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Return to Work Guide

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Return to Work – Key Considerations

The well-known quote from Winston Churchill “*Those who fail to plan, plan to fail*” has rarely been more relevant than it is in the wake of COVID-19’s impact on the workforce. It is important to understand the two components of returning to work: “When and How”. Without considering both components, businesses could be exposed to unnecessary risks.

The points outlined below will help owners and/or managers remember some of the key considerations that are required as businesses across Canada are gradually opening back up.

When:

As business leaders, it is imperative to set the example and adhere to the Government’s orders surrounding business closures, health and safety issues and social (physical) distancing requirements. To do this, one must stay abreast of the daily updates announced by all levels of Government. It is important to note that the different jurisdictions across Canada are continuing to update these timelines as the climate surrounding COVID-19 evolves. Several provinces including Manitoba, Saskatchewan, Ontario, Quebec, PEI and New Brunswick have already created plans for re-opening the economy. As more provinces and territories gradually re-open their economy, Employers must be mindful of health and safety implications in the workplace as well as their mandatory legal duty to take every reasonable step to protect the health and safety of their employees.

How:

Below are key considerations for Employers as they plan for re-opening their workplaces. Please note, Employers will have to customize a return to work plan that is specific for their business. Employers also need to be mindful of provincial/territorial legislation and recommendations by applicable regulatory and licensing bodies (e.g. Colleges and Associations).

1) Keep Employees Informed and Updated

Although the climate surrounding COVID-19 is rapidly changing, it is important for updates to be sent out to employees in a timely and concise manner. Employers should be communicating updates that affect the business, any measures they have put in place to ensure the continuous health and safety of employees, and any recall/return to work plans. It is also important to provide employees with an avenue to voice their issues/concerns and ask questions. When communicating recall plans to employees, it is best practice to provide as much notice as possible. Hosting daily huddles with staff is recommended to ensure ongoing and frequent communication.

2) Have a plan to recall employees on lay-off

Employers need to understand the legislation in their respective jurisdiction surrounding layoffs and recalls prior to creating a recall plan. Given the complexity and uncertainty in this area, Employers are encouraged to seek legal and/or expert advice.

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When creating a recall plan, Employers should consider:

a) Bringing employees back in a phased approach or in shifts

It must be understood that choosing to recall all staff at one time may increase the risk of spreading the virus. Therefore, in order to protect the health and safety of employees, Employers should manage the number of employees that are brought back at one time. To do this, Employers should consider a phased approach. This means recalling a percentage of employees while keeping the remaining staff on layoff and/or providing remote work options (if possible). It should be noted that there are no requirements to recall employees based on length of service. Employers should be bringing back those employees based on the needs of the business. The only exception to this is under Collective Agreement whereby there is a protocol for recalling staff on layoff.

Many Employers have elected to phase employees back in terms of their “risk-level”. Employees who are caring for children, elderly parents/family, or who are considered vulnerable should be the last to be brought back to the physical working environment. Employers should consider making the return to work voluntary for the first few transition phases and this will allow for employees who are still fearful, or unable to return to the physical workplace to remain off, or to work remotely (if available).

It is important to note that all provinces and territories have layoff and recall restrictions. Employers must ensure employees are recalled within the layoff periods to avoid triggering a deemed termination and the possibility of having to pay statutory Termination and/or Severance Pay (if applicable).

Employers also have the option of recalling some, or all, employees and creating a shift schedule to minimize the number of employees in the workplace at any given time. For example, Employers can create two (2) rotating shifts: one shift working mornings and the second shift working afternoons or evenings. The shifts will then rotate every week to ensure equity and fairness amongst the employees. Another example is Employers creating two (2) rotating shifts: one shift working three (3) days per week while the second shift works two (2) days per week.

b) Employees who may refuse recall (for health and safety and/or personal circumstances)

There may also be situations in which employees are refusing to return to work. Employees have the right to refuse work if they believe there is a risk in the workplace to their health or safety. In the workplace, this typically involves concerns over the usage of machines and/or work processes. However, in this unprecedented time, an argument may be made that risk of exposure to COVID-19 is a *reasonable* health and safety concern. In the event of a health and safety work refusal, Employers are required to investigate the concern and follow the work refusal guidelines outlined in the Health and Safety legislation applicable in the jurisdiction in which they operate.

