

COVID-19: Questions and answers

Employment Standards and Occupational Health and Safety

(May 20)

On March 18, 2020 the Government of Saskatchewan declared a provincial state of emergency outlining specific measures. Over the last several months regulatory and legislative amendments have been made to assist employees and employers. This includes changes to *The Saskatchewan Employment Act* on March 17 to create an unpaid public health leave and amendments to *The Employment Standards Regulations* on March 20 and again on May 20 to provide for temporary layoffs during a public emergency.

We know that as employers are making decisions about how best to ensure the health and safety of workers and of citizens they serve, there are a number of questions that have arisen. The information below is intended to assist employers and employees at this time.

Public Health Emergency Leave - Announced March 17, 2020

Who does the public health emergency leave apply to and what does it include?

This leave is intended for employees to assist in protecting their jobs during leaves as ordered by their employer, the government, their doctor, or the chief medical health officer of the province to isolate themselves or, if they are required to care for their child or family member who are affected by the order or direction of the Government of Saskatchewan or an order of the chief medical health officer.

- e.g. direction of government: closure of day cares as a result of school closures
- e.g. orders of government: closure of schools indefinitely
- e.g. order of chief medical health officer: when returning from outside of Canada individuals must isolate for 14 days

In order to ensure the health and safety of the public, employees required to provide critical public health and safety services are not entitled to this leave.

How long is the leave for?

Employees will be entitled to leave for the length of time they are ordered by their employer, government, their doctor or the chief medical health officer.

Is the public health emergency leave paid leave?

This is an unpaid leave. However, employees are entitled to be paid their regular wages if their employer authorizes them to work from home during the period of time as set out by the order of the employer, chief medical health officer or government.

Is there a minimum employment time required for the leave?

No. Employees do not have to have worked for an employer for any set time.

Do I need to give my employer notice to take leave?

While notice is not required, employees are encouraged to be in regular contact with their employer regarding their leave.

Do I need to give notice to return to work?

While notice is not required it is encouraged that you stay in contact with your employer to ensure a smooth transition back to work.

How long can I take the leave?

The length of time will depend on the public health order and may be different in each individual circumstance. The protected leave is for as long as the public health order is in place.

- e.g. returning to Canada from vacation outside of the country: individuals need to isolate for 14 days.
- e.g. caring for children who are out of school: if you are able to find alternate means of care you may be on leave for a couple of days only or longer periods of time.

Is the public health emergency leave in place right now?

Yes. The unpaid leave is effective retroactive to March 6, 2020.

My employer has told me that I can't access the public health emergency leave because my position is critical to public health and safety. How can I check that?

Critical public health and safety services are listed on the following link: saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/public-health-measures/public-health-orders/list-of-critical-public-services-and-allowable-business-services

Do I need a doctor's note to access the leave? If I am ill, can my employer ask for a doctor's note?

The doctor's note is waived for the leave. However, employees will still be expected to give a doctor's note as may be required by their employer if the illness or injury is unrelated to COVID-19.

What about sick workers?

If the employee is ill, then *The Saskatchewan Employment Act* protects the employee from discriminatory action for either 12 days or 12 weeks, depending on the severity of the illness. Severity may depend on the impact of this illness on the employee.

What about workers whose place of business has closed temporarily or permanently

Group termination notice is not required during the public emergency period. However, employers must notify the minister of Labour Relations and Workplace Safety as soon as possible after the termination.

Employers can lay the employees off temporarily or permanently terminate employment.

What about workers who need to take time off to care for their children who are no longer in school? Is this leave paid?

These workers are entitled to job protected leave under the new public health emergency leave provisions. This would be considered unpaid leave, however employees would be entitled to employer benefit plans and provisions of collective agreements where applicable.

Employees are entitled to be paid their regular wages if their employer authorizes them to work from home during the period of time as set out by the order of the chief medical health officer or government.

What about freelance workers, contract workers, and gig workers?

The Saskatchewan Employment Act does not apply to self-employed individuals such as freelance workers, independent contractors or business owner operators.

The federal government has made several announcements around employment insurance and other benefits available at this time. For more information, we encourage individuals to visit www.canada.ca/en/departement-finance/news/2020/03/canadas-covid-19-economic-response-plan-support-for-canadians-and-businesses.html.

Can I access a public health emergency leave if I am concerned with exposure to Covid-19 at work?

The new unpaid public emergency leave can be accessed when the World Health Organization has determined that there is a public health emergency and the province's chief medical health officer has also issued an order that measures be taken to reduce the spread of a disease; or the province's chief medical health officer has independently issued an order that measures be taken provincially to reduce the spread of a disease where it is believed there is sufficient risk of harm to citizens of the province. The orders would also be made public to ensure everyone is aware of the direction.

