave entitlement. As of the time of publication, no regulations had been published.

Like all other protected leaves, employees who exercise their right to Infectious Disease Leave are entitled to the following protections:

- They cannot be subject to employer reprisal for accessing the leave;
- They are entitled to benefit continuation during the leave if the employee continues to pay their portion

of the premiums;

- They are entitled to reinstatement to their position at the end of the leave, if it still exists, or to a comparable position, if it does not.

### ■ State of Emergency in Ontario

On Tuesday March 17, 2020, Ontario Premier Doug Ford declared a state of emergency in Ontario due to the Covid-19 pandemic. The government ordered the immediate closure of:

- all facilities providing indoor recreational programs;
- all public libraries;
- all private schools as defined in the Education Act;
- all licensed childcare centres;
- all bars and restaurants, except to the extent that

- such facilities provide takeout food and delivery;
- all theatres including those offering live performances of music, dance, and other art forms, as well as cinemas that show movies; and
- concert venues.

The government has prohibited all organized public events of over 50 people. These orders will remain in place until Mar

31, 2020, at which time they will be reassessed.

This declaration of a state of emergency followed the provincial governments announcement on March 12<sup>th</sup>, 2020 that all public schools would be closed for a two-week period following march break (from March 14<sup>th</sup> to April 5<sup>th</sup>).

## **What Is Not New - But We Need to Know Under Provincial Law?**

### ■ *Occupational Health & Safety Act (OHSA) and Work Refusals*

Employers have legislative obligations requiring them to ensure that they take reasonable measures to protect the health and safety of workers. What is reasonable will depend on each individual organization and workplace.

Under the OHSA workers can refuse to perform work they feel is unsafe. An employer has a duty to investigate and determine whether the safety risk has been resolved. If the employee disagrees with the employer's decision, they can escalate the matter to the Ministry of Labour.

There are two limitations on the right to refuse unsafe work. First, if the dangers or hazards are inherent to the worker's work or are normal conditions of the workers employment. The second limitation is where it would directly endanger the life, health or safety of another person. Employees to whom these limitations may apply are entitled to the same procedural protections as other employees which means that if they refuse work on the basis that it is unsafe, the employer must follow the work refusal process under the legislation including involving the Ministry of Labour if the issue cannot be resolved.

An employee may refuse to perform work as a result of COVID-19. An employee may have safety concerns if a colleague has been diagnosed with COVID-19 or if their personal health circumstances put them at risk. Whether their refusal is justified will be contingent upon various factors including, the workers personal characteristics, the state of COVID-19 in the worker's city or region, the type of workplace, and the measures adopted by the employer to combat the pandemic.

### ■ *Employment Standards Act, 2000 (ESA)*

#### **Lay-Offs**

Under the ESA, employers may lay-off employees temporarily without triggering notice obligations or severance.

For non-union employees there is a risk that an employee may claim that a temporary lay-off constitutes constructive dismissal or breach of contract under the common law. It is a matter of debate whether this applies in the context of a pandemic or if a lay-off due to a pandemic can be considered a "frustration of contract".

#### **Duration of Temporary Lay-Offs**

In Ontario, a temporary lay-off is a lay-off of less than:

- 13 weeks in any consecutive 20 weeks; or

- 35 weeks in any period of 52 weeks where:
  - The employee receives substantial payments from the employer;
  - The employer continues to make payments for benefits or a legitimate retirement or pension plan;
  - The employee receives supplementary unemployment benefits (SUBP – see below); or
  - The employee is employed elsewhere during the lay-off and would be entitled to receive a SUBP if they were not so.
  - The employer recalls the employee within the time approved by the director, or
  - In the case of an employee who is not represented by a trade union, the employer recalls the employee within the time set out in an agreement between the employer and the employee.

For **unionized employees**, there is an additional category of “temporary lay-offs” that may exceed 35 weeks in a period of 52 weeks where the employer “recalls the employee within the time set out in an agreement between the employer and the trade union”. This provision of the Act has been interpreted by labour arbitrators as extending the period of a temporary lay-off for as long as the recall rights available to the employee under the collective agreement. However, after 35 weeks of lay-off (in a period of 52 weeks), the employer must give the employee the option to elect to receive their termination entitlements (notice and severance), or to keep their recall rights. Where employees elect to keep their recall rights, the union can require the employer to place the termination entitlements into trust.

### Other Leaves of Absence

In addition to the new Infectious Disease Leave, the ESA also includes a number of other leaves that may be applicable. Employees are not limited to only one type of leave. All leaves are available. If employees meet the eligibility criteria for more than one leave, they may take all that they qualify for. The following chart summarizes the leaves that may be applicable to Covid-19 absences.

