

# COVID-19: Questions and answers

## Employment Standards and Occupational Health and Safety

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### Contents

Public Health Emergency Leave .....	1
Layoff Provisions .....	2
Protection for Workers Accessing Federal Recovery Benefits .....	4
COVID-19 Vaccination Leave .....	5
Occupational Health and Safety .....	6

With a new public health order in place on September 13, 2021, the provision of a public health emergency leave is again available for employees.

The information below is intended to assist employers and employees as the province moves to recovery from the pandemic.

### Public Health Emergency Leave

#### When am I entitled to a public health emergency leave?

When a public health order is in place and you need to be away from work in order to self-isolate as required by the public health order.

You are also entitled to this leave if you must be away from work to care for an child or adult family member who is affected by an order or direction of the provincial government or chief medical health officer, such as if your child must isolate from school or daycare.

#### How long am I entitled to the leave?

You can take a leave for as long as you are required to isolate or care for someone required to isolate in order to follow the public health order.

#### Do I have to provide any medical information to my employer to access this leave?

No.

#### What if I am required to self-isolate as a close contact? Will I still be able to receive this leave?

Employees are entitled to leave for the length of their requirement to self-isolate. This also applies if the employee must care for a member of their immediate family.

## **What about sick workers? Do they still have job protection?**

If a worker is ill, then *The Saskatchewan Employment Act* protects the employee from discriminatory action during absences 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. This protection starts from the first day of employment and a medical note isn't required.

Eligible workers will also continue to have job protection when away from work and applying for/receiving the Canada Recovery Caregiver Benefit and Canada Recovery Sickness Benefit up until October 23, 2021, according to the current rules for those benefits. Visit [www.canada.ca](http://www.canada.ca) for current information.

## **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.

## **What options will workers have if they need to care for a child or family member as a result of COVID-19?**

Currently, until October 23, 2021, eligible workers will have job protection to be able to access the Canada Recovery Caregiver Benefit and Canada Recovery Sickness Benefit.

Employees may also access public health emergency leave if they are required to provide care or support to their child or adult family member who is affected by a direction or order of the provincial government or chief medical health officer.

## **What if my employer allows me to work from home when I am required to self-isolate?**

If the employer allows an employee to work during self-isolation, the employee must be paid their regular wages and benefits.

## **Who can order an employee to self-isolate?**

To comply with public health order, their employer, their doctor, the Government of Saskatchewan or the chief medical health officer may order an employee to self-isolate.

## **Layoff Provisions**

### **Are there any COVID-19-related layoff provisions in effect?**

No. The previous regulation that provided an exemption to the normal layoff provision ended two weeks after the state of emergency and previous public health orders ended, which was July 25, 2021.

### **What was supposed to happen at the end of the two weeks following the end of the public emergency when that provision was in place?**

An employer was required to inform an employee of their schedule no later than the end of the two week period after the state of emergency and previous public health orders lifted. The employee would be entitled to pay instead of notice if they were not scheduled to work after the two weeks.

## What were the two additional weeks for?

The additional time was a “grace period” to allow employers whose operations have been restricted and their employees time to prepare to return to work. Employers were required to inform employees of their work schedule no later than the end of the two weeks. Employees must still be provided at least one week of notice of their first scheduled shift.

Employees who were not scheduled were to be considered terminated and pay instead of notice was due within 14 days. Pay instead of notice is calculated from wages previous to the date the employee was first laid off.

## What earnings are used to determine pay instead of notice?

The pay instead of notice will be based on the greater of the earnings during the period of notice, or the normal earnings for the period of notice. If the employee’s wages vary, it will be the average weekly wage for the 13 weeks worked prior to the layoff multiplied by the number of weeks of notice entitlement.

## If my employer didn’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 lifting of provincial public health orders and emergency declaration, you will be entitled to pay instead of notice based on your service with that employer including 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

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

Workers generally must be returned to work under the same terms and conditions that they had prior to the layoff. A layoff is not a break in employment; it is a temporary break in work.

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 believe they have been terminated. The employee may then decide to pursue a claim for pay instead of notice on the basis that their contract has been unilaterally broken without notice. Employers or employees may need legal advice for these situations.

## The public emergency layoff provisions no longer apply, but I am not re-opening or unable to resume business. Do I still have to schedule employees back?

While this is difficult, employees who were not scheduled by the end of the two weeks following the lifting of restrictions and state of emergency (July 25, 2021) are entitled to pay instead of notice.

## Was my employer allowed to lay me off?

The *Employment Standards Regulations* were amended to exempt employers from notice or pay instead of notice of layoffs during the period when the provincial health order and emergency declaration was in place and for two weeks after. These provisions have now been repealed and are not available.

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

*The Saskatchewan Employment Act* requires that the schedule must be personally given to the employee, posted in the workplace, posted online to a website the employee has access to, or provided in any other manner that is customary, or consistent with how the employer notified employees of their schedules prior to the layoff.

## **What's required in a work schedule?**

Schedules must include the time when work begins and ends, and when any required meal break begins and ends; and must cover at least one week at a time. Schedules must be given to employees one week in advance of the start 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.

