

**Employment Standards
During Public Emergencies**
*Revised for the February 2021 Regulatory
Amendment*

Employment Standards Division
1-800-667-1783 (toll free)

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About Employment Standards

- Sets, administers and enforces minimum employment standards legislation under
 - *The Saskatchewan Employment Act*
 - *The Employment Standards Regulations*
 - *The Conditions of Employment Regulations*
 - *The Minimum Wage Regulations*

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Webinars

- Listen to recordings and register for live webinars at www.saskatchewan.ca under:
 - [Employment Standards Training](#); and
 - [Supports for Businesses](#)
- Email any comments and suggestions to lrswebinarteam@gov.sk.ca

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Disclaimer

- This presentation is for your information and education.
- It is not legal advice or opinion.
- Consult a lawyer for interpretation and application to your specific situation.
- Refer to *The Saskatchewan Employment Act* (the SEA) and regulations.
- The presentation material is not to be used, reproduced, stored, distributed or transmitted in whole or in part for commercial purposes without written permission from the Saskatchewan Ministry of Labour Relations and Workplace Safety.
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Objectives

- To provide information about legislative changes made to respond to COVID-19.
- To answer frequently asked questions.
- To provide additional sources of information.

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Background

- With the COVID-19 pandemic,
 - the Chief Medical Health Officer (CMHO) issued public health orders; and
 - government issued an emergency declaration and directions.
- These have led to:
 - Employees being unable to attend work; and
 - Employers reducing or closing operations, needing fewer employees at work.

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Background

- Legislation was changed to support employee attachment to jobs and employer sustainability to maintain jobs.
- Most recently, Saskatchewan added a protection for employees accessing the Canada Recovery Sickness and Caregiving Benefits.

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DEFINITIONS

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“Public Health Emergency”

- A public health emergency of international concern, determined by the WHO, in accordance with the *International Health Regulations (2005)* or any subsequent *International Health Regulations*.

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“Public Emergency Period”

- A “public emergency period” is the period when either an order of the chief medical health officer under a public health emergency or an emergency order under *The Emergency Planning Act* are in place.

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“Layoff” and “Termination”

- A “layoff” is a temporary interruption of work by an employer that exceeds six consecutive work days.
- A “termination” is a permanent ending of employment by the employer (e.g., firing) or employee (i.e., quit or abandonment).
- A “group termination” is the termination of the employment of 10 or more employees in a workplace within any four-week period.

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“Period of Employment”

- “Period of employment” means any period of employment that is not interrupted by more than 14 consecutive (calendar) days.

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Change 1:
LAYOFF RULES DURING A PUBLIC EMERGENCY

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Normal Rules About Layoffs and Terminations

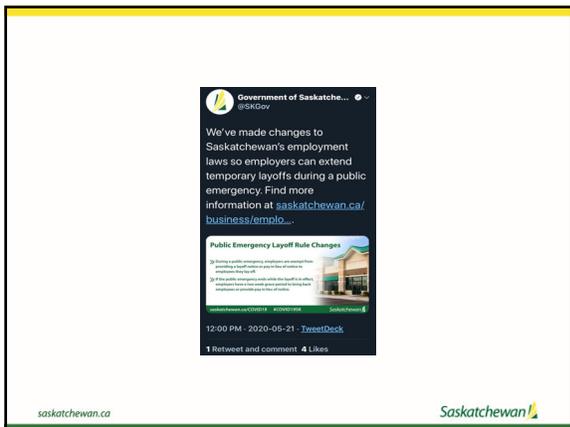
- The SEA does not provide employers with the right to temporarily lay off employees; it provides the maximum length of layoff allowed before the employee is terminated and owed pay instead of notice.
- Employees may agree to better terms in an employment contract or Collective Bargaining Agreement; but it can't fall below the SEA or regulations.
- Better terms include longer layoff periods to maintain the employment relationship.

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Normal Rules About Layoffs and Terminations

- The SEA sets the minimum amount of notice or pay instead of notice of a layoff or termination.
- Pay instead of notice is calculated multiplying the number of weeks of notice owed by employee's normal weekly wages.

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Public Emergency Layoff

- During a public emergency period and for two weeks following the end of the public emergency period, notice or pay instead of notice for layoffs is not required.
- Employers and employees are exempt from the normal layoff requirements.
- Notice is deferred to help maintain employment.

