

CSSEA *Info* keeps members informed about human resources and labour relations issues in the community social services sector.

For more information, contact your human resources/ labour relations consulting team.

COVID-19 AND FREQUENTLY ASKED QUESTIONS APRIL 1, 2020

Since issuing the recent CSSEA Info bulletins, members have asked a number of clarifying and additional questions. The following list of Frequently Asked Questions will address many of them, and CSSEA will issue additional bulletins based on emerging developments and questions.

Health and Safety

As essential services providers, it is critical that our services continue to be provided, but a number of employees are anxious about reporting to work now for fear of acquiring or transmitting COVID-19. What can we do?

Employers must continue to remain current on COVID-19 developments and rely on the most up-to-date information, recommendations and directions of the BC Provincial Health Officer (PHO), BC Centre for Disease Control (BCCDC), WorkSafeBC (WSBC) and their funder(s) for best health and safety practices.

This will involve reviewing and updating policies, procedures, and practices in light of current information, and taking active steps to improve procedures where possible. These procedures will include:

- Risk assessments being conducted;
- Appropriate training and communication on health and safety practices;
- Having an actively engaged joint occupational health and safety committee to review health and safety practices and make recommendations for improvements, and to help with consistent communication on the application of COVID-19 policy/protocols.
- Making necessary personal protective equipment available, and providing training on its use;
- Ensuring that employees and all others who attend at the workplace with flu-like symptoms do not enter;
- Promoting healthy hand hygiene and coughing/sneezing practices for all persons attending at the workplace;
- Posting signage for all persons who attend at the workplace to promote health and safety practices;
- Assessing any feedback received from the union on safe practices.

Upon ensuring that your health and safety practices are as current and robust as possible, engage with individual employees on their specific concerns and all the precautions (see above) that have been taken. Upon understanding the employee concerns, make an assessment on whether additional precautions can be taken, or whether it is reasonable for the employee to continue to work as assigned, to be redeployed, or to work from home where feasible.

Those employers who experienced the SARS and H1N1 outbreaks may wish to review the protocols that were then in place, and adjust them to address COVID-19.

Please see WorkSafeBC's New Guidelines (issued March 30, 2020) on COVID-19: <https://www.worksafebc.com/en/about-us/news-events/announcements/2020/March/helping-employers-address-covid-19-in-the-workplace>.

See also:

WorkSafeBC COVID-19 RESOURCES link: <https://www.worksafebc.com/en/about-us/covid-19-updates>

What if the employee continues to refuse to work?

If, after you have taken all reasonable and available measures and have clearly understood the employee's concerns, but the employee continues to refuse, Section 3.12 of the OHS Regulation and Article 22.4 (and Information Appendix B) outlines the process to follow. The final appeal in the process is to have a WSBC officer investigate.

Some staff are being directed to work in a client's own homes as the care model shifts from group homes to moving clients home. How do we address the safety concerns?

Employers should continue to review, update and follow their existing health and safety and WSBC protocols when deploying staff to work in clients' homes. Amongst other things, the employer must ensure a risk assessment is completed and that employees are provided with the appropriate orientation, training and personal protective equipment prior to delivering services at the new work location. Employers should collaborate with their Joint Occupational Health & Safety Committees and funder(s) to address these issues.

Please refer to this [CSSEA Info](#) for more information and resources on OHS practices. See also this recent [WSBC publication](#).

Employee Requested Layoffs and Leaves

What if an employee asks to be laid off or be placed on unpaid leave due to their concerns?

While employee concerns over their health and safety, and the health and safety of those close to them are understandable, community social services employers are delivering

services that have now been deemed essential to the health and well-being of individuals served. This declaration was made by the PHO on March 26. Employees should be encouraged to remain at work to deliver these essential services, to be redeployed where possible, and not be laid off or placed on approved leaves, pending exceptional circumstances. Employers will need all available staff to be deployed in the event that the COVID-19 outbreak continues to worsen.

What might be considered exceptional circumstances that would support a decision to grant a leave? What would employees be paid on such a leave?

If you have determined that there will be sufficient staff available to address service requirements, and you are convinced of the need to allow certain employees to take leave after considering other available options (redeployment, working from home, providing services virtually, etc.) then a leave may be appropriate. It may be provided for a temporary period (eg. two weeks) with extensions to be discussed prior to being granted. Employees who, for example, live with immune compromised individuals, or who have no child care options available due to COVID-19 may fall into these exceptional circumstances. They would not be paid either sick leave or paid leave for self-isolation as they do not qualify for either. They may be paid vacation credits or other banked credits like overtime. Or they may be placed on unpaid leave and supported to access EI benefits.

