

MANDATORY MASK UPDATE: Effective **Friday, November 6, 2020**, all residents in Saskatoon, Regina and Prince Albert are required to wear non-medical masks in indoor public spaces to reduce the risk of COVID-19 transmission. A public health order will be in place for at least 28 days. For residents in other communities, health officials strongly recommend wearing a non-medical mask anywhere outside the home. Find out more information about mandatory indoor mask requirements [here](#).



COVID-19 and Human Rights For Employers

Persons who have contracted, or are perceived to have contracted, COVID-19 could be considered to have a disability, as defined by the *Saskatchewan Human Rights Code*. As such, harassment, dismissal, or other negative treatment of employees who have, or are perceived to have, COVID-19 – for reasons unrelated to public health and safety – may be discriminatory and prohibited under the *Saskatchewan Human Rights Code*.

The COVID-19 pandemic has created unique human rights situations. Employers may need to consider new or different accommodations for employees who have pre-existing disabilities, or for family status reasons (for childcare issues, for example). Each situation is assessed on a case-by-case basis. This document alerts employers to potential human rights issues that may arise in their workplace relating to COVID-19.

For further information businesses can contact the Government of Saskatchewan Business Response Team at 1-844-800-8688, or by emailing supportforbusiness@gov.sk.ca. Also visit the employer section at: saskatchewan.ca/covid19-business. The Saskatchewan Human Rights Commission also maintains a Business Help Line for employers to access: 1-800-667-9249

Existing legislation and regulations governing employment remain in force. However, a provincial state of emergency was declared on March 18, 2020, and amendments have been made to the *Saskatchewan Employment Act* and *The Employment Standards Regulations* that have adjusted some rules. A new “[public health emergency leave](#)” has been created (Section 2-59.1 of the *SEA*), and adjustments have been made to the way layoffs work during a public health emergency. These changes could possible impact collective agreements.

During the plan to reopen Saskatchewan, further changes and public health orders should be expected.

The Saskatchewan Human Rights Code remains in full effect. Employers must not discriminate against employees, which includes decisions around layoffs, recalls, and terminations.

Q1. Can I lay off employees during COVID-19?

Yes. A lay off is not a termination of the employment relationship, but is a temporary furlough as defined under the *Saskatchewan Employment Act*. Note that there are some changes to layoff procedures during a public health emergency.

However, an employee who has been ordered to self-isolate, due to contracting or being exposed to the coronavirus, will be eligible to



access the new public health emergency leave for the duration of the order (usually 14 days), rather than receive a layoff. At the end of their isolation/recovery period, such an employee would expect to return to work.

Q2. Can I terminate employees during COVID-19?

Yes. This includes employees who are not recalled from layoff within the period outlined in the *Saskatchewan Employment Act*.

Q3. Do I have to recall all my employees who are on layoff?

No. However, employers must follow the procedures in the amended *Act* and *Regulations*.

Moreover, layoffs, recalls, and terminations must not be discriminatory under *The Saskatchewan Human Rights Code*. Employees who may have been exposed to the coronavirus, but have recovered or completed the isolation period, should not be excluded from the recall process.

Q4. My employee says they have contracted COVID-19, and cannot work – can I terminate their employment?

Retroactive to March 6, 2020, employees precluded from returning to work due to government, physician, or public health order, have their jobs protected under the Saskatchewan public health emergency leave program.

Terminating an employee because they have contracted or been exposed to the coronavirus may be discriminatory under the *Saskatchewan Human Rights Code*.

Q5. Can I require my employee to provide a doctor's note?

If the employee is required to isolate, or appears to have contracted COVID-19, then they are not required to provide a medical note. *The Employment Standard Regulations* under the *Saskatchewan Employment Act* were recently amended to remove the ability for an employer to require medical practitioner's certificate for the purposes of accessing public health emergency leave.

However, if the illness is not a COVID-19 illness, then an employer may still request a medical certificate.

Q6. My employee is sick with COVID-19 – when should I bring them back to work?

A person who has contracted COVID-19 will be required to isolate (typically for 14 days) and may have to seek treatment for symptoms relating to the disease, which may vary the time to recovery. Public Health officials will only allow exit from isolation, and thus return to work, after the appropriate period. In some cases, employees may be able to provide an employer with confirmation from public health officials or medical practitioner that they are cleared to return to work.

Saskatchewan Human Rights Commission

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Q7. What if my employee(s) doesn't want to return to work?

Employees who are reluctant to return to work may feel so for a variety of reasons. Employers should inquire as to the reasons. Many employees feel uncertain about how safe their workplace is. Employers must make sure they are following the public health guidelines for distancing, personal protective equipment (PPE), and cleaning to meet occupational health and safety requirements. Employees who continue to have concerns about safety should follow [Occupational Health and Safety \(OHS\) reporting procedures](#).

However, some employees may not be able to return to work due to an underlying disability. COVID-19 may create additional risk factors for some disabilities. Employers have a duty to accommodate employees with a disability, and should engage them in the accommodation process.

As well, some employees may not be able to return to work because of a lack of available childcare. Employers have a duty to accommodate employees on the basis of family status for childcare requirements. Employers should engage with the employee in the accommodation process.

Q8. My employee says they are unable to return to work because they don't have childcare, can I dismiss them?

An employer has a duty to accommodate an employee on the basis of family status, including for childcare issues, where an employee does not have a reasonable way to obtain childcare. An employer is not required to pay an employee who is not working (unless the employee has access to workplace policies or a collective agreement that would entitle them to payment).

Q9. What if we don't want to bring them back?

Harassment, dismissal, or other negative treatment of employees who have, or are perceived to have, COVID-19 – for reasons unrelated to public health and safety – may be discriminatory and prohibited under the *Saskatchewan Human Rights Code*. Employers have a duty to accommodate employees in relation to COVID-19, up to the point of undue hardship, including reasonable health and safety considerations. Employees who have been dismissed by an employer due to their exposure to COVID-19 may be able to pursue a human rights complaint.

Q10. Can I test the temperature of my employees when they arrive at work?

Some medical examinations, including the taking of temperatures, may be justified under the circumstances of the COVID-19 emergency. However, employers must be aware that some employees may have other unrelated disabilities

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that could be detected under new medical examinations, and should act cautiously and on a case-by-case basis.

Q11. As an Employer, can I require employees to complete a COVID-19 test prior to return to work?

Employers who want or need additional screening or testing requirements should consult with Labour Relations & Workplace Safety.

Q12. Can I require my employees to wear PPE (masks, gloves), and social distance while at work?

Yes, in accordance with Public Health orders and OHS requirements.

Q13. Am I required to allow my employees to work from home?

No. However, you may wish to facilitate a work from home plan where possible, in accordance with public health recommendations/orders. If you choose to have your employees work from home, you will need to pay them at the same rate.

As well, work from home arrangements may need to be considered as part of an accommodation process/plan for an employee who is unable to work in the office (due to disability, and-or family status).

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