

Novel Coronavirus (Covid-19): What Manitoba Employers Need To Know Now (February 18)

published 02/18/2020

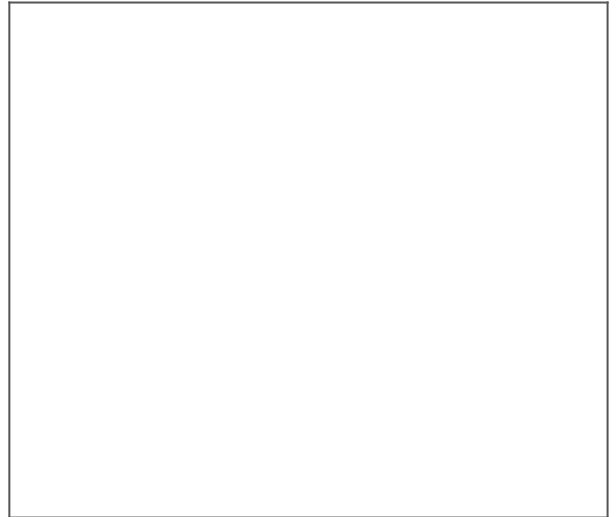
There has been significant media attention paid so far in 2020 to the emergence of a novel coronavirus, now referred to as COVID-19 (the “Coronavirus”). As most readers will be aware, the Coronavirus was first reported in Wuhan, China and has since spread throughout China and to 24 countries worldwide. Cases have been confirmed in British Columbia and Ontario, but there have been no confirmed cases of the Coronavirus in Manitoba as of the date of this article.

If the Coronavirus spreads to Manitoba, the potential effect on Manitoba employers is wide-ranging. As a result, we have prepared an overview of some of the potential issues that employers should prepare to address in a pandemic situation. At the end of the article, we outline a number of practical steps that employers can implement now in order to minimize risk to employees and possible operational issues arising from the Coronavirus.

The information below is meant to provide an overview of issues to which employers should be aware, but is not intended to provide a comprehensive review of all potential concerns. Employers and employees should also be mindful that additional considerations may apply to certain industries (such as health care, child care, or emergency response). Where a Manitoba employer is subject to federal regulation, similar considerations will likely arise, but employers should refer to the federal legislation for specific entitlements and protections for federally regulated employees.

For reliable, updated information on symptoms, prevention and spread of Coronavirus, we recommend referring to the websites of the **Government of Canada** and the **World Health Organization**.

Obligation to Provide a Safe Workplace



All employers have an obligation to provide their employees with a safe workplace, and to provide the information, instruction and training necessary to ensure the health and safety of their employees. If an employer has reason to be concerned that there may be a risk of exposure to Coronavirus in the workplace, the employer must take steps to protect their employees.

If there is reason to believe that an employee has travelled to an affected region or had contact with an infected individual, the employer may wish to ask that the employee to stay home from work for a period of time to ensure that the employee is not carrying the virus. If Manitoba cases are confirmed and an employee is exhibiting symptoms, employers may wish to send the employee home and advise the employee to seek medical care as soon as possible. We note, however, that employers must be cautious to ensure that, in doing so, the employer does not inadvertently discriminate against an employee or group of employees (as discussed later in this article).

Employers may also have to address situations where employees are concerned that coming to work (or working alongside a certain employee or customer) will put them at risk of exposure to Coronavirus.

An employee is entitled to refuse to work if they believe, on reasonable grounds, that working would constitute a danger to their safety and health. If an employee refuses to work, they are required to notify their employer immediately. The employer should then take steps to investigate the concern and should involve the workplace safety and health committee or representative (if one exists).

Most employers have likely already eliminated or limited travel to the most seriously affected areas. Employers may wish to consider temporary limitations on non-essential business travel. If it is necessary for employees to travel, especially to higher risk areas, employers should ensure that the travel and medical insurance policies in place for these employees provide appropriate coverage.

Leaves from the Workplace

Under *The Employment Standards Code* (Manitoba), provincially regulated employees are entitled to a variety of leaves of absence. A number of these leaves may become more common if there is an outbreak of Coronavirus in Manitoba:

- Family Leave (to deal with family responsibilities or personal illness);
- Bereavement Leave (to deal with the death of a family member);
- Compassionate Care Leave (to care for a seriously ill family member);
- Long-term Leave for Serious Injury or Illness (for an employee with a long-term serious illness or injury); and
- Leave related to Critical Illness (to provide support to a critically ill child or other family member).

