

Employment and Duty to Accommodate Staff in the COVID Era

RELANS Fall Education Webinar Series

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October 8, 2020

Employer Legal Obligations



Agenda

- Develop a Plan
- Employment Law Considerations
- Your Workplace COVID-19 Prevention Plan
- Work Refusals – OHS and Human Rights Considerations
- Q&A

Why a Plan?

- For some, it's required by law
- Provide for orderly resumption of operations
- Ensure a safe & healthy workplace
 - For your employees
 - For your customers, contractors and others
- Prove 'Due Diligence' should you need to
- Manage Expectations:
 - Employees
 - Unions
 - Customers

Recall Issues

- Advanced Planning
- Employee Preference(s)
 - Survey;
 - Priority List
- Staggered Return (Manage Expectation)
- Business/Operational Needs Govern
- Employment Standards (Jurisdiction Specific)
- Collective Agreement (Seniority)

Permanent Terminations

- Realization that Business Needs Have Changed;
- Considerations:
 - Review What Said Upon Temporary Layoff;
 - Employment contract review;
 - Appropriate severances;
 - Factors Warranting Longer Severances “availability of replacement employment”

Your workplace COVID-19 prevention plan





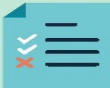

The Nova Scotia Government has stated that plans must address public health protocols, including:

- Physical (social) distancing in the workplace (staff and clients)
- Number of clients
- How to work and interact with customers
- Cleaning
- Equipment
- Preparing employees to return to work
- Preparing for customers or clients
- Monitoring and communicating of plans

Workplace COVID-19 Prevention Plan

If you're part of a sector association or organization, check to see if they've developed any Safe Practice Guidelines for your industry. Use the Safe Practice Guidelines to help you prepare your individual plan.

COVID-19 prevention plan checklist

	<p>How you work and interact with customers</p> <p>Think about how you serve customers, receive supplies, deliver materials, deal with waste and cleaning. Your plan could consider measures like:</p> <ul style="list-style-type: none"> • Restricting contact through curbside pick-up and delivery • Changing how supplies are delivered • Cleaning and disposing of waste more often
	<p>Physical distancing in the workplace</p> <p>Physical distancing is one of the best ways to reduce the spread of COVID-19. Your plan may consider:</p> <ul style="list-style-type: none"> • Floor markings to separate and direct customers and clients • Separating work-stations or cash registers • Staggering working hours
	<p>Cleaning</p> <p>Viruses can live on surfaces for days. If you have equipment or tools shared by multiple people, think about whether you can limit who uses it and clean surfaces and objects you touch frequently. Your plan could consider measures like:</p> <ul style="list-style-type: none"> • Regularly scheduled cleaning and disinfecting throughout the day • Frequent disinfecting of high-touch surfaces such as countertops, door handles and debit machines
	<p>Equipment</p> <p>Consider what equipment is in your workplace: such as, desks, computers, cash registers, pencils, water coolers, lunch room appliances, pens, personal protective equipment or barriers. Your plan could consider:</p> <ul style="list-style-type: none"> • Limiting who can use the equipment and a schedule to clean equipment • Any protective equipment required for employees such as masks and gloves • Any protective measures to be installed, like plexiglass dividers
	<p>Preparing employees to return to work</p> <p>Help employees understand their duties and responsibilities for complying with safe practices set by the industry and the employer. Your plan could consider:</p> <ul style="list-style-type: none"> • Training on how to self-assess symptoms and what to do/when to stay home • Understanding duties and responsibilities of both managers and staff • Policies to report and address non-compliance
	<p>Preparing for customers or clients</p> <p>Customers, service providers and suppliers need to be aware of the safety precautions they must follow. Your plan could consider:</p> <ul style="list-style-type: none"> • Signage to limit numbers, physical distancing • Markings for line-ups and strategies to reduce opportunities for close contact • Contactless delivery and pick-up
	<p>Monitoring and communicating your plan</p> <p>Everyone needs to be adaptable and considerate as we move forward together. It's critical to maintain and adapt your plan as the situation changes. You also need to communicate your plan and make sure people understand it.</p>

novascotia.ca/coronavirus

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OHS Duty to Prevent

Employer:
reasonable
precautions
to ensure
health &
safety of
persons @
or near the
workplace

Employee:
protect
own health
& safety &
that of
other
persons @
or near the
workplace

Develop Covid-19 Resumption Plan

- Establish a Management Team or Task Force
- Consult with Workplace (a) Safety Rep, or (b) JOHSC
- Depending on your business, you may be required to submit your Plan for approval
- Communicate Plan to Employees
- Communicate Plan to Customers
- Communicate to Contractors & Other Third Parties
- Enforce Compliance

