

COVID-19: Employer's 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 Epidemiologist are encouraging the public to take preventative measure to reduce the spread of the virus. Unfortunately, these preventative measure 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 you need to reduce operating costs or cannot pay your employees.

The first option that an employer may want to consider is negotiating temporary modified work agreements with their 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 will not have any force or effect if they deprive an employee of a right or benefit they would otherwise have under the Act. 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 that only a brief shutdown is needed. 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, employers are required to provide prior notice to their 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.

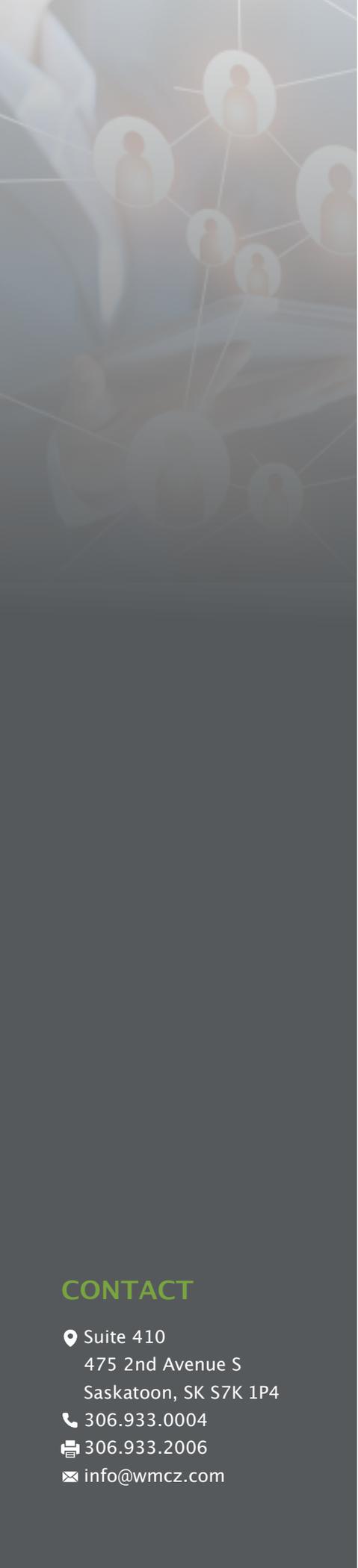
Once laid off, employees may qualify for unemployment benefits by meeting the requirement of experiencing an interruption of earnings, during which no work is performed for their employer and in respect of which no earnings are received from that employment.

We recommend contacting a lawyer to discuss the potential consequences if you are considering laying-off your employees. The legislative changes 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 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 by meeting the requirement of experiencing an interruption



of earnings, during which no work is performed for their employer and in respect of which no earnings are received from that employment. 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.

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.

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