Pandemic Preparedness: Labour and Employment Law Considerations

Shane Smith
416.595.8166
ssmith@millerthomson.ca
Pandemic Planning

• It is estimated that 20%-60% of working population unable or unwilling to work for 2-4 weeks
  • Significant human resources impact
  • Raises a number of legal issues
Statutory Obligations

- Occupational Health and Safety Act
- Employment Standards Act
- Human Rights Code
- Workplace Safety and Insurance Act
Occupational Health and Safety Act

• “take every precaution reasonable in the circumstances for the protection of a worker”
  – employees not to come to work if showing symptoms
  – send sick people home
  – promote good hygiene practices
  – ensure clean workplace – particularly high risk
  – distribute and instruct on use of PPE as appropriate
  – educate and keep employees informed
  – restricting social gatherings and large gatherings
OHSA (cont’d)

• work refusals
  – managers should be made aware of process and steps in the event of occurrences
  – restrictions on right to refuse for certain employees
  – includes persons employed in operation of a hospital, nursing home, mental health centre, etc.
Employment Standards Act

• various statutory leaves of absence can come into play due to quarantine, personal illness, family members
  – emergency leave (50 or more employees)
  – family medical leave in serious cases
  – declared emergency leave – right to leave where declared emergency by government
Human Rights Code

• is it a disability? - prior decisions have found influenza not a disability
• if it is, then duty to accommodate
• some concerns have been expressed about discrimination based on ethnic background
Workplace Safety and Insurance Act

- employees who acquire illness at work may be entitled to benefits
- would be dealt with on a case-by-case basis
- two issues – establishing that acquired at work; establishing that related to employment
Collective Agreement Considerations

- sick leave and absence compensation practices need to be determined
  - if sick, then typically benefits
  - if unable to work due to quarantine, but not sick = ??
  - concern about abuse in quarantine situations
  - likely have entitlement to EI benefits, maybe WSIB
  - could be special legislation
Collective Agreement (cont’d)

– there are pandemic specific provisions in ONA central agreement
– 6.05(a) – obligation to have adequate supplies of N95 masks
– 6.05(d) – obligation on nurses to disclose working at other health care facilities
– consider getting ahead of it now
Collective Agreement (cont’d)

- influenza vaccination provisions in central provisions of hospital agreements
- based on ‘outbreak’ occurrences
- familiarize self with provisions and plan ahead
- if not in collective agreement, vaccination protocols can be established by policy
Preparation Principles

- two primary considerations:
  a) how to protect workers;
  b) how to deal with absences and shortages

- much will be determined as events unfold – legislative response, public health directives
Preparation Principles

• Many resources available:
  – Public Health Agency of Canada (www.phac-aspc.gc.ca/index-eng.php)
  – Ministry of Health and Long-Term Care (www.health.gov.on.ca/english/providers/program/emu/pan_flu/pan_flu_plan.html)
  – Canadian Centre of Occ. Health and Safety (www.ccohs.ca/pandemic)
  – www.fightflu.ca