As already noted above, employees who take statutory leaves are entitled to the following protections:

- They cannot be subject to employer reprisal for accessing the leave;
- They are entitled to benefit continuation during the leave if the employee continues to pay their portion of the premiums;
- They are entitled to reinstatement to their position at the end of the leave, if it still exists, or to a comparable position, if it does not.

Type of Leave	Re-quired Service	Duration	Medical or other Ev-idence Employer can Request	Purpose of Leave	Persons Ineligible for Leave
New Declared Emergency & Infectious Disease Emergencies Leave (retroactive effect to January 25, 2020)	None	As long as De-clared Emergency or Infectious Dis-ease Emergency is in effect	No medical docu-mentation required	absence due to: a) med-ical investigation or treatment for COVID-19, b) order under HPPA or from Public Health, c) isolation or quarantine, d) employer direction not to work, e) provision of care or assistance to a family member for a rea-son related to Declared Emergency, Infectious Disease, or school or day-care closure, or f) travel restrictions that prevent travel back to Ontario	The Lieutenant Govenor in Coun-cil may exempt a class of employees from this leave or any provision of it. No exemptions regulations pub-lished to date.
Sick Leave	2 weeks	3 days per year	Evidence reasonable in the circumstances may be requested	absence due to personal illness, injury or medical emergency	Employees with professional ob-ligations* may be exempt if the entitlement would constitute an act of professional misconduct or a dereliction of a professional duty

Type of Leave	Re-quired Service	Duration	Medical or other Ev-idence Employer can Request	Purpose of Leave	Persons Ineligible for Leave
Family Responsi-bility	2 weeks	3 days per year	Evidence reasonable in the circumstances may be requested	to provide care to a fam-ily member who is ill, injured or has a medical emergency or any other urgent matter	Employees with professional ob-ligations* may be exempt if the entitlement would constitute an act of professional misconduct or a dereliction of a professional duty
Family Caregiver	None	8 weeks per family member per year	A certificate from a qualified health pro-fessional stating that the family member has a serious medi-cal condition may be requested.	to provide care or sup-port to a family member that has a serious med-ical condition including chronic or episodic con-ditions	
Critical Illness (for care of a child who is a family mem-ber under 18)	6 months	up to 37 weeks**	A certificate from a qualified health pro-fessional stating that the child is critically ill and requires the care and support of a family member	to provide care or sup-port to a minor child who is a family member that is critically ill	
Critical Illness (for care of adult fami-ly member )	6 months	up to 17 weeks**	A certificate from a qualified health pro-fessional stating that the adjult is critically ill and requires the care and support of a family member	to provide care or sup-port to a family member that is critically ill	

Type of Leave	Re-quired Service	Duration	Medical or other Ev-idence Employer can Request	Purpose of Leave	Persons Ineligible for Leave
Family Medical	None	28 weeks	A certificate from a qualified health professional stating that the family member has a serious medical condition with a significant risk fo death within 26 weeks may be requested.	to provide care or sup-port to a family mem-ber who has a serious medical condition with a significant risk of death within 26 weeks or less	
<p>* Employees with Professional Obligations are defined as: architects, lawyers, professional engineers, accountants, surveyors, veterinarians, naturopaths, teachers, students in training for the aforementioned professions, and registered practitioners of a health profession covered by the Regulated Health Professions Act</p>					
<p>**leaves may be extended or new leaves granted in certain circumstances</p>					

## ■ Ontario Human Rights Code (Code)

The Ontario Human Rights Commission has published the following policy position regarding Covid-19:

*“The OHRC’s policy position is that negative treatment of employees who have, or are perceived to have, COVID-19, for reasons unrelated to public health and safety, is discriminatory and prohibited under the Code. Employers have a duty to accommodate employees in relation to COVID-19, unless it would amount to undue hardship based on cost, or health and safety.*

*An employer should not send an individual employee home or ask them not to work because of concerns over COVID-19 unless the concerns are reasonable and consistent with the most recent advice from medical and Public Health officials. In unique circumstances, an employer might have other health and safety concerns that could amount to undue hardship. They would need to be able to show objective evidence to support such a claim.*

*Employer absenteeism policies must not negatively affect employees who cannot work in connection with COVID-19. An employer may not discipline or terminate an employee who is unable to come to work because medical or health officials have quarantined them or have advised them to self-isolate and stay home in connection with COVID-19.*

*An employee who has care-giving responsibilities should be accommodated to the point of undue hardship, which might include staying home. These care-giving responsibilities which relate to the Code ground of family status could include situations where another family member is ill or in self-isolation, or where their child’s school is closed due to COVID-19.”*

It is important to note that the Ontario Human Rights Commission policy positions are not law and any human rights issues related to Covid-19 need to be considered based on the provisions of the Code. We note that many of the Commission’s statements about accommodating child and elder care and not disciplining or terminating employees who cannot work due to quarantine, are codified with the new Infectious Disease Leave under the ESA.

