



## The Ontario Human Rights Commission COVID-19 Advice

To: Presidents and All Members

From: Pierre Côté, General Secretary

### For Information

The Ontario Human Rights Commission (OHRC) has recently posted an updated Q&A page answering questions related to COVID-19. The OHRC considers COVID-19 to be a disability. Accordingly, employee rights and employer obligations under Ontario's Human Rights Code (HRC) that apply to people with disabilities are engaged. In addition, OSSTF/FEESO collective agreements generally provide greater protections than the basic features of the HRC and the Employment Standards Act (ESA). This is a summary of the document, with some additional OSSTF/FEESO advice added.

#### **Can an employer terminate an employee who is unable to work because of COVID-19?**

An employer cannot terminate an employee because they have been diagnosed with COVID-19 or are showing COVID-19-like symptoms. In addition, employers cannot discipline employees if they are unable to report to work because they have been advised to self-isolate, or if they are placed in quarantine.

#### **Can an employer lay employees off if there is no work due to COVID-19?**

If there is no work, employers are entitled to lay workers off. Similarly, if employees are not doing work, employers are not required to pay them.

#### **Can employers refuse to allow employees to work due to COVID-19?**

If an employer has reasonable concerns that are consistent with the information provided by medical and public health officials, they may send employees home to protect the safety of those and other employees. This would mean that an employee who is exhibiting symptoms of COVID-19 could be sent home and required to stay at home until either they no longer exhibit symptoms, or until they can otherwise prove that they are not a risk to the health and safety of others in the workplace e.g. by producing a negative COVID-19 test.

#### **Does an employer have to accommodate employees who contract COVID-19 or are otherwise medically impacted by COVID-19?**

If an OSSTF/FEESO member contracts COVID-19 and is unable to report to work, they must be allowed to stay home and access sick leave. If an employee has another medical condition that is affected by COVID-19, such as a condition that results in a compromised immune system, employers are required to accommodate the employee.



Potential accommodations can include allowing employees to work from home, permitting employees to work alternate hours, allowing employees to take leaves from work, or other flexible options.

**Does an employer have to accommodate employees who need to stay home to care for children or ill family members?**

Employers must accommodate the family status of an employee. This could include situations where another family member is ill or in self-isolation, or where their child's school is closed due to COVID-19. Potential accommodations can include allowing employees to work from home where feasible, permitting employees to work alternate hours, allowing employees to take leaves from work, or other flexible options. However, there is no requirement for employers to continue to pay such employees beyond the provisions of the collective agreement. Most OSSTF/FEESO collective agreements provide up to five (5) paid leave days for family care. Members should check their local collective agreement to confirm whether they have access to family care days. In cases where family members are gravely ill due to COVID-19, Family Medical Leave and/or Critical Care Leave provisions may apply, which invoke other benefits such as Employment Insurance and SEB top-up. In such cases, members should contact their bargaining unit representatives for further information.

**Is medical documentation required to support a request for accommodation?**

The OHRC expects employers to take accommodation requests in good faith. This does not mean that they cannot require documentation, but that they should accommodate an employee who requests an accommodation immediately rather than waiting for medical documentation before implementing an accommodation. The Functional Abilities Form (FAF) contained in the Central Terms of OSSTF/FEESO collective agreements can be used to indicate any restrictions and limitations on a member due to issues related to COVID-19.

**Does an employer have to assist with child care costs during COVID-19?**

The HRC does not require employers to provide any additional financial assistance for employees' expenses related to COVID-19. However, the federal government has measures in place to assist individuals who are financially impacted by COVID-19.

**Can employers require employees to work during the COVID-19 pandemic?**

Employers can expect employees to continue to work unless there is a legitimate reason for them not to. If the work cannot be done in the workplace for safety reasons, the employer can explore options such as working from home, working alternate hours, etc.

**Can my employer redeploy me to do other work during COVID-19?**

The Emergency Management and Civil Procedures Act (EMCPA) provides for the redeployment of workers. OSSTF/FEESO worked with the Ministry of Education to create an agreement that school boards and local bargaining units can sign to establish the ability for certain members to be redeployed if they volunteer to do so. The agreement also outlines the terms of the redeployment. In bargaining units where these agreements have been signed, eligible members can volunteer for redeployment. Members can contact their bargaining unit representatives for more details.

**Can an employee refuse to work if they think it is unsafe due to COVID-19?**

Workers have the right under the Occupational Health and Safety Act (OHSA) to refuse unsafe work. If OSSTF/FEESO members have concerns about workplace safety, they should contact their bargaining unit Health and Safety Officer for advice.



### **Can an employer require employees to undergo a COVID-19 related medical test?**

An employer is entitled to do medical testing to determine fitness to perform work safely, or to protect other workers or people receiving services. The testing must be shown to be effective and necessary. However, testing should only be done by someone qualified to perform the test, and information from the tests cannot lead to automatic negative consequences such as discipline. Information that may result in discrimination under the Code must be excluded. The OHRC recommends the following:

- Organizations should make clear the reasons why a medical test is needed in the circumstances, and ensure prior, informed consent.
- Organizations must explain how they will use and dispose of information from a test and protect the person's privacy as much as possible.
- Organizations should only require the least intrusive means of testing necessary in the circumstances.
- Employers and employees should be aware of their rights and obligations under the OHSA.

### **Can an employer require an employee to wear a mask because of COVID-19?**

The OHRC's policy position is that any health and safety requirements to wear a mask are not a concern under the HRC. Employers should clearly state the reasons why a mask or other equipment is necessary under the circumstances. However, in situations where the wearing of a mask has a negative impact on a person because of a protected ground under the HRC, employers will have to take steps to accommodate the employee.

The HRTO's Q&A also addresses questions related to landlord-tenant issues as well as issues surrounding residential institutions.

OSSTF/FEESO members who are experiencing difficulty with their employers regarding COVID-19 issues should contact their bargaining unit representative for advice and assistance.

Source: [http://www.ohrc.on.ca/en/news\\_centre/covid-19-and-ontario%E2%80%99s-human-rights-code-%E2%80%93-93-questions-and-answers](http://www.ohrc.on.ca/en/news_centre/covid-19-and-ontario%E2%80%99s-human-rights-code-%E2%80%93-93-questions-and-answers)

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