Workers have the right to refuse unusually dangerous work. If you are concerned with exposure and you feel your workplace is unsafe, you are encouraged to discuss reasonable protection measures with your employer, raise the issue with your occupational health and safety committee, and consult with safety resources found at saskatchewan.ca/COVID19.

Employers are responsible to continuously examine their workplaces and ensure they are providing a safe and healthy environment to protect their workers as well as customers.

During the various phases of the re-open Saskatchewan plan, does the public health emergency leave still apply?

The protected leave can be accessed for as long as the public health order is in place. At different phases of the re-open Saskatchewan plan the orders may change.

- e.g. the plan does not indicate a date for reopening of schools, so parents caring for children who are out of school may be on leave for a couple of days or longer periods of time if they cannot arrange other childcare arrangements.

What if a business is allowed to open but chooses not to because of COVID-19 concerns; will staff still be entitled to the unpaid public health emergency leave?

The public health emergency leave is still available for those individuals that have to: self-isolate, stay home due to an order, have to provide care or support to an adult family member affected by an order, or have to care for a child at home due to the school closure. Employers that stay closed can still use the temporary layoff provisions that allow for a layoff for two weeks following the duration of the public emergency period without notice or pay instead of notice.

Layoff Provisions—Announced March 20 and amended May 20

How do the layoff provisions work during a public emergency?

An employer has the option to implement a temporary layoff as part of their response to the public emergency during an order of the medical health officer or an emergency declaration by the Government of Saskatchewan. With the amended regulation, if the employment relationship provides for layoffs, an employer may temporarily lay off an employee for up to two weeks following the public emergency period without having to provide notice or pay instead of notice to the employee.

Employees on a temporary layoff would still be considered employees but would be able to apply for Federal Employment Insurance Benefits.

Does this delay my eligibility for pay instead of notice if my employment was terminated?

No. If you have not been laid off and your employment has been permanently terminated you would be eligible for pay instead of notice payable within 14 days of the termination.

With this new provision, employers may adjust their layoff and termination provisions with their employees as part of their expectations to bring those employees back to work within two weeks after the end of a public emergency.

What happens at the end of the two weeks following the end of the public emergency?

An employer can lay off an employee for maximum of two weeks following the public emergency period. The employee would be entitled to pay instead of notice if they have not been scheduled to work after the two weeks.

What is the two additional weeks for?

The additional time is a “grace period” to allow employers and employees time to prepare to return to work. Employers are required to inform employees of their work schedule before the end of the two weeks. Employment of employees who have not been scheduled is considered terminated and pay instead of notice is due within 14 days. Pay instead of notice is calculated from date the employee was first laid off.

If my employer doesn't reinstate me how much pay instead of notice will I get?

If you have worked more than 13 weeks prior to the temporary layoff and you are laid off for more than two weeks following the public emergency period, you will be entitled to pay instead of notice based on your service with that employer as well as the temporary layoff period. The pay instead of notice varies from one week if you have worked more than 13 weeks but less than a year, up to eight weeks if you have worked more than 10 years.

Length of Service	Notice by Employer
13 weeks to 1 year	1 week
1 year to 3 years	2 weeks
3 years to 5 years	4 weeks
5 years to 10 years	6 weeks
More than 10 years	8 weeks

What earnings will be used to determine my pay instead of notice?

Under normal circumstances average earnings for the past 13 weeks are used to determine the pay instead of notice assessment. However, during the public health emergency leave, while the temporary layoff provisions are in place, employees are not likely to be earning their typical wages even if they returned to work fully or partially due to changes in business operations. The pay instead of notice assessment will be based on average weekly earnings prior to layoff notice date.

Can staff be recalled during a layoff?

Yes. During the layoff, employees can be recalled. Employees are still employed during a layoff and are obligated to return to work.

What if staff refuse to return to work during the layoff?

Employees are required to return to work. However, we encourage employers to listen to and address employee concerns with returning to work, especially if they are about health and safety. There are health and safety resources on saskatchewan.ca/COVID19 for employers and employees to access. If employees don't return to work as directed, they may end up being considered as abandoning their job and therefore to have resigned, which can affect their access to federal programs.

What if I don't qualify for Employment Insurance?

With the enhanced coverage from the federal government, it is anticipated that individuals who have been laid off will have options for compensation. Please contact www.canada.ca for more information about Employment Insurance. Currently, we understand that employment insurance payments are available for employees on temporary stoppages of work, (e.g., layoffs).

Do Employment Insurance payments or other federal or provincial support payments during layoff off-set or exempt an employer from pay instead of notice?

No. During a public health emergency, the employee deemed terminated is owed pay instead of notice if the periods of time without work exceeds two weeks following the public emergency. This is separate from special benefit programs that laid off employees may be entitled to by government agencies during the layoff.

