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**In partnership with Cowan Insurance Group**

**Return to Work, Wellness, Health Claims Trends, and  
Retirement - Impact of COVID-19 on the next 12 months**

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Please note all information provided during this session is not intended to, constitute legal advice; instead, all information, content, and materials available are for general informational purposes only.

# Agenda

- Administering Recalls / Reintegration
  - Mitigating Constructive Dismissal Risks
  - Meeting Occupational Health & Safety Act (OHSA) Obligations
  - Managing Employees Refusing to Report
- 
- All of these are interdependent measures



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# Administering Recalls / Reintegration

# Recalls / Reintegration

- Ensure you avoid the deemed termination trigger under provincial rules for temporary layoff.
  - 13 / 35 in Ontario.
- Employee has a contractual obligation to return to work as directed (subject to OHSA/Public Health Orders).
  - Valid source of resistance: work refusal or Human Rights accommodation (childcare and disability).
    - Fear of using public transit to get to work?

# Recalls / Reintegration

- Ensure recall properly administered.
  - In Alberta, recall notice must be served on employee, in writing and stating employee must return to work within 7 days from date notice served.
  - No prescribed format of recall notice in Ontario, employers should ensure employee actually receives notice of recall and given reasonable period to return.
    - Forfeit termination pay if do not return in reasonable time
- Recall letter should detail healthy, safety and wellness procedures and benefits in place.

# Recalls / Reintegration

- Ensure recall / return properly administered.
  - Caution if using as a culling exercise.
    - *Human Rights Code* (e.g., age, disability etc.).
    - Ensure objective criteria (e.g., seniority, qualifications, performance, point system).
- Follow up before assuming abandonment.
- Willingness to reconsider employment cessation on new information.



# Recalls / Reintegration

- Graduated and/or staggered return to work to allow time for confidence to take root.
  - Modified schedules, gradual increase in days/hours.
  - Caution on 50% reduction = layoff week.
  - Gradual change in split between work from home and days in the office.
- Risk employee may treat changes in compensation and other key terms of employment as a Constructive Dismissal.

# Recalls / Reintegration

- Vacation scheduling needs to be mapped out.
- Generally employer right to unilaterally schedule vacation.
  - Subject to existing policy although unprecedented circumstances may allow immediate revisions.
- Plan for ongoing protected leaves.
- Contingency planning if 2<sup>nd</sup> wave of pandemic.
- Anticipate more cautious self-quarantine.



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# Mitigating Constructive Dismissal Risks

# Managing Constructive Dismissal

Respond to constructive dismissal claims, or complaints just short of that:

- If gradual increase in work and pay, provide assurances with a timeline.
- Consider Work Share for income support or CEWS.
- Consider retention bonus.
- Allow for mixed work from home and workplace attendance, gradual increase in time at workplace.
- Robust compliance with OHSA obligations accompanied by detailed communiques to employees.



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# Managing Refusals to Report to Work

# Managing Refusals to Report

- Anticipate outright refusals based on fear.
- Demands for continued work from home.
- Response with leave requests for childcare and/or immunocompromised employees or those with co-morbidity factors.
- Provide details around safety protocols in place and commitment to employee health, safety and wellness.
  - Rely on public health materials for comfort.

# Managing Refusals to Report

Ensure to manage case-by case:

- Is there a protected ground underlying refusal.
- Seek more information, including medical.
- Are there personal circumstances that can be accommodated even if not legally required.

# Managing Refusals to Report

- For outright refusals, attempt to address concerns, failing which:
  - Progress through the steps in work refusal process, including contacting the MOL.
    - Over 200 investigated by MOL since outbreak and none upheld to this point (*Toronto Star April 27, 2020*).
  - Respond to refusals with escalating discipline, but engage in case by case considerations.
- Exercise caution as court/tribunal sympathies will favour employees in COVID19 return to work environment.





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# Complying with Obligations under Occupational Health & Safety Act (OHSA)

# OHSA Obligations

- Appoint a team for COVID19 accountability.
- Consult with experts for OHSA due diligence:
  - Medical professional, occupational health and safety specialist and/or industrial hygiene specialist.
- Reevaluate office or production floor layout.
  - One way routes around the premises.
  - Single occupancy washrooms.
  - Shielding between desks and staggered seating.
  - Maintain 6 feet of separation as much as possible.

# OHSA Obligations

- Supply relevant PPE and provide training.
- Remote conferencing for meetings.
- Establish system for proactive screening before appointments are even scheduled.
- Passive screening by signage at points of entry to inform people about specific protocols.
- Robust cleaning schedule around touch points.
- HVAC systems filter/purge air on a nightly basis.

# OHSA Obligations

- Reciprocal duty on employees to report COVID19 symptoms or potential exposure.
- Cooperate with workplace COVID19 protocols.
  - Personal hygiene.
  - Physical distancing.
  - Temperature monitoring.
  - Symptom inquiries/screening.
  - Wear any PPE supplied.
  - Training (yes, handwashing and how to don a mask).

# Conclusion

- Miller Thomson tracks and reports on all things COVID19 which you can review at:
  - <https://www.millerthomson.com/en/covid-19-resources/>
- Subscribe to our Labour & Employment newsletter and webinars:
  - [https://sites-millerthomson.vuturevx.com/5/2299/landing-pages/subscribe-en.asp?\\_ga=2.56235439.521763284.1589134389-1214954792.1565622137](https://sites-millerthomson.vuturevx.com/5/2299/landing-pages/subscribe-en.asp?_ga=2.56235439.521763284.1589134389-1214954792.1565622137)
- Also good resources at:
  - <https://covid-19.ontario.ca/>
  - <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>

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