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Two Week “Grace Period”

- Employers must provide employees with a work schedule by the end of the two weeks after the end of the public emergency period.
- If the employer doesn’t do this:
 - the employee’s job is terminated; and
 - the employee is owed applicable pay instead of notice.

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If An Employee Doesn't Return

- If an employee chooses not to return to work as scheduled, the employee is deemed to have abandoned their job and quit.
- However, employers are to find out why employees aren't returning and attempt to resolve issues.
- Employers: warn employees that not returning is a resignation.

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Employee Responsibilities

- Laid off employees must be reasonably ready to return to work when called.
- Employers may provide employees more time to accommodate health and safety issues or extenuating circumstances.

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Onus is on the Employer

- Employers: document attempted contacts with the employee and communication of problem solving and direction, including warnings for not responding or returning.

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Pay If Employees are Terminated

- If employees are terminated, the layoff period is part of their period of employment.
- Period of employment determines the number of weeks of notice owed.
- Wages earned before the layoff are used to calculate the normal weekly wages and are multiplied by the number of weeks of notice owed to arrive at the pay instead of notice owed. (SEA section 2-60, 2-61)

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Scheduled means....?

- Does it mean the first day after the two weeks is up? Not necessarily
- It means a return to regular rotations or shift assignments, with evidence of:
 - an ongoing employment relationship;
 - a schedule for the return to work;
 - a clear and well documented recall process;
 - a return to work date established and agreed to within a reasonable period of time; and
 - and a return to work within that time period.

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Change 2:

GROUP TERMINATION

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Group Termination

- During a public emergency period, employers aren't required to provide the normal group termination notice to employees or their unions in the Act.
- However, employers must still notify the Minister of LRWS as soon as possible following the termination.
- Remember: Individual notice is still required.

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Change 3:

PROTECTION FROM DISCRIMINATORY ACTION FOR ABSENCES DUE TO ILLNESS

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What is Discriminatory Action?

- Discriminatory action: any adverse action or threat of action by the employer against an employee.
- Includes layoff, termination, loss of opportunity, demotion, discipline or intimidation.

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Protection From Discriminatory Action for Absences Due to Illness

- Employees are protected from discriminatory action if the employee is off work because:
 - of illness; or
 - the employee must care for a dependent family member who is ill.
- Protection is for absences of up to 12 days in a calendar year or 12 weeks in a period of 52 weeks, depending the serious of the illness.

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Protection From Discriminatory Action for Absences Due to Illness

Normally, employees must work for the employer for at least 13 consecutive weeks, and provide a medical note if requested.

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Protection From Discriminatory Action for Absences Due to Illness - Change

During a public health emergency, employees are:

- protected from their first day of work; and
- don't need to provide medical evidence.

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Change 4:
**PROTECTION DURING ABSENCES TO
ACCESS FEDERAL RECOVERY BENEFITS
(NEW!)**

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**Protection for Employees Accessing
Federal Recovery Benefits**

- September 2020: the federal government announced the Canada Recovery Sickness Benefit and Caregiving Benefit.
- February 2021: Saskatchewan extended legislative protection against discriminatory action for employees who access these benefits.
- Entitlement depends on the eligibility requirements of the benefit programs.

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**Protection for Employees Accessing
Federal Recovery Benefits**

- The protection extends to an employee who is
 - absent from work,
 - believes they are eligible for recovery sickness or caregiving benefits,
 - doesn't provide notice of absence, and
 - is in receipt of, or will be applying for either recovery or caregiving benefits.

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Federal Recovery Benefits Eligibility

Employees are eligible if they:

- are sick with COVID-19, have COVID-19 symptoms and are required to self-isolate, or have an underlying health condition which makes them susceptible to COVID-19 and isolating; or
- must provide care to a child under 12 or family member who needs supervision because their school, daycare or day program was cancelled because of COVID-19; or

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Federal Recovery Benefit Eligibility

- must provide care for a person who is sick with COVID-19, has COVID-19 symptoms, or has underlying health complications if they get COVID-19 and is isolating as directed by a medical professional.