If employees are refusing to return to work because of personal circumstances (beyond health and safety), Employers should probe for the reason(s) of the work refusal and treat every situation on a case by case basis. Employers must consider the implications of Human Rights and/or Job Protected Leaves as several provinces introduced legislation that protects employees due to COVID-19 related issues.

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3) Update Policies and Procedures

It is also key that Employers review their operations and identify any areas of increased efficiency and deficiency specifically in terms of technology and communication. For example, have Employers capitalized the use of virtual communications technology, such as Zoom Meetings, to encourage ongoing communication between employees and with clients? Have Employers streamlined payment processes by accepting electronic payments and utilizing digital signatures? Employers should then update their operations and ensure that all staff are trained on new technology, processes, procedures and methods of communication which will then become the new norm upon the return to work.

4) Establish a Plan-Ahead Committee

In times of uncertainty, it can be difficult to forecast what a week, month, or even a year from now will look like for businesses. A plan-ahead committee should be made up of high-potential employees who are tasked with assessing the strengths, weaknesses, areas of opportunities and potential threats that may affect the business as the situation surrounding closures are lifted and businesses strive to gain a sense of what the new “norm of work” will look like. This taskforce is also responsible for brainstorming and making recommendations on how the business can pivot to alleviate the negative impacts of the economic troubles caused by COVID-19. Using this information, Employers can better forecast how to react to a multitude of possible future risks and realities.

5) Create a “Road Map” for Return to Work

By creating a visual representation which includes the plan to return to work and any updates to the business, Employers can ensure the right information and directions are being followed and communicated to all employees, as well as clients, vendors, etc. A Return to Work Road Map may include elements such as the strategic vision for the business post-pandemic, the approach to return employees to the workplace, the health and safety measures in place to protect employees, and each employee’s role in the return to work plan (employees, supervisors, senior leaders, etc.).

6) Offer Continued Support for Mental Health

As stress manifests itself differently for different individuals, Employers should understand that COVID-19 has undoubtedly affected many employees on a mental/emotional level. To support employees, Employers should demonstrate empathy and check-in with their employees regularly to keep a pulse on their mental well being. There are many options for Employers who want to offer additional support to their staff. For instance, employees can access counselling and support services through an Employee Assistance Program (“EAP”) offered by the employer. Additionally, Employers should have open and candid conversations with their employees and offer support and flexibility during the transition back to the workplace.

7) Re-build Employee Morale

For many Employers, employee morale may be “on the back-burner” and not a top priority when weighed against the responsibility of ensuring the safe return to work for their staff. However, it is well known that employees who are *engaged and motivated* will exert a greater discretionary effort and creativity in their work. Employers should consider using an Engagement Survey to understand the areas of motivation to focus on. These results will provide Employers with a starting point and allow them to address the most pressing staff concerns first.

Employers should be mindful that some employees may have “lost touch” with the organizational goals and vision and may be concerned about the new direction the business will be taking. To best respond this to

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concern, the revised goals and vision must be re-affirmed with employees so they can understand their purpose and the impact they have to the organization's long-term recovery and success. Communication of the revised goals and vision can be done as a Town Hall meeting conducted by the leadership team, either virtually or in person (if it is safe to do so).

8) Create a “Plan B”

A “lessons learned” for many Employers through this COVID-19 pandemic is to plan and prepare for the **worst-case** scenario while hoping for the **best-case** scenario. Employers should never be placed in a compromising situation without proper planning and this is why Employers need to create a contingency plan, a “Plan B” in the event of any future business disruption created by a second surge of the pandemic and subsequent Government lockdown. This plan should outline the steps the employer will take in an event of another mandatory shut down directed by the Government and/or regulatory and licensing bodies. This will ensure Employers are well-equipped should another pandemic or emergency occur.

Recap:

In conclusion, returning employees to work post-pandemic can be stressful and pose many challenges. This transition back to work will take time, however, by keeping in mind the key considerations outlined above the transition will be smoother. Keeping employees informed will reduce confusion and provide them with time to prepare for their return. Phasing employees back gradually will increase the chances of keeping employees healthy, happy and productive. Despite this, some employees may be fearful of returning to the physical workplace and these situations should be treated on a case-by-case basis with consideration of applicable Human Rights and Employment Law legislation. By planning now, Employers will save precious time and resources that will be imperative to the quick recovery and return to normalcy for the business and employees.

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