

# COVID Pandemic and Your Health & Safety Rights at Work

The presentation will start shortly. In the meantime, please familiarize yourself with the toolbar on the right hand side.



# Objectives

- To define COVID-19, and review how to protect yourselves and others
- To outline employer responsibilities regarding pandemics by reviewing the Canada Labour Code, and reference to provincial legislations
- To identify rights and responsibilities of employees with regards to required training, information, precautions and personal protective equipment
- To identify supports and redress mechanisms if experiencing workplace issues, including enacting the Right to Refuse Dangerous Work
- Address some frequently asked questions



# COVID-19 defined

Coronaviruses (CoV) are a large family of viruses that are common and are typically associated with mild illnesses, similar to the common cold.

A novel coronavirus (nCoV) is a new strain that has not been previously identified in humans.

The severe diseases have included:

- Middle East Respiratory Syndrome (MERS-CoV) (first reported in 2012, all cases have been linked to countries in or near the Arabian Peninsula)
- Severe Acute Respiratory Syndrome (SARS-CoV)

Currently a new coronavirus has been identified in China (Wuhan City), and was initially known as 2019 Novel Coronavirus (2019-nCoV). It has been now formally named COVID-19.

The case was reported on December 31st, 2019, and confirmation of the coronavirus identification occurred on January 7th, 2020.



# How coronavirus spreads

Human coronaviruses cause infections of the nose, throat and lungs. They are most commonly spread from an infected person through:

- respiratory droplets generated when you cough or sneeze
- close, prolonged personal contact, such as touching or shaking hands
- touching something with the virus on it, then touching your mouth, nose or eyes before washing your hands

Current evidence suggests person-to-person spread is efficient when there is close contact.



# Tips to protect yourself and others

- Wash your hands PROPERLY
- Avoid touching your face
- Don't touch anything you don't have to, especially in public
- Avoid non essential travel
- Self isolate
- clean high-touch surfaces frequently
- Masks and gloves? My thoughts...





# Social/Physical Distancing

Using social distancing techniques, such as using telephone, video conferencing, or the internet to conduct as much business as possible (including within the same building), allow employees to work from home, or to work flexible hours to avoid peak public transportation times or crowding the workplace.

This is the point many workplaces are at, and where most of the issues originate, when some are essential (or critical) to the operation of the workplace



# Key Sections of The Canada Labour Code

**√ Most provincial legislations will have similar wording- for specific references, please contact your local or your PSAC Regional Office**

- Sections we will review involve processes, required training, protective equipment, and other employer responsibilities
- we will also explore the worker's right to refuse dangerous work if they do not agree with the workplace, which is a basic right enshrined in all legislations



# Preventative Measures

- 122.2 Preventive measures should consist first of the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment, clothing, devices or materials, all with the goal of ensuring the health and safety of employees.



# Employer Responsibility

*124 Every employer shall ensure that the health and safety at work of every person employed by the employer is protected.*

- Nothing else in any part of the Code or it's regulations takes away from or diminishes this statement*



# Specific Employer Responsibility

125 (1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,...



# Specific Employer Responsibilities con't

- (i) provide prescribed sanitary and personal facilities;
- (l) provide every person granted access to the work place by the employer with prescribed safety materials, equipment, devices and clothing;
- (n) ensure that the levels of ventilation, lighting, temperature, humidity, sound and vibration are in accordance with prescribed standards;

- (q) provide, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work;
- (s) ensure that each employee is made aware of every known or foreseeable health or safety hazard in the area where the employee works
- (y) ensure that the activities of every person granted access to the work place do not endanger the health and safety of employees;

- (z) ensure that employees who have supervisory or managerial responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer

Be honest- how many of you read this one and laughed out loud, unfortunately!





# Workplace and Policy Committees and H&S Representatives

(z.03) develop, implement and monitor, in consultation with the policy committee or, if there is no policy committee, with the work place committee or the health and safety representative, a prescribed program for the prevention of hazards in the work place appropriate to its size and the nature of the hazards in it that also provides for the education of employees in health and safety matters;



# Committees and Representatives con't

- (z.05) consult the policy committee or, if there is no policy committee, the work place committee or the health and safety representative to plan the implementation of changes that might affect occupational health and safety, including work processes and procedures;
- (z.06) consult the work place committee or the health and safety representative in the implementation of changes that might affect occupational health and safety, including work processes and procedures



# Provincial Equivalents

MB- Part 4 of Regulations

SK- Division 3, 3-8, 3-9



# The Right to Refuse Dangerous Work



# Federal Definition of Danger

"any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered."

