

Employment Standards Public Emergency Provisions and Occupational Health and Safety Requirements

For Step 3 of the Re-opening Roadmap

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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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Disclaimer

- This presentation is for your information and education; not legal advice or opinion.
- Consult a lawyer for advice on the application of the legislation to your specific situation.
- Refer to *The Saskatchewan Employment Act* (SEA) and the regulations for interpretation.
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3

Objectives

- To provide information about legislative responses to COVID-19.
- To review the impact of an ending of orders and restrictions on the legislation.
- To answer to some typical questions.
- To provide post-restriction occupational health and safety information.
- To share where to find more resources.

COVID-19 Pandemic

- With the COVID-19 pandemic,
 - the Chief Medical Health Officer (CMHO) issued public health orders and restrictions on people and organizations; and
 - government issued an emergency declaration and directions.
- These led to:
 - employees being unable to attend work since they have to either isolate or to care for dependents affected by an order; and
 - employers reduced or closed operations and needed fewer employees at work.

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In Response

- To provide protection and support, some employment standards were changed to:
 - help maintain employee attachment to their jobs,
 - allow employees and employers to access federal financial supports, and
 - sustain employers financially by deferring pay instead notice, helping them stay in business and keep jobs for after the pandemic.
- With the Re-opening Roadmap, restrictions and public health orders are planned to lift on July 11, 2021.
- Employers and workplaces will be open and employees will return to work.

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What happens with the public emergency provisions?

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The Employment Standards Public Emergency Provisions

- Public Health Emergency Leave
- Job protection for absences for illness (sick leave)
- Job protection during absences to access federal benefits:
 - Canada Recovery Sickness Benefit
 - Canada Recovery Caregiving Benefit
- Extended exemption from notice for layoffs
- Exemption from notice for group termination

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PUBLIC HEALTH EMERGENCY LEAVE

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Public Health Emergency Leave

- A job-protected employment leave for employees:
 - who are ordered to self-isolate; or
 - who must care for their child or adult family member who is affected by the direction or order of the Government of Saskatchewan or the Chief Medical Health Officer (CMHO).

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When Does The Leave Apply?

- When a public health emergency is determined by the World Health Organization, 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.

Entitlement to Leave - Orders 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 in the public health order.
- Direction could be from:
 - a doctor;
 - an employer;
 - the Government of Saskatchewan; and/or
 - the Chief Medical Health Officer.
- Employees must isolate and be away from the workplace.

Entitlement to Leave – Orders and Directions

- Employers, businesses and services were restricted or closed.
- Dependents aren't able to attend schools and programs, etc. that were subject to the orders and therefore are affected by an order.
- Employees needed to be off work to care for their affected dependent child or adult family member.

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Public Health Emergency Leave: Key Points

- Unpaid, but wages are owed if the employer let the employee work from home.
- Leave may be for length of the order to self-isolate or length of the direction/restriction affecting the employee's dependent.
- Advance notice by the employee isn't required for taking the leave or on return.
- Available regardless of the employee's length of service.
- A medical note isn't required.
- Employees who were informed in writing they are required to provide critical public health and safety services were exempt from the leave.
- Employment is maintained while on leave.

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After lifting orders and restrictions

- The public health emergency leave won't apply.
- The public health emergency won't apply in Saskatchewan.
- The general isolation order will be lifted.
- Employees won't need the job protection as they won't need to be away from work:
 - to comply with a CHMO public health order; and/or
 - to care for their dependents as they will be able to attend programs and services that were restricted or closed.

