

COVID-19 FREQUENTLY ASKED QUESTIONS

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INTRODUCTION

COVID-19 is a pandemic illness. Public health agencies are monitoring the outbreak of this illness and providing public health and infection control guidance. That guidance is evolving rapidly. In the meantime, many workplace issues are developing about COVID-19.

UNION MEETINGS AND OTHER GATHERINGS

Some meetings, educational and other events have already been cancelled by Unifor. Local unions should consider the interests of our members in light of the advice and directions provided by public health agencies in your province.

For the immediate future, Canada’s public health agencies are recommending “social distancing” and reduced travel. In some provinces, public health agencies have issued directions that prohibit large gatherings. This means that many more gatherings will be cancelled.

If membership meetings must be held (for instance, a ratification meeting for a collective bargaining settlement), it cannot be business as usual. Membership meetings may have to be broken into smaller meetings with a reduced number of participants and in a larger space so that the recommended social distancing measures can be maintained. Be aware however that this alternative arrangement is not without risk. Local union leaders and national union staff will then be exposed to numbers of people for a longer period of time.

It is advised to conduct risk assessments on any Unifor meetings or other gatherings. Risk-informed decision-making for mass gatherings during COVID-19 global outbreak (<https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/health-professionals/mass-gatherings-risk-assesment.html>)

Scheduled court, labour board or arbitration hearings

In some provinces, courts and tribunals have announced that some cases will be postponed or dealt with by phone or video conference. Some arbitrators have communicated their interest in taking pandemic-related steps to reduce risk. Arbitrators may be contacted for directions on adjournments or for assistance with making alternative hearing arrangements. Many will be pleased to cooperate in ways to reduce travel. If an adjournment is going to be requested, consent from the employer should first be requested.

If a meeting or hearing cannot be cancelled or adjourned, alternative meeting methods may be considered. This may include telephone or video conferencing.

Steps should be taken to preserve time limits for grievances and referrals to arbitration. This is particularly important in some jurisdictions where an arbitrator may have no power to relieve against missed time limits.

Collective bargaining and other meetings with employers

Consider whether scheduled meetings can be postponed to a later date. In some circumstances, a telephone or video meeting might be a suitable alternative.

If an in-person meeting is required, only individuals who are absolutely essential should attend. All participants should be told in advance to consider their own health and the health of others when deciding whether to attend if they are feeling ill. Attendees should also be encouraged to follow other public health recommendations regarding personal protective practices (hand hygiene, respiratory etiquette, maintaining recommended distance from others, and staying home if ill).

If meetings must be held, consider changing the venue to prevent crowding. In the case of an arbitration or mediation, if only one hearing or mediation room is booked, arrange additional break-out rooms, instead of having people meeting and congregating in congested hallways or common spaces.

Meetings of large numbers of persons may have to be broken up into several smaller meetings. Advise all those attending to take guidance from public health agencies and consider their own health and the health of others when deciding whether to attend if they are feeling ill.

If travel to your meeting or hearing location is required, consider whether travelling alone in a personal vehicle is an option rather than taking buses, trains, or planes.

REFUSING UNSAFE WORK BECAUSE OF COVID-19

Do employees have the right to refuse work if concerned about exposure to COVID-19?

Workers in Canada have the right to a healthy and safe work environment. Health and safety legislation requires employers to take reasonable steps to protect the health and safety of their employees. This may include responding to new and potentially hazardous situations, such as the COVID-19 virus.

In every jurisdiction in Canada, workers have the right to refuse work if they honestly and reasonably believe their health and safety is in danger in their workplaces; if they communicate this belief to their supervisors; and if the seriousness of the perceived danger justifies the work refusal.

Whether a work refusal is justified will largely depend on the facts. The measures that an employer takes to ensure a healthy and safe work environment will be taken into consideration and weighed against the potential risks to workers.

