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Employer's Guide to Return to Work EMPLOYMENT LAW & MENTAL HEALTH

RETURN TO WORK

The information in this Guide was presented at a City of Markham and Markham Small Business Centre webinar in partnership with Minken Employment Lawyers. The speakers were **Ronald S. Minken**, Founder & Managing Lawyer of Minken Employment Lawyers, and their special guest, **Dr. Joseph Garber**, leading Clinical and Rehabilitation Psychologist. The Moderator was **Aneesha Lewis**, lawyer at **Minken Employment Lawyers**.

This Guide has been put together by the team of lawyers at Minken Employment Lawyers and Dr. Joseph Garber, to help employers manage mental health-related concerns in their workplace as employees return to work in the wake of the COVID-19 pandemic.

The Province of Ontario recently released its *Framework for Reopening the Province*, and many employers – and employees - are excited about the rejuvenation of businesses in Ontario. A great deal of attention is being placed on constructing a physically safe and protected work environment for employees to return to, *but is enough attention being placed on the mental health component of this return to work?*

We are all in the midst of a dramatic societal change, and workplaces may never look the same. Employers are challenged with significant economic difficulty and uncertainty. On top of that, employers now need to carefully consider how they are going to open their doors and bring back employees. It is not as simple as unlocking the door and letting everyone in. Everything is in flux, and the best laid plans today may need to be modified tomorrow.

The 'Return to Work' process will inevitably bring uncertainty, confusion, risk, and a lack of clarity. This will result in some form of psychological reactivity for employees. As Ontario slowly starts to reopen, people are nervous about the 'new normal' that awaits them in the workplace. A Return to Work Plan that does not take into consideration employees' mental health may be considered negligent and could even breach an employer's obligations under the *Ontario Occupational Health and Safety Act*.

What safety considerations should employers be taking before asking employees to return to work?

Under the *Ontario Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 ("the *OHS Act*") an employer is responsible for ensuring the health and safety of their workers. Employers must take every reasonable precaution in the circumstances for the protection of their workers.

In determining what precautions are 'reasonable' during the COVID-19 crisis, employers should take into consideration recommendations,

directions, and guidance from Public Health and government sources. This may include the provision of personal protective equipment ("PPE"), reconfiguration of the workplace including considerations of the number of people per square foot in office space, or the introduction of mandatory temperature testing upon an employee's return to the workplace.



The Province of Ontario and other entities have developed safety guidelines for different sectors. More information can be found on the Ontario website.

Employees should be told that your primary concern as an employer is creating an environment that is **safe** and **responsive** as a first step in the process of work reintegration. Those who turn to you for leadership want to be sure that you will not knowingly or willingly expose them to harm or risk.

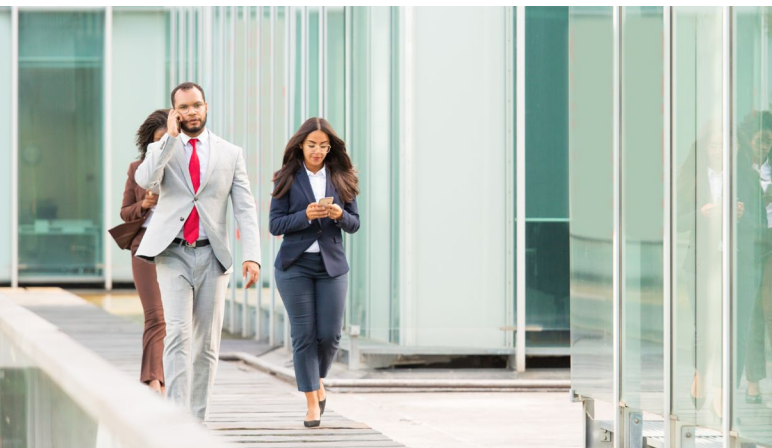
What are the standard procedures and expectations for bringing employees back to work?

A Return to Work Plan can look different depending on whether your employees will be returning from a Temporary Layoff, a leave of absence, or a prolonged period of working from home.