## ■ *Workplace Safety and Insurance Act*

The WSIB has published the following regarding entitlement to WSIB benefits arising from Covid-19:

**“Multiple** *potential sources of COVID-19 may now exist at work and at home creating challenges in establishing work-relatedness when adjudicating claims.*

*For a COVID-19 claim to be allowed, evidence must show that the person’s risk of contracting the disease through their employment is greater than the risk to which the public at large is exposed and that work significantly contributed to the person’s illness.*

*To determine the work-relatedness of COVID-19 claims, the WSIB will look at details such as the person’s employment activities, their symptoms and whether they have a diagnosis of COVID-19.*

*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, this is a constantly evolving situation and any claims received by the WSIB will need to be adjudicated on a case-by-case basis, taking into consideration the facts and circumstances.*

*Please note: The WSIB does not provide coverage for people who are symptom-free even when quarantined or sent home on a precautionary basis. However, should someone who is symptom-free develop symptoms or illness while on quarantine, they may be eligible for WSIB coverage.”*

## **What is New from the Federal Government?**

The federal government has made some changes to existing employment insurance benefits and introduced new benefits including:

- Extending EI sick benefits to employees required to self-isolate due to Covid-19
- Eliminating the 1 week waiting period for EI sick benefits
- Waiving the requirement for a medical certificate for Covid-19 related sick benefits
- Extending the EI Work Sharing Program to Covid-19 related work reductions and extending the period the program can be in place to 78 weeks
- Introducing an Emergency Care Benefit for those who do not qualify for EI sick benefits
- Introducing the Emergency Support Benefits for those who do not qualify for EI regular benefits due to work reduction

Below we will provide more detail regarding each of these programs and the existing EI programs that employers and employees may access due to Covid-19 absences from work or reductions in work.

## ■ **EI Entitlements for Individuals Impacted by Illness, Quarantine and School Closure**

### **EI – Sick Benefits**

### *Minimum insurable hours requirement*

Employees must have 600 insurable hours in the qualifying period. The qualifying period is one of:

- the 52-week period immediately before the start date of the claim; or
- the period since the start of a previous EI benefit period, if that benefit period started during the last 52 weeks.

### *Eligible Workers*

- » Employees who are sick and don't have sick benefits with their employer
- » Employees who are quarantined/self-isolating:
  - Under federal or provincial legislation
  - Under order of a public safety officer
  - By recommendation of a public safety officer and the employee has been instructed to do so by an employer, nurse, physician or any other similar person or authority
  - Voluntarily because a family member or close relative with whom the employee has had contact has been quarantined

### *Medical certificates*

The requirement of a medical certificate does not apply for the Covid-19 related benefits.

### *Waiting period*

Effective March 15, 2020, the one week waiting period is waived for claimants who are impacted by Covid-19

### *Benefit*

Up to 15 weeks at 55% of the employee's average insurable weekly earnings up to a maximum of \$573.00

### *Where do employees apply?*

<https://www.canada.ca/en/services/benefits/ei.html>

### *Eligible for Supplementary Unemployment Benefit Plan (SUBP) Top-up (see more details below)?*

Yes

### **EI – Emergency Care Benefit (All information based on Government Announcement)**

The new Emergency Care Benefit was introduced by the federal government on March 18, 2020 to provide up to individuals who do not qualify for EI Sickness Benefits, for up to \$900 bi-weekly for up to 15 weeks, which will be available in April.

### *Minimum insurable hours requirement*

No

### *Eligible Workers*

Individuals who do not qualify for EI-Sick benefits but who:

- Workers, including the self-employed, who are quarantined or sick with COVID-19 but do not qualify for EI sickness benefits.
- Workers, including the self-employed, who are taking care of a family member who is sick with COVID-19, such as an elderly parent, but do not qualify for EI sickness benefits.
- Parents with children who require care or supervision due to school closures, and are unable to earn employment income, irrespective of whether they qualify for EI or not.

### *Medical certificates*

Unknown

### *Waiting period*

Unknown.

### *Benefit*

Up to 15 weeks of up to \$900 bi-weekly.

### *Where do employees apply?*

The benefit will be administered by Canada Revenue Agency and the following processes for applying have been announced:

- by accessing it on their CRA MyAccount secure portal;
- by accessing it from their secure My Service Canada Account; or
- by calling a toll-free number equipped with an automated application process.

