Employer strategies for managing novel coronavirus risks in the workplace

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COVID-19, also known as novel coronavirus, is a serious public health concern. Employers will be at the forefront dealing with a multitude of COVID-19-related issues, which could cause severe business disruptions. Employers are advised to prepare contingency plans to manage the COVID-19 novel coronavirus in North America.

Preparing for a potential outbreak in North America

Canada's Public Health Officer tweeted on February 28, 2020 that Canadians should take steps to prepare for a wider outbreak of COVID-19. That is consistent with the World Health Organization's (WHO) assessment earlier that same day that the global COVID-19 risk is very high, with more than 85,000 cases and 2,900 deaths reported amid the continuing global spread of the virus. This is also consistent with the fact that more than 60 countries have confirmed cases of COVID-19, some with publicly stated or potential community transmission/spread.

Community transmission means the illness was acquired through unknown exposure in the community. In general, every country's first strategy is containment. Containment includes aggressive steps to find everyone who has come into direct contact with an ill person, also known as contact tracing.

Containment becomes harder as more countries have community transmission. At some point, a shift from containment to trying to mitigate the situation can be appropriate.

At this point, there is no vaccine to protect against COVID-19. The U.S. Centers for Disease Control and Prevention (CDC) advises that non-pharmaceutical interventions (NPIs) will be the most important tools. There are three categories of NPIs:

- Personal NPIs, which include personal protective measures such as washing hands;
- Community NPIs, which include social distancing designed to keep people who are sick away from others; and
- Environmental NPIs, which include surface cleaning measures.

Each employer will have to determine which NPIs are appropriate for its business.

In the final week of February 2020, the CDC confirmed the possibility of community transmission cases in the United States. Although none of Canada's confirmed cases have been community transmission cases to date, Canada's Public Health Officer has indicated that Canada has begun to look at tracking community transmission of COVID-19 in Canada.

Although, we hope that there will be limited community transmission cases in the United States and that there will be no community transmission cases in Canada, employers in Canada and the United States would be prudent to prepare for situation managing a potential outbreak.

Concrete and practical situation management steps for employers

The following three concrete steps can be taken by employers before the potential wider outbreak warned by Canada's Public Health Officer. If an outbreak occurs, employers should consider immediately implementing these three concrete steps.

1. **Consider potential employment issues (including business continuity) that may arise and legal considerations**. Here are examples of employment-related business issues to consider:

- ***Preventative steps now***. Employers can take a number of preventative steps, including:
    i. remind employees of respiratory etiquette and hand hygiene;
    ii. encourage sick employees to stay home;
    iii. perform routine environmental cleaning;
    iv. advise employees before travelling to take steps such as reporting their travel locations to their employer;
    v. consider restricting business travel to certain countries or regions;
    vi. encourage employees to inform employers if they are undergoing testing for COVID-19, particularly if there has been contact with others at the workplace;
    vii. encourage employees to inform employers if they have a sick family member at home with COVID-19;
    viii. inform employees that some people may be at higher risk for severe illness, such as older adults or those with chronic medical conditions;
    ix. encourage employees that may be vulnerable and may be at higher risk for COVID-19 adverse health complications to inform their employer, so that an informed decision on whether additional precautions should be taken can be considered, if applicable;
    x. cross-train employees to perform essential functions in case of workplace absences;
    xi. remind employees of cyber risk related to COVID-19, including not becoming a victim of COVID-19 phishing email attacks;
    xii. consider whether flexible work hours (*e.g.*, staggered start times and/or shifts), remote work or other off-site arrangements would be acceptable to

the business, and if necessary, upgrading and testing technology now to deal with remote work arrangements if required;

xiii. reach out to key suppliers to ensure that the business will have uninterrupted goods and services during any outbreak;

xiv. create or update human resources policies, including statutory and non-statutory leaves of absence policies and legal requirements, business continuity plans and pandemic response plans, including who in the chain of command can make a decision to close business locations; and

xv. assess whether, in case of an outbreak, the business has and will have sufficient inventory and supplies, including from a health and safety perspective (*e.g.*, tissues, no-touch disposal receptacles, soap and water, surface cleaning supplies, disposal wipes and hand sanitizers).

- ***Employee shows up ill****.* Employees who show up in the workplace appearing to have acute respiratory symptoms (*e.g.*, cough or shortness of breath) should be separated from other employees and/or, if appropriate, sent home without delay.
- ***Employee refuses to work for safety reasons, employee returns from travel from a region that has reported COVID-19 cases and/or evidence of community transmission, or employee informs employer that s/he or a family member at home is undergoing testing for COVID-19***. This will be a case-by-case determination. In these cases, key legal considerations for employers will be occupational health and safety legislation, employment standards legislation and public health guidance from reputable sources. Context will be very important. An emergency room hospital setting, for example, is very different from a typical professional services office setting, and different from an airline setting. A region that has thousands of community transmission cases may be different from a region with only one reported case that is not from community transmission. An employee with a high number of face-to-face interactions may warrant different considerations than an employee that has limited face-to-face interactions.
  Context matters.
- ***Employee discriminates against another employee on the basis of race or other prohibited grounds****.* Employers generally have an obligation to maintain a discrimination-free workplace. Employers must deal with any discriminatory behaviour from employees promptly and firmly.
- ***Significant absences in the workforce***. Businesses should consider how they would deal with a significant number of absences, including for reasons of voluntary self-isolation or mandatory quarantine. Options include asking employees to work overtime, hiring temporary employees with appropriate employment contracts to mitigate risk, and engaging temporary help agencies for temporary workers.

2. Assess the nature of the business. It is important to have an objective assessment of the business and any unique risk factors that may be present in the environment. For example, as we wrote about earlier this year in our article titled Novel Coronavirus Outbreak: Legal and Practical Insights and Perspectives, the hospital sector has unique clinical and legal considerations. Retail businesses with a large amount of face-to-face contact with members of the public will have somewhat different considerations than businesses that only employ workers that work remotely. Long-term care homes, retirement homes and airlines will also have unique considerations. Depending on the nature of one's business, certain steps will be necessary and/or appropriate to take that may not necessarily be necessary or appropriate to take for a business in a different sector. Again, context matters. Depending on the nature of the business, the COVID-19

situation can have broader business impacts, including business transactions, contracts with other parties, and supply chains.

3. Locate reputable sources for information and advice. In uncertain times like these, it is important to base actions on evidence and facts. Employers should be cautious before relying on non-government sources, as misinformation abounds on the internet. Reputable sources include medical expert organizations such as:

- Public Health Agency of Canada
- BC Centre for Disease Control
- Government of Québec
- Ontario Public Health
- Toronto Public Health
- CDC
- WHO

Leaders including executives, legal and human resources heads, should consider taking these concrete steps now. Businesses may already have human resources policies, pandemic response plans and/or business continuity plans, and they should be assessed and updated regularly. In times like these, it is better to be over prepared than underprepared.

>For employment law advice with respect to workplace legal issues arising from COVID-19, our contacts listed below are ready and available to assist with navigating through these unprecedented times. BLG has also created a COVID-19 Resource Centre to assist businesses on a variety of topics, including contractual risks, public disclosure requirements, schools and criminal law.

By

James Fu

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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

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