

## **Emond Harnden Breakfast Seminar**

### **The Flu Pandemic Threat: Concerns and Obligations for Employers**

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### **Session Overview Emergency Preparedness**

- Pandemic facts, planning assumptions and timeline
- Legal obligations
- Human resources issues
- Policy and procedures
- Communication

## **Legal Obligations and Human Resources Issues**

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## **Relevant Legal Obligations**

- Occupational Health and Safety
- Workplace Safety and Insurance
- Employment Standards Act
- Employment Insurance
- Human Rights
- Quarantine Act
- Health Protection and Promotion Act
- Privacy
  - Personal Information Protection and Electronic Documents Act ("PIPEDA")
  - Personal Health Information Protection Act ("PHIPA")

## Occupational Health and Safety

- Employers' duties
  - Take every precaution reasonable in the circumstances for the protection of a worker
  - Education, training, communication
- Employees' duties

## Occupational Health and Safety Work Refusals

- Employee's right to refuse or to stop work where health or safety is in danger
- Certain workers have a limited or conditional right to refuse work (i.e. healthcare workers, police, firefighters). Right is limited where:
  - Normal condition of employment
  - Refusal would directly endanger the life, health or safety of another person
  - Teachers – work refusal provisions do not apply where life, health or safety of a pupil is in imminent jeopardy (Reg. 857)
- Impact of work refusals

## **Workplace Safety and Insurance**

- SARS – WSIB position - workers who believed they were infected in the course of their employment may be entitled to WSIB benefits
- Workers infected in the course of their employment may be entitled to benefits
  - May be difficult to establish

## **Employment Standards Act Personal Emergency Leave (s.50)**

- Regularly employs 50 or more employees
- 10 days of unpaid, job-protected leave
- Personal illness, injury or medical emergency
- Death, illness, injury, or medical emergency of prescribed individuals
- Urgent matter

## **Employment Standards Act**

### **Emergency Leave, Declared Emergencies (s. 50.1)**

- Unpaid, job-protected leave
- Government-declared emergency – *Emergency Management and Civil Protection Act*

## **Employment Standards Act**

### **Emergency Leave, Declared Emergencies (s. 50.1)**

- Employee not performing duties because of a declared emergency and
  - Because of an order that applies to him or her made under the EMCPA
  - Because of an order that applies to him or her made under the *Health Protection and Promotion Act*
  - Because he or she is needed to provide care or assistance to an individual as defined in the section; or
  - Because of such other reasons as may be prescribed
- In addition to personal emergency leave and family medical leave entitlements

## **Employment Standards Act / Employment Insurance**

- **Family Medical Leave (s. 49.1)**
  - 8 weeks, unpaid, job-protected leave
  - To provide care and support to a family member who has a serious medical condition with a significant risk of death within 26 weeks
  - Further 8 weeks, if family member does not die during first leave period of 8 weeks
- **Compassionate care EI benefits**
  - Maximum 6 weeks

## **Employment Insurance (EI)**

- Act allows for up to 15 weeks of sickness benefits
- **SARS emergency legislation**
  - Amendments made to allow for claims for individuals who were quarantined
  - Waiting period did not apply
  - No requirement to produce a medical certificate in order to qualify for benefits
- Similar amendments may be made in a pandemic situation

## Human Rights Code

- Code prohibits discrimination and harassment based on disability, race, place of origin
- Employers should take care that any precautions taken are not discriminatory
- Definition of disability

## Quarantine Act (s. 20)

- Employers who require employees to travel
- Federal government has the authority to require any traveller who enters or leaves Canada to undergo a health assessment
- Where quarantine officer has reasonable grounds to suspect that the person has recently been in close proximity to a person who has a communicable disease

## Health Protection and Promotion Act

- Authority to place individuals in quarantine comes from HPPA
- HPPA gives medical officers of health broad powers to restrict the mobility and conduct of persons

## Privacy

- *Personal Health Information Protection Act*
- Recipient rule – employers are restricted in what they can do with health information once received. Only use or disclose employee's health information for the authorized purpose for which the consent was given
- Health information custodian may disclose an employee's personal health information in emergency or other urgent situations
  - Where reasonable grounds that the disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm to a person or group of persons (s. 40(1))



## **Workplace Practices, Policies, and Procedures for Pandemic Preparedness**

## **Human Resources Issues**

- Business continuity plan
- Review of existing policies
- Drafting pandemic specific policies
- Employee communication and education plan