Workers should be cautioned that Tribunals and Arbitration Boards have largely sided with employers when workers have refused work over contagious infection concerns in the workplace. In *Hogue-Burzynski v. VIA Rail Canada* [2006] (<https://www.canada.ca/en/occupational-health-and-safety-tribunal-canada/programs/decisions/archived/2006/ohstc-2006-015.html>), four workers refused to work out of concerns that a train had not been cleaned properly following an outbreak of Norwalk virus or a similar illness. The Canada Occupational Health and Safety Tribunal determined that the employer's efforts to sanitize the train, including disinfecting all hard surfaces and steam cleaning soft surfaces, were reasonably practicable to eliminate and control the risk of further illness.

The steps taken by your employer to limit the spread of COVID-19 will likely factor into whether a work refusal is considered reasonable. Such efforts might include:

- Installing hand sanitizer stations in high-traffic areas;
- Making hand sanitizer available in washrooms;
- Directing cleaning staff to sanitize high traffic surfaces and frequently-touched objects (door knobs, etc.);
- Reducing activities that require physical contact between workers and/or members of the public, if possible; and
- Recommending that employees wash their hands frequently; practice social distancing; and stay home from work if they exhibit symptoms of COVID-19.

The nature of your workplace may also factor into whether a work refusal is reasonable. In *Hogue-Burzynski v. VIA Rail Canada* [2006], the Health and Safety Officer who first investigated the work

refusal determined the nature of the employee's work involved inherent risk to exposure to illness by virtue of the fact that they serviced large numbers of the public on a daily basis. If your workplace regularly requires you to provide services to members of the public, including those who may be ill, or employs a large number of workers at the workplace at the same time, it may be determined that exposure to viral infection is a risk inherent to the workplace.

Your risk of serious complications from COVID-19 may also be relevant to the reasonableness of a work refusal. Health officials have warned that older individuals, those with certain conditions, such as lung or heart disease or individuals with suppressed immune systems are at greater risk of becoming seriously ill from COVID-19. It is possible that individuals at greater risk will require heightened accommodation from employers.

What about health agency advice about large public gatherings?

Public health agencies in most provinces have advised or directed that large public gatherings should be cancelled. This does not necessarily mean that large workplaces must close. Employees should not assume that the government has given them permission to refuse work if their workplace contains a large number of employees or a large number of customers.

Public health agency directions to cancel large public gatherings may be relevant to the reasonableness of a belief that a workplace is unsafe because of the risk of COVID-19. As outlined above, when considering whether to refuse work, workers must weigh both the risks of transmission against the risks that are inherent to their work, and also the steps their employer has taken to reduce the risk of a COVID-19 outbreak in their workplaces.

What are the potential consequences of refusing to work over COVID-19 concerns?

Refusing to work in defiance of an employer direction to work is insubordination. An employer's response to insubordination might be discipline. If an employee is disciplined for refusing to work, and a Tribunal or Arbitrator determines that the refusal was reasonable, the discipline might be overturned. If the refusal is found to be unreasonable, the discipline may stand.

If I cannot refuse to work, what should I do to protect myself?

If you have concerns over the measures your employer is taking or failing to take in response to COVID-19, you should raise them with your supervisor, union representatives or health and safety representatives. Health and Safety Committees should work with employers to develop a plan for minimizing the risk of a COVID-19 outbreak in your workplace.

DISCLOSURE OF PANDEMIC ILLNESS

Do employees have to tell their employer that they have a COVID-19 illness, or that they may have been exposed to the virus?

Employer policies should be designed to encourage self-disclosure by allowing employees to continue working from home where possible, and protecting their wages and benefits when they cannot continue working.

Mandatory disclosure of pandemic illness will likely be reasonable

It is likely reasonable for an employer to require employees to self-disclose a pandemic illness or even the possible exposure to the source of that illness. Occupational health and safety laws generally require employers to protect workers from health and safety hazards on the job. This is a basis for the employer to require disclosure. Employers may have additional responsibilities in a pandemic. Public health authorities may require employers to take specific measures to address public health emergencies.

Policies requiring employee disclosure must not offend human rights laws. For example, they cannot require some employees to disclose based on race or national origin. Any required reporting must be reasonable and bona fide, taking into account the work actually performed. An employer might reasonably, for instance, ask any individuals returning from travel to high-risk countries, to self-disclose and self-isolate.