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Where to Find Public Orders

Visit saskatchewan.ca: 'COVID-19' banner at the top

The screenshot shows the Saskatchewan.ca website interface. At the top, there is a yellow banner with the text "COVID-19 - Latest information" and a "Learn more" link. Below the banner is the Saskatchewan logo and a search bar. The main navigation menu includes "Residents and Visitors", "Business and Industry", "Government", and "Services". The "Government" menu is expanded, showing "Home", "Government", "Health Care Administration and Provider Resources", "Treatment, Procedures and Guidelines", "Emerging Public Health Issues", and "COVID-19". The "COVID-19" page is displayed, featuring a green banner with the text "Find COVID-19 specific content" and a search bar. Below the banner, there are two main sections: "COVID-19 Vaccine" and "Public Health Orders". The "Public Health Orders" section has a green arrow pointing to it from the right.

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PROTECTION FROM DISCRIMINATORY ACTION FOR ABSENCES DUE TO ILLNESS OR INJURY

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Normal Protection From Discriminatory Action Due to Absences for Illness Or Injury

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

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Normal Protection From Discriminatory Action Due to Absences for Illness or Injury

- Employees must work for the employer for at least 13 consecutive weeks, and provide a medical note if requested by their employer.

What is 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.

Protection From Discriminatory Action For Absences Due to Illness for COVID-19: Public Health Emergency Provision

- If the absence for illness or injury of the employee is *a result of a public health emergency*, employees are:
 - protected from their first day of work, and
 - don't need to provide medical evidence.

After lifting restrictions and orders

- The public health emergency exemptions will continue for an employee's COVID-19-related illness.
- Employees also have the normal job protections for absences due to illnesses or injuries for themselves or immediate family.

JOB PROTECTION FOR ABSENCES TO ACCESS FEDERAL RECOVERY (SICKNESS OR CAREGIVING) BENEFITS

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Protection for Employees Accessing Federal Recovery Benefits

- In September 2020, the federal government announced the Canada Recovery Sickness Benefit and Canada Recovery Caregiving Benefit.
- Currently, these benefits extend until September 25, 2021.
- Saskatchewan added employee protection from discriminatory action (such as job loss) to access these benefits.

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Protection for Employees Accessing Federal Recovery Benefits

- Protects an employee who is:
 - absent from work,
 - believes they are eligible for recovery sickness or caregiving benefits,
 - may not have provided notice of absence, and
 - is in receipt of, or will be applying for either Canada Recovery Sickness or Caregiving Benefits.

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Protection for Employees Accessing Federal Recovery Benefits

- Protects employees from their first day of work, no matter their length of service.
- Employees are expected to provide their employer as much notice as possible when they are away and when returning.
- Employees aren't required to provide medical evidence or evidence of application.

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After lifting restrictions and orders

- This protection applies as long as the applicable federal recovery benefits are available, which is currently until September 25, 2021.

Canada Recovery Sickness Benefit Eligibility

- Employees are eligible if unable to work for at least 50% of a week, and:
 - 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 for a dependent 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.

Canada Recovery Caregiving Benefit Eligibility

- Employees are eligible if unable to work for at least 50% of a week, and:
 - 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.

Source: www.Canada.ca

TEMPORARY LAYOFFS DURING A PUBLIC EMERGENCY

Layoffs in SEA

- A layoff is a temporary work interruption by an employer.
- Employers must notify employees in advance of a layoff of more than 6 consecutive work days.
- Otherwise, pay instead of notice is owed.

Public Emergency Extended Layoff Provision

- During a public emergency period and for two weeks following the end of the public emergency period, employers aren't required to provide notice or pay instead of notice for layoffs.
- Employers are exempt from the normal layoff requirements.

A Two-Week “Grace Period”

- To prepare for the return to work.
- Employers must provide employees with a work schedule no later than the end of the two weeks after the end of the public emergency period.
- If an employee isn’t scheduled,
 - the employee’s employment is terminated; and
 - is owed pay instead of notice.

Public Emergency Period

- A “public emergency period” is a time period when either of these are in place.
 - An order of the chief medical health officer to address a “public health emergency”.
 - A civil emergency declaration under *The Emergency Planning Act*.

