

Compliance Briefing: The 4 Kinds of Coronavirus Control Measures Required by OHS Law



What's At Stake

The World Health Organization (WHO) has declared the coronavirus outbreak a global health emergency. Although most of the 16,000+ cases and 300+ deaths come from the city of Wuhan in the Chinese province of Hubei where the virus originated, coronavirus has spread to Canada with Ontario and BC reporting confirmed cases. Still, the point of this article is *not* to educate you about the coronavirus. There's already plenty of information about the virus online. But what you won't find much of is what you most need as an OHS director: an explanation of how it affects you. **Bottom Line:** You do have a legal obligation to protect workers from coronavirus infection. Here's a look at your liability risks and how to manage them.

5 Ways Coronavirus Can Get You into Legal Trouble

The best reason to prepare for coronavirus is to protect the health of your workers and your business. The next best reason is to protect your company from liability risks:

1. OHS Violations

OHS acts include a provision requiring employers to protect workers against foreseeable health and safety hazards not expressly mentioned in the regulations. We know from the SARS, West Nile and avian influenza outbreaks that an infectious illness like coronavirus would be considered a foreseeable hazard that these so-called general duty clauses cover.

2. Negligence

Although workers' comp bars workers from suing their employers for negligence, the bar doesn't apply to third parties that become infected in your workplace or as a result of work-related contact with one of your infected workers.

3. Wage & Hour Violations

Absenteeism from coronavirus infection might force you to use workers for longer hours and precipitate wage and hour complaints under your province's employment standards law.

4. Workers' Comp Claims

Workers who contract coronavirus at work may file workers' comp claims.

5. Disability Discrimination & Failure to Accommodate

A worker who becomes infected or shows symptoms of infection may be considered "disabled" under human right laws. **Result:** You must accommodate his/her absences or special needs to the point of undue hardship.

The 4 Things You Must Do

So, what exactly are employers required to do to comply with their general duty to protect workers against coronavirus infection? The best way to answer that question is by looking to government guidelines issued during previous outbreaks. While not technically binding law, these guidelines are crucial because they lay out the actual criteria that government inspectors who enforce the law use to evaluate whether an employer has taken the "reasonable precautions" the OHS law requires. And even though they address West Nile, SARS, avian influenza and other previous illnesses, these guidelines are based on fundamental principles and best practices promulgated by the WHO, U.S. Centers for Disease Control and other internationally recognized health agencies. Let's look at the 4 sets of measures they require employers to take:

1. Educate Workers

Ensuring that workers know about the hazards to which they're exposed is a fundamental duty under OHS laws. In the context of infectious illness, the right to know requires:

General Education: First, you must familiarize workers with the nature of the risk posed by coronavirus—what it is, how it can infect them and how to protect themselves. Click [here](#) for a Fact Sheet you can distribute to your own workers.

Prevention Measures: You must acquaint your workers with personal hygiene and other measures they can take to guard against the risk of infection, including:

- Hand washing;
- "Cough etiquette";
- Social distancing;
- Proper use of PPE;
- Vaccination; and
- Precautions for workers planning to travel to affected areas.

Notification & Communication: Education also involves keeping your workers apprised of recent developments, both public and within your workplace. Employers must provide "clear, timely and proactive communication to staff, including how your organization is handling the situation," stress the Ontario Guidelines. This would involve posting information on your company website

and/or starting an internal phone service that workers can call for information. Also post the location of hospitals, clinics, public health authorities and other health resources in your community. In addition, you need to establish and maintain communication with any of your workers who are absent due to infection.

2. Control Workplace Infection

The heart of the employer's duty is to implement what the BC Guidelines call "infection countermeasures" to minimize the risk of infection in the workplace. These include:

- Basic hygiene measures such as furnishing soap, anti-bacterial products and paper towels and keeping sinks and surfaces that people touch clean, e.g., doorknobs;
- Posting signs, posters and notices reminding workers to wash their hands properly, use cough etiquette, keep social distances, etc.;
- Implementing work practices to promote social distance, e.g., use of conference calls instead of face-to-face meetings;
- Physical design measures, such as keeping workstations as far apart as possible;
- Screening workers and visitors entering the workplace for signs of coronavirus; ([Click here for a Model Screening Form](#))
- Disciplining workers that don't practice proper hygiene, come to work infected or otherwise endanger co-workers; and
- Managing cases of infection at work, including telling those suspected of having coronavirus to go home immediately and monitoring which workers get infected, where they work, etc.

3. Ensure Use of Appropriate PPE

While we still don't know much about how coronavirus is transmitted, PPE has been an essential element in preventing infectious illness outbreaks. Such PPE typically includes:

- Protective gloves that are disinfected and disposable;
- Disposable particulate or other respirators, e.g., N95, N99 or N100;
- Protective gowns for medical workers; and
- Eye protection for medical workers within 3 feet of infected patients.

4. Create Preparedness Plan

Incorporate the above countermeasures into a broader policy or plan on responding to coronavirus and other infectious illnesses at your workplace in consultation with the JHSC that also includes:

- Hazard assessment gauging your vulnerability in case of outbreak;
- Identification of key personnel and operations that are a priority to protect and/or replace;
- Revision of integral OHS and HR policies, e.g., regarding absences, cancellation of vacations, overtime or temporary workers to ensure availability of labour during an outbreak;
- Provisions to ensure business continuity;
- Preparation for labour, service and supply disruptions; and
- Creating secure lines of communications with workers, customers, suppliers, government agencies and other key parties during an outbreak.

[Click here for a Model Infectious Illness Exposure Control and Response Plan.](#)