Do employees have protected leave rights in these exceptional circumstances?

Yes, some employees do now. On March 23, 2020, the BC government passed amendments to the *Employment Standards Act* that entitle employees to a COVID-19 Related Leave including for employees who need to stay home to care for a child due to school or daycare closure. This follows the March 17 announcement of the indefinite suspension of elementary and high schools. While the amendments to the *Employment Standards Act* protect employment status, they do not provide for a paid leave. Employees who are unable to attend work because they are required to care for their children may access paid leave banks such as vacation and banked overtime. If they do not have vacation or banked overtime and cannot attend work, they should be placed on an unpaid leave of absence.

Asymptomatic employees who are required to remain at home to care for sick family members may similarly use vacation and banked overtime and should be placed on an unpaid leave of absence if paid leave credits are not available.

If employees are placed on an unpaid leave of absence for COVID-19 related reasons should we continue to keep employees enrolled in health and welfare benefits?

CSSEA recommends that where unpaid leaves have been granted in exceptional circumstances related to COVID-19, that the employer continue to pay for health and welfare benefits for enrolled employees after the 20 day grace period per Article 20.7, which stipulates that service for vacation entitlement continue uninterrupted, and that MPP contributions continue to be made if the employee continues to contribute. The three approved benefits providers used by CSSEA members have been notified of this.

What about employees who have reported an underlying health condition?

Employees with underlying health conditions who are at a higher risk for serious illness due to COVID-19 should be treated as you would any employee with a medical condition that requires an accommodation under the *Human Rights Code*. Given the current restrictions on securing medical proof, your accommodation assessment should be done as quickly as possible without further medical documentation to substantiate their underlying health condition. Where reasonable to accept the employee assertion, an accommodation process should be engaged, including consideration of:

- redeploying the employee to avoid direct care or otherwise minimize risk of exposure to COVID-19; or
- redeploying the employee to work from home where feasible.

If neither of these options are available, the employee may be placed on a sick leave in the same manner as any other employee with a medical condition that prevents them from working. The accommodation would be temporary and be revisited as circumstances improve.

What about pregnant employees? Are they at risk?

On March 25, 2020 the BC Ministry of Health released a statement regarding COVID-19 and pregnancy. Pregnant women are no more at risk for acquiring the virus nor are they more at risk of getting severe disease than comparable aged adults. Pregnant women should continue to work if they are asymptomatic. They should follow the usual precautions and use PPE appropriate to the work environment. For more information, see the BC Centre for Disease Control's [guidelines](#).

If employees are placed on an unpaid leave, do we need to issue a Record of Employment (ROE)?

If employees are no longer working for reasons related to COVID-19, employers must issue an ROE. If an employee is on an unpaid leave due to sickness, use code D (Illness or injury) as the reason for separation (block 16). If an employee is no longer working due to a shortage of work because the business has closed or there are reduced operations, use code A (Shortage of work). If an employee does not work but is not sick, use code N (Leave of absence). Avoid adding comments in relation to the applicable sections unless absolutely necessary as it may delay processing. For more detailed information, please see:

<https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html>

Employees on an unpaid leave of absence may also qualify for the new Canada Emergency Response Benefit (CERB) instead of the EI benefit. The CERB provides up to \$2000 a month for up to 4 months to individuals who must stop working due to COVID. See:

https://www.canada.ca/en/department-finance/economic-response-plan/covid19-individuals.html#new_canada_emergency_response_benefit.

Sick Leave and Self-Isolation Pay

When should employees be placed on sick leave instead of paid self-isolation leave?

The approach to sick leave has not changed with COVID-19. Employees with symptoms of flu, cold, or any illness should not be at work, and should recover at home on sick leave and avoid further potential transmission of their illness. Where there are symptoms of illness, sick leave is appropriate and continues to be paid at 80% of employee wage rates. In order to avoid unnecessary utilization of health system resources during this time, employers should refrain from requesting medical proof of illness. Sick employees who have not been directed to self-isolate should return to work when symptoms cease, as they would in the ordinary course. Employees who run out of sick leave credits would be placed on an unpaid leave of absence or draw down on other accrued banks as agreeable. They should also be supported in the EI application process.