- For our purposes, the federal language is likely the worst language when it comes to preventing potential or foreseeable instances. The whole concept of “serious or imminent” is unique in comparison to most other legislations
- Check with your local or PSAC Regional office for provincial definitions of danger





# Provincial Starting Point - MB

MB- 43(1)

*Subject to this section, a worker may refuse to work or do particular work at a workplace if he or she believes on reasonable grounds that the work constitutes a danger to his or her safety or health or to the safety or health of another worker or another person.*



# Provincial Starting Point - SK

- SK- 3-31 A worker may refuse to perform any particular act or series of acts at a place of employment if the worker has reasonable grounds to believe that the act or series of acts is unusually dangerous to the worker's health or safety or the health or safety of any other person at the place of employment until:
  - (a) sufficient steps have been taken to satisfy the worker otherwise; or
  - (b) the occupational health committee has investigated the matter and advised the worker otherwise.

# Federal Language- Right to Refuse step by step

- Employee refuses and notifies employer 128.(6).
- Employer investigates in presence of employee, and employer writes employer Report 128.(7.1)
- If the employee is satisfied, employee returns to work.
- If the employee is not satisfied, the employee notifies the employer and the committee/representative 128.(9)
- Committee/representative investigates in presence of employee 128.(10) and provides a report of investigation results and recommendations to the employer 128.(10.1)



- If the employee is satisfied, employee returns to work.
- The employer provides additional information to the committee/representative 128.(10.2)
- A revised report if deemed appropriate is presented to the employer that takes into account the new information
- The employer then decides under 128.(13) whether:
- Danger exists – employer takes corrective action and employer notifies committee / representative 128.(14)



# Employer considerations con't

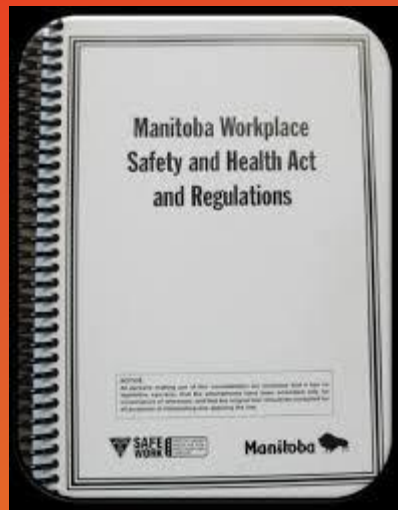
- Danger exists - but the refusal is not permitted under ss.128.(13)(b) as it puts lives, health or safety of another person directly in danger 128.(2)(a) or the danger is a normal condition of employment 128.(2)
- If employee continue to refuse and notifies the employer under 128.(15)
- The employer notifies the Minister of Labour and presents his investigation reports and also notifies the committee/representative 128.(16)





# Sask and MB References

- Manitoba- Right to Refuse Dangerous Work: Workplace Safety and Health Act- Section 43
- Saskatchewan- Division 5



# Exercising the right to refuse

An employee wishing to exercise the right to refuse dangerous work shall immediately report the dangerous situation to the employer.

If more than one employee has made a report of a similar nature, those employees may designate one employee from among themselves to represent them during the work place committee's or representative's investigation.

**The right to refuse is different than the “comply and grieve” process with collective agreement disputes.**



- Upon being notified that the employee has exercised the right to refuse dangerous work, the employer shall immediately investigate the situation in the presence of the employee. The investigation is conducted even if the employee or the person designated to represent the employee chooses not to be present.
- The employer cannot, at this point, assign someone else to do the work that the employee refused to do. An employer can only do this after the matter has been fully investigated internally as described in this document, and has been properly referred to the Health and Safety Officer

Once the employer's investigation has been concluded, the employer shall prepare a written report setting out the results of the investigation. If, following the investigation, the employer agrees that a danger exists, the employer shall take immediate action to protect employees from the danger. The employer shall also inform the work place committee or representative of the situation and the action taken to resolve it.



# Continued refusal of the employee

- If following the employer's investigation, the employee does not agree with the employer decision, the employee can continue the refusal. The employee shall immediately report the continued refusal to the employer and to the work place committee or representative.