What financial assistance is available to employers/business to assist them?

The federal government has made several announcements around employment insurance and other benefits available at this time. For more information, we encourage individuals to visit www.canada.ca/en/department-finance/news/2020/03/canadas-covid-19-economic-response-plan-support-for-canadians-and-businesses.html.

Can I, as the employer, reduce the hours my staff work every day in an attempt to prevent layoffs?

Reducing daily hours does not mean the employee is laid off. However, this may be a fundamental change to the employment contract it may lead to constructive dismissal claims. A lawyer may need to be consulted.

As an employer, what if I reduce work by a work day or two a week?

This would not lead to a layoff involving pay instead of notice under the legislation. However, such a reduction, without employee agreement, may lead to constructive dismissal claims if it isn't in your employment contract. Seek legal advice if you are thinking of this option for your business.

How do the new layoff provisions apply to seasonal layoffs? What if I am not recalled as normal during this public emergency?

There is no requirement under the legislation to recall seasonal staff.

Do the layoff provisions in my collective bargaining agreement or employment contract take precedent over the regulatory changes made?

Employment standards are the minimum entitlements and conditions of employment that apply to all work performed in Saskatchewan. However, if the collective agreement or other employment contracts exceed employment standards, then follow those provisions. Those agreements are not permitted to fall below employment standards legislation.

Can the employer take back the pay in lieu of notice that they have given employees? Is that a legal deduction?

If the employer has paid pay instead of notice when they were not legally required to and the employee refuses to return it, then the employer will have to pursue this in court. Since *The Saskatchewan Employment Act* (SEA) doesn't allow a wage deduction to recover an overpayment, there is no mechanism in legislation to require an employee to return that money.

How will the Employment Standards Division look at dismissals for organizations accessing the new wage subsidy program? Would they enforce constructive dismissal claims if employees earn 75 per cent of what they were paid and the employers didn't top up wages but maintained their employment?

The Employment Standards investigative and enforcement practice has been that an employee would have to quit to claim constructive dismissal in Saskatchewan. If the nature of the job changes leading to changes in wages or if the job remains the same and the employer changes wages but the employee continues to work for the employer – then the employee has indicated agreement to the change in employment contract. If the employee quits due to the change in wages, we would investigate to see if the job changed leading to change in wages or if the employer reduced wages without changes to the job and determine constructive dismissal based on investigation finding.

Employees always have the option to pursue civil action if we do not assess a constructive dismissal claim.

What if an employer laid off an employee prior to the public emergency layoff provisions came into force and now the employee is waiting for their pay-in-lieu of notice and has filed a claim with Employment Standards?

The legislation does not require employers to provide notice on layoffs. However, in the interest of clarity with their staff, most employers are doing so and we encourage them to continue. However, should such an employee file a claim with Employment Standards, we would investigate to determine if the business closed during the he public emergency period. If that is the case, then pay instead of notice would not be owed until two weeks following the end of the public emergency, as the change to the legislation is a matter of public record and has been communicated through a variety of public forums. While the employer would receive the benefit of time, the employee would not lose their minimum protection of pay in lieu of notice although it may be delayed.

As retail and other businesses are allowed to re-open, can employees that have been temporarily laid off decline to return to work when their employer contacts them? If they do will they be considered terminated?

When an employer is reopening, the employer has the same right to schedule and require an employee's attendance at work as they have always had. It is recommended that the employer work with the employee to ensure a smooth transition back to work keeping in mind that some employees may be eligible for public health emergency leave.

Employees should be aware that the employer has the right to direct staff to return and employees are expected to return according to that direction. Failure to do so may be considered a resignation from employment, although the employer needs to provide warning if the employer takes such action.

Do the employees need to be returned to the same position with the same hours and rate of pay?

Employees should be returned to work under the same terms that they were previously employed. If the terms are going to change, the employer should give the employee advance notice of the change. Even with advance notice an employee may not accept the change and could pursue a claim for pay instead of notice on the basis that their contract has been unilaterally changed without notice.

Can an employer reassign an employee to another position or other duties after a layoff, but maintain same rate of pay?

Possibly, if the employee agrees to the change or the employer provides proper notice of the change. However, this can depend on the amount of change and the employment contract, as a minor change or reassignment may be reasonable. However, a week's notice following the employee's return is required for a schedule change. Legal advice may be required.

Do the employees need to be brought back to work based on how long they have been with the employer?

There are no requirements to bring the most senior employees back first; however, employers must keep in mind that the temporary layoff provisions only allow a layoff for the duration of the public emergency period. If the employee is not scheduled for work after two weeks following the public emergency, pay instead of notice would be owing to the employee.

Where can I find more information?