On the other hand, a public policy decision has been made to pay employees at 100% pay who self-isolate where there are no symptoms of illness but an elevated level of possible exposure to COVID-19. The PHO has directed employees to self-isolate if they have returned from international travel, or have been exposed to others who may have COVID-19. In cases other than the clear example of returning from international travel, self-isolation should occur only after receiving specific direction from public health, 8-1-1, or an attending physician. The degree of proof of direction to self-isolate is low at this time, as employers are asked to refrain from taxing the health care system with requests for proof. It will suffice if the employee provides the name of the professional at 8-1-1 who provided the direction and the date it was provided, for example. Employees in self-isolation should complete the daily self-assessment form provided [online](#). Employees who self-isolate may also be requested to work from home, where feasible, and receive normal pay while they remain asymptomatic.

Employees who departed on international travel after the date that the PHO recommended against it (travel starting on March 13) are not entitled to the paid leave while asymptomatic upon their return to Canada.

An employee who is directed to self-isolate when asymptomatic, but who subsequently develops symptoms of illness would be placed on sick leave for the duration of illness, which may extend beyond the 14 day self-isolation period. Some employers have reported that where the employee falls ill and then recovers, all within the 14 day self-isolation period, that they prefer to maintain the employee on the paid leave rather than convert the leave to sick leave and then revert back to paid leave for the remainder of the 14 day period. As the paid leave for self-isolation falls outside of the collective agreement, employers have the discretion to do this. Please continue to report all new instances of self-isolation on the [CSSEA link](#), at least weekly.

An employee who contacts 8-1-1 or public health or their attending physician because they have symptoms, and who is directed to self-isolate, would be placed on sick leave because they are exhibiting symptoms of sickness. They may return to work when fully recovered. An

employee who is confirmed as COVID-19 positive may return to work upon full recovery, and upon being given medical clearance to return to work.

For employees who are directed to self-isolate, what are they paid?

Regular employees are to be paid full pay for their regularly scheduled hours during the 14 day self-isolation period, while casual employees are to be paid full pay for the hours that were scheduled but cancelled in the 14 day period. Regular status employees continue to accrue seniority and all benefits while on this paid leave.

It doesn't seem fair that asymptomatic employees on directed self-isolation are paid full pay while employees who are symptomatic and ill are paid sick leave at 80% of pay. What is the rationale?

Asymptomatic employees on self-isolation may still be required to work from home where it is feasible, in which case they would continue to be paid their regular wages in any event. However, where an employee is unable to work from home while self-isolating, payment of full wages supports the public health objective of ensuring that employees who may be at risk of acquiring COVID-19 remain at home to prevent transmission and "flatten the curve" of the pandemic. Full pay for the self-isolation period is mandated government policy. Government has indicated that it is prepared to financially support this policy objective and CSSEA members are to track utilization.

Can the same employee be directed to self-isolate more than once?

This appears to be the case so far, if directed by a public health and/or medical professional.

Essential Services

Community social services have been declared as essential. What does this mean?

On March 26, the PHO and government declared community social services essential, and therefore employers are encouraged to continue to provide the services that are vital to British Columbians and avoid layoffs of employees in provincially funded programs. Essential services will have priority access to funding, supply chain needs like personal protective equipment (PPE), and supportive services for essential employees, like child care.

In meeting the need to provide essential services, and responding to both public health directives and potential staffing challenges, employers may have to further determine what services remain essential and what other services may need to be reduced or delivered in an alternative way (ie. virtually). In these circumstances, essential services and the employees who provide them would be those who are considered critical to preserving life, health, public safety and basic societal functioning and who have been determined by the leadership of their organization, on an individual basis, to be critical to delivering these essential services.

The designation of an essential service is specific to this crisis and the unique circumstances in a worksite or program. It must be revisited regularly to ensure the designation remains current. The determination of what is “essential” during this crisis is not the same as the determination made during a collective bargaining dispute in accordance with the *Labour Relations Code*. Employers should not rely on previous essential services plan staffing levels that were created solely for continuity of service during labour disputes to make current determinations, given the other considerations at play in the *Code* process.

With a shortage of staff and/or potential reduced service delivery, we may need to redeploy staff. What is the process?