Scheduled

- Scheduled means...
 - The employee has been given assigned times and dates to work comparable to their employment prior to layoff.
 - The employer has included the employee's name in the employer's work schedule and that schedule is provided to the employee.

Scheduled

- Employers show that employees are scheduled when there is a:
 - Return to regular rotations/shift assignments;
 - Retained employment relationship;
 - Clearly documented recall process;
 - Return to work date is set within a reasonable period of time according to the employment relationship; and
 - Return to work.

Scheduling Requirements

- Scheduling requirements include:
 - Time when work begins and ends;
 - When a meal breaks begins and ends; and
 - Covers at least one week.
- Notice of a schedule must be at least at week in advance of the start of the schedule.
- Be personally given to the employee, or posted online where the employee may access it, or any other manner that informs the employee.

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Examples of Scheduling

If the employer has had a scheduling rotation, here are some examples when the employee is scheduled.

- If there is a one-week rotation, the employee must be in the schedule in the first or in the second week.
- If there is a two-week rotation, the employee must be in the schedule no later than in the third week.
- If there is a three-week rotation, the employee must be in the schedule no later than in fourth week.
- ...And so on.

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“On-call” employees

- Employees without a set schedule prior to layoffs may be returned to the same status as being scheduled as needed or “on call”.

If An Employee Doesn't Return

- If an employee decides not to return to work as scheduled, the employee is deemed to have abandoned their job and quit.
- And no pay instead of notice is owed.

Employer's Role

- Make and document reasonable attempts to contact employees.
- Ensure employees are aware of the schedule.
- Consider employee explanations for not being able to return as scheduled once notified.
- Provide clear direction, including warnings of considered to have quit for not returning to work as scheduled.
- Show reasonable attempts to resolve reasonable employee explanations for non-attendance, as in normal times.

Employee's Role

- Be available to return to their job as it was prior to the layoff.
- Respond and acknowledge the employer's notification of a schedule to return to work.
- Attend work as scheduled according to their employment before layoff.
- Inform their employer of any required employment accommodation.
- Provide a reasonable explanation of not returning as scheduled.

Pay Instead of Notice on Termination

- The layoff period is included in period of employment.
- The length of the period of employment determines the number of weeks of notice owed.
- Use normal weekly wage from before the layoff.
- Multiply the normal weekly wage by the number of weeks of notice owed.

Notice of Layoff and Termination Section 2-60, SEA

Period of Employment	Required 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

Layoff Rules After 2 weeks Following the Public Emergency

- Employers must provide the following:
 - Notice of a layoff that is more than 6 consecutive work days.
 - Pay instead of notice, if the layoff is 7 consecutive days or more.
- Applies to employees with more than 13 consecutive weeks of service.

Notice of Layoff and Termination Section 2-60, SEA

Period of Employment	Required 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

GROUP TERMINATION NOTICE

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Group Termination Notice

- During the public emergency period, employers are only required to provide group termination notice to the Minister of LRWS.
- Employers are exempted from providing group termination notice to employees and their unions.

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Group Termination Notice

- After the public emergency period, unless exempted by regulation,
 - employers must provide notice of group termination to employees, their union, and the Minister of LRWS.
- No two week grace period, as in the layoff provision.

QUESTIONS AND ANSWERS – Employment Standards

I heard the Premier say that orders and restrictions would be lifted on July 11. What COVID-19 related employment standards will still apply?

Won't continue

- Public health emergency leave
- Extended layoff exemption
- Exemption from group termination notice

Will continue

- Job protection for sick leave
- Job protection to access federal sickness and caregiving benefits

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Can my employer make me get vaccinated? Or can I make my employees get vaccinated?

- Vaccination is personal health information.
- Employment Standards does not regulate health-related matters.
- The employer has a legal obligation to ensure a healthy and safe workplace.
- While employers may encourage vaccination, employers have to balance reasonable health and safety and no other alternative (e.g. masking or distancing) and employee privacy.

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Can my employer terminate me for not getting vaccinated?