Where an employee self-identifies as having been exposed to a pandemic illness, an employer has a continuing duty to accommodate that worker, up to the point of undue hardship. Employers must consider such things as whether a worker can continue to work, possibly in a different way. Working from home is possible for some employees.

What if an employee does not disclose a pandemic illness, or an exposure to a source of infection?

Where an employee is infected, or is aware they may have been exposed and there is a risk of exposure of an infectious disease to others, and an employee fails to disclose that risk, the employee is likely to be in violation of employer policies where such policies exist. It may also be a violation of occupational health and safety laws that require employees to report workplace hazards. Even if there is not a policy, the employee could be disciplined.

Can the employer stop an employee from coming to work?

In appropriate cases, even where there has been no disclosure of a possible COVID-19 risk, an employer may have a limited right to hold an employee out of work if the employee is not fit for duty. If an employer has reasonable concerns about the safety of other employees or the public, it can ask the employee to provide medical or other evidence that they are fit to work. But if the request is not reasonable, and the employee remains off work, the employer could be required to pay the lost wages of the employee.

If an employer is following the direction of a health agency in requiring proof of fitness to work, this requirement would likely not be found to be unreasonable. For example, the employer may know of an employee's recent travel history, or contacts with infected persons.

WHAT HAPPENS WHEN EMPLOYEES ARE ABSENT FROM WORK BECAUSE OF COVID-19 ILLNESS OR EXPOSURE?

Public health agencies have issued guidelines about social distancing. This includes when we should avoid crowds, isolate from others, and monitor our own health. See for example PHAC, Community-based measures to mitigate the spread of coronavirus disease (COVID-19) in Canada (March 12, 2020) (<https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/health-professionals/public-health-measures-mitigate-covid-19.html>)

These guidelines describe a range of protective measures that individuals should take, including self-monitoring, and self-isolation.

When is self-isolation required?

While public health guidelines are changing rapidly, self-isolation has generally been recommended only in cases where an individual is experiencing symptoms (for example, coughing, fever or shortness of breath) after:

- travel outside of Canada;
- having close contact with someone who has a probable or confirmed diagnosis of COVID-19;
- having close contact with a person with an acute respiratory illness who has travelled anywhere outside of Canada;
- living with someone who has a probable or confirmed diagnosis of COVID-19 and who is not self-isolating; and/or
- having laboratory exposure to the COVID-19 virus.

Canadian public health agencies are currently recommending that individuals who have travelled

anywhere outside of Canada must self-monitor for symptoms for 14 days after their return to Canada. There are also recommendations that individuals returning to Canada should voluntarily self-isolate for 14 days, and in Quebec this has been made compulsory. It is possible that there will be stronger requirements to self-isolate for the same period in other jurisdictions. How to isolate at home when you have COVID-19 (<https://www.canada.ca/en/public-health/services/publications/diseases-conditions/covid-19-how-to-isolate-at-home.html>)

Unifor members should continue to monitor public health guidelines in their own province for guidance about when self-isolation is recommended. You can monitor this here: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html>

Note that the guidance for employees of the same employer may vary depending on the province in which they work. A VIA-Rail employee in Montreal may receive different public health guidance than a VIA Rail employee in Halifax.

Employer policies about social distancing

Employer policies about COVID-19 are likely to require or encourage employees to follow public health guidelines about hygiene and social distancing, including self-monitoring and self-isolation.

Employer policies may set out additional circumstances in which employees are asked to self-isolate. The reasonableness of these policies will likely depend on whether they are consistent with health agency guidelines. In all but exceptional cases, employees should follow the principle of “work now, grieve later,” which requires employees to comply with an employer policy now, and then seek redress through a grievance.

What steps should an employee take who decides to self-isolate?

Employees have a general obligation to notify employers when they are unable to attend work. This principle applies where an employee is in self-isolation because of COVID-19. Employees should report absences as soon as they become aware that they will need to be absent from work. Employees should advise their employers of the general reason for their absence from work and the date when they expect to return to work.