### **Emergency Support Benefit**

The new Emergency Support Benefit was introduced by the federal government on March 18, 2020 to provide up to \$5 billion of support through payments of undisclosed amounts to unemployed workers who lose their jobs or face reduced hours because of the impact of COVID-19 and are not eligible for EI benefits, which will be available in April.

### *Minimum insurable hours requirement*

No

### *Eligible Workers*

Individuals who do not qualify for EI benefits. Any additional details are unavailable at this time.

### *Medical certificates*

Unknown.

### *Waiting period*

Unknown

### *Benefit*

Unknown.

### *Where do employees apply?*

The benefit will be administered by Canada Revenue Agency and the following processes for applying have been announced:

- by accessing it on their CRA MyAccount secure portal;
- by accessing it from their secure My Service Canada Account; or
- by calling a toll-free number equipped with an automated application process.

## ■ EI Entitlements for Individuals Impacted by Lay-offs and Work Reduction

### Regular EI Benefits

#### *Minimum insurable hours requirement*

The employee must have between 420 and 700 insurable hours in the qualifying period (depending on the economic region). The qualifying period is one of:

- the 52-week period immediately before the start date of the claim; or
- the period since the start of a previous EI benefit period, if that benefit period started during the last 52 weeks.

#### *Eligible Workers*

Employees who are:

- laid off or terminated through no fault of their own
- ready, willing and capable of working each day

- actively looking for work

#### *Waiting period*

1 week.

#### *Benefit*

Up to 45 weeks (depending on the economic region) at 55% of the employee's average insurable weekly earnings up to a maximum of \$573.00

#### *Where do employees apply?*

<https://www.canada.ca/en/services/benefits/ei.html>

#### *Eligible for Supplementary Unemployment Benefit Plan (SUBP) Top-up?*

Yes

#### **Work Share**

Employees may agree to work reduced hours rather than have the employer lay-off employees due to a reduction in work. Eligible employees will be paid EI benefits for the missed worked time calculated based on the regular EI benefits.

#### *Eligible Employers*

Publicly held companies, private businesses or not-for-profit organizations (not public sector employers) with year-round operations for at least 2 years and:

- Recent decrease of approximately 10% (or more) of a company's business activity.
- A reduction in work activity of the employees' regular work schedule between a minimum of 10% (one half day) and a maximum of 60% (three days). The amount can vary week to week.

#### *Eligible Employees*

- » "Core employees" (i.e. year-round permanent employees full-time or part-time required to carry out the everyday functions of normal business activity)
- » Eligible for EI benefits
- » Agreed to a reduction of their regular hours in order to share the available work.
- » Not seasonal or casual employees or employees of a temporary help agency

#### *What is a "work-sharing unit"?*

- » A minimum of 2 employees
- » The "work-sharing unit" generally includes all employees in a single job description or all employees who perform similar work. Employees who do different work but whose jobs impact one another (i.e. slowdown in business affects one job resulting in less work for another job or jobs) may form one work-sharing unit provided that all employees can reduce their hours equally.

- » There can be more than one work-sharing unit.

*Is there a minimum and maximum period of time the Work Share must be in place?*

Plan must be for at least 6 weeks and can be upwards of 78 weeks under the current government announcements.

*Do all employees who participate have to agree?*

- » The program is voluntary, and employees must sign an agreement to participate. The members of each Work-Sharing unit must authorize an employee who will represent them in the agreement.
- » If the workplace is unionized, the union must agree, and hours must be reduced equally regardless of seniority provisions in a collective agreement

*What if an employee does not want to participate?*

Employees who do not want to participate or can't because they don't qualify for EI will also have their hours reduced.

*Do benefits have to continue?*

All benefits must continue although disability benefits can be pro-rated to reflect the reduced work week.

*Application process*

Employers must submit an application that includes three parts:

1. application form;
2. work-sharing unit information; and
3. a recovery plan.

In addition, employers must submit sales or production figures as well as the total number of employees over the last 24 months up to and including the last month prior to submitting the application, broken down by month

## **Supplemental Unemployment Benefits Plan (SUB Plan)**

Employers can establish a Supplementary Unemployment Benefit (SUB) Plan to top up employees' EI benefits during a period of unemployment due to a temporary layoff.

*EI Benefits eligible for a SUB Plan*

- A SUB Plan is available for EI benefits or EI Sickness benefits, but it is unclear whether it is available for EI Emergency Care Benefit or Emergency Support Benefit at this time.

