



ILLNESS PROTOCOLS

Absence from Work due to COVID 19

New rules under The Employment Standards Act (ESA) provide for **Infectious Disease Emergency Leave (IDEL)**

Employees can take IDEL if they will not be performing the duties of their position because:

- They can't come to work because they are sick
 - They can't come to work because they are in quarantine (including self-quarantine)
 - They can't come to work because schools and daycares are closed and they have to take care of their kids
 - They can't come to work because they are stuck in another country due to travel restrictions
 - They can't come to work because they need to care for someone who is sick
- [Employees taking infectious disease emergency leave have the same rights as those taking pregnancy leave or parental leave.](#)
 - IDEL can be taken as well as other leaves under the ESA; each leave is separate.
 - Leave entitlement is retroactive to January 25, 2020
 - If an employee was fired on or after January 25, 2020 because the employee was absent from work for a reason that meets the criteria for IDEL the employer is required to reinstate the employee to the position the employee most recently held with the employer if it still exists (or to a comparable position if it does not) as of March 19, 2020.
 - There is no limit on the length of the IDEL; absences don't have to be consecutive
 - An employee must generally advise the employer that he or she will be taking an IDEL before starting the leave.



- An employer may require an employee to provide evidence reasonable in the circumstances at a time that is reasonable in the circumstances that the employee is eligible for infectious disease emergency leave but **employers cannot require an employee to provide a certificate from a physician or nurse as evidence**. Employers are not prohibited under the ESA from requiring medical notes in the context of issues such as return-to-work situations or for accommodation purposes.
- Employees who take infectious disease emergency leave may be entitled to employment insurance benefits or to other federal government financial supports.

Employers Wishing to Carry Out Temperature Testing

The position of the [Ontario Human Rights Commission](#) is that medical assessments (including temperature screening) to verify or determine an employee's fitness to perform on the job duties may be permissible in these circumstances under the Ontario Human Rights Code. However, information on medical tests may have an adverse impact on employees with other disabilities. As such, employers are advised to only obtain information from medical testing that is reasonably necessary to the employee's fitness to perform on the job and any restrictions that may limit this ability, while excluding information that may identify a disability. Generally speaking, a simple temperature scan performed in accordance with the above-noted recommendations should not give rise to any human rights-related concerns.

<https://gowlingwlg.com/en/insights-resources/articles/2020/temperature-screening-at-workplaces-covid19/>

The Collection of Personal Health and Travel Information by the Employer

[The rights and responsibilities of employees](#) are set out by the federal government: The employer can request certain information from the employee. This is:



- Whether the employee is exhibiting symptoms of COVID 19
- If the employee is undergoing COVID-19 testing and the result of that testing, and if the employee was present in the workplace while potentially infected. **Note:** there is nothing under the Canada Labour Code that allows the employer to insist that the employee is tested. (Further legal advice on testing is available [here](#)).
- If the employee was in close contact with someone diagnosed with COVID-19.
- If the employee has travelled internationally in the last 14 days.
- The employer may follow up with the employee to ensure a return to work when it is safe to do so

Canadian Centre for Occupational Health and Safety offers free COVID 19 Tip Sheets:

- [COVID 19 Screening Tool](#)
- [Retail](#)

[Huron Perth Public Health](#) offers advice for employers and a list of frequently asked questions, including:

- What to do if an employee is being tested for COVID 19
<https://www.hpph.ca/en/health-matters/covid-19-information-workplaces-employers-employees.aspx#What-if-my-employee-is-being-tested-for-COVID-19>
- When can an employee who has recovered from COVID 19 return to work
<https://www.hpph.ca/en/health-matters/covid-19-information-workplaces-employers-employees.aspx#When-can-employees-who-have-recovered-from-COVID-19-return-to-work>