- More information at www.Canada.ca

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Protection for Employees Accessing Federal Recovery Benefits

- Employees are entitled to this protection from their first day of work.
- Employees aren't required to provide medical evidence or evidence of application for benefits.
- Employers may take action against an employee for reasons unrelated to an absence from work to access the caregiving and sickness recovery benefits.

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Protection for Employees Accessing Federal Recovery Benefits

Employee Notice of Absence:

- While action can't be taken against an employee for not providing advance notice, an employee must provide their employer as much notice as possible when they are away and on return.

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Change 5: PUBLIC HEALTH EMERGENCY LEAVE

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Public Health Emergency Leave

- A job-protected employment leave for employees:
 - ordered to self-isolate; or
 - who have to care for their child or adult family member who is affected by the direction or order of the Government or the Chief Medical Health Officer (CMHO).
- Unpaid leave, unless the employer lets the employee work from home.

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When Is it Available?

When a public health emergency is determined by the WHO and the CMHO orders that:

- it applies to Saskatchewan, and
- individuals must take measures to prevent or reduce the spread of the disease including self-isolation; or
- individuals must take measures to prevent or reduce the spread of a disease in Saskatchewan.

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Order to Self-Isolate

- Employees are entitled to this leave when they are directed to self-isolate to prevent or reduce the spread of the disease specified in the order.
- Direction could be from:
 - a doctor;
 - an employer;
 - the Government of Saskatchewan; and/or
 - the Chief Medical Health Officer.

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If Directions About an Order Conflict

- If in conflict, the Government's, the doctor's, or the CMHO's opinion prevails over the employer's.

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Exempted Employees

- If employees have been told by their employer that they are necessary to provide critical public health and safety services, they are not entitled to a public health emergency leave.
- However, these employees are eligible for leave if ordered to self-isolate by a medical or government order (e.g., travel, exposure).
- Check www.saskatchewan.ca for a listing of critical public services.

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Other Key Points: Public Health Emergency Leaves

- A leave can be for the length of the order.
- Employees are not required to give notice before taking leave or before returning to work, as with other leaves.
- A medical note isn't required.
- The leave is available regardless of the employee's length of service.
- Since an employee is still employed during the leave, they may continue under employee benefit plans.

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Where to Find Public Orders

Visit saskatchewan.ca – banner at the top that reads 'COVID-19'



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FREQUENTLY ASKED QUESTIONS

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What is the difference between a leave and a layoff?

Employment Leave	Layoff Period
<ul style="list-style-type: none">• An “employment leave” is an employee entitlement.• An employer may provide additional leaves by policy.	<ul style="list-style-type: none">• Temporary reduction of work by the employer for a period of time.• Public emergency layoff provisions are for employers who reduce staffing due to business slowdowns or shutdowns as a result of public health or emergency orders.

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Can I get government financial support during a layoff or leave?

- Yes, depending on the rules of the financial program.
- Employers must still provide notice if they terminated employees who are receiving financial support.

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**My business is ordered closed.
Now what?**

- Employers may access the temporary layoff provisions.
- Employees may access public health emergency leave if they have been ordered to self-isolate.

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What if the employer decides to permanently close as a result of the public emergency?

- The normal notice or pay instead of notice rules apply.

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Can an employer require an employee to take public health emergency leave?

- Employees must comply with isolation orders.
- The employer could direct the employee to comply with the isolation order, which may involve being away from the workplace and working from home.
- The employee would then be entitled to the job protection of a public health emergency leave.

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What if I have been ordered to isolate and the employer lays me off?

- The layoff starts when your public health emergency leave is over.

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What do we do with vacation pay during a layoff?

- As employment continues during layoffs, the employer is not required to pay out vacation pay.
- However, an employer and employee may agree to use vacation before a layoff or a payout.

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What happens with overtime banks during a layoff?

- If there is an overtime bank, then the employee could give the employer written notice that they want overtime paid and/or that they want to terminate the overtime bank.

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Overtime banks during a layoff

- Payout would occur in the pay period following the pay period the notice was given.
- Or the employer must schedule when the employee must take the banked time off.

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How do layoff provisions apply if an employee is laid off but is called back temporarily?

- No notice is required during and for up to two weeks following the end of public emergency period, regardless of the number of times that the employee is recalled.
- If the employee is not scheduled within the two weeks following the end of the public emergency period, pay instead of notice is owed.

