

BRIEFING NOTE

The New “Work Place”

Health and Safety Considerations for WFH and RTW

The COVID-19 Pandemic and social distancing has shifted many workplaces to a work-from-home (WFH) model. Although the economy is slowly reopening, WFH will likely continue to be part of the “new normal” for many workplaces. Even if a business is returning to work (RTW), for the foreseeable future, the office workplace will not be the same as it was pre-COVID-19.

The *Workers Compensation Act* does not differentiate between a home office and a traditional office. As such, there are a number of considerations that employers should keep in mind while their employees work from home. Many health and safety roles, rights, and responsibilities are just as applicable for at-home workers as they are for more traditional workplaces.

This Briefing Note is not to exhaust all of these considerations, but to highlight a few key ones for employers to consider as we continue to operate and work during these unique times, whether at home or in the office environment.

Is the employee set up and supported to Work From Home?

WorkSafe BC has issued guidance on health and safety responsibilities when employees are WFH, including developing a WFH health and safety policy that addresses safe workplace practices, ergonomic considerations, evacuation protocols, and injury reporting processes.

At the outset, employers should have a discussion (and ongoing as needed) with their employees to assess their employees’ work needs, including:

- whether they will be working alone or in isolation; and
- the work environment (including office set up) and any potential workplace hazards.

Employers could consider asking employees to send photos of their workspace to assist in assessing whether the workspace is suitable for the employee’s work needs and the employee has the equipment necessary to continue his or her work duties from home.

Employers may also wish to consider a WFH Agreement to ensure that the parties are clear on the parameters and expectations of WFH.¹

¹ <https://www.worksafebc.com/en/about-us/news-events/announcements/2020/March/health-safety-responsibilities-when-working-from-home>

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If an employee works alone or in isolation, there are additional risk assessments and obligations on the employer to ensure the worker's safety with respect to any likely hazards the worker may be exposed to while working alone.

Mental health of Employees during WFH

In late April, Statistics Canada conducted an online survey regarding the impact of Covid-19 on mental health and found that 52% of participants had “somewhat worse” or “much worse” mental health since the start of the pandemic.² While this decrease in mood is, of course, partially caused by the global health crisis, the effects of social distancing and WFH may also contribute to lower mental health amongst Canadians.

With the transition to WFH and the emphasis placed on social distancing, many Canadians may be experiencing increased loneliness due to increased isolation. This impact of loneliness should not be minimized as research has found that loneliness can be equally, if not more, harmful to employees as physical injuries.³

While Canadians may not be able to control when they return to the office, there are many things that can be done to mitigate the negative effects of WFH and it is recommended that employers reach out to their employees to provide support, not only for the physical aspects of WFH, but for the mental aspects as well. Some suggestions for employers to provide to their employees include, but are not limited to:

- **Create/Maintain a Routine:** If possible, try to follow the same routine the employee would have had during pre-COVID19 times. Get ready for work as you normally would. Try to avoid working from the couch in your pajamas to create a mental barrier of “home time” and “work time”.
- **Stay connected:** For those who are missing the social interaction that comes with being in the office, communicate with co-workers. Schedule lunch dates with work buddies. Take advantage of technology and hold video meetings. If it is feasible, employers are encourage to assist in facilitating video “social” meet ups for employees as an additional social outlet for those WFH.
- **Create a Designated Workspace:** If possible, designate a specific area as the employee’s workspace so that employee’s can better concentrate, as well as take breaks from the “office”. If an employee does not have an isolated room that can be designated as the home office, then communicate with your house mates to coordinate schedules.

² <https://www150.statcan.gc.ca/n1/daily-quotidien/200527/dq200527b-eng.htm>

³ <https://www.forbes.com/sites/onemind/2020/03/17/when-home-becomes-the-workplace-mental-health-and-remote-work/#6c998c981760>

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- **Plan Your Meals and Eat Healthy:** Instead of snacking throughout the day and eating in the designated workspace, set specific lunch hours where an employee can take a proper break from work and also eat a healthy meal.
- **Plan Your Week Ahead of Time:** Making a to-do list and schedule will help an employee meet deadlines. Figuring out when there are long work blocks and when there are meetings will help people stay productive during the workday.⁴

As restrictions slowly ease, employers may be slowly transitioning back to office and this will come with its own set mental health challenges. Employers should be aware that different employees will be experiencing different emotions, which may be constantly changing as the situation changes. Communicate with your employees on an ongoing basis and make sure they are aware of and are familiar with the COVID-19 Safety Plan in place. Ensure employees know who they can approach with concerns and what, if any, mental health programs the company has in place.⁵ Lastly, if appropriate and needed, assist employees with finding professional help. A number of professional mental health services can be found on the BC provincial website.⁶

What must the employer do in order to transition employees back to the office?