Collective agreements and/or employer policies often set out the circumstances in which an employee is required to provide documentation, such as a medical note, to support an absence from work. Wherever possible, employees who are in self-isolation should comply with these policies but employees in self-isolation should clarify with their employers whether a medical note will be required for an absence related to COVID-19. Public health agencies advise that individuals should not attend at a doctor’s office or hospital with mere suspicions of COVID-19. This may mean that employees absent due to COVID-19 may not have any medical substantiation. The Government of Canada has decided to waive medical documentation requirements for Employment Insurance in COVID-19 exposure cases. A pandemic illness strains the health care system such that employer demands for medical notes in every

case ought to be relaxed. Unifor and other trade unions oppose employer requirements to provide doctor's notes for all absences, for exactly this reason.

What substantiation can employers require from employees after a COVID-19 absence?

Depending on the circumstances, it may be reasonable for an employer to require medical documentation at the end of an absence, to satisfy the employer's obligation to ensure that the employee can safely return to work. The current pandemic is an exceptional factor that may change those usual rules. When employees seek a return to work after a COVID-19-related absence, employers will be concerned about the safety of others. However, these exceptional circumstances may also make it reasonable that employees will not be able to provide medical substantiation in every case. The employee may not have seen a doctor, in accordance with public health guidelines. These situations will have to be dealt with on a case-by case basis.

Current guidance from health authorities is that if no symptoms are evident after 14 days of an exposure risk, employees may return to work. We can expect employers to require medical substantiation where an employee has had a diagnosed COVID-19 illness or a confirmed exposure risk. Employees who have had a confirmed COVID-19 illness will have been monitored throughout the illness by a public health agency. They will likely be isolated until such time as the public health agency confirms that the individual is no longer infectious. Currently, public health agencies make that determination by relying on two consecutive negative tests, at least 24 hours apart (<https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/health-professionals/interim-guidance-cases-contacts.html>)

Can employees work from home when they are in self-isolation?

Many employers and employees are arranging ways for employees to work at home where that is possible, regardless of any possible exposure. This is an example of the "social distancing" recommended by public health agencies.

Employees who are in self-isolation but who are not currently experiencing symptoms may be required by their employer to work from home where possible. In those cases the employer would be required to maintain the employee's pay and benefits. The Employer should not require an employee who is in self-isolation due to an identified risk to work from home in such a way that would require them to break their self-isolation or expose others to COVID-19.

Employees who are absent from work because they are unwell, including because of a probable or confirmed case of COVID-19, will be considered absent from work because of illness and in general should not be required to work while they are unwell. The employee's entitlement to pay and benefits would then depend on the available sick leave or wage replacement benefits.

EMPLOYER POLICIES ON PERSONAL TRAVEL DURING PANDEMIC

What can employers require of employees who have travelled?

Personal travel warnings or business travel restrictions should be based on current public health information and government travel health notices. The list of countries with active travel health notices is established by the Government of Canada and posted online (<https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/latest-travel-health-advice.html>).

In most cases, an employer cannot prohibit an employee from personal travel to a country or region that is subject to a travel health notice. However, there may be exceptional cases in which an employer's business interests would be sufficiently affected by an employee's possible absence that the employer can require the employee to not travel. An employee may play a critical role so that an extended absence would harm the employer's operations.

However, it will be appropriate for employers to warn employees against personal travel to any country or region that is subject to a Level 3 or Level 4 government travel health notice. Level 3 warns Canadians to avoid non-essential travel to those countries or regions. Level 4 warns Canadians to avoid all travel to those countries or regions.

It is likely reasonable in the circumstances of the COVID-19 pandemic for employers to require employees to provide their employer with advance notice if they intend to travel to any country or region that is subject to a travel health notice so that the employer may assess any possible business-related issues.

Be aware that to the extent your employer offers private extended health insurance, any travel insurance included in that benefit package may have been changed because of COVID-19.

What medical substantiation might be required upon return from travel to a Level 3 or 4 country or region?

