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A Health Industry Seminar Series

Pandemic Preparedness: Labour and Employment Law Considerations

Shane Smith

416.595.8166

ssmith@millerthomson.ca

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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*

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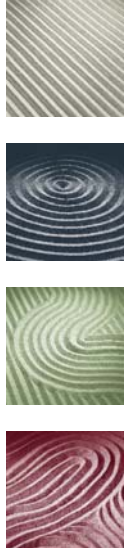
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Occupational Health and Safety Act

- *“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.



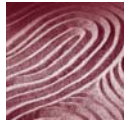
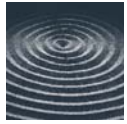
Employment Standards Act

- 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

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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