What if employees have been on a temporary layoff pursuant to the Employment Standards Act, 2000?

If an employer is permitted by the applicable employment contract or collective agreement, the employer can place employees on a ‘temporary layoff’ pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41 (“the *ESA*”) for up to 13 weeks in any period of 20 consecutive weeks. In some circumstances, the period of a temporary layoff can be extended up to 35 weeks.

When an employer is ready to recall employees from a temporary layoff, the employer should provide reasonable notice – ideally in writing – to the employee. The *ESA* does not provide guidance on the amount of notice required, only that it be ‘reasonable’.



If an employee is recalled to work before the expiry of the temporary layoff, the employment relationship simply continues and the employee is not entitled to any additional pay or benefits. If an employee is not recalled before the expiry of the temporary layoff, the employment relationship is deemed to be terminated and the employee will be entitled to notice – which will include termination pay and possibly severance pay. If an employment agreement, workplace policy, or collective agreement provides for specific ‘recall notice’, the employer must follow

that recall procedure; the recall procedure may grant a greater right or benefit to the employee than the ‘reasonable’ notice required by the *ESA*.

An employee who is ‘re-hired’ following a termination – for example, if they were deemed terminated following the end of a temporary layoff period and are rehired weeks or months later – should be required to sign a new employment contract or hiring letter.

Please refer to our **Employer’s Guide to Employment Contracts** for more information on how employers can limit their liability.

What if employees are returning to the workplace after working from home?

There are no legal requirements or rules setting out the reasonable notice an employer is required to give to employees returning from remote work. The employer should provide reasonable notice – ideally in writing – to the employee. The appropriate length of notice depends on the circumstances, and could be a few days’ notice or longer.

What if the employee has on-going child care or family care obligations?

Keep in mind that employees who have been on a temporary layoff or who are returning from working remotely may require time to arrange for child or family care before returning to work. Some employees may not be able to come back immediately due to childcare obligations or caring for family members due to COVID-19-related issues. Under the *ESA*, these employees will likely still be able to take an unpaid, job-protected leave of absence under the new Emergency Leave provisions – *Emergency Leave: Declared Emergencies and Infectious Disease Emergencies*. Under this leave, employees that are providing care or support to an individual because of a matter related to COVID-19 that concerns that individual, including, but not limited to, school or day care closures, are entitled to unpaid leave. This leave can last until either the employee no longer needs the leave to care for

their children or family members due to COVID-19-related reasons, or as long as the employee is not performing the duties of their position due to COVID-19 *and* COVID-19 is designated as an ‘infectious disease emergency’.

Is there sufficient attention being placed on the mental health component of this return to work?

The mental health fallout associated with the COVID-19 pandemic is only beginning to be recognized, and there will likely be a notable continuing effect on everyone’s mental health. Leading Psychologist, Dr. Joseph Garber has noted that, “We do not need to look very far to acknowledge that **stress, anxiety and depression** has had and will continue to have a direct impact on how we come back from this.” Dr. Garber notes that preliminary research suggests that the rate of depression in the general Canadian population has doubled and the rate of anxiety has quadrupled as a result of this pandemic, and as a society we may experience what can be referred to as an “echo pandemic” of mental health concerns.

Dr. Tedros Ghebreyesus, the Director General of the World Health Organization recently said that the effects of the pandemic on people’s mental health was *extremely worrying*. Specifically, he mentioned that **social isolation, fear of contagion and loss of family members** is compounded by the distress caused by loss of income and loss of employment. He went on to say that a failure to take people’s emotional well-being seriously will lead to long-term social and economic costs to society.

Dr. Garber hypothesizes that based on current modelling data the “infectious rate will inevitably rise because of diminished social distancing. We need to consider and better prepare for the mental health aftereffects of this type of rise. In my estimation there will be an even greater negative impact on an individual’s mental health once these numbers rise and we need to re-implement some form of containment. That

intensity of distress will become even more pronounced once we hear about a resurgence either in other countries or other parts of the province.”



