

COVID-19 FAQ sheet for Employers

This is an unprecedented situation, and though it is likely that additional leeway we will be given, we cannot guess what that will be, so we are providing recommendations based on past and current situations.

WHAT ARE MY RESPONSIBILITIES AND RIGHTS AS AN EMPLOYER?

There is a general duty on all employers to take all reasonable precautions to prevent harm to employees in the workplace. You should have a policy and a plan to protect your employees and your company. See the template policy that is uploaded to our website. Employers should have a detailed plan in place to deal with this pandemic and specific protocols, including providing personal protective equipment for workers and the necessary training to use and dispose of that equipment. The approach must be proactive and focus on the protection of the worker.

Under occupational health and safety legislation, employees have the right to refuse unsafe work. If your employee indicates he or she feels they are unsafe to work, they have a right to not report to work. Your only choice at this point is to accept the refusal to work. An investigation is usually the next step, which we see as difficult.

You do not need to pay employees if they cannot work. You have options, see below.

I HAVE EMPLOYEES WITH KIDS WHO CANNOT COME TO WORK, WHAT ARE MY OPTIONS?

1. Inform employees that you will pay vacation, sick, flex, and banked time for as long as those benefits cover.
2. Offer work from home, job share, online meetings, etc. if that works for your industry. Flexibility like early or evening shifts are solutions to this difficult situation.
3. Government of Canada Work share program (see details below in Work Share)
4. Layoff (see details below in Layoffs)
5. Terminations

WHAT ARE MY OPTIONS WHEN SEEING A SLOWDOWN IN MY BUSINESS?

1. **Start with paying out time.** Use vacation, sick, flex, and banked time to cover the time you do not need the employee to work.
2. **Reduce hours/work share.** You can reduce the wage or the hours of employees with notice. The notice is dependent on their longevity of employment. There is an official work sharing program which allow them to collect EI while work sharing (see below).
3. **Layoff.** Employees can apply for EI (see below).
4. **Terminate.** Employees can apply for EI (see below).

WORK SHARING AGREEMENT

Work-Sharing (WS) 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 measure provides income support to employees eligible for Employment Insurance benefits who work a temporarily reduced work week while their employer recovers.

Work-Sharing is a three-party agreement involving employers, employees and Service Canada. Employees on a Work-Sharing agreement must agree to a reduced schedule of work and to share the available work over a specified period. The number of employees in the work share is not limited, it can be 2-500+.

Apply online at:

<https://www.canada.ca/en/employment-social-development/services/work-sharing/temporary-measures-forestry-sector.html>

CAN I REDUCE PAY OR WORK HOURS?

If you intend to reduce any form of pay (including overtime, vacation, or general holiday pay), you must notify the affected employees before the start of the pay period when the reduction will take effect. You cannot reduce the rates below the minimum required by the legislated standards.

Be careful of constructive dismissal. Constructive dismissal happens when changes to pay, benefits, job duties, expectations, or titles mean that they no longer resemble the original contract or the role the employee was hired to do. This situation is considered a dismissal in the eyes of the courts. Seek legal consultation.

CAN I LAYOFF MY EMPLOYEES?

If you're expecting or seeing significant decrease in business, you can institute layoffs. You do not need to layoff all employees. The list below indicates those categories that qualify for layoffs:

- a. end of contract or season
- b. end of casual/part-time work
- c. end of school year
- d. temporary shutdown of operations
- e. permanent shutdown of operations
- f. position eliminated/redundant
- g. company restructuring
- h. employer bankruptcy or receivership

Be aware that if you do not call back to work from layoff, that termination pay (pay in lieu of notice) is due at that time.

If you employ in the Construction industry, you do not pay termination or pay in lieu of notice, so you could just issue terminations instead, if preferred.

The employer must give the employee notice of temporary layoff. To be valid, the notice must:

1. be in writing
2. state that it's a temporary layoff notice and its effective date
3. include sections 62-64 of the Code (<http://www.qp.alberta.ca/documents/Acts/E09.pdf>)

The following notice must be provided unless there is a collective agreement that states otherwise, or there are unforeseeable circumstances. This is unforeseeable circumstances, so notice is likely not required. Provide as much working notice as you feel you can:

- at least one week prior to the date layoff begins if the employee has been employed by the employer for less than 2 years
- at least 2 weeks prior to the date layoff begins if the employee has been employed by the employer for 2 or more years

WHAT ARE THE EXTRA MEASURES FOR EFFECTED EMPLOYERS AND EMPLOYEES?

Announced on March 18, 2020 additional supports to Canadians effected by COVID-19 and subsequent closures are below:

Emergency Care Benefit The Federal government will provide money every two weeks to workers who must stay home. People will receive this benefit for 14 weeks for an amount comparable to the amount that would be paid through EI (55% of wages usually).

