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WELCOME

VANCOUVER CALGARY EDMONTON SASKATOON REGINA LONDON KITCHENER-WATERLOO GUELPH TORONTO VAUGHAN MARKHAM MONTRÉAL

Please find the PPT template attached.



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COVID-19

Planning for the Unknown

Gillian Tuck Kutarna & Nadya Tymochenko

CoVID19

As of March 5:

- 45 confirmed cases in Canada
- 26 cases in Ontario
- 14 in Toronto
- 300 million children not in school
 - South Korea, Iran, Japan, France, Pakistan, Italy
 - Washington, California, New York
 - China broadcasting primary school classes on public television, and launched a cloud learning platform



Nagoya Japan



March 5, 2020



Lushan International Experimental Primary School in Changsha, central China's Hunan Province, Feb. 10, 2020.



March 5, 2020



Agenda

- ESA/Collective Agreement Staff Absences
 - Personal
 - Family
 - Emergency Leaves
- OHS Work Refusals
- MFIPPA/PHIPA
- HRTO
 - Accommodation Based on Family Status
- International Student Programs
 - Travel Bans (from and to Canada)
 - Care & Supervision
 - Additional Costs
- Student Travel
- Exclusion
- Emergency Preparedness Obligations



Employee Absence - ESA

Employment Standards Act (ESA) Part XIV leave entitlements:

ESA protection for workers with at least 2 weeks' of service are entitled to job-protected, **unpaid*** leaves of absence for:

- a) Personal illness, injury or medical emergency
 - 3 unpaid days

- b) Bereavement
 - 2 unpaid days

Employee Absence - ESA

(c) Family Medical Leave

- Up to 28 weeks of unpaid leave to care for a family member with a serious medical condition and a risk of death within 26 weeks.

(d) Family Caregiver Leave

- Up to 8 weeks of unpaid leave per year to care for a family member with a serious medical condition

(e) Critical Illness Leave

- Up to 37 weeks to provide care for a critically ill minor child
- Up to 17 weeks to care for a critically ill adult family member



Employee Absence - ESA

(f) An employee is entitled to Emergency Leave without pay if:

- not performing duties because an emergency is declared pursuant to the *Emergency Management and Civil Protection Act* (“EMCPA”), or
- an order is made pertaining to the employee under the *Health Protection and Promotion Act* (“HPPA”) applies to the employee, or the employee is needed to care for or assist one or more specified family members
- Parent/guardian is responsible for ensuring compliance of person under 16 who is subject to an order





Employee Absence – Collective Agreement

- **Illness entitlement:** Allocated eleven (11) sick days at one hundred percent (100%) salary in each school year.
- **Short-term disability entitlement:** Allocated one hundred and twenty (120) short-term disability days at beginning of each school year.
- Board may require medical confirmation of illness or injury
- Upon return, a Board may require information to assess whether employee is able to return to work and perform the essential duties of his or her position.





Employee Absence – Collective Agreement

- **Certification:** A Teacher's absence for illness or injury for a period of:
 - *Five consecutive school days or less* may be certified by the principal or Board official in charge of the appropriate department;
 - *Over five consecutive school days* must be certified by a license medical practitioner (exemptions apply in special cases);
 - *Over 20 consecutive school days*, the Director may require that a certificate be submitted monthly by such medical practitioner before the Teacher shall be entitled to payment.
- **Denials on case-by-case basis:** A Board decision to deny access to a sick leave or short-term disability leave will be made on a case-by-case basis.



Leave

- **personal days:** generally, 5 paid days per school year, in addition to sick leave.
- **miscellaneous leave:** up to a maximum of 5 paid days in any one year may be granted under special circumstances for reasons approved by the Executive.
- **Quarantine:** entitled to paid absence from duty in any case where, because of exposure to communicable disease, the Teacher is quarantined or otherwise prevented by the order of the public medical health authorities from attending upon the Teacher's duties.
- **Unpaid Leave:** Teacher may apply for a leave of absence without pay for a period of one year or less, without reasons.



EMCPA

The ESA and the *Emergency Management and Civil Protection Act* define “emergency” as

*“... a situation or an impending situation that constitutes a danger of major proportions that could result in **serious harm to persons or substantial damage to property** and caused by... forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise”*

- Who may declare an emergency?
 - Lieutenant Governor of Ontario in Council (i.e. Premier and Cabinet)
 - The head of a municipality may declare that an emergency exists in the municipality
 - The head of a school board may declare that an emergency exists at the school board



EMCPA (cont.)

