

Our Legal Services

Unison Health & Community Services offers legal advice, legal assistance and representation in the following employment matters:

- Employment Standards matters
- Wrongful Dismissal
- Human Rights Applications (HRTO)
- Employment Insurance (EI)

RECENT EMPLOYMENT LAW CHANGES IN RESPONSE TO COVID-19

Changes to the Employment Standards Act – Infectious Disease Emergency Leave

The government of Ontario recently amended the *Employment Standards Act, 2000* to include an **unpaid, job-protected infectious disease emergency leave**. This leave is available to employees who are not performing the duties of their position for certain reasons related to COVID-19, including:

- personal illness, quarantine or isolation in specified circumstances
- concern by the employer that the employee may expose other individuals in the workplace to COVID-19
- to provide care or support to certain family members for a reason related to COVID-19, including school or day care closures
- due to certain travel-related restrictions

The leave is retroactive to January 25, 2020. Employers cannot require employees to provide medical notes to prove they are eligible for the leave.

In addition, Ontario declared an emergency due to COVID-19 on March 17, 2020. During a declared emergency, an employee may have the right to take an unpaid, job protected leave if the employee will not be performing the duties of his or her position because of the emergency and because certain circumstances apply.

For more information, please check the following link:

<https://www.labour.gov.on.ca/english/es/>

Please also check the COVID-19 Employment and Work Guide published by **Steps to Justice**:

<https://stepstojustice.ca/covid-19/covid%E2%80%9119-employment-and-work>

Employment Insurance (EI) – CANADA EMERGENCY RESPONSE BENEFIT (CERB)

In response to the COVID-19 situation, the federal government has implemented the Canada Emergency Response Benefit (CERB). This is a program that offers **temporary support of \$500 a week for up to 16 weeks to workers who have stopped working because of COVID-19.**

Please visit the following website to find out how to apply:

<https://www.canada.ca/en/services/benefits/ei/cerb-application.html>

Please also check the COVID-19 Employment and Work Guide published by Steps to Justice:

<https://stepstojustice.ca/covid-19/covid%E2%80%9119-employment-and-work>

Workplace Safety and Insurance Board (WSIB):

The Workplace Safety and Insurance Board (WSIB) has announced how the Board will address different issues related to COVID-19, including:

- If a worker contracted coronavirus at work
- If the worker will keep receiving WSIB during the time that the employer shut down the workplace due to COVID-19
- If the worker is afraid to go to work because of COVID-19
- How WSIB will assess COVID-19 claims.

For more information, please visit:

<https://www.wsib.ca/en/covid-19-fags-about-wsib-claims>

Please also check the COVID-19 Employment and Work Guide published by **Steps to Justice**:

<https://stepstojustice.ca/covid-19/covid%E2%80%9119-employment-and-work>

Human Rights

Accommodation for those who need to take care of their Parents, Spouses or Children – Substantial Obligation

The *Ontario Human Rights Code* protects people from being discriminated because of family status. Under the *Ontario Human Rights Code*, employers have an obligation to accommodate to the point of

undue hardship. If an employee needs to take care of their children or their parents, an employer has an obligation to provide proper accommodation. For example, a workplace rule may be discriminatory if it puts the employee in the position of having to choose between working and caregiving or if it negatively impacts the parent/child relationship and the responsibilities that flow from that relationship in a significant way (*Misetich v. Value Village Stores Inc.*, 2016 HRTO 1229).

For information about how to file a Human Rights claim, please go to:

<http://www.sjto.gov.on.ca/hrto/application-and-hearing-process/>

Please also check the COVID-19 Employment and Work Guide published by **Steps to Justice**:

<https://stepstojustice.ca/covid-19/covid%E2%80%9119-employment-and-work>

Occupational Health and Safety – Reporting Concerns Related to COVID-19 in the Workplace

Employers are responsible for taking every precaution reasonable in the circumstances for the protection of their workers. Workers have the right to refuse work that they believe is dangerous to either their own health and safety or that of another worker in the workplace. For example, workers may refuse work if they believe their health and safety is endangered by any equipment they are to use or by the physical conditions of the workplace. There are steps that workers have to follow to refuse work. Section 43 of the *Occupational Health and Safety Act* (OHSA) describes the exact process for refusing work and the responsibilities of the employer/supervisor in responding to such a refusal. Those steps include: [1] reporting hazards to the employer, [2] asking the employer for an investigation, and [3] contacting the Ministry of Labour to resolve the problem.

Please note that the *Occupational Health and Safety Act* **does not apply to workplaces under federal jurisdiction**, such as:

- post offices
- airlines and airports
- banks
- some grain elevators
- telecommunication companies
- interprovincial trucking, shipping, railway and bus companies.

Please also note that **the right to refuse unsafe work is limited for some jobs**, such as health care workers and persons employed in workplaces like hospitals, nursing homes, sanatoriums, homes for the aged, psychiatric institutions, mental health centres or rehabilitation facilities, residential group homes

for persons with behavioural or emotional problems or a physical, mental or developmental disability, ambulance services, first aid clinics, licensed laboratories—or in any laundry service, food service, power plant or technical service used by one of the above (Section 43(2) of the OHSA).

For information about the steps that a worker needs to take to report health and safety concerns, please see:

<https://www.ontario.ca/document/guide-occupational-health-and-safety-act/internal-responsibility-system>

Please also check the COVID-19 Employment and Work Guide published by **Steps to Justice**:

<https://stepstojustice.ca/covid-19/covid%E2%80%9119-employment-and-work>