

MANDATORY MASK UPDATE:

See the latest [Public Health Orders](#) issued by the Chief Medical Health Officer for details.



SASKATCHEWAN
HUMAN RIGHTS
COMMISSION

COVID-19 and Human Rights For Employers

Persons who have contracted COVID-19 could be considered to have a disability, as defined by the *Saskatchewan Human Rights Code, 2018*. As such, harassment, dismissal, or other negative treatment of employees who have COVID-19 – for reasons unrelated to public health and safety – may be discriminatory and prohibited under the *Saskatchewan Human Rights Code, 2018*.

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

During the COVID-19 pandemic, the Government of Saskatchewan implemented a number of measures aimed at reducing transmission of the virus and increasing public safety.

However, *The Saskatchewan Human Rights Code, 2018* 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, may be eligible to access the new public health emergency leave for the duration of the order, 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?

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?

An employer may request evidence to support an absence from work. For ill employees, this typically would be a certificate from a medical professional confirming the absence is required from medical reasons.

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 and may have to seek treatment for symptoms relating to the disease, which may vary the time to recovery. Public Health officials will provide guidance on the recommended duration for isolation. 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.

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.

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As well, some employees may have difficulties returning to work due to issues with 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 employee is responsible to secure adequate care for their children, and should pursue all reasonable measures to do so.

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, COVID-19 – for reasons unrelated to public health and safety – may be discriminatory and prohibited under the *Saskatchewan Human Rights Code, 2018*. 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 that could be detected under new medical examinations, and should act cautiously and on a case-by-case basis.

Q11. 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.

Q12. 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).

However, persons who believe they have been subject to discrimination on the basis of disability, or other prohibited grounds, may contact the SHRC.

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