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Do these provisions apply to freelance workers, "gig" workers or other types of independent contractors?

- No, these protections apply to "employees" as defined in the legislation.
- Independent contractors are in a business to business relationship, not employment relationship.

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What if I am sick?

- Employees are protected from discriminatory action from absences due to illness for up to 12 days in a calendar year or 12 weeks in a period of 52 weeks, depending on the severity of the illness.
- Severity may depend on the impact of the illness on the employee.
- May need to access the public health emergency leave, if ordered to self-isolate.
- During public health emergencies, 13 weeks of employment or a doctor's note are not required to access this protection or public health emergency leave.

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I have a health issue that places me at risk of further illness. Do I have to go back to work?

- If you feel you are at risk, you must notify your employer about a possible medical accommodation.
- You may need to provide medical evidence.
- Possible accommodations include a leave, a reassignment, or modification of duties.
- If ordered to self-isolate, access a public emergency leave.

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As the employer, can I reduce hours or pay rather than lay off employees?

- Consult a lawyer.
- Small changes in work hours may not create a layoff.
- Unilateral changes by the employer could be a constructive dismissal (i.e., permanent termination) of the employee.
- Employee agreement or proper notice is required.
- Employees may accept the change temporarily, but likely expects to be returned to normal.
- Record and share details in writing.

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I've recalled or scheduled my employee, but they refused to return. Now what?

- Employees are expected to return to work.
- Employers must give employees specific and reasonable direction when they are expected back.
- Employers should warn employees that not returning may be considered job abandonment.

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What if my staff don't feel comfortable coming to work because of COVID-19?

- Employers must provide a safe workplace, including hearing employee concerns and complying with public and occupational health and safety measures.
- If occupational health and safety standards are met, the employee is required to return to work.

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What do I need consider when employees refuse to return to work?

- Consider if your employees:
 - are entitled to public health emergency leave.
 - require a medical accommodation.
 - have a workplace health and safety concern.
- After all is considered and reasonable warnings are provided, the employees may be deemed to have quit.

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Do I have to inform my employer of the reasons for my absence from work while I access the federal recovery benefits?

- You need to tell your employer why you are away from work.
- Your employer can't require you to provide evidence of your illness or your application for benefits.

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I tested positive for COVID-19, but my quarantine is over. For safety reasons, my employer tells me they are not letting me back. What can I do?

- Contact Occupational Health and Safety at 1-800-567-7233 to learn about when an employee can be cleared to return to work or visit www.saskatchewan.ca. Share this information with your employer.
- If the workplace is safe, you are protected from layoff or termination for being away from work because of illness, being on a public health emergency leave or if you have accessed or applied for the federal recovery sickness benefit.

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OTHER RESOURCES

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Employment Standards Division

For more information about these Amendments and the SEA:

- 1-800-667-1783
- employmentstandards@gov.sk.ca
- www.publications.gov.sk.ca
- saskatchewan.ca/business/employment-standards – includes regular webinars on various employment standards

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Other Resources: Government of Saskatchewan

- Frequently Asked Questions:
 - Follow www.saskatchewan.ca...Information for Businesses and Workers...Managing Staffing and Leave.
- For non-health public safety questions:
 - 1 (855) 559-5502 (for Regina residents: 306-787-8539)
- For general workplace safety questions:
 - Occupational Health and Safety: 1 (800) 567-7233

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Business Resources

- Visit [Public Health Measures – Resources for Workplaces](#) for information about the various measures the Saskatchewan Government has taken to support employers and employees, including the use of personal protective equipment (PPE).

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Other Resources: Government of Saskatchewan

- The Employer Services Branch within the Ministry of Immigration and Career Training (ICT) helps employers navigate provincial and federal supports.
 - Email: supportforbusiness@gov.sk.ca
 - Visit: saskatchewan.ca/covid19-business
 - Phone: 306-787-7428
 - Toll Free: 1-844-800-8688 (Business Response Team)
- Saskatchewan Public Safety Agency: 1-855-559-5502

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Other Resources: Government of Canada

- www.Canada.ca – click on Covid-19 banner

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How to Access the ES Website



saskatchewan.ca

<https://www.saskatchewan.ca/>