Employers must take reasonable care to ensure the health and safety of their returning employees. This includes identifying and controlling the risk of COVID-19 transmission.

Before bringing employees back into the office, employers must develop a COVID-19 Safety Plan that outlines the policies, guidelines, and procedures it has put in place to reduce the risk of COVID-19 transmission. Employers should consult the websites of the Provincial Health Officer, the Public Health Agency of Canada, the BC Centre for Disease Control, and WorkSafe BC for up-to-date information and additional resources. Employers may also wish to involve front line workers, supervisors, HR and the company's health and safety representatives in this process.

As a starting point, WorkSafe BC has set out a six-step plan for employers to consider in preparing their Safety Plan:⁷

⁴ <https://www.fastcompany.com/90479504/how-to-maintain-your-mental-health-while-working-from-home> ; <https://skillcrush.com/blog/working-remotely-tips/> ; <https://www.cbc.ca/news/canada/coronavirus-remote-work-work-from-home-1.5502294>

⁵ <https://cmha.ca/news/6-tips-to-respond-to-employee-anxiety-about-covid-19>

⁶ <https://www2.gov.bc.ca/gov/content/health/managing-your-health/mental-health-substance-use/virtual-supports-covid-19>

⁷ <https://www.worksafebc.com/en/about-us/covid-19-updates/covid-19-returning-safe-operation>

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1. **Assess the risk** to determine where there is a risk of COVID-19 transmission. WorkSafe BC recommends that employers conduct a walk-through of the workplace to identify specific risks. Consider places where people congregate in the workplace, tasks that require employees to be in close proximity with one another, and what surfaces and equipment are frequently used by people.
2. **Implement measures to reduce risk.** Consider measures that can be put in place to maintain physical distance, alternatives for when physical distance cannot be maintained, and measures that will increase cleaning and hygiene in the office.
3. **Develop policies** to manage your workplace. Consider who can be in the office, how to manage illness and how to keep workers safe from COVID-19 transmission.
4. **Develop communication plans & training** to ensure all employees know how to keep themselves safe while they are at the office.
5. **Monitor the workplace and update plans as needed.** Ensure that employees can make complaints and know who to approach with concerns.
6. **Assess and address risks from resuming operations.** Consider whether there have been staffing changes and their affects, and whether additional training will be needed to refresh skills.

Employers are required to post a copy of their COVID-19 Safety Plan on their website (if they have one) and at their workplace so that it is visible for those who attend.

What if my employee does not want to transition back to work due to COVID-19 concerns?

All employers are obligated to provide a safe working environment. Similarly, employees have the right to refuse any work or refuse to return to a workplace that has a dangerous condition or that poses a danger to health and safety, which may include an increased risk of exposure to COVID-19.⁸ A fear of contracting COVID-19 is, on its own, not a basis for refusal. What will be considered a safety or health risk is an objective assessment and depends on the nature of the workplace; the suspected safety risk; the individual needs of the employer; the COVID-19 Safety Plan in place, and what is reasonable in the circumstances.

If an employee refuses to return to work, the employee must file a complaint immediately with the employer setting out the basis for his or her safety concerns. The employer must then investigate the complaint to determine the basis for the refusal and if the complaint is valid and reasonable. Employers should be mindful of

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⁸The OHS, supra note 6 at s. 3.12(1)

BRIEFING NOTE

whether the employee's situation triggers a statutory leave under the Employment Standards Act or of any protected ground under the Human Rights Code.⁹

If the employer's COVID-19 Safety Plan is not in compliance, the employer should take steps to update and revise its measures and Safety Plan to comply with the recommended steps to address the employee's concerns.¹⁰ A WorkSafe BC inspector may also get involved to inspect the workplace.

Practically, employers are encouraged to be flexible and accommodating to the safety concerns of their employees and to explore options with the employee that are feasible and appropriate in the circumstances.

The COVID19 Pandemic is an unprecedented situation and it does not appear it will be ending in the near future. The landscape is constantly changing week to week and it is important that employers also take a fluid approach to their operations and careful and considered steps to ensure the health and safety of its employees, whether it is a continued WFH or a return to the workplace.

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⁹ Policy Statement: COVID-19 Pandemic, BC Office of the Human Rights Commissioner https://bchumanrights.ca/wp-content/uploads/2020/03/BC-OHRC_COVID19_Policy-V3.pdf

¹⁰ *Ibid* at s. 3.12(2)-(3)

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