Who qualifies?

1. Those that are ill, who must self-isolate,
2. and those who take care of a family member who is diagnosed with COVID-19.

COVID-19 Emergency Support Benefit For those that are laid off or terminated and would not normally qualify for EI such as:

- Self-employed people who have not paid into EI
- Employees who do not meet the insurable hours, or wouldn't normally qualify for EI for another reason

Small Business Wage Subsidy Temporary wage subsidy from Ottawa that will be equal to 10 per cent of salary paid to employees for a period of three months. This is meant to encourage employers to keep staff on the payroll during this uncertain time.

TERMINATIONS

Perhaps terminations make more sense in your situation, here is a quick guideline to terminations. There are two ways in which we look at terminations Employment Standards minimum, and Case Law when employers are taken to court. You can provide working notice or pay in lieu of notice. Please remember that we are HR Consultants and not Employment Lawyers.

Here is **Employment Standards** minimum:

One week	for employment of more than three months, but less than two years,
Two weeks	for employment of two years, but less than four years,
Four weeks	for employment of four years, but less than six years
Five weeks	for employment of six years, but less than eight years
Six weeks	for employment of eight years, but less than 10 years
Eight weeks	for employment of 10 years or more

Case Law suggests anywhere between 2-4 weeks per year of service. The difference is vast. If you want to talk about this in more detail, please contact Avail's HR Consulting department.

WHAT WILL EMPLOYEES BE PAID ON EMPLOYMENT INSURANCE?

Employees who are terminated without cause and on layoff are likely to receive EI. For most people, the basic rate for calculating EI benefits is 55% of the average insurable weekly earnings, up to a maximum amount. As of January 1, 2020, the maximum yearly insurable earnings amount is \$54,200. This means that employees can receive a maximum amount of \$573 per week. Because the last updated unemployment rate in Southern Alberta is 7.3%, employees are required to have at least 665 insurable hours. The more hours, the more time the employee will be covered.

Visit the Government of Canada EI Benefits page here:

<https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit/benefit-amount.html>

Employees (and business owners) can apply for Emergency Financial Assistance:

https://www.alberta.ca/emergency-financial-assistance.aspx?fbclid=IwAR1BFrsS_SYVrdW160Rq5qIb06usTFIVDjgdk3sL1M3D2M_a5WCCt_UCoX4

WHAT IS THE 14-DAY SICK LEAVE?

It was initially announced as a paid sick leave for those who are diagnosed with COVID-19. On March 18, 2020 that was retracted to include only job-protected leave. This means that the employee's job is protected while away, however it is not a leave that qualifies under EI. The employee should apply for a different leave (see sickness leave below)

WHAT IS SICKNESS LEAVE?

Employment Insurance (EI) sickness benefits provide up to 15 weeks of income replacement and is available to eligible claimants who are unable to work because of illness, injury or quarantine, to allow them time to restore their health and return to work. Canadians quarantined can apply for Employment Insurance (EI) sickness benefits.

If you are eligible, visit the EI sickness benefits page to apply:

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

Service Canada is ready to support Canadians affected by COVID-19 and placed in quarantine, with the following support actions:

1. The one-week waiting period for EI sickness benefits will be waived for new claimants who are quarantined so they can be paid for the first week of their claim.
2. Priority EI application processing for EI sickness claims for clients under quarantine.

DO I NEED TO PAY MY EMPLOYEES ADDITIONAL HAZARD PAY?

At the time of writing (March 18, 2020), you are not required to pay additional pay for this hazard. You should use all practicable measures to keep your employees safe.

HOW DO I IMPOSE SOCIAL DISTANCING?

This is a great opportunity for employers to arrange for online/ video conferencing meetings. Meetings should be kept to a minimum with the least number of people possible. If you share workspaces or have common areas, they should be regularly cleaned.

WILL CONTRACTORS WHO DON'T HAVE CARE FOR THEIR CHILDREN HAVE A WAY TO BE COMPENSATED FOR LOST WAGES? ARE THERE ANY OPTIONS FOR BUSINESS OWNERS WHO CANNOT APPLY FOR EI?

There is emergency funding available through the government of Alberta:

https://www.alberta.ca/emergency-financial-assistance.aspx?fbclid=IwAR1BFrsS_SYVrdW160Rq5qIb06usTFIVDJqdk3sL1M3D2M_a5WCCt_UCoX4

WHAT ARE OTHER MEASURES?

Mention to your employee that there are many measures taken by our government to help Canadians

1. The tax deadline has been moved to June 1, 2020 and can defer payment until after August 31, 2020.
2. Ottawa will temporarily boost the Canada Child Benefit.
3. Most banks are allowing people to defer mortgage payments