What type of mental health problems may occur in returning workers to the workplace? How could these problems show themselves?

It will likely take some time to see the full repercussions of the pandemic on people’s mental health, but many Canadians are already experiencing **fear, loss, uncertainty, unpredictability and a pervasive sense of danger**. Dr. Garber notes that these feelings will likely generate varying degrees of anxiety-based concerns.

Employees with pre-existent mental health concerns may experience some form of an intensification or exacerbation of their mental health-related challenges. Furthermore, it can also be anticipated that some previously un-afflicted employees may experience newly acquired psychological concerns. Anxiety, depression, and posttraumatic stress disorder are likely outcomes for many employees. Likely symptoms can include sadness, annoyance, irritability, frustration, anger, hypervigilance, and to some degree a fundamental dread and uncertainty about the future. The more severe the symptoms experienced by an employee, the more likely that condition will impact their activities of daily living.

Both employers and employees should be aware that these conditions can change one's ability to sleep, eat, work, and play. The presence of any one of these symptoms can be problematic. The compounding effect of multiple and interactive symptoms can be disabling.



Employers should be conscious of the anxiety caused by the unknown duration and scale of the pandemic, and should do what they can to help employees manage this uncertainty. Clear communication of the employer's Return to Work Plan and policies can help. The basic principle is that the more accurate and detailed information that is provided, the more likely employees' anxiety will diminish. Employers should also provide as much information as possible on what is being done to ensure the safety of the workplace and the well-being of the employees. As much guidance as possible should be provided on what employees can do to manage the risks – for example, social distancing, handwashing, clear and timely communication of concerns, and adherence to your company's health and safety policies.

Employers must also be realistic and cautious, and Dr. Garber notes that “as employers, while needing to be hopeful, you also need to temper expectations and guard against the notion that we've gotten through [the pandemic].”

Will everyone have mental health adjustment difficulties when they return to work?

The return to working ‘as usual’, whether following a leave of absence or a period when the employee has been working from home, will likely entail a period of adjustment for all employees. It is important to remember that many employees will look forward to the opportunity of going back to work, and the majority will probably be able to make this transition efficiently and successfully.

However, Dr. Garber notes that, “While we are all navigating very rough seas, each of us are in our own very unique and separate boats equipped in different ways.” An individual's mental health history will be a significant pre-determinant of the extent to which one will probably react to this new assault to their sense of safety and security.

All businesses operate on a hierarchy of needs and safety and security formulates a fundamental requirement without which little else can be achieved. It can be anticipated that this has been substantively challenged as a result of this pandemic. Employees who have the greatest difficulty in returning to work will likely continue to struggle with such basic needs. The objective then would be to both recognize and attempt to bolster the employee's sense of safety and security.

Employers should keep in mind that some employees will experience new or exacerbated mental health challenges and concerns upon returning to work. Those that experienced varying degrees of personal vulnerability even before this pandemic will likely experience an exacerbation of those difficulties. Employees with pre-existing conditions may require accommodation in addition to the health and safety precautions put in place for all employees.

Dr. Garber encourages employers to pay attention to those employees that have had pre-existent mental health-related concerns. This does not suggest that this group of employees will be the only ones that may have difficulties, but they can be more vulnerable and, therefore,

require greater degrees of attention. The profoundness of the uncertainty brought on by the COVID-19 pandemic and its impact on one's self and one's immediate and extended family cannot and should not be underestimated.

Dr. Garber strongly recommends that employers work with a licensed, regulated, and experienced mental health consultant to determine a plan of action for those employees who have had pre-existent concerns or may develop a new set of symptoms upon their return to the workplace.

Additionally, it is important for employers to remember that some employees may be coming back to work with a far more entrenched substance abuse disorder or, in the alternative, returning to work with a newly developed substance abuse disorder.

Moreover, employees may have experienced marital and/or familial turmoil, they may have been ill themselves or had someone that they love become ill or possibly die. Dr. Garber encourages employers to keep in mind that "the established social parameters that have become part of our transitional process particularly when it comes to the loss of a significant other have been removed. People will be coming back to work differently as compared to when they left."