## **Expect High Absenteeism Rates**

- Illness/unable to report to work due to quarantine
- Caring for ill family members
- Caring for children if day cares and schools are closed
- Fear of contracting illness while at work or commuting to work

## **Review of Existing Policies & Practices**

- Leaves of absence
  - Sick leave
  - Short-term disability
  - Vacation
  - Bereavement leave
  - Discretionary unpaid leave
- Absenteeism, attendance management
  - Application of policy, exclude absences from program
- Hygiene
- Security

## Review of Existing Policies & Practices

- Staffing
  - Identify key positions, cross-training of employees, flexibility to reorganize workplace, move employees to other positions/work assignments
- Return to work
  - Ensuring fitness to return
- Encourage sick employees to stay at home
  - Provision of various leave options
- Voluntary vaccinations
  - Organize workplace clinics, allow employees time off work

## Review of Existing Policies & Practices

- Health and safety
  - Providing PPE and training in its use
- EAP, counseling services
- Unionized environments
  - Verify collective agreement obligations and limitations
  - Implementing new policies or changes – KVP test
  - Address emergency planning in bargaining

## **Social Distancing – Policies and Procedures**

- Means minimizing contact during peak pandemic phases
- Work from home
- Limit face-to-face interaction
- Limit public gatherings and meetings
- Travel
  - Avoid unnecessary travel, restricting travel

## **Social Distancing – Policies and Procedures**

- Develop policies and procedures to allow employee to work from home
- Determine job responsibilities and personnel who can work from home
- Clearly set out duties, expectations, and deadlines
- Set out hours of work
- Indicate that employer has right to inspect workspace
- Consider supervision options

## **Social Distancing – Policies and Procedures**

- Consider technological options
- Remote networking to provide home access to e-mail and files
- Ensure that employees have adequate hardware, software, and connections from home
- Ensure corporate resources can be accessed electronically
- Develop adequate security and privacy safeguards

## **Workplace Safety Procedures**

- Restrict workplace entry by employees, customers/clients, or suppliers who exhibit influenza symptoms
- Advise employees not to come to work if ill or under quarantine
- Elevate workplace cleanliness standards

## Workplace Safety Procedures

- Encourage workplace hygiene practices such as hand washing
- Provide adequate supply of sanitary products such as tissues and hand sanitizer
- Provide personal protective equipment for employees who frequently deal with the public

## Leaves of Absences

- Employer may also need to consider cancelling leaves to ensure adequate attendance
  - Cancel vacation and extend vacation pay
  - Approach retired or soon-to-retire employees to back up a key position as a regular employee or contractor
  - Extended overtime policy to increase its availability and rates

## Employee Communication and Education Plan

- Information to provide
  - The latest company news, including revised policies and procedures – health and safety protocols, business continuity decisions that have been reached or are being considered (whether to close temporarily or stay open), HR policies regarding pay and leave
- Methods of communication
- Contact list
- Dealing with unions

## Websites

- Ontario Emergency Management – Ontario Ministry of Community Safety and Correctional Services
  - [http://www.mpss.ius.gov.on.ca/english/pub\\_security/emo/about\\_emo.html](http://www.mpss.ius.gov.on.ca/english/pub_security/emo/about_emo.html)
- Québec – Direction générale de la sécurité civile et de la sécurité incendie
  - [http://www.msp.gouv.qc.ca/index\\_en.asp](http://www.msp.gouv.qc.ca/index_en.asp)
- Public Safety and Emergency Preparedness Canada
  - <http://www.psepc-sppcc.gc.ca/>
  - 1-800-484-8302
- Health Canada – Latest Headlines, Advisories and Warnings
  - <http://www.hc-sc.gc.ca/>
- Public Health Agency of Canada – Canadian Pandemic Influenza Plan
  - <http://www.phac-aspc.gc.ca/cpip-pclcpi/index.html>

## Websites

- Workplace Safety and Insurance Board – Ontario
  - [http://www.wsib.on.ca/wsib/wsibsite.nsf/public/flu\\_resources](http://www.wsib.on.ca/wsib/wsibsite.nsf/public/flu_resources)
- Canadian Manufacturers & Exporters
  - [http://www.cme-mec.ca/national/template\\_na.asp?p=22](http://www.cme-mec.ca/national/template_na.asp?p=22)