*SUB Plan Requirements*

A SUB Plan (SUBP) must be registered with Service Canada and must meet the requirements set out by Service

Canada, otherwise it will be treated as income and any EI benefits received may be reduced. Some SUBPs may also qualify for registration under the *Income Tax Act*. This publication only discusses the process to register a SUBP with Service Canada.

A SUBP must:

- identify the group or groups of employees covered by the plan
- may cover any period of unemployment by reason of a temporary stoppage of work, training, illness, injury, quarantine or any combination of such reasons;
- require employees to apply for and be in receipt of EI benefits in order to receive payments under the plan;
- require that the combined weekly payments received from the plan and the portion of the weekly benefit rate from that employment **do not exceed 95 per cent** of the employee's normal weekly earnings from that employment;
- require that payments under the plan be financed by the employer and that the employer keep separate accounts for those payments;
- require that, on termination of the plan, all remaining assets revert to the employer or be used for payments under the plan or for administrative costs of the plan;
- require that the plan be approved prior to its effective date and that written notice of any change to the plan be given within 30 days after the effective date of the change;
- provide that the employees have no vested right to payments under the plan, except to payments during a period of unemployment specified in the plan; and
- provide that payments in respect of guaranteed annual remuneration or in respect of deferred remuneration or severance pay benefits are not reduced or increased by payments received under the plan
- Have a duration of at least one year, but the number of weeks of top-up under the plan can be as few as one week

The registration date of the SUB Plan is the date on which it is submitted to Service Canada's SUB Program. Until a plan is registered and approved, any amounts paid will be treated as earnings and may be deducted from the employee's EI benefits.

## TOP 5 Frequently Asked Questions (FAQs)

Below are answers to some of questions employers have been asking.

### 1. What can we do to keep our employees safe?

Employees who can work from home should be permitted to do so; employees who work from home should continue to receive their regular pay and benefits. For employees who cannot work from home, follow the advice of your public health authority:

- Practice social distancing and limit social contact as much as reasonably possible;
- Regularly clean and disinfect work and common areas;
- Encourage frequent hand washing and ensure that hand sanitizer and soap are available;
- Encourage employees to cough and sneeze into their elbows;

- Limit the number of individuals who may use common areas concurrently.

If an employee is exhibiting symptoms of COVID-19, you should send them home and encourage them to self-isolate and contact public health. Workers who have recently returned from travel abroad should self-isolate at home for at least 14 days. Employers should ensure that they have up to date contact information for all employees who are working on site, working from home or on temporary layoff.

## 2. Can an employee refuse to perform work they believed to be unsafe?

All employees have the right to refuse to perform work they believe to be unsafe. Where an employee refuses work on the basis that the work is unsafe, the employer must follow the work refusal process under the OHSA. An employee may have safety concerns if a colleague has been diagnosed with COVID-19 or if their personal health circumstances put them at risk. Whether their refusal is justified will be contingent upon various factors including, the worker's personal characteristics, whether there are limits on their right to refuse work based on their job (hospital workers, for example), the state of COVID-19 in the worker's city or region, the type of workplace, and the measures adopted by the employer to combat the pandemic.

## 3. What steps should I take if an employee tests positive for COVID-19?

Consult your provincial public health authority and follow any directions they provide. The employee should not be permitted to return to the workplace until cleared to do so by a medical practitioner.

Employers may be required to seal off all areas where the infected employee worked. Employees who had contact with the worker should be sent home to self-isolate for at least 14 days in order to limit the spread of the illness and employers may also have to temporarily close the workplace depending on the amount of exposure and the safety risk to other workers.

## 4. Can I prevent an employee from attending at work because I think they may be infected?

Employers should be mindful of differential treatment of employees who have, or who are *perceived* to have COVID-19, and should take care not to single out employees due to any of the protected grounds under the Human Rights Code. If an employee has not been advised by a medical professional to remain at home, and is exhibiting no symptoms of the virus, they are entitled to attend at work.

If there is a legitimate safety risk in allowing the employee at work (e.g. the employee is displaying symptoms of COVID-19; the employee has recently returned from travel outside Canada; or the employee has been in contact with someone with a confirmed diagnosis of COVID-19), then the employer can require the employee to remain at home on either a paid or unpaid leave.

## 5. What best practices should I consider for remote employees working from home?

If you do not have a remote working policy, ensure that you take the following into consideration:

- How you will verify or records hours of work;
- How you will ensure that employees are available to receive work;

- What expectations you will set regarding responsiveness, connectivity and methods of communication;
- How you will ensure that any confidential information taken out of the workplace is kept secure;
- If required, whether you have remote access licenses for all employees;
- Whether any specific equipment is required to facilitate an employee's ability to work from home.