What can an employer do to facilitate and ease an employee's return to work?

Clear communication should be the priority for employers while facilitating their employees' return to work. It is essential that employers provide a transparent and comprehensive description of what they have done to make their work environment safe. As Dr. Garber states, "a sense of trepidation and uncertainty can be quelled by clear, consistent, accurate and genuine information."

Employers should develop a COVID-19 Return to Work Plan unique to their workplace. The Plan should be clearly communicated to employees and posted in the workplace. Employers should notify employees in writing of all efforts taken to

ensure and enhance workplace safety, including, for example:

- the physical spacing of workstations,
- the number of employees permitted in the office at any one time,
- changes to work space or alternate work schedules,
- procedures if an employee is ill or any family member is ill,
- procedures for travel,
- ventilation improvements, or,
- other risk mitigation strategies.



Employers should clearly communicate to employees what steps have been taken – and will continue to be taken – to ensure the workplace is as safe as possible. Employers should ensure that employees are able to easily access information about what has been done in the workplace to ensure ongoing safety. For example, an employer can clearly display a certificate that the workplace has been professionally cleaned.

Employers should be straightforward and direct with their employees, and should provide clear,

genuine, and authentic information. Honest responses to employees' questions will show that an employer cares about the employees' safety and security, and will demonstrate that employees can trust their employer. Employers should welcome questions from employees. Of course, the ultimate goal of clear and open communication between employees and employers is to assure employees that the workplace is safe. Employers should tell employees that it is in everyone's best interest to ensure that they return to work in a safe fashion where their own health and the health of their families will be protected and respected to the extent reasonably possible.



It is important for employers to establish an on-going dialogue with respect to health and safety considerations. Employers should recognize that 'opening up' the workplace is more than just a consideration of the physical workplace, but also the mental health, safety, and overall well-being of employees. Remember that for many employees this will be the first time that they will be exposed to feelings of intense anxiety, sadness, fear, frustration, and real challenges to their self-worth and self-esteem. An open channel for dialogue will encourage those employees who are struggling to ask for help if they feel they need help.

Dr. Garber says that, "the most important thing that a leader can do is to remain 'empathically sensitive' and provide truthful, scientifically driven, consistent, accurate, transparent and authentic information. Develop a reputation of being straightforward and honest with your people. Keep people apprised of circumstances even when circumstances are changing. Let them know that they can trust you to give them the most up-to-date and accurate information available to you."

Employers need to be seen by their employees as a trustworthy source of information, and Dr. Garber recommends that it would be wise to establish a process of "checking in" with employees to see how employees and their families are managing the transition back to work.

Additionally, employers should be understanding and flexible. In these unprecedented times, it is wise for an employer to take extra precautions – cost permitting – to ensure health and safety rather than risk a Ministry of Labour complaint or lawsuit. Both employers and employees should recognize that the total elimination of risk in a workplace is not possible; however, employers can show their employees that they have done as much as reasonably possible in the circumstances to ensure the safety of their workers. Employers – and employees – should also remember that people can remain at work while getting the help that they need.

Most importantly, remember **you are an employer and not a clinical specialist or physician!** Encourage employees to seek treatment appropriately, and remember it is not an employer's responsibility to diagnose or treat conditions, but rather facilitate communication and put in place accommodation as necessary.

Dr. Garber suggests that employers hire a mental health professional as a consultant to determine what mental health processes and procedures should be put in place to facilitate an effective

return to work. This can help protect employers from the suggestion that an employee's mental health concerns were reasonably foreseeable and not appropriately addressed upon their return to work, which could lead to legal problems.



What is the difference between 1) a 'work refusal' under the Occupational Health and Safety Act, 2) an employee who does not want to return to work, and 3) an employee who is unable to return to work for mental health reasons?

WHAT IS A 'WORK REFUSAL'?

It is important to clarify the difference between a 'Work Refusal' under the *OHSA* and situations where either an employee does not want to work or is unable to return work for mental health or other legitimate reasons.

