“Priority commercial enterprises”: What should you do if employees exercise their right of refusal on account of COVID-19?

March 25, 2020

In light of the Government of Québec’s announced shut down of non-priority services and activities as of 12:01 a.m. on Wednesday, March 25, 2020 and the soaring number of cases of community contamination, workers in priority commercial enterprises may be concerned about the risks to their health and safety. The *Act respecting occupational health and safety* (the Act) specifies the steps to follow when a worker has reason to believe that the performance of their work may endanger their health,safety, or physical well-being, but what happens in the context of the COVID-19 pandemic?

Mechanisms set out in the Act

The Act provides the following mechanisms:

- The worker immediately informs his supervisor (or an agent of the employer) and provides him with the reasons for his refusal.
- The employer or agent of the employer (safety representative, representative of the worker’s certified association or any other designated worker) examines the matter and the corrective measures he intends to apply.
- In the event of a disagreement between the employer and the representative of the worker’s certified association on the danger or the solution, they may request the intervention of an inspector from the Commission des normes, de l’équité, de la santé et de la sécurité du travail (CNESST).
- The CNESST inspector analyzes the situation and determines immediately whether or not the danger justifies the worker’s refusal to work. His decision takes effect immediately, but it may be contested before the Administrative Labour Tribunal.
- If the refusal is not justified or acceptable, the employer may have the work performed by another worker by informing the replacement of the refusal and the reasons therefore.

An employer may require a worker who has exercised his right to refuse to work to remain at the workplace and assign him temporarily to other duties that he is reasonably capable of performing. The employer may not dismiss, suspend or transfer a worker,

practise discrimination or take reprisals against him or impose any other sanction on the ground that he has exercised his right of refusal.

Focus on prevention

Public health authorities have established health recommendations that everyone must comply with. To protect the health, safety and physical well-being of workers in priority services and activities, including in the food industry, employers will need to review their processes and operations.

Here are some solutions that may be implemented to protect both workers and clients:

- Frequently cleaning worker rest areas and washrooms, including disinfecting high-touch surfaces
- Regularly cleaning cash registers, counters, scales, forklifts and other work tools
- Reducing business hours to allow employees to do more cleaning and disinfecting of key areas as well as re-stocking of popular items
- Making the wearing of gloves mandatory
- Enforcing hourly hand washing
- Requiring clients to use hand sanitizer upon entering and leaving the store
- Limiting the number of clients in the store depending on its size
- Hiring security guards to enforce social distancing guidelines between clients waiting in line and to control the number of clients in the store

Establish a collaborative environment

Business continuity in commercial enterprises is critical to meet the needs of the population during these difficult times. However, the rapidly evolving situation may cause serious concerns among workers who interact with the public. Employers must be attuned to these expressed concerns and establish a collaborative environment in order to come up with solutions to ensure the health and safety of workers.

For updates on business issues arising in this rapidly evolving situation, please visit our COVID-19 Resource Centre.

By

Don J. Alberga, François Longpré

Expertise

Labour & Employment, Retail & Hospitality

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.