The Government of Saskatchewan has created a single online resource for the most current information, statistics and guidelines regarding COVID-19. This information can be accessed at saskatchewan.ca/COVID19.

Employment Insurance contact info:

- General: 1-800- 206-7218
- COVID: 1-833-381-2725

Saskatchewan Employment Standards 1-800-667-1783 or email employmentstandards@gov.sk.ca

Occupational Health and Safety (OHS)

What type of personal protective equipment is required for the businesses that are allowed to reopen?

Employers and workers are encouraged to ensure they understand their workplace health and safety guidelines and responsibilities to meet the requirements of the Public Health Orders.

The Public Health Agency of Canada (PHAC) has developed a guideline, titled “Risk-Informed Decision Making Guidelines for Business and Workplaces During the COVID-19 Pandemic” that provides a risk assessment tool. The risk assessment tool is designed to help business owners and employers in identifying types of risks/exposures within their workplace and how to mitigate the risks through public health.

The guideline can be found at: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/guidance-documents/risk-informed-decision-making-workplaces-businesses-covid-19-pandemic.html>.

Information on safety requirements for the workplace are available on the Government of Saskatchewan website: [saskatchewan.ca/COVID19](https://www.saskatchewan.ca/COVID19), such as COVID-19 Appropriate Use of Personal Protective Equipment (PPE) Information for Employers.

Additional resources for workplaces are available at:

- WorkSafe Saskatchewan: www.worksafesask.ca/covid-19
- Workers Compensation Board (SK): <http://www.wcbsask.com>

Can an employee refuse to work, because of a lack of PPE?

Employees have the right to refuse to do any specific job or task which they have reasonable grounds to believe is unusually dangerous. The danger may be to the individual or to any other person. You cannot be fired or disciplined for using this right.

You are required to follow the proper procedures when refusing work.

[saskatchewan.ca/business/safety-in-the-workplace/rights-and-responsibilities-in-the-workplace/duties-and-rights-of-workers](https://www.saskatchewan.ca/business/safety-in-the-workplace/rights-and-responsibilities-in-the-workplace/duties-and-rights-of-workers).

Can I continue to operate my business without PPE outlined in the safety requirements for workplaces?

Employers are responsible for the health and safety of employees when in the workplace and as such need to take the appropriate measures of protection. If PPE supplies are required in order to continue, or to re-open, businesses should determine their specific needs and procure appropriate supplies directly.

Who is going to enforce the distancing and cleaning guidelines outlined for workplaces?

Employers are responsible for the health and safety of their employees. To report situations where an individual or business is suspected of being in non-compliance with Public Health Orders, complete the form available at: [saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/public-health-measures/public-health-orders/non-compliance-reporting-form](https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/public-health-measures/public-health-orders/non-compliance-reporting-form)

How can I operate my business if I can't meet the physical distancing requirements?

In the event that an allowable business service is unable to maintain two metre distancing, other measures such as self-monitoring of personal health or supervision by infection prevention and control officers or occupational health and safety officer in the workplace shall be applied.

Can I refuse unusually dangerous work?

You have the right to refuse to do any specific job or task which you have reasonable grounds to believe is unusually dangerous. The danger may be to you or to any other person. An unusual danger could include:

- A danger that is not normal for the job (e.g., repairing a roof in dangerous winds);
- A danger that would normally stop work (e.g., operating a forklift with a flat tire); or
- A situation for which you are not properly trained, equipped, or experienced to do the work assigned (e.g., cleaning windows on a tall building with no fall protection equipment or training).

You cannot be fired or disciplined for using this right. Occupational Health and Safety provides procedures to be followed when refusing.

Steps for Refusing Unusually Dangerous Work

If your supervisor/employer asks you to perform a specific job or task that you have grounds to believe is unusually dangerous, follow these steps:

1. Tell your employer/supervisor that you are refusing work because of a health or safety concern.
2. Do not leave the worksite without your employer's permission.
3. Contact your occupational health committee (OHC) or OHS representative if you cannot resolve the concern with the employer/supervisor.
4. Your OHC will investigate the refusal, meet and vote to determine if you have reasonable grounds to refuse the work. (The vote must be unanimous for or against the refusal.)
5. If the concern cannot be resolved within your workplace, contact an occupational health officer at the Occupational Health and Safety Division.
6. The officer will investigate the refusal and rule on the matter.

Your place of employment may have its own procedures for refusing unusually dangerous work. Ask your supervisor, occupational health committee, occupational health and safety representative, and/or union steward for information.

How do I refuse to work (employee)/How do I manage a work refusal (employer)?

saskatchewan.ca/business/safety-in-the-workplace/rights-and-responsibilities-in-the-workplace/duties-and-rights-of-workers

Procedural Summary for Investigating a Refusal to Work