First and foremost, layoffs of employees in provincially funded programs are to be avoided; if you are considering any reduction in staff, consult with your funder(s) to ensure that necessary approvals are granted. If there are public health considerations in the reduction or redeployment of staff, consult with your public health office as well, and review the anticipated changes with the joint occupational health and safety committee. Non-provincially funded programs may need to lay-off staff in the event that their funding supports do not continue.

In either case of provincial or NPF programs, where practicable, review staffing changes in advance with your union to promote understanding of the need for the changes and to assist with problem-solving and implementation. Decisions may need to be made quickly so it may not always be reasonable to consult in advance with the union, but the discussions should take place as soon as possible. In the case of redeployment, employers are encouraged to consult with their union, even after staff have been redeployed. The unions of the bargaining association have all agreed to support employers as best they can in adapting to staffing and service delivery challenges, and can assist employers with problem-solving with staff if they have sufficient information. Please contact your CSSEA Consultant or Advocate for assistance with any staffing reductions and redeployments so we can work with you and the unions. This is a priority for CSSEA staff.

Can an employer redeploy staff to a different program than they currently work in, or can staff perform different job duties than they currently perform?

Employers may need to deploy available staff to where they are most needed to deliver essential services. This means that their hours of work and work locations may change, they may be assigned to different programs, and may perform duties not found in their current job description. Employees should not be requested to perform work duties for which they are not qualified or reasonably oriented. Nor should they be asked to perform duties that do not meet appropriate occupational health and safety standards. While employers should make reasonable efforts to retain employee shift times and days off, it may not be practicable.

Can staff refuse to be redeployed? Can employees be required to work even if their schedule changes?

Provided the above conditions are met, employers can redeploy employees as contemplated under Article 26. Further, Article 26 addresses rate of pay issues upon assignment to higher and lower rated positions. Those provisions are applicable for protecting wage rates when assigned to a lower rated position and paying higher wages when assigned to a higher rated position.

If an employee has specific concerns about redeployment, they should be specifically identified and considered. Conditions supporting the need for redeployment should be balanced against possible human rights considerations such as disabilities or family status. Health and safety concerns should be addressed as outlined above.

Worksite Employment Restrictions

What is the current status of the PHO's restrictions on employees working at multiple worksites?

The PHO has directed employees working with vulnerable populations in the Health Sector (eg. long-term care homes, assisted living, mental health group homes) to declare their preferences for working at a single worksite in preparation for potential restrictions in deployment within the health sector to prevent the spread of COVID-19 amongst those identified populations. The current Order excludes social services employers and does not prohibit employees working in the health sector from continuing to work in the community social services sector as well, which has also been declared an essential service. If this changes, the PHO will make further orders or the local MHO may issue site specific Orders.

Can community social services employers restrict employees from working at multiple employers or worksites?

Such a restriction has not been ordered in this sector and there is no public health declaration requiring it at this time. Employers may face potential liability if they limit the earnings of their employees by restricting their lawful employment. If this changes, the PHO or MHO will make further orders as required.

Incentive/Hazard Pay

We are concerned that we will have critical staffing shortages and will need to incent employees to come to work as scheduled. Can we provide them with incentives or hazard pay?

At this time, government has not indicated support for employers unilaterally implementing changes to the pay rates under the collective agreements, and action in this respect may impact on funding arrangements.

Other employers within CSSEA membership will also be concerned about some employers taking this approach, as it creates an environment of competition for human resources (and

bidding wars) at a time when we are aiming to work together as a sector and with employers' respective ministries.

Note that the general wage increase and low wage redress increase under the collective agreement is effective April 1, 2020.

What about providing employees with other types of incentives?

Other types of incentives that do not require amendments to the collective agreements may be considered and assessed for their effectiveness.

Where can we find more online information to remain current?

Please see the following links:

Office of the Provincial Health Officer

<https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer>

BC Centre for Disease Control – COVID-19

[http://www.bccdc.ca/health-info/diseases-conditions/coronavirus-\(novel\)](http://www.bccdc.ca/health-info/diseases-conditions/coronavirus-(novel))

HealthLink BC (which contains many links to other useful websites)

<https://www.healthlinkbc.ca/health-feature/coronavirus-covid-19>

Public Health Agency of Canada

<https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html>

and for travel notices:

<https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/latest-travel-health-advice.html>

WorkSafeBC – COVID-19 and the Workplace

<https://www.worksafebc.com/en/about-us/news-events/announcements/2020/March/covid-19-and-the-workplace>

Government of Canada – Employment Insurance – COVID 19

<https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html>