Under the *OHSA*, most employees have the right to refuse work in a workplace they have reason to believe is likely to endanger them. This will trigger the employer's duty to investigate the employee's safety concern. Pursuant to section 43 of the *OHSA*,

- (3) A worker may refuse to work or do particular work where he or she has reason to believe that,

- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
- (b) *the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself,*
- (b.1) workplace violence is likely to endanger himself or herself; or
- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker. R.S.O. 1990, c. O.1, s. 43 (3); 2009, c. 23, s. 4 (2).

The work refusal must be reasonable, and the employee must provide a reason for the refusal to the employer. It is always best to request that the work refusal and reason for it be in writing.

Generally, work refusals under the *OHSA* deal with the **physical condition** of the workplace – not the employee's mental health, or their personal preference to not work. However, in the wake of the COVID-19 pandemic, mental health concerns may play a part in an employee's perception of whether the workplace is likely to endanger them.

Determination of whether the workplace is 'likely to endanger' an employee will depend on a lot of factors and requires careful case-by-case analysis. Employers should consider:

- The type of work place (is it a primary health care provider? A grocery store? An IT company?);
- The specific employee (their age, health, family obligations);

- The most current information on the virus itself (transmission, recommendations for the appropriate amount of time to quarantine following travel, etc); and,
- Government recommendations and orders (essential workplaces versus non-essential workplaces).

The right to refuse work does not apply to all employees; for example, it does not apply to 'essential workers' such as first responders, firefighters, police officers, or health care workers, when 1) the likely endangerment is inherent in the worker's work or is a normal condition of the worker's employment; or 2) when the worker's refusal to work would directly endanger the life, health or safety of another person.

If a protected employee reasonably believes the workplace is likely to endanger them or another worker and refuses the work, the employee must:

1. report the circumstances of the refusal to the worker's employer or supervisor;
2. explain the reasons for the refusal; and,
3. remain available for the purposes of the investigation.

The employer may then have an obligation to advise other parties of the refusal, such as, for example, a health and safety representative, a union representative and/or a health and safety committee. The employer *must* then investigate the work refusal report pursuant to their obligations under the *OHSA*. At this stage, the employer has an opportunity to remedy the health and safety concern. If, following an investigation and steps taken to deal with the circumstances that caused the worker to refuse work, the employee still has reasonable grounds to believe they are likely to be endangered, they can continue to refuse work and the employer must notify a Ministry of Labour inspector. The inspector will decide whether there are

circumstances likely to endanger the worker or another worker.

In the event that an employee says they feel 'unsafe' returning to the workplace, the employer should ask the employee *why* they feel this way. If the employee's concern relates to "the physical condition of the workplace", the Work Refusal process under section 43 of the *OHSA* may be required.



WHAT IF AN EMPLOYEE REQUIRES ACCOMMODATION?

A 'work refusal' is based on safety concerns under the *OHSA*, and a request for accommodation is based on an individual employee's specific needs in relation to a protected ground under the *Ontario Human Rights Code* ("the *Code*").

The Ontario Human Rights Commission states that, "the *Code* ground of disability is engaged in relation to COVID-19 as it covers medical conditions or perceived medical conditions that carry significant social stigma" – so employees who test positive for COVID-19 must be provided accommodation and likely cannot be terminated without the dismissal being deemed discriminatory.

Examples of accommodation requests related to COVID-19 could be:

- An employee with a pre-existing condition (an illness or disability) requesting to work from home to decrease their risk of exposure – this relates to the protected ground of ‘disability’;
- An employee with young children requesting a change in their work hours due to school closures – this relates to the protected ground of ‘family status’; or,
- An employee over the age of 65 requesting to work from home to decrease their risk of exposure – this relates directly to COVID-19 as a ‘disability’ or ‘age’.



The employee needs to initiate the request for accommodation and provide relevant information and, if required, documentation to support the accommodation request.

