

# COVID-19 Human Resource Information for Employers

What has become clear over the past few weeks is that the COVID-19 pandemic situation is evolving daily and having a significant impact on the employer – employee landscape.

The following information is intended to answer your questions about how COVID-19 might affect your business and workplace operations, and to offer support as you navigate through this global health emergency.

Note that these resources are based on information available today, April 1<sup>st</sup>, 2020, and their validity may be impacted by ongoing changes being made to programs at a provincial and federal level.

## EMPLOYMENT STANDARDS

### What has changed?

The province has made a significant change to legislation, to provide better support to workers during the COVID-19 health crisis.

First, there was a permanent change to the Act, which provides workers who cannot work due to illness or injury, up to three days of unpaid, job-protected leave each year.

Specific to COVID-19, the Act now allows workers to access unpaid leave, with job-protection if they are unable to work for reasons relating to COVID-19, including:

- Workers who are ill and need to self-isolate,
- Workers who need to care for their child or dependent, or
- Workers whose employer is concerned that they may expose others to risk.

### What does this mean to me as an employer?

During the pandemic, employees meeting the above criteria are eligible for an unpaid leave of absence for the duration of time that their circumstances require them to be away from work.

You are required by law, to accommodate their return to work upon completion of the leave.

### What about employees who requested a leave prior to this change?

This protection is retroactive to the date when the first presumptive COVID-19 case was confirmed in B.C, January 27, 2020.

### What if I need to close my business due to COVID-19? Am I required to give or pay notice?

If you must close your business for safety reasons, employees would be laid off, due to “shortage of work”. There is no requirement to pay notice when there is a temporary layoff.



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## What do I need to document for a leave?

You should retain a written acknowledgment from the employee requesting their leave of absence and confirming their last day worked. The criteria above do not require medical notes. Do not burden the medical system by asking for COVID-19 related medical notes from your employees.

The employee will experience an immediate wage stoppage and a Record of Employment must be issued. Please refer to the ROE information below for appropriate coding updates.

## Record of Employment (ROE)

The following is taken directly from Service Canada regarding issuance of ROE's ([click for more](#))

If your employees are directly affected by the coronavirus (COVID-19) and they are no longer working, you must issue a Record of Employment (ROE).

When the employee is sick or quarantined, use code D (Illness or injury) as the reason for separation (block 16). Do not add comments.

When the employee is no longer working due to a shortage of work because the business has closed or decreased operations due to coronavirus (COVID-19), use code A (Shortage of work). Do not add comments.

When the employee refuses to come to work but is not sick or quarantined, use code E (Quit) or code N (Leave of absence), as appropriate. Avoid adding comments unless absolutely necessary.

## Temporary Layoffs

### How does a temporary layoff work?

Temporary layoffs are regulated by the B.C. Employment Standards Act (ESA), which allows employers to temporarily layoff employees for up to 13 weeks in a 20-week period, without triggering termination. ESA says that an employee is laid off when work stops or is reduced by more than 50%.

### Can I temporarily layoff my employee?

Layoffs can only be applied by employers if:

- There is a contractual term in the employment agreement allowing them;
- Temporary layoffs are normal in the industry; and/or
- The employee agrees to the layoff.

In the absence of a written contract, or agreement from the employee, layoffs can be considered termination and employers may be required to provide written notice and/or compensation to the employee.



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## What does this mean?

If you are in a position where reducing your workforce cannot be avoided and temporarily laying off an employee appears to be your best option, you are encouraged to do so cautiously. If an employee is not under contract (you do not have an employee agreement), and if you are not operating business in an industry which commonly sees layoffs (e.g. forestry, construction), you must obtain their agreement to process a layoff, or you are at increased risk for the employee to claim that they were terminated.

The option of agreeing to a temporary layoff should be motivating for most employees, as they will be eligible for Employment Insurance (and/or Canada Emergency Response Benefit) and will also have a job to return to.

## Wouldn't it just be easier to terminate the employee and hire them back later?

This is not recommended, as there are benefits to retaining employees who you have made an investment in. The decision to layoff or terminate should be considered carefully, case by case. If you are unsure of the appropriate direction you are encouraged to contact an HR professional or employment lawyer.

Under the Employment Standards Act, a terminated employee is entitled to working notice, or pay in lieu. Workers on temporary layoff do not require a notice period or pay.

Learn more about ESA working notice or pay in lieu [here](#)

## How do I process a layoff?

Retain written acknowledgment from the employee of their last day of work. Due to the immediate interruption to earnings, you must issue a Record of Employment (ROE).

Prepare a layoff letter and use caution citing any notice period or anticipated return to work date. Consult with an HR Professional or employment lawyer for more information.

## Have changes been made to provide protection for employers against termination claims, during the pandemic?

No. Although employers are experiencing significant pressure and financial challenges as they struggle to meet business needs, there has been no change to the law to protect businesses from claims of termination or requirements to pay severance. The following measures however, can help to reduce an employer's risk of triggering constructive dismissal (termination):

- Where possible, avoid making significant changes to the terms and conditions of employment. Reduction of hours, changing compensation or even a change in the employees work location can be considered grounds for constructive dismissal
- Talk to your employees – they understand that something very different is going on. Ensure that you have their agreement with any changes made to the employment relationship.



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## Employment Insurance (EI) Benefits

The Employment Insurance Benefit program is being heavily utilized and Service Canada has put support actions in place to support individuals and processing times. Employers are encouraged to stay informed about changes to these programs and services.

It is important to advise departing employees to submit their applications immediately, to prevent delays. As of today, EI eligible workers are still being advised to apply directly to EI. Those who are ineligible for EI, are directed to apply to CERB – see below for more information.

As of March 15, 2020, the requirement of a medical note for the application of sickness benefits has been waived. Workers must only claim that they have been placed in quarantine.

Click [here](#) to learn more about EI Sickness Benefits

## Canada Emergency Response Benefit (CERB)

The Government has established a taxable benefit, that will provide support to workers who have lost their income as a result of the COVID-19 pandemic. Workers may be eligible for \$2,000 per month for up to four months. This benefit replaces previously announced emergency benefits and is intended to apply to individuals who would not otherwise be eligible for EI. Employers are encouraged to stay informed about this program and its overlap with EI, and to share information with employees.

Workers can apply if they:

- Need to take sick leave because of isolation or quarantine,
- Cannot work because they are caring for someone who is sick,
- Have been laid off or terminated due to shortage of work, or
- Are home because kids cannot attend school or daycare.

Employees who have already applied for Regular EI Benefits, or Sickness Benefits but not yet received payment will be automatically assessed for CERB and do not need to send in a new application.

There is no impact to employers.

For more information about eligibility and the application process, employees should be directed [here](#).



### *About Robyn*

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Robyn Jespersen is a Human Resources Consultant with HR West Consulting Ltd., serving the interior of BC with their 'people' and organizational development needs.

### *Contact HR West*

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P: (604) 546 – 7660

E: [robyn@hrwest.ca](mailto:robyn@hrwest.ca)

W: [www.hrwest.ca](http://www.hrwest.ca)