

# Employees are Afraid to Return to Work. Now What?

May 2020 - 2 min read

On May 13, 2020 we hosted a webinar about pandemic-related work refusals as Alberta and other governments enable businesses and other organizations to reopen and call employees back to work. The most frequently asked question was: What do I do with an employee who is afraid to return to work (or doesn't want to) for health or family related reasons? Examples included immune-compromised workers or their family members and employees without available child care.

In Alberta, this question engages both our occupational health and safety (OHS) and human rights laws. From an OHS perspective, employers must assess whether the risk of harm – here, a risk of infection with the novel coronavirus that causes COVID-19 – and determine if there is a dangerous condition in the workplace or if the work is dangerous work. If so, the danger of injury or illness (physical and psychological) must be remedied by eliminating or controlling the hazards involved.

Under human rights laws, we are required to accommodate to the point of undue hardship, employees who are parents who lack available child care during the pandemic to allow their return to work. While accommodation is not required to the point of perfection, it is (and is meant to be) an onerous standard.

Since risk of infection with the novel coronavirus cannot be eliminated, employers must follow the hierarchy of hazard controls: engineering (e.g. physical barriers), administrative (e.g. physical distancing, hand washing), and personal protective equipment or PPE (e.g. masks, face shields, gloves). If, after adopting the best available hazard controls, we determine that the work is not dangerous and no dangerous condition is present at the work site, we complete our written report, provide it to the refusing worker and, if that worker continues to refuse to work, we reassign the work following the requirements in Part 4 of the *OHS Act*.

Under OHS laws, we also need to ask whether the risk of infection for a refusing worker poses a hazard to the worker's psychological health and well-being. This may depend, in part, on the worker and whether a diagnosed medical condition (e.g. generalized anxiety disorder) which, while managed before the pandemic, places the worker at risk of injury or illness if forced back into the workplace. We cannot force employees to disclose a mental health condition and if none is disclosed, all hazard controls have been implemented and the worker still does not want to return to work that cannot be performed remotely, employers may be in a position to terminate the worker (including for job abandonment) or, if possible, layoff or extend an existing layoff and defer a final decision by either the employee or employer until a later date.

If an employee disclosed a mental health condition, the duty to accommodate under the *Human Rights Act* is triggered. To ensure we are properly accommodating the disability, we may ask the employee for a doctor's note indicating what accommodations are required to ensure the employee's ability to perform required tasks and confirming that the employee is fit to work if those accommodations can be put in place.

## Services

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Where employees' response to a call back to work is more preference than refusal, employers may be in a position to terminate (subject to the terms of a collective agreement in unionized workplaces), particularly for work that cannot be done remotely. However, we encourage employers to look at alternatives and consider the risk of workers making OHS, human rights and/or employment standards complaints and determine the best path forward in each instance.

If you have any further questions regarding work refusals or have other OHS concerns, please contact [Steve Eichler](#) in Calgary or Sharon Roberts in Edmonton.