New Critical Worker Exemption in Alberta allows workers with COVID-19 to attend work

January 13, 2022

Dr. Deena Hinshaw, Chief Medical Officer of Health for Alberta, signed an Order on January 3, 2022, and amended January 10, 2022, creating an exception to the isolation requirements for individuals who are symptomatic or have a confirmed case of COVID-19.

If a person is a critical worker, and the worker's absence would "cause a substantive disruption of services that would be harmful to the public", that worker can be granted a limited exemption from the requirement to isolate in order to attend work, even if that person has tested positive for COVID-19.

In essence, there are two hurdles:

1. the business/services must impact the public interest, and any substantive disruption of such services would need to be detrimental to the public interest; and
2. the relevant worker needs to be "critical" to the provision of those services.

What businesses or services qualify for the Critical Worker Exemption?

There is no definition or guidance provided as to what businesses or services impact the public interest (or in what way their substantive disruption would be detrimental to the public interest) and employers are being given leeway to make this decision themselves.

How should the worker be chosen?

Assuming the services are in the public interest (and that any substantive disruption of them would be detrimental to the public interest), the relevant worker still needs to be critical to the provision of those services.

The "critical worker" must:

- be required to be on-site, in-person for critical work duties
- be either asymptomatic or mildly symptomatic, and
- only be chosen if all other means of staffing the position must have been exhausted.

Employers who utilize the Critical Worker Exemption should prioritize the worker who has the least risk of transmitting the disease, by giving preference according to the following hierarchy of risk:

1. A person who has received a booster dose;
2. A person who is fully immunized;
3. A person who is partially immunized;
4. A symptomatic person who is unimmunized, and tests negative for COVID-19;
5. An asymptomatic person who has taken one rapid test with a positive result;
6. An asymptomatic person who is a confirmed case of COVID-19;
7. A symptomatic person who is a confirmed case of COVID-19 but exhibits mild symptoms.

Who determines whether a business applies for the exemption, or whether worker is a “critical worker”?

The determination as to whether a worker’s absence would cause a substantive disruption of services that would be harmful to the public is made by the owner or operator of the business, sector or service.

What requirements does the business or service have to follow to minimize risk of transmission?

The owner or operator of a qualifying business, sector or service must create a plan to minimize the risk of the spread of infection by the presence of the critical worker at the job site, which includes at a minimum the following precautions:

- Limit access to the work location to only critical workers, as much as possible;
- Critical workers are only to attend for the purpose of completing the job duties that require them to be on-site, in-person, to ensure the ongoing functioning of the service;
- Critical workers must travel directly to the work location, and immediately return home, until their isolation period is complete;
- Medical masks must be worn to enter and exit the building, and at any time the critical worker is in the same area as another person; and
- Ensure the HVAC system is functioning properly.

To the extent possible, critical workers should work alone and have their own washroom and kitchen facilities. Rooms should be thoroughly sanitized between shifts.

A word of caution

Although this public health order leaves it up to the owners and operators of businesses, sectors and services to determine eligibility for this exemption, employers would be advised not to take an overly broad view of what constitutes “a substantive disruption of services that would be harmful to the public.”

As with all public health orders, violations of this Order can result in fines. In addition, inappropriately applying this exemption to a business that does not truly meet the requirements of the public health order could also be a breach of the employer’s obligation to protect the health and safety of their employees.

If you have any further questions on this new Critical Workers Exemption, reach out to your lawyer or any of the key contacts below.

By

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