- Generally, employers may terminate employees with more than 13 weeks with notice (Notice isn't required for employees with 13 weeks or less of service).
- For terminations without notice, employers would have to show just cause.
- Just cause to terminate without notice for not being vaccinated must balance of the employee's right to privacy and the employer's responsibility to provide a healthy and safe workplace.
- As in all terminations without notice, just cause will depend on a number of factors, such as the employment contract, the nature of the work itself, and any employee medical conditions requiring accommodation.

Can my employer require me to wear a mask at work?

- Employment Standards doesn't regulate or prohibit whether an employer requires employees to wear a mask.
- Employers can't require an employee to purchase clothing with the employer's name on it.
- If the employer requires an employee to wear a mask with the employer's name on it, it is to be provided free.

Can my employer terminate me for not wearing a mask?

- Even if not mandated by public health order, some employers may implement a masking policy for health and safety precautions.
- Not following a fair masking policy may be grounds for termination of an employee.
- Employers will have to show just cause for terminations without notice or pay instead of notice.

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Can my employer send me home if I am ill? Do they have to pay me for the time I am away?

- Employers are not prohibited from keeping an ill employee from the workplace, especially if it means protecting other employees.
- Employers are not required to pay for time away.
- Employees have job protection for 12 days in a calendar year for absences for illnesses that aren't serious, and 12 weeks in a period of 52 weeks for more serious illness.
- Until September 25, 2021, employees also have protection if they are applying for or in receipt of the Canada Recovery Sickness Benefit.

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What if my employer permanently closed?

- If your employment has permanently ended, normal notice or pay instead of notice rules apply.

Was my employer allowed to lay me off without notice?

- Employers may lay off employees without notice during the public emergency period plus the two-week period.

Do employers have to pay vacation pay during a layoff or leave?

- Since employment continues, an employer isn't required to pay out vacation pay.
- Vacation service continues to accumulate during both layoffs and leaves.

My business has been restricted. With the orders lifted, can I bring my employees back earlier than the two weeks?

- Yes, as long as they get at least a week's notice.
- Employers may end their layoffs and return employees at any time as long as they are complying with a public health order or direction.
- Laid off employees must be scheduled after 2 weeks (14 days) following the end of the public emergency period and lifting of orders and restrictions.

As a business owner, what I do if my employees don't return before the restrictions are lifted?

- Employers can require employees to return to work at any time during a layoff.
- Employees need to be provide correct notice of a schedule to return.

What's required for proper notice of a work schedule?

- Employers must:
 - personally give it to the employee;
 - post it in the workplace;
 - post it online to a website the employee has access to; or
 - provide it in any other manner that informs employees of the schedule.

Can my employer provide me a different schedule than what I had before the layoff?

- Employees are entitled to a scheduled return from layoff with the same employment arrangement in place before.
- The employer may provide you with the scheduled return or pay instead of notice, ending your employment.
- If you don't return as scheduled, you will be deemed to have resigned.

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As the employer, can I reduce hours or pay when employees return from layoff?

- Employees are to be scheduled to return to work to their employment as before the layoff.
- If employees aren't scheduled back to previous employment, pay instead of notice may be owed.
- Unilateral, substantial changes to essential employment terms (hours or pay) by an employer without notice may lead to claims of constructive dismissal (i.e. termination).
- Employees would have to leave the employer and file for pay instead of notice.
- Generally, employers need to provide notice of changes after the laid off employee has returned, as entitled.
- Some employees may accept the change without notice.
- "Substantial" or "essential" depends on the employment contract.

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My employer called me back to work but I am sick at home with COVID-19 related symptoms. What am I entitled to under SEA?

- Your job is protected if you are ill for up to 12 days in a calendar year, or 12 weeks in a period of 52 weeks if it's serious.
- If your illness is a result of a public health emergency such as COVID-19, 13 weeks of employment or a doctor's note are not required.
- You are protected for absences to access the Canada Recovery Sickness Benefit.

