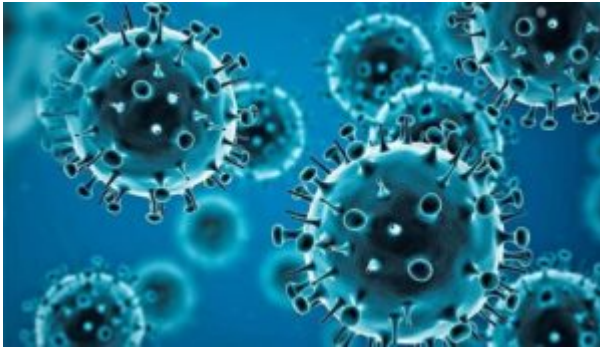


COVID-19 Infection Considered an Employment Injury



On September 23, 2021, the *Tribunal administratif du travail* [Administrative Labour Tribunal] (the 'Tribunal') determined that a COVID-19 infection could constitute an employment injury, within the meaning of the *Act respecting industrial accidents and occupational diseases* (the 'Act').

The Facts

A worker employed as a truck driver alleged that he suffered an occupational injury due to having been infected and diagnosed with COVID-19.

In the performance of his duties, the worker was required to be in confined spaces where it was impossible to maintain the physical distancing required by public health authorities. As a result, he was sometimes in close contact with his colleagues. He was also in direct contact with others.

At the time of the events, face masks were not required to be worn in this workplace. Consequently, the company's workers were not wearing masks or protective gloves.

In May 2020, five employees at the warehouse where this particular worker was working were infected with COVID-19. The worker had been in close contact with each of them in the course of his duties, and in particular with an employee who had contracted the virus a week prior.

Shortly thereafter, the worker reported to work and realized he had lost his sense of smell. He subsequently tested positive for COVID-19.

He then filed a claim with the *Commission des normes, de l'équit , de la sant  et de la s curit  du travail* [Labour Standards, Pay Equity and Workplace Health and Safety Board] (the 'CNESST') to establish that he had suffered an occupational injury. The CNESST denied the worker's claim; that decision was later confirmed by the *Direction de la r vision administrative* [Administrative Review Branch].

The worker therefore brought these decisions before the Tribunal to determine whether a COVID-19 infection could constitute an occupational injury within the meaning of the *Act*.

Decision

The Tribunal noted at the outset that a COVID-19 infection constitutes a disease. Consequently, the worker had to show that this disease was contracted during a work accident. Depending on the circumstances, the fact that a person has been in contact with a virus can be an unforeseen and sudden event.

The Tribunal stated that it did not have to determine the precise timing of the transmission, but rather whether the infection in question was most likely contracted in the workplace.

The evidence showed that the worker had not been exposed to COVID-19 outside the workplace.

This made it more likely that the infection was contracted in the workplace than elsewhere. The Tribunal therefore declared that the worker had suffered an occupational injury diagnosed as a COVID-19 infection.

Takeaways

- This decision, one of the first to establish that a COVID-19 infection can constitute an employment injury, should serve as a reminder to employers of the importance of complying with and applying the directives and recommendations of public health authorities and the CNESST;
- More than two years after the beginning of the pandemic, its legal consequences and impacts on the workplaces are still being felt;
- In this context, despite improvements in Canada's pandemic situation, we can only encourage employers across the country to put in place the necessary health measures to avoid being faced with such a situation;
- Physical distancing, masking, triage of symptomatic workers, promotion of hand hygiene, and isolation guidelines are measures that could help Canadian employers avoid workplace outbreaks, which could potentially result in claims being made to the appropriate provincial workers' compensation boards;
- Although this decision was rendered in Quebec, the principles it sets out regarding the relationship between infections and the workplace could be applied by tribunals and their decision-makers in other provinces.

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Source: Fasken

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