The length of these leaves ranges from three days to thirty-seven weeks, and entitlement to each leave requires the employee in question to have been employed for a qualifying period. Employees may also be entitled to additional paid or unpaid leaves of absence pursuant to applicable collective agreements, individual employment agreements, or company policies.

Employers should consider what approach to adopt where an employee is not ill, but is under quarantine or there are concerns that the employee may have been exposed to Coronavirus. Such employees may not qualify for sick leave or short-term disability pay. If an employer is considering sending an employee home without pay, consideration should be given to whether such a step may result in a grievance or an allegation that the employee has been constructively dismissed.

If the Coronavirus spreads to Manitoba, employers may wish to be flexible in applying sick time, vacation, and leave policies. Overly rigid application may lead to employees coming to work when they suspect that they may be contagious - which is the last thing employers (not to mention clients and fellow employees) want to encourage.

Potential Human Rights Issues

In addition to employers' obligations under employment standards legislation, employers must also be alive to potential human rights issues which may arise related to the Coronavirus. *The Human Rights Code* (Manitoba) states that employers cannot discriminate against employees on a number of protected characteristics, including:

- Disability;
- Ancestry, including colour and perceived race;
- Nationality or national origin;
- Age; or
- Ethnic background or origin.

It is not clear at this time whether Coronavirus itself would be considered to be a disability pursuant to *The Human Rights Code* (as short-term illnesses are not always considered to be disabilities), but there is a risk that discriminatory treatment of Coronavirus patients would be deemed to be prohibited discrimination.

There are additional human rights related issues which may arise. For example, there may be employees whose age or pre-existing disability puts them at greater risk from exposure to a respiratory illness such as Coronavirus. If there is a material risk of being exposed to Coronavirus, it may be a reasonable accommodation for the employer to take additional steps to keep such employees from exposure (such as permitting the employee to work from home).

Employers must also ensure that precautionary measures implemented do not constitute indirect discrimination. For example, implementation of a rule requiring that employees of

Asian origin take precautionary steps that are not required of other employees (in the absence of any specific evidence suggesting that the individual employee may have been exposed to the virus) would likely constitute a violation of *The Human Rights Code*.

Economic Effects of Coronavirus

Given the scale of the Chinese economy, many Manitoba employers will experience significant effects from the Coronavirus even in the absence of any cases within the province. These effects may include significant sudden changes to supply or demand for certain goods and services, or disruption in supply chains which utilize Chinese products.

If an employer believes that the Coronavirus is likely to have significant impact on its operations, the employer may wish to give preliminary consideration to what options are available in terms of making adjustments to the workforce, if such action becomes necessary.

What can Manitoba Employers do Now to Prepare?

There are a number of steps that Manitoba employers can be taking now to prepare for a potential outbreak:

- Remind employees of the importance of good hygiene practices such as washing their hands thoroughly and frequently. If the work environment does not allow for handwashing at all times, consider provision of alcohol-based hand sanitizers.
- Update cleaning procedures to ensure that frequently touched surfaces are being cleaned and disinfected regularly.
- Create a pandemic contingency plan. While this plan will likely not be required, if there is an outbreak there will be limited time to plan and respond.
- Consider creating specific policies for employees regarding potential exposure, reporting symptoms, and when to stay home.
- Ensure that there is a plan in place for communication with employees if an outbreak should occur. Should such an outbreak occur, encourage symptomatic employees to stay home from work.
- Remember that employees are entitled to privacy with regard to personal health information. Where an employee discloses exposure or symptoms, consideration must be given to what information should be disclosed to other employees.
- Stay up to date on the most recent developments and information regarding the Coronavirus from reliable sources. Rumours and misinformation are likely to spread quickly, and being up to date on recent developments and risks will allow employers to evaluate requests from employees or make decisions efficiently.

Author Kristin Kersey has left TDS. Please contact **businessdevdept@tdslaw.com** to connect with a lawyer on this topic.

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