EMCPA requires school boards:

- To have an emergency management plan, consisting of:
 - An emergency plan, to be reviewed each year
 - Training and exercises for employees
 - Public education on risks and preparedness
 - Duty of school principal to report communicable disease

HPPA

Health Protection and Promotion Act, Part IV
Communicable Diseases provides that the Medical Officer of Health may issue order that:

- a person with a communicable disease must refrain from taking specified actions;
- Closing of premises
- Isolation of infected persons
- Cleaning and/or disinfecting
- Destruction of articles
- Testing, examination by physician
- quarantine



OHSA

Occupational Health and Safety Act (“OHSA”) creates an obligation for every employer to

“take every precaution reasonable in the circumstances for the protection of a worker” (s.25(2)(h)).

This can include:

- Encouraging 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.)

Right to refuse or to stop working

- Workers have the right to refuse work, or to stop working if their health and safety is in danger
- A refusal to work must be objectively reasonable, taking into consideration all information available to the worker
- Employer must, therefore,
 - take all reasonable steps to limit spread of infectious disease in workplace; and
 - Communicate to employees what employer has done
- Reg. 857: teacher may not refuse work where the circumstances are such that the life, health or safety of a pupil is in imminent jeopardy.



OHSA (cont.)

Work refusal (cont.)

- If a refusal takes place, employers must investigate the situation immediately and attempt to resolve the situation with the employee.
- In the event that a resolution is impossible, employers must notify the relevant labour inspector or officer, as dictated by provincial legislation
- Employers cannot threaten, discipline, or otherwise take reprisals against an employee who refuses to work on the basis of workplace health and safety concerns.



OHSA (cont.)

- Several Occupational Health & Safety cases decided under Canada Labour Code involved work refusals due to SARS:
 - Chapman v. Canada
 - Caverly v. Canada
 - Cole v. Air Canada
- In all cases, no reasonable basis for work refusal found
- Employees can't be forced to continue to work in area they reasonably believe to be unsafe. However, cannot continue refusal after a health and safety officer declares workplace safe





Education Act

S.265(1) It is the duty of a Principal:

(k) to report promptly to the board and to the medical officer of health when the principal has reason to suspect the existence of any communicable disease in the school, and of the unsanitary condition of any part of the school building or the school grounds;

(l) to refuse admission to the school of any person who the principal believes is infected with or exposed to communicable diseases requiring an order under [section 22](#) of the [Health Protection and Promotion Act](#) until furnished with a certificate of a medical officer of health or of a legally qualified medical practitioner approved by the medical officer of health that all danger from exposure to contact with such person has passed;

(m) subject to an appeal to the board, to refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal's judgment be detrimental to the physical or mental well-being of the pupils;



WSIB

During the SARS pandemic:

- Ontario's Workplace Safety and Insurance Board ("WSIB") stated that workers with symptoms of SARS who had been infected in the course of their employment could be entitled to WSIB benefits
- determined on a case-by-case basis.
- Could be entitlement to compensation if employees can establish a link between CoVID19 infection and workplace.

Human Rights Code

Human Rights Code, R.S.O. 1990, C.H.19, as amended

“Every person has a right to equal treatment with respect to employment without discrimination because of [various grounds, including]... disability”

“Every person who is an employee has a right to freedom from harassment in the workplace ... because of disability.”

- Individuals are protected from discrimination in employment based on actual or perceived disability
- Employer is obligated to reasonably accommodate disability to the point of “undue hardship”

Human Rights Code

- Generally speaking, common conditions of temporary duration are not disabilities
- Ontario Human Rights Commission policy re SARS:
 - “different treatment of persons who have or are perceived to have SARS, for reasons unrelated to health and safety precautions prescribed by medical and public health officials, is prohibited by the Code”
 - Classified SARS as a handicap, so employers had a duty to accommodate employees who had SARS, or were exposed to SARS.
 - discrimination on basis ancestry, race, ethnicity, and place of origin, also prohibited
 - Note duty to accommodate on basis of family status

International Student Programs

- 100,000's of international fee paying students in Ontario, primarily secondary, residing in homestays.
- Review terms of:
 - Homestay
 - Guardianship
 - Study permit
 - Return travel
 - refund
 - Termination
 - Additional costs
- Consider program for next year

Privacy

Employee right to privacy vs. HPPA reporting obligations

- PHIPA: Information received from a “health information custodian” may only be disclosed for specific purpose for which information was provided
- Privacy Commissioner of Canada: privacy laws may not apply in the same manner in an emergency (see “Guidance Document”, *Privacy in the Time of a Pandemic*)
- ***S. 40 (1) A health information custodian may disclose personal health information about an individual if the custodian believes on reasonable grounds that the disclosure is **necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons.*****

Recommendations

- Review Emergency Plan
- Review expectations pursuant to the Education Act and coordination pursuant to the HPPA
- Identify system leads and who may act in their absence
- Anticipate high levels of absenteeism
- Consultation with unions
- H&S – education/training on hygiene, fitness for work, protective equipment and duties
- Workplace hygiene and social distancing
- Review Fitness to Work policy for applicability
- Reconsider employee and student travel, group meetings, work-from-home policies and procedures
- Consider technology capacities

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