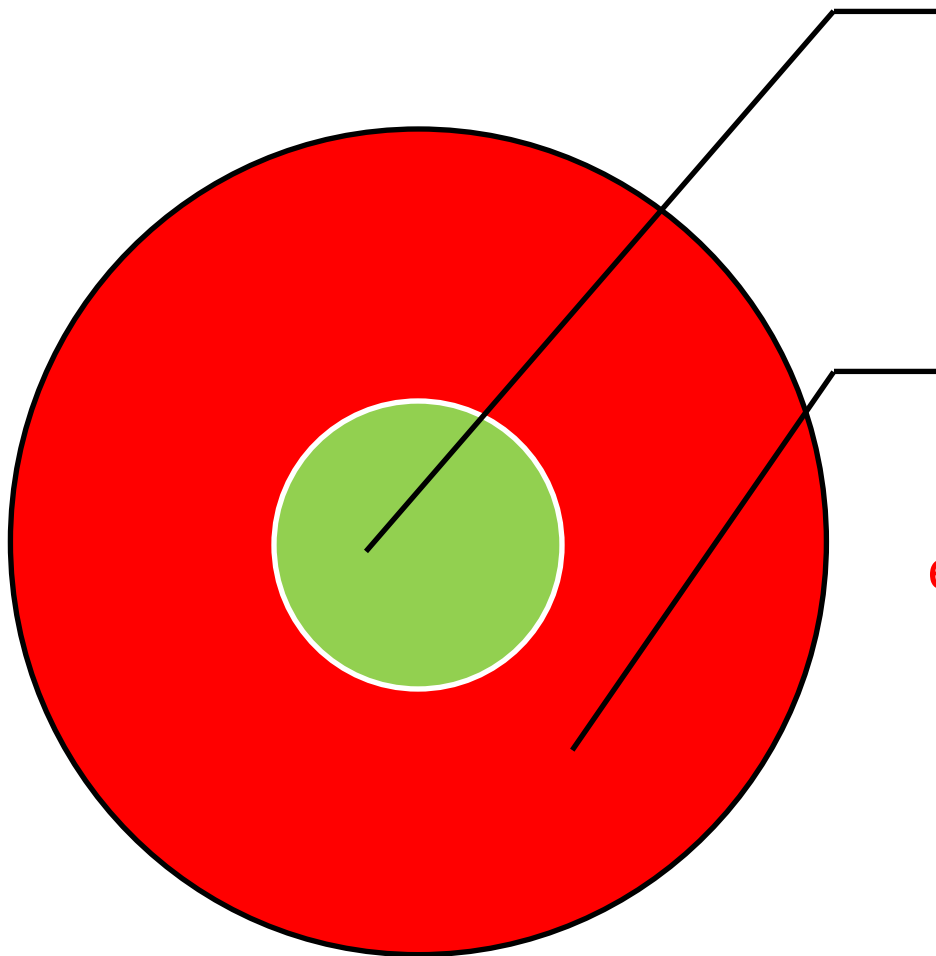
Administrative Controls

- Requiring sick employees to remain at home
- Minimizing face-to-face contact:
 - Virtual meetings
- Alternating “in office” days
- Assigning employees to designated “zones”
- Discontinuing non-essential travel
- Designing new safe work practices and additional information and training

Work Refusals

- Need to determine the basis for work refusals which can range from:
 - Formal work refusal pursuant to OHS legislation
 - Inability to come to work due to illness (human rights issue)
 - Inability to come to work due to childcare (family status)
 - Personal preference not to come to work

Human Rights Laws



Duty to
Accommodate to the
Point of Undue
Hardship

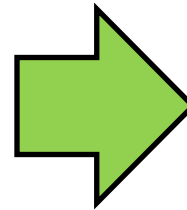
Human Rights Act
prohibition of
discrimination in
employment based on a
protected ground

Employer Duty

“The test is **not whether it was impossible** for the employer to accommodate the employee’s characteristics. The employer **does not have a duty to change working conditions in a fundamental way**, but does have a duty, if it can do so **without undue hardship**, to arrange the employee’s workplace or duties to enable the employee to do his or her work.”

Work refusal | Rights & duties

- ✓ Right to refuse when “work endanger[s] the [worker’s] health and safety or that of coworkers”
- ✓ Some define “danger” to include “exposure to a hazardous substance that is likely to result in ... disease”
- ✓ **Sufficient likelihood** of “danger”
- × **Mere presence** of risk



- Employer investigation
- Employer measures to eliminate or reduce danger

Questions?



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