

COVID-19: WORKPLACE SAFETY AND RIGHTS OF HEALTH PROFESSIONALS TO REFUSE WORK

The spread of the coronavirus is raising important questions around workplace safety and the duties and obligations of employers particularly in the absence of personal protective equipment, such as gowns, gloves, masks, facial protection (“PPE”). In Canada, employment and labour standards and workplace safety is regulated by provincial governments, and by the federal government for federally regulated industries.

Some provinces, such as Ontario, have now banned groups of people from physically congregating. In Ontario, groups of more than 5 people are now prohibited. Essential services and healthcare facilities are exempt from the order. For further information on essential workplaces generally see Gowling WLG’s information [here](#).

Employer Workplace Obligations

Private clinics are typically governed by provincial workplace health and safety legislation. Generally, provincial workplace health and safety legislation requires employers to provide a safe workplace for professionals and staff. In this regard, employers are expected to put in place measures, reasonable in the circumstances, to protect workers from infectious diseases.

Employee’s Right to Refuse Unsafe Work

Workplace health and safety legislation generally allows employees the right to refuse to work in exceptional circumstances where they have reason to believe they are exposed to hazards in the workplace that are not inherent in their ordinary work. The courts and labour boards judge safety in the workplace based on actual evidence of risk in the circumstances of each case and whether adequate measures were taken by the employer to ensure safety of the workplace. Healthcare professionals who are not considered employees of a facility may be subject to other obligations.

The ability of hospital and care facility employees to refuse work under workplace health and safety legislation may be limited depending on the circumstances. Obtaining appropriate legal advice is recommended before exercising the right to refuse work.

Does a refusal to provide PPE constitute an unsafe workplace?

In determining whether a lack of PPE constitutes an unsafe workplace, the courts and labour boards will look at all of the safety measures taken by the employer and in light of any recommendations from local health authorities. Based on the current recommendations from local health authorities, health care providers should perform a point of care risk assessment to determine whether there is a risk of being exposed to COVID-19 and the type of PPE, if any that may be required under the circumstances. Healthcare providers who provide direct care to patients will want to use appropriate PPE for all interactions with suspected, presumed or confirmed COVID-19 patients. However, PPE may not be required or provided in other circumstances, where alternative measures such as protective barriers between patients and professional could achieve safety given the nature of the risk. Each professional should work with his or her facility, clinic, or employer to develop and implement appropriate Covid-19 screening and infection prevention and control policies and procedures.

Refusal to Work

As a health professional you should also consult your professional association, liability protection provider and/or College to seek direction in these circumstances. Refusing to work as a result of a lack of PPE is highly dependent upon the particular circumstances of the situation. In some circumstances a refusal to work might lead to a College complaint. We recommend engaging in a collaborative approach with your employer to promote a safe working environment.