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I need to say home from work to look after my young child with COVID-19 symptoms. What provisions apply?

- Until September 25, 2021, employees have protection for absences to access the Canada Recovery Caregiving Benefit.
- Employees with 13 weeks of employment also have protection for absences of 12 days in calendar year or 12 weeks in a period of 52 weeks for serious illness or injury of a dependent immediate family member.

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Why can't I get a public health emergency leave?

- If the orders and directions/restrictions are lifted, the leave doesn't apply.
- The leave provided job protection during a public health emergency when CMHO issued public orders and Government restrictions closed facilities.
- Other protections exist if you need to be away from work, including if you are ill, have to care for an ill dependent, or are accessing federal recovery sickness or caregiving benefits.

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Some staff working from home or laid off don't feel comfortable coming back because of COVID-19, but I need them to return.

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

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What do employers need consider if employees refuse to return to work?

- Consider if your employee:
 - has properly been notified of their schedule;
 - is entitled to illness protections;
 - requires a medical accommodation; and
 - has a reasonable workplace health and safety concern.
- After all is considered and reasonable notification of schedule is provided, employees are deemed to have quit if they don't return as scheduled.

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Do I have to tell my employer why I am away from work if it's to access the federal recovery benefits?

- Yes. Generally, employers have a right to know when you are away from your work and why.
- You aren't required you to prove your illness or your application for benefits.

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Occupational Health and Safety

After restrictions.

Exposure Control Plans

- Now that the public health orders have lifted, not all employers are required to have a COVID-19 exposure control plan.
- Employers must conduct a hazard assessment to determine if they are required to develop a COVID-19 exposure control plan for their workplace.
- If a worker works with an infectious material or organism or needs to be vaccinated against an infectious material or organism that is an infectious disease hazard, then section 6-22 of *The Occupational Health and Safety Regulations 2020* for exposure control plans apply.

Right to Refuse

- A worker's right to refuse unusually dangerous work has not changed because of the pandemic.
- Workers have the right to refuse to perform any specific job or task which they **have reasonable grounds to believe is unusually dangerous**. The danger may be to the worker or to any other person at the workplace. 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).

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Right to Refuse

- Follow these steps to resolve a work refusal:
 - The employee informs their employer/supervisor that they are refusing work because of a health or safety concern pursuant to section 3-31 of *The Saskatchewan Employment Act*. The supervisor asks the employee what task or tasks they are refusing and why they believe the work is unusually dangerous.
 - The employee should not leave the worksite without their employer's permission.
 - If the worker and supervisor cannot resolve the concern to the worker's satisfaction, they contact their workplace occupational health committee (OHC).
 - The OHC investigates the refusal to determine if there are reasonable grounds to refuse the work. The OHC's decision must be a **unanimous** vote for or against the refusal.
 - If the refusal cannot be resolved within the workplace, contact the Occupational Health and Safety Division at the Ministry of Labour Relations and Workplace Safety by calling **1-800-567-7233**.
 - An occupational health officer will investigate the refusal and provide a written decision on the matter.

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QUESTIONS AND ANSWERS – Occupational Health And Safety

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Most vaccines require two shots. Can employees use paid time off for a minimum of three hours for each time or is it a cumulative amount of time?

- Under the occupational health and safety regulations, paid time off is for one vaccination shot.

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With the orders lifted, do employers still need to limit exposure to COVID-19 for workers?

- Under *The Occupational Health and Safety Regulations, 2020*, employers must take every reasonable precaution to protect the health and safety of workers.

Do I have to wear a mask in the workplace after I get vaccinated?

- Workplaces will continue to follow any public health orders issued by Chief Medical Health Officer.
- Additional measures may be implemented by employers to address hazard in the workplace to protect the health and safety of the workers.
- Employees have a duty to follow these measures and use any protective equipment as provided by their employer.

Can I request proof from employees that they have been vaccinated?

