Consequences for QC employers failing to provide their workers with a safe environment

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With the gradual reopening of the Canadian economy, employers have every interest in implementing a concrete plan of action to combat the spread of COVID 19 in their establishments in order to prevent the workplace from becoming a site of transmission. Adequate preventive measures like hygiene and social distancing protocols are critical in order to make the working environment safe for workers. That being said, what are the consequences for employers who fail to take such measures?

Claims for occupational illnesses or work accidents

Workers who become infected with COVID-19 in the workplace may file claims for occupational injuries under the *Act respecting industrial accidents and occupational diseases* (AIAOD). Claims may be filed whether the worker concerned was infected at a specific time (an industrial accident) or as a result of the propagation of the virus in the workplace due to insufficient preventive measures (an occupational disease). If the contamination allegedly results from an occupational disease, the worker suffering from COVID-19 will then have the burden of proving that his or her sickness was contracted in the course of work and is directly related to the risks associated with that work. Naturally, if a large number of cases were to occur on the same worksite, proof that the disease was contracted by risks in the working environment would be evident.

If the workers' compensation claim is accepted by the *Commission des normes du travail, de l'équité, de la santé et de la sécurité du travail* (the CNESST), the worker can then receive an income replacement indemnity equal to 90 per cent of his or her net annual income. In certain cases, this may be more financially advantageous than the Canada Emergency Benefit program to which infected workers would also be entitled. Workers might therefore prefer to claim under the employment injury compensation regime, which will provide extended coverage, as well as the possibility of being compensated for any permanent impairment to their physical integrity that might result from the injury.

Right to refuse to work

In Québec, the *Act respecting occupational health and safety* (the AOHS) allows workers to refuse to perform work if they have reasonable grounds to believe that the performance of that work would expose them to danger to their health, safety or physical well-being, or would expose another person to a similar danger. For example, workers called back to work could exercise their right to refuse to work if, in the performance of their duties, they are required to work closely with colleagues or customers who are potentially carriers of the virus, without any strict social distancing directives being established or without any adequate personal protective equipment being provided.

A worker who refuses to perform their work must immediately notify their employer and explain the reasons for their refusal. The employer must then examine the situation with the worker (or their representative) and, if applicable, propose corrective measures. In the event of a disagreement between the parties that a danger exists, the parties may seek the intervention of a CNESST inspector. The inspector must then investigate the situation and determine as quickly as possible whether or not a danger exists that would justify the worker's refusal to work. If the inspector concludes that such a danger exists, he may order the complete or partial shutdown of the workplace. He may also order the sealing of equipment, prescribe temporary measures and require that the necessary correctives be made within the timeframe he determines.

Penal sanctions in occupational health and safety

The AOHS also provides that the employer is subject to penal sanctions that vary, depending upon the gravity of risks identified by the CNESST inspector, if the preventive measures implemented appear inadequate in the light of regulations or if they would directly and seriously compromise the safety of workers. Such sanctions could also damage the image of the organization and undermine the public's confidence in the company.

In cases of negligence

It is conceivable that parties (customers, partners, etc.) might take civil action against the organization concerned. We note, however, that neither the worker who has sustained an occupational injury nor his or her beneficiaries may institute any civil proceedings against the employer, since the AIAOD strictly limits the civil liability of employers.

Nevertheless, a negligent organization could face criminal prosecution involving its liability and that of the officers or workers involved under section 217.1 of the *Criminal Code*, which provides that anyone who directs or is authorized to direct the performance of work or the carrying out of a duty is under a legal obligation to take reasonable steps to prevent bodily harm to others.

Focus on prevention: Adequately preparing the workplace for resuming activities

It is crucial under these special circumstances to implement the required preventive measures to prepare for workers' return to the workplace. The CNESST has put

together an online COVID-19 guide in which it provides information and practical tools for employers to ensure a healthy work environment by respecting the occupational health and safety obligations and the health instructions in place.

The toolkit includes a guide and posters to remind workers of the directives in force. The CNESST's website also includes specific guidelines for construction activities, mining and retail activities, which should be reviewed and implemented before the concerned organizations resume activities.

Dealing with these new health and safety requirements may represent a major challenge for employers. BLG's labour and employment law professionals are available to help you implement a workplace management policy in the context of the pandemic, in order to limit as much as possible the risk of propagation of the virus and to assist you in identifying various strategies for managing your workforce in such a context.

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