Employers also have a right to inquire as to what accommodation is required and the employee’s prognosis. Employers could require the employee to provide a medical note, and in some circumstances can require additional documentation – this could include a request from the employee’s physician for suggestions on a gradual Return to Work Plan, or other suggestions for reasonable accommodation. In some circumstances, an employer may request an Independent Examination, such as an

assessment by a Psychologist in order to better understand the difficulties that an employee has in being able to successfully return to work.

Employers have a duty to accommodate employees under the *Code*, unless the accommodation would amount to “undue hardship” for the employer. The duty to accommodate should consider the employee’s dignity and their unique needs, and should aim to maximize the employee’s full integration and participation in the workplace.

When it comes to assessing ‘undue hardship’, only cost and ‘health and safety’ requirements can be properly taken into account under Ontario law. Therefore, factors such as business inconvenience, employee morale, and customer and third-party preferences are not valid considerations in assessing whether an accommodation would cause undue hardship. However – in assessing ‘health and safety’ requirements, given the unprecedented nature of the COVID-19 crisis, employers may be able to argue that a serious negative impact on their ability to provide essential services due to a request for accommodation (eg. an employee working from home) amounts to undue hardship.

Accommodation is a two-way street, and employees cannot expect accommodation to be perfect. If an employee fails to cooperate with reasonable accommodation proposed by the employer, then the employer has fulfilled their obligation and there is likely no breach of the *Code*.

Please refer to our **Employer’s Guide to Accommodation** for more information on accommodating employees.

WHAT IF AN EMPLOYEE SIMPLY DOES NOT WANT TO RETURN TO WORK?

In the event that an employee cannot work from home because of the nature of their position, and the employee does not fall under the

categories captured by the *ESA* job-protected leave or a protected ground under the *Code*, then the employee would be required to be at the workplace performing their duties as usual in order to be paid. If an employee simply refuses to attend work and stays home, it could be considered abandonment of their employment.

Employees may be eager to return to work; however, once they start they realize they are unable to continue. What are some of the Red Flags suggestive of an employee struggling with mental health concerns?

Dr. Garber notes that different employees will have differing degrees of ‘risk tolerance’. When considering whether an employee may be struggling with mental health-related concerns, an employer or supervisor should carefully pay attention to the following:

- problems with tardiness and attendance;
- signs of substance abuse;
- the presence of newly developed and consuming marital or family distress;
- having experienced a loss either in their immediate or extended family;
- difficulties with attention and concentration (e.g. making errors);
- complaints of fatigue or lethargy;
- changes in productivity either noticing or being told by others that something is “not right” with the employee in question; or,
- the employee says they are okay but they continue to show symptoms.

In the event that an employer notices these ‘red flags’, they should:

- discuss what they have noticed with the employee;
- suggest that the employee contacts their family physician; and,

- closely monitor the employee over the next 2 to 4 weeks with an interest in whether the ‘red flags’ continue or not.

Dr. Garber goes on to suggest that if there is no improvement, the employer may be able to arrange for an Independent Examination in order to better assess the employees described difficulties, personality organization in addition to assessing the reliability and validity of the individual’s reported symptoms. In other words, Dr. Garber suggests that in certain circumstances the employer arrange for a comprehensive Independent Examination that would be undertaken in order to know more about what is going on with the employee.

Please refer to our **Employer’s Guide to Sick Leave** for more information regarding an employer’s obligation when an employee becomes ill.



What happens when an employee goes to their family physician and tells him or her that they are afraid and anxious and that they can’t work? How does an employer know that this type of concern is real?

Employers should start from the position of believing employees and taking medical notes in good faith.

Employers should work to support employees who are struggling, and substantive issues of mental health (such as anxiety, depression, or PTSD) should be treated as real health and safety concerns in the workplace.

Employees will need to work with their physicians to identify realistic accommodations and adjustments that could assist the employee with a successful return to work.

