

## COVID-19: Employers' Options Where Business Slows

On March 11, 2020, the World Health Organization (WHO) declared the outbreak of the new coronavirus disease, COVID-19, to be a pandemic. Government Officials and Epidemiologists are encouraging the public to take preventative measures to reduce the spread of the virus. Unfortunately, these preventative measures have had an adverse impact on a variety of businesses across a number of industries.

If your business is struggling to continue operations as a result of COVID-19, there are a number of options available to you if you are in a position where work or income has slowed and you cannot pay your employees.

The first option an employer may want to consider is negotiating temporary modified work agreements with your employees, such as tele-working. Tele-working, or “work from home” arrangements may allow you to reduce day to day operating costs related to computers, phones, electricity, heating and air conditioning. Employees agreeing to reduced hours is another possibility. That being said, employers do have to exercise caution with any type of temporary modified work agreements, as *The Saskatchewan Employment Act* provides that agreements which deprive an employee of a right or benefit they would otherwise have under the Act, will not have any force or effect. We recommend obtaining legal advice if you are considering a temporary modified work agreement to ensure that it will be enforceable.

Employers may want to consider applying for the Federal work-sharing program. It is designed to help eligible employers avoid layoffs when there is a temporary reduction in the normal level of business activity beyond the control of the employer, and it may help reduce operating costs by decreasing human asset costs. The benefits of work-sharing to employees include: the availability of EI benefits for eligible employees as income support; employees are able to retain seniority and job security; and employees can stay home with children if needed as a result of school closures. In addition, the Federal Government has loosened some of the requirements relating to instituting work-sharing programs in response to Covid-19. We anticipate the application process will continue to change and adapt in the coming weeks. We invite you to contact us for additional information on the work-sharing program, eligibility and how work-sharing policies are evolving in response to the pandemic.

A second option is for employers to shut down for a limited time and require their employees to take their vacations during the shutdown. Pursuant to *The Saskatchewan Employment Act* an employer can require all employees, or all employees in part of a workplace, to take their vacation at a time when the employer has closed all or part of the workplace if the vacation periods are more than one week in length. This option, however, is only suitable if you anticipate only a brief



shutdown is needed and you can maintain pay during the vacation period. We recommend obtaining legal advice if you are considering a brief shutdown to ensure that you are in compliance with the notice requirements set out in the legislation.

A third option for employers whose businesses are suffering is to lay-off your employees and re-hire them once business improves. The provisions of *The Saskatchewan Employment Act* provide that, whether an employee is terminated or laid-off, an employer is required to provide prior notice to the employee, or pay in lieu of notice, the length of which depends on the employee's length of service. If 10 or more employees are laid-off, additional reporting requirements may come into play.

However, in response to the Covid-19 pandemic, the Government of Saskatchewan released *The Employment Standards (Public Emergencies) Amendment Regulations, 2020*, effective March 19, 2020. These regulations have removed the requirement for notice, or pay in lieu of notice, in situations where:

- A public health emergency has been declared by Saskatchewan's Chief Medical Health Officer or an emergency is declared pursuant to The Emergency Planning Act; and
- The lay-off period is 12 weeks or less in a 16 week period.

Once laid off, employees may qualify for unemployment benefits, as they would then meet the requirement of experiencing an interruption of earnings. An interruption of earnings is defined in s. 14(1) of the *Employment Insurance Regulations* as occurring where:

- an insured person is laid off or separated from employment;
- has a period of seven or more consecutive days during which no work is performed for their employer; and
- no earnings that arise from employment are payable or allocated.

If you anticipate having to lay-off employees in the future, but also want to supplement their income from EI, an employer may apply to the Federal Government for approval to participate in a Supplemental Unemployment Benefit Plan. This allows an employer to "top up" their employees' weekly earnings, and the top up is not considered as earnings and does not affect the amount of EI to be paid.

An alternative to employment insurance is the Canada Emergency Response Benefit, newly created by the Federal Government to help deal with the Covid-19 crisis. The Canada Emergency Response Benefit program provides \$500 a week for up to 16 weeks. Applications for the Canada Emergency Response Benefit open April 6. The benefit will be available to workers:

- At least 15 years old and residing in Canada;
- Who have stopped working because of Covid-19 and have not voluntarily quit their job;
- Who had income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application; and
- Who are or expect to be without employment for at least 14 consecutive days in the initial four-week period, and no employment for the remainder of the benefits period.

We recommend contacting a lawyer to discuss the potential consequences if you are considering laying-off your employees. The legislative changes in Saskatchewan do not apply to lay-offs greater than 12 weeks duration in a 16 week period. In addition, a lay-off is a temporary measure, with the intention that the employees will be re-hired, and the legal consequences may become more complicated if it becomes permanent.

A fourth option, which has also emerged in response to the Covid-19 pandemic, is that employees may be able to take Saskatchewan's Public Health Emergency Leave. Employees may become entitled to Public Health Emergency leave:

- If Saskatchewan's Chief Medical Health Officer issues an order declaring that a public health emergency exists in Saskatchewan, and individuals must take steps to prevent or reduce the spread of disease by isolating themselves; and
- The employees have been directed (by their employer, a duly qualified medical practitioner, or the Government) to self-isolate to prevent or reduce the spread of the disease.

Employees on unpaid Public Health Emergency Leave may qualify for unemployment benefits, but if an employee is directed to self-isolate and the employee is authorized to work from home during the emergency period, they must be paid their regular wages. Amendments to allow for Public Health Emergency Leave were added to *The Saskatchewan Employment Act* and became law on March 20, 2020, retroactive to March 6. If you decide to direct your employees to not attend work so as to isolate themselves to prevent or reduce the spread of COVID-19 for the duration of the emergency, we suggest you obtain legal advice prior to doing so.

To keep workers employed, even if the employer is suffering a revenue decline, the Federal Government is implementing measures to subsidize employers for wage costs. Small employers may be eligible for a 10% subsidy, received by tax credit, for wages paid over a three month period, commencing March 18, 2020. In addition, the Federal Government announced a larger program, available to all employers except public employers, who have experienced at least a 30% decline in gross revenues. Eligible employers may receive payment from the Federal Government of a subsidy of 75% of employee wages paid over a three month period, commencing March 15, 2020. We invite you to contact us for additional information on the Federal subsidy programs, including whether your business may be eligible.

Lastly, employers with Business Loss or Business Interruption Insurance may want to consider contacting their insurance provider and inquiring whether their policy would provide coverage in this situation.

For further information please contact:

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