# Investigation by the work place committee or representative

Upon being informed of a continued refusal, the work place committee or representative shall immediately initiate an investigation in the presence to the employee. At the conclusion of the investigation, the work place committee or representative shall immediately provide a written report to the employer that sets out the results of the investigation and their recommendations, if any. The work place committee shall appoint two of its members to conduct the investigation, one member representing the employees, the other representing the employer



# Employer's decision

- After receiving the report from the work place committee or representative, the employer makes one of the following decisions:
- Danger exists:
- The employer shall take immediate action to protect employee(s) and inform the work place committee or representative of the situation and the actions taken to resolve it.
- If after the corrective measures are taken and the employee agrees, he or she returns to work.



# Or... concept of Inherent Risk

- Danger exists but the refusal is not permitted under ss.128.(2) as it puts lives, health or safety of another person directly in danger or the danger is a normal condition of employment.
- The employer shall notify the employee in writing.
- If the employee agrees, he or she returns to work.

# Continued refusal after employer decision

If the employee disagrees with the employer's decision, the employee shall inform the employer that the refusal to work will continue. The employer shall immediately inform the Minister of Labour or Health and Safety Officer and the work place committee or representative and shall provide the Minister or Health and Safety Representative copies of the two investigation reports



# Health and Safety Officer's decision

The Minister or H&S Officer, upon being informed of the employer's decision and the continued refusal, can conduct an investigation. The Minister or H&S Officer investigates in the presence of the employer, employee and a member of the work place committee appointed by the employees or of the representative or, if this is not possible, in the presence of any employee from the work place who is appointed by the employee. The employee may continue the refusal to work during the Minister/H&S Officer's investigation on the situation

The Health and Safety Officer then considers the issue with the same considerations, and can provide recommendations or orders.





# Disciplinary Action- References

- 147 No employer shall dismiss, suspend, lay off or demote an employee, impose a financial or other penalty on an employee, or refuse to pay an employee remuneration in respect of any period that the employee would, but for the exercise of the employee's rights under this Part, have worked, or take any disciplinary action against or threaten to take any such action against an employee because the employee...
- (c) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part
- SK- 3-35 Discriminatory action prohibited
- MB 42.1 of Regulations



# Workplaces should have an infection control plan including:

- Providing clean hand washing facilities.
- Offering alcohol-based hand sanitizers when regular facilities are not available (or to people on the road).
- Cleaning objects that are touched frequently, such as doorknobs, handles, railings, kettles, etc. more often with regular disinfectants
- Making sure ventilation systems are working properly.
- Providing personal protective equipment where no other options
- Provide proper training on the hazards and proper protection techniques

# Are you or someone you represent deemed essential or critical?

- From Treasury Board;

*Managers are to consider telework for all employees, at all work sites, and identify an approach that is flexible while ensuring continued critical government operations and services to Canadians.*

*Federal organizations must identify and determine how to manage through exceptional situations that do not lend themselves to telework such as: critical services requiring on-site presence; security limitations; other operational imperatives where there are no alternatives.*

- **Any disputes with the employer decision? Bring concerns forward and if not resolved use the Right to Refuse!**



# Currently teleworking? An appropriate work space at home may include

- a space or room where it is easy to concentrate - preferably separate from other living areas and away from the television
- level of security as required by the workplace
- necessary telephone lines (separate from family line if required) and answering machine or voice mail
- telephone line or cable for e-mail and Internet connections, if necessary
- control over temperature, light and sound
- household members who will understand you are working and will not disturb you unnecessarily
- ergonomically safe



# Mental Health

1. Understand the fight-or-flight response
2. Be selective about news sources
3. Consider the practical value of the information
4. Don't discount the power of language
5. Set boundaries on news consumption





# Where to find more information

- [www.psacunion.ca/covid-19](http://www.psacunion.ca/covid-19)
- [www.ccohs.ca](http://www.ccohs.ca)
- Your provincial health authorities
- Health Canada- <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html>
- Federal Code and Regulations, or provincial Acts and Regulations
- Guide on the Right to Refuse process  
<https://www.canada.ca/en/employment-social-development/services/health-safety/reports/right-refuse.html>



# Thank you

- Your participation is appreciated
- Q&A

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