A comprehensive Independent Examination or assessment can help an employee and employer establish appropriate accommodation based on the degree to which an employee's reported anxiety compromises their functioning. An Independent Assessment can more clearly determine the nature of the employee's reported clinical concerns and whether those clinical concerns are being influenced by other factors. The timing of this procedure is significant and should not be undertaken too early in the process and without seeking legal advice.



What is an employer's obligation in this situation where an employee is unable to continue working?

As discussed above, the employer will first need to determine the reason *why* the employee is unwilling or unable to return to work or continue working.

If the employee does not want to return to the workplace or continue working due to a safety concern about the physical condition of the workplace, then the employer must take every precaution reasonable in the circumstances for the protection of a worker and the employer's obligations to investigate under the *OHSA* will likely be triggered.

If the employee is not concerned about the physical conditions of the workplace *per se*, and is *unable* to return to work due to a mental health-related condition, then the employer's duty to accommodate pursuant to the *Code* may be triggered.

Employers should keep in mind that generally the legal system in Ontario looks favourably on employees, and – in post-COVID-19 litigation – may decide that employers should have known an employee was suffering from a condition requiring accommodation, *even if* the employee did not request the accommodation. The failure to properly accommodate an employee is a breach of the *Code* and could render an employer liable to pay damages to the employee.

- The best practice for employers if an employee says they are unable to continue working and the employer has ruled out the physical condition of workplace as the concern – or if the employer cannot reasonable comply with changing the workplace – is that the employer should still accommodate the employee as long as the employee produces a supporting medical note.

As COVID-19 is a worldwide pandemic, Courts in Ontario will likely recognize the pandemic as a factor impacting on an employer's obligations when it comes to accommodation of employees. The risk of employers' liability is high.

It should be noted that there may be different processes if an employer is covered by WSIB, as WSIB has a set process for workplace injuries.

What if an employer needs to reduce its workforce? What does an employer need to keep in mind when terminating the employment of an employee?

If an employee is terminated prior to returning to work – for example, while they are still on a temporary layoff - the employer will be liable to provide the employee with pay-in-lieu of notice, and possibly severance pay. The amount of notice owed to the employee will depend in part on whether or not they have an employment contract, and the language of a termination clause included in that contract. The employer may also be liable to provide ‘common law notice’ to the employee, which can be substantially greater than the employee’s minimum entitlements to notice under the *ESA*.

Employers should keep in mind that terminating the employment of an employee who has recently returned to work may increase the risk of the employee alleging discrimination in relation to COVID-19. If employers plan to reduce their workforce, the best practice would be to terminate the employment relationship prior to the employee returning to the workplace.

Given the highly sensitive nature of these conversations, employers should keep in mind the following principles when relaying bad news to employees:

- be as transparent and genuine as you can be, while giving employees a chance to ask questions;
- consider whether to speak to employees in person or over the phone, based on their level of comfort and the relationship between the employee and the employer; and,
- deliver news in as empathetic a manner as possible.

Remember that employees are likely to be conscious of the real economic concerns facing employers in the wake of the COVID-19 pandemic, but news of a termination can still come as a shock. On-going communication

throughout the entire return to work process will help in the event that employees do have to be let go, as the termination may come as less of a surprise.

Please refer to our **Employer’s Guide to Termination of Employment** for more information on termination of the employment relationship and our **Employer’s Guide to Employment Contracts**.



WE ARE HERE TO HELP!

The return to work and the beginning of our ‘new normal’ will be an ongoing process and discussion, and starting the conversation with your employees is essential. Reach out to your employees now, prior to, and leading up to the return to work, to ask for their concerns and questions, and contact Minken Employment Lawyers for assistance with your Return to Work Plan. Contact us today at contact@minken.com or call us at 905-477-7011. Go to our website and sign up for our newsletter to receive up to date information, including new legislation and Court decisions impacting your workplace.

The content of this booklet is intended to provide a general guide to the subject matter. The **content of the booklet is not, and should not be construed as, offering any form of legal or psychological clinical advice**. Every case and clinical circumstances is different so we strongly recommend speaking to a professional should any of the situations discussed occur; specialist advice should always be sought about your specific circumstances.