## **Protection for Workers Accessing Federal Recovery Benefits**

### **Even though the orders have been lifted can an employee who needs to be off work to look after a child still apply for the federal caregiving benefit? Is their job still protected?**

Yes. Eligible workers will also continue to have job protection when away from work and applying for/receiving the Canada Recovery Caregiver Benefit and Canada Recovery Sickness Benefit up until October 23, 2021.

### **If am away from work but I am denied recovery benefits, am I still protected?**

Yes, as long as it's reasonable that you believed you were eligible. However, you must return to work if you find out you are not eligible. There is no protection if you are absent from work for reasons not relating to accessing these federal benefits.

### **Do I have to inform my employer of the reasons for my absence from work while I access these benefits? Can my employer require me to provide medical evidence?**

While you need to tell your employer why you are away from work; your employer cannot require you to provide medical evidence or evidence of your application for benefits.

### **Do I have to notify my employer that I will be away from work?**

Yes – however, the employer can't take discriminatory action against you if you aren't able to provide advance notice. You are required to provide as much notice as possible before you are away and when you return.

### **Do I have to notify my employer in advance of my return to work after accessing the federal sickness or caregiving programs?**

Yes, you must inform your employer in advance of your return to work. You should provide as much notice as reasonably possible.

If you have specific questions regarding leaves and layoffs, please contact Saskatchewan Employment Standards 1-800-667-1783 or email [employmentstandards@gov.sk.ca](mailto:employmentstandards@gov.sk.ca).

## COVID-19 Vaccination Leave

### **Are workers still able to access the vaccination leave?**

Upon request to an employer, workers are able to take a minimum of three consecutive hours of paid time off to receive a COVID-19 vaccine during work hours. Employers can provide more than three hours off if they feel it is warranted to receive the vaccine. The COVID-19 vaccination leave is only applicable to one dose.

Each employer needs to have conversations with their staff about what is a reasonable time away for a vaccination. The three hours is a minimum amount of time, however an employer can allow for more than three consecutive hours leave if it is warranted.

### **Will government reimburse employers for having to provide paid time for employees to receive the vaccine during work hours?**

There will not be a cost recovery program associated with this new regulation.

### **Can you provide an example of when more than three hours of leave would be warranted?**

An example would be where a worker is required to travel from a remote location to receive a vaccination.

### **Are employers responsible for paid time off if the worker has a reaction to the vaccine and needs to stay home or be hospitalized?**

No. If a worker needs to be away from the office as a result of a reaction to the vaccine they will need to use sick leave or other leave options that may be available to them.

### **Most of the vaccines require two shots, can employees use paid time off for a minimum of three hours each time or is it a cumulative amount of time?**

The paid time off is for one vaccination shot.

### **Can workers who have had their first shot before the special COVID-19 vaccination leave legislation came into force (March 18, 2021) now take paid time to receive a second dose of the vaccine?**

Yes. In this circumstance upon request, workers would be entitled to a minimum of three consecutive hours of paid time off to get their second dose if vaccinated during work hours.

### **If a worker receives paid time for their first dose of the vaccine, can employers require a worker to take sick leave or vacation time to receive a second shot?**

Employers and workers should discuss options to determine the best way for workers to get a second dose as currently the paid time off is for one dose only.

### **Can workers split the three-hour minimum time between the two shots?**

The current regulations indicate that the leave is for three consecutive hours not a total of three hours.

### **Can employers determine when a worker gets time off for a vaccination?**

Workers are required to request time away. Workers and employers must work together to arrange a mutually acceptable time to ensure operational requirements are met in the workplace.

### **If a worker is only part time are they still entitled to paid time off for getting vaccinated?**

Yes. Workers who are part time employees are still able to request time off to receive the COVID-19 vaccine during work hours.

## **Will a worker be entitled to paid time for receiving the vaccine outside of working hours?**

Under the COVID-19 vaccination leave a worker being vaccinated outside work hours would not be entitled to reimbursement.

## **If a worker already received a COVID-19 vaccination and had to take personal time or other leave can they now claim the cost of time back to the employer?**

No. The paid time off for a minimum of three consecutive hours only begins when the regulations come into force which is March 18, 2021.

## **Occupational Health and Safety (OHS)**

### **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 the 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.

### **Do I still require an exposure control plan? Can the Ministry of Labour Relations and Workplace Safety still require me to show an exposure control plan to an officer?**

Now that the public health orders have been lifted, not all employers are required to have a COVID-19 exposure control plan. Employers must have a competent person conduct a hazard assessment to determine if they are required to develop a COVID-19 exposure control plan for their workplace.

### **When would a workplace need a COVID-19 exposure control plan?**

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 would apply. Some examples where a plan may still be required could include hospitals, dental offices, police, EMS, firefighters, corrections workers and other workplaces.

### **Can a worker refuse work because of COVID-19?**

Workers have the right to refuse to do any specific job or task which they have reasonable grounds to believe is unusually dangerous. 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).

### **Can a worker be fired for refusing unusually dangerous work?**

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

## What are the steps for a worker to refuse 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. 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. It is helpful if this is documented in writing.
2. The employee should not leave the worksite without their employer's permission.
3. If the worker and supervisor cannot resolve the concern to the worker's satisfaction, they contact their workplace occupational health committee (OHC).
4. 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.
5. 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.
6. An occupational health officer will investigate the refusal and provide a written decision on the matter.

For specific occupational health and safety questions please contact 1-800-567-7233.