- In most cases the employer cannot request personal medical information such as status of vaccination from a worker.
- However, in exceptional circumstance where there is a high risk of transmission to a vulnerable client population, employers may have the ability to access limited information.
- Employers should consult a lawyer to make a determination.

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Can a worker be fired for refusing unusually dangerous work?

- No. Workers cannot be fired or disciplined for using this right.

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OTHER RESOURCES

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Employment Standards Division

For more information about the SEA:

- Call Centre: 1-800-667-1783 (free)
- employmentstandards@gov.sk.ca
- www.publications.gov.sk.ca
- www.saskatchewan.ca/business/employment-standards – includes regular webinars on various employment standards
- Visit any of our 8 locations across the province.

82

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Employment Standards

- More Questions and Answers:
 - Visit www.saskatchewan.ca...Information for Businesses and Workers...Supports for Business...Managing Staffing and Leave.
- Listen to recordings and register for live webinars at www.saskatchewan.ca under:
 - [Employment Standards Training](#); and
- Email any comments and suggestions to lrwswebinarteam@gov.sk.ca

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Some Government of Saskatchewan Resources

- Provincial Workplace Safety Questions:
 - Occupational Health and Safety: 1-800-567-7233
- General Information for Businesses
 - Business Response Team: 1-844-800-8688
 - Email - supportforbusiness@gov.sk.ca
- For Non Health-Related Public Safety Questions:
 - 1-855-559-5502 (for Regina residents: 306-787-8539)
- Public health inquires: email COVID19@health.gov.sk.ca

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Other Resources: Government of Canada

- www.Canada.ca
– click on “COVID-19 finance assistance” link

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Finding Employment Standards' Website

The screenshot shows the Saskatchewan government website. At the top, there is a navigation bar with the Saskatchewan logo and a search bar. Below the navigation bar, there is a main banner for COVID-19 with the text "COVID-19" and "Latest Updates, Vaccine Information, Public Health Measures". Below the banner, there are four columns of services: "I want to...", "Workplace", "Students", and "Health". The "Workplace" column is highlighted with a blue box around the "Vacation, leaves and absences" link.

I want to...	Workplace	Students	Health
<ul style="list-style-type: none">> Purchase a hunting licence> Check highway conditions> Find licensed child care> Find and apply for jobs	<ul style="list-style-type: none">> Employment standards> Wages and pay> Vacation, leaves and absences> Workplace safety	<ul style="list-style-type: none">> Student loans> Graduate Retention Program> Scholarships and grants> Anti-Bullying	<ul style="list-style-type: none">> COVID-19 Vaccine Appointments> Health cards> HealthLine Online> MySaskHealthRecord

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Finding Employment Standards on the Web

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<https://www.saskatchewan.ca/business/employment-standards>



Finding LRWS Legislation

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Finding Saskatchewan Legislation

www.publications.gov.sk.ca

The screenshot shows the Saskatchewan Publications Centre website. At the top, there is a navigation bar with tabs for 'Residents and Visitors', 'Business and Industry', 'Government', and 'Services'. Below this is a search bar with the text 'Search our catalogue of over 40,000 publications.' and a search button. There are also links for 'My Resources', 'My Orders', and 'My Items'. The main content area is divided into two columns: 'Most Popular Documents' and 'Featured Publications'. The 'Most Popular Documents' section includes links to 'Wildlife Management Zone Map', '2019 Anglers' Guide', '2019 Saskatchewan Resident Big Game Draw Supplement', and '2018 Hunters' and Trappers' Guide - Complete PDF'. The 'Featured Publications' section includes links to 'Management and Reduction of Greenhouse Gases Compliance Standard', 'The Mines Regulations, 2018 (Bound)', 'Saskatchewan Tick Surveillance Summary 2018', 'Division of Family Property Self-Help Kit', and 'Healthy Foods for my Recreation Setting - Getting Started'.

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