It is also reasonable for employers to ask employees to undergo appropriate health screening after travel during a pandemic. This may include self-monitoring for symptoms in accordance with public health agency guidelines. It could include requirements to remain away from work for a period of time recommended by health professionals for individuals who have been exposed (at least 14 days). This would be the case even if the employee is not experiencing symptoms of illness upon their return.

All individuals should understand the risk of travel outside of Canada in the current circumstances.

Can an employer restrict other personal travel?

It will not be reasonable for an employer to expect employees to provide advance notice of personal travel to a country or region that is not subject to a travel health notice. However, the government's travel advisory website does advise individuals to self-monitor for 14 days (for fever, cough or difficulty breathing) following any trip outside of Canada and in some jurisdictions like Quebec, self-isolation after an out-of-country trip is required. In those cases, an employee who chooses to travel knowing that as a result they will have to self-isolate after their return, and therefore miss work, may expose themselves to discipline.

At the same time, employees may have pressing family obligations that compel them to travel even against the advice of public health agencies.

In addition, employees should monitor the active travel health notices themselves on the website of the Public Health Agency of Canada and advise their employer before their return to work if their travel destination subsequently become subject to a travel health notice. In those circumstances, it would be reasonable for the employer to apply the return to work protocol described above.

EMPLOYMENT INSURANCE ISSUES

Can I apply for Employment Insurance sickness benefit if I have to self-isolate or quarantine?

Yes, you can apply for benefits if you have to self-isolate or quarantine due to COVID-19. The Employment Insurance (EI) sickness benefit provides up to 55% of a worker's pre-illness income for up to 15 weeks to a maximum of \$573 per week, for workers who have worked at least 600 insured hours in the past 52 weeks.

There is usually a one-week waiting period for EI sick benefits, but the Government has waived this waiting period for those who are in quarantine or self-isolation due to COVID-19. This means that a worker who qualifies for EI sickness benefits is eligible for EI sickness benefits for both weeks of a two-week quarantine.

In order to be eligible for EI sickness benefits for the virus, you must have had a quarantine imposed upon you by law or by a public health official, or been asked by your employer, a doctor or a nurse to quarantine or self-isolate. If you live in the same household as an individual who has been asked to self-isolate or quarantine by their employer, doctor, nurse, or under legislation, you are also eligible for EI sickness benefits immediately.

Do I need a medical note to access EI sickness benefits for self-isolation?

Ordinarily, a medical certificate is required in order to collect EI sick benefits. No medical note is required for the two-week quarantine period for COVID-19. As long as an individual can say that they have been asked to self-isolate or quarantine by their doctor, an employer, a public health official or under a statute, no medical documentation will be required. A medical note will only be required if the individual seeks sick leave benefits for more than the two-week quarantine period.

What should I do if I need to access EI sickness benefits for the virus?

The Government has set up a dedicated line for those seeking EI sick benefits for self-isolation or quarantine. If you need to file for EI sickness benefits, you should first file online (<https://www.canada.ca/en/services/benefits/ei/ei-sickness/apply.html>), and then call the EI Coronavirus line to advise them of your application. They will help ensure your Application is processed according to the special rules in place for COVID-19. Processing times are still estimated at 1 to 28 business days, but the Government is working on setting up a priority processing system.

You can call the EI Coronavirus line at 1-833-381-2725 between the hours of 8:00 and 4:30 to access further information.

Are there other income-support programs offered by the Government?

The Government has announced enhancements to its Employment Insurance Work-Sharing program. The program is designed to prevent temporary layoffs, and provides income support to workers where there has been a temporary reduction in labour needs beyond the control of the employer. More enhancements may be announced, but the Government has already announced that the maximum eligible timeframe employers and workers can access the program will be increased from 38 weeks to 76. It is employers, not individual workers who make an initial application to the Work-Sharing program.

What if I don't qualify for Employment Insurance sick benefits?

Canada's Employment Minister announced on March 12 that the government was looking into measures to help workers who do not qualify for EI. No specific measures have been announced yet.