Ask the Expert: Can You Make Employees Work from Home as a Precaution?



QUESTION

Can we force an employee work from home because his wife is a health care worker who treats COVID-19 patients’

ANSWER

No, at least under current public health guidelines.

EXPLANATION

You can and must require employees to self-isolate if they have symptoms of COVID-19, e.g., cough, fever, tiredness and/or difficulty breathing. The Public Health Agency of Canada (PHAC) and other public health organizations are also advising people without symptoms to self-isolate if they’re at high risk of exposure. Being married and living with a health care worker who treats COVID-19 patients would count as high risk, as would people who’ve traveled to areas at high risk of the virus.

And where does that leave you’ You can encourage but can’t require the employee to work from home unless and until he develops symptoms. In fact, that’s probably the right thing to do. The problem is that if you try to force him to work from home, you run some serious legal risks, including but not limited to liability for:

- Constructive dismissal;
- Breach of contract; and
- Discrimination on the basis of an actual or perceived disability.

But stay tuned. If the COVID-19 situation gets worse, the public health guidelines might change and require high-risk people to self-isolate even if they don’t have symptoms.