



## **WORKERS' HEALTH AND SAFETY LEGAL CLINIC**

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### **FREQUENTLY ASKED COVID-19 WORKPLACE HEALTH AND SAFETY QUESTIONS**

*The below information applies to provincially-regulated industries and workers **in Ontario**. While many of the general concepts apply to federally-regulated industries (for example, banks, airlines, airports, telecommunications and interprovincial transportation and shipping), there are meaningful differences with respect to workers' protections and enforcement mechanisms.*

#### **What can I do if I think my workplace is not following appropriate health and safety protocols with respect to COVID-19?**

- Generally speaking, **you have the right to refuse unsafe work if you think the work is dangerous**. This applies to all workers, regardless of your immigration status or whether you are classified as an employee or a contractor. Certain industries such as construction and healthcare have their own rules with respect to refusing unsafe work. This right of refusal applies to work environments where you will or suspect you will be exposed to COVID-19. However, **this suspicion must be based on facts specific to your workplace and the situation there**. You cannot refuse work because of a general fear that you might become ill by going to work, or if the nature of your work is dangerous by default.
- If you wish to refuse work due to concerns of exposure to COVID-19 in the workplace, you should **tell your supervisor/employer that the work is unsafe** and that you are refusing to do it. If there is a health and safety representative in the workplace you should consider telling them as well.
- Once you have refused unsafe work, **your employer has an obligation to investigate the issue as soon as possible**. You have a right to be present during the investigation. You also have the right to wait in a safe part of the workplace (if one exists) while your employer conducts the investigation. If your employer investigates and determines that there is a health and safety issue, they are required to discuss potential solutions with you. Potential solutions could include allowing you to work from home or providing you with personal protective equipment.

- After investigating, **your employer may claim that there is no health and safety issue. If you are still concerned, you should contact the Ministry of Labour Health and Safety Contact Centre (1-877-202-0008)** and request a formal inspection of the workplace. The Ministry of Labour is experiencing a high call volume during this time, so you may be asked to leave a message and someone will call you back.
- Once you have formally requested a workplace inspection, an inspector will come to the workplace to gather evidence and determine whether or not the work is unsafe. You have the right to be present during the inspector's visit. The inspector has the authority to order the employer to make adjustments to ensure the workplace is safe, up to and including shutting down the workplace until the safety issue is fixed.

### **Can my employer punish me for refusing to do work that I think is unsafe due to COVID-19?**

- At all times, **you have the right to refuse unsafe work without reprisal.** A reprisal is a retaliation (a reprimand or punishment) for exercising your rights. This means that if you raise concerns about COVID-19 in your workplace, your employer cannot use that as a basis to punish you. Examples of potential punishments include, but are not limited, to:
  - firing you;
  - suspending you;
  - harassing or bullying you;
  - demoting you;
  - reducing your hours; or
  - denying you an expected raise or benefits.

### **What can I do if my employer punished me for raising concerns about COVID-19?**

- If your employer punishes you for raising concerns COVID-19, **you should consider making an application to the Ontario Labour Relations Board alleging reprisal.** If there is a Health and Safety Representative or Joint Health and Safety Committee in your workplace, you should raise the issue with them. If you are a unionized worker, you should raise the issue with your union representative to see whether they will support you in making the application.
- Prior to making this application, you should gather any available evidence that demonstrates your employer punished you for raising health and safety concerns, such as text messages, email exchanges, disciplinary letters or notes you took.
- If you believe that you were punished for refusing unsafe work please call the Ministry of Labour Health and Safety Contact Centre (1-877-202-0008), the Workers' Health and Safety Legal Clinic (416-971-8832 ext. 201 or 1-877-832-6090 ext. 201), or the Office of the Worker Adviser (416-212-5335 or 1-855-659-77744).

### **Can my employer require me to come into work even though I am trying to social distance?**

- This will differ on a case-by-case basis. Employers have the right to demand you come to work if the work environment is safe, you are healthy, and the workplace provides an essential service as outlined by the Ontario government. For a full list of essential services, see the following link: [https://www.ontario.ca/page/list-essential-workplaces?\\_ga=2.190947310.597799276.1585060728-654220015.1584722902](https://www.ontario.ca/page/list-essential-workplaces?_ga=2.190947310.597799276.1585060728-654220015.1584722902). If you refuse to come into work in such circumstances **you could face discipline up to and including the termination of your employment.**
- If you wish to practice social distancing and **it is feasible for you to work from home**, you should speak with your employer about accommodating you.

### **What if I have COVID-19 symptoms or know I have been exposed, but I don't want to tell my employer because I don't want to be sent home?**

- Employers have a duty to keep the workplace safe, but workers also have a duty to report unsafe working conditions to their employers. If you know you or your coworkers are experiencing symptoms of COVID-19 or were exposed to the virus, you must inform your employer to protect others from the spread of the virus.
- If you are required to stay away from the workplace and are concerned about a loss of pay, you should speak with your employer about potential solutions such as paid sick days or vacation days. If your employer refuses or is unable to pay you during your leave of absence, you should consider applying for Employment Insurance benefits. Please visit the Service Canada website for further information: <https://www.canada.ca/en/services/benefits/ei.html>.

### **Can I claim WSIB benefits if I become sick at work due to COVID-19?**

- You may be able to claim WSIB benefits if you become ill due to exposure to COVID-19 while at work and in the course of your employment. The WSIB will consider whether the nature of your employment created a risk of contracting the disease which the general public is not normally exposed to and if the WSIB is satisfied that the COVID-19 condition has been confirmed.

### **Can my employer fire me if I have to look after my children or a sick relative?**

- No. Your employer cannot fire you for requesting accommodation due to family status obligations. That principle is enshrined in the Ontario *Human Rights Code*.

- In the context of childcare the following criteria must be met:
  - 1) the child is in your care and supervision;
  - 2) the obligations to look after the child are part of your legal responsibility;
  - 3) you have tried to find a reasonable alternative to you missing work to provide childcare; and
  - 4) your employer's requirement for you to be at work impacts your childcare obligation in a more than trivial way.
  
- Your employer is also prohibited from firing you if you have told them that you have to miss work because the provincial government has declared a state of emergency. You can make this claim if you have to miss work either because you are caring for a loved one who is ill or because schools and daycares are closed due to the emergency. You have to tell your employer that you are claiming this specific kind of leave in order to benefit from this protection. While on this leave you **are not** entitled to be paid.

**Stay safe and healthy!**

*For further information, please contact the Workers' Health and Safety Legal Clinic at 416-971-8832 ext. 201 (Local) or 1-877-832-6090 ext. 201 (Toll Free).*