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March 18, 2020

**Q&A FOR CUPE LOCALS, COVID-19**

\*Note: This Q&A is dated March 18, 2020. Given the nature of the pandemic, this Q&A may need to be updated.

This Q&A is not intended for Health Care Locals.

The COVID-19 virus has been a matter for concern since the advent of the strain earlier this year. Many employers have been developing protocols to deal with how COVID-19 affects staff and the services they provide. CUPE intends to work closely with employers to ensure our members' health and safety are protected.

This Q&A is intended to answer some frequently asked questions related to workplace rights and COVID-19.

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**Q: I have been ordered to self-isolate or self-quarantine and my collective agreement requires a doctor's note for absences. Am I required to get a note from my doctor's office? What if I can't get a doctor's note?**

Health Canada and the Manitoba Government have advised individuals who are suffering mild or partial symptoms of COVID-19 to self-isolate or self-quarantine. Members who exhibit symptoms should follow the Government's recommendations and consult professionals as required. Manitobans are encouraged to contact Health Links at 204-788-8200 in Winnipeg or 1-888-315-9257 to speak with a professional and only visit an assessment centre if they have symptoms.

Members who have been ordered to self-isolate or self-quarantine should inform their employer of the order. Individuals who cannot obtain a doctor's note should contact their steward and CUPE Local if they encounter difficulties in taking time off or their employer requires a doctor's note to approve an absence.

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**Q: What are my employer's obligations to provide me with personal protective equipment ("PPE") to protect me against exposure to COVID-19?**

Employers have a duty under the *Workplace Safety and Health Act* and *Canada Labour Code* to provide PPE and ensure that it is maintained in good condition. PPE is appropriate where providing it would increase the safety of employees by more than a minimal amount. Locals should review their workplaces and provide recommendations about what, if any, additional PPE will increase member safety.

Health and Safety committees should be engaged in order to ensure that employer's provide appropriate PPE and that it is maintained in good condition. If an employer does not provide appropriate PPE, members should inform their health and safety representative and speak to their Local about filing a grievance.

Members have a statutory right to refuse unsafe work and a summary of this right is provided further below.

**Q: How does COVID-19 affect ongoing or upcoming collective bargaining?**

When scheduling collective bargaining dates, Local's should keep in mind the Canadian Government's suggestion that individuals avoid large group gatherings and practice social distancing. Technology should be used to ensure that collective bargaining continues while ensuring the safety of members.

Local's should use methods other than in-person meetings, such as:

- exchanging proposals over email.
- arranging video or conference calls between the parties.
- creating shared documents which can be edited remotely.
- holding webinars to update members on collective bargaining.

**Q: My Local has upcoming arbitration/mediation dates, should we make alternate arrangements?**

Locals should consider adjudicating their disputes using methods other than in-person hearings.

Unions and Employers have wide latitude with regards to scheduling and the manner of hearing for arbitrations and mediations pursuant to a collective agreement. Parties should

proactively discuss between themselves and with the adjudicator what alternative measures can be taken.

Many preliminary matters, such as disclosure and objections to arbitrability can be argued in writing or through a teleconference hearing. If an in-person hearing cannot be avoided, Local's should consider limiting the number of individuals who attend. Only individuals vital to the adjudication of the matter should attend. Parties should avoid paper documents and work with electronic copies wherever possible.

**Q: What steps can my Local take to protect the rights of the members during the COVID-19 pandemic?**

Local's should ensure that members are aware of their rights under the *Workplace Safety and Health Act, Canada Labour Code*, and any other applicable employment or health statutes.

Health and Safety committees should be engaged and tasked with reviewing the workplace and ensuring that the Employer takes appropriate health and safety measures. Members should be encouraged to report any possible health and safety issues and grievances should be filed where appropriate.

Employers should be pressed to provide any upcoming closure plans or reduction of hours which may impact members, whether imminent or in draft form.

Local's are advised to meet with Employers to establish a Letter of Understanding outlining measures to maintain rights and ensure member health and safety considering COVID-19.

**Q: I am worried that a member of the public will bring COVID-19 into my workplace and I will be exposed. Can I refuse work on this basis?**

The Manitoba *Workplace Safety and Health Act* and the *Canada Labour Code* provide a right to refuse unsafe work. Both statutes impose a high threshold for risk, and a general fear of exposure to COVID-19 is unlikely to meet the threshold.

Public health authorities have currently characterized the risk to the general population as "low" and as a result, continuing with business as usual in most workplaces is unlikely to be considered to be unsafe or dangerous. This assessment is fluid and may change if COVID-19 becomes more generally circulating in the local population. It may also change if public health authorities issue guidance regarding what types of organizations should or should not operate. The assessment will also depend on the member's occupations and degree of exposure to potentially infected individuals, as well as their specific circumstances. As an example,

immune-compromised individuals face a greater risk should they be infected than an average member of the population.

Employers should be reminded of their obligation to take steps to ensure a safe and healthy workplace. This includes controlling public access to a facility, regular disinfection, provision of appropriate personal protective equipment and communication to employees.

**Q: What should Locals do if employees who are exhibiting symptoms do not self-isolate and continue to work?**

Local unions should make sure that their employer is aware of its obligation to maintain a safe and healthy work environment. This includes a requirement to ensure that employees are well enough to attend at work so that they do not place an infection risk on co-workers. If an employer will not take action to maintain a safe and healthy work environment, grievances should be filed regarding that failure.

**Q: Will I get paid if I am told to self-isolate or self-quarantine?**

The answer to this question depends on the paid-leave provisions of the specific collective agreement in question. As a general matter, the law does not entitle employees to be paid in these circumstances. CUPE National recommends that Locals attempt to negotiate the attached Letter of Understanding with their employer to ensure that employees continue to be paid without a negative impact on sick leave/vacation banks or short-term disability benefit entitlement in these circumstances.

The federal government has announced that it will be waiving the mandatory one-week waiting period to access Employment Insurance (“EI”) sickness benefits for COVID-19 related claims. Where employees are not able to access other sources of income protection, they should make an immediate claim for EI sickness benefits. The eligibility requirement, to have worked 600 insurable hours during the preceding year remains in place at the time of writing.

**Q: If my employer shuts down because of COVID-19, what are my rights?**

An employer shutdown due to COVID-19 is a layoff, and all collective agreement provisions relative to a layoff apply, for example, entitlement to notice. Where an employer does not provide notice compliant with the collective agreement, grievances should be filed to make sure that employees are made whole for all losses suffered as a result. A collective agreement may include an “act of God” or “force majeure” clause which says that in extreme and unforeseen circumstances these provisions don’t apply. Your collective agreement should be

reviewed carefully to determine what rights apply in the event of a layoff, and what any restrictions on those rights might be.

CUPE National recommends that Locals attempt to negotiate the attached Letter of Understanding to ensure that employees continue to be paid without a negative impact on their sick leave/vacation banks in these circumstances.

**Q: Can my employer tell me not to travel? Am I required to inform my employer if I have travelled outside the country in and around these last 14 days?**

An employer has the right to restrict travel for work, however, if employees have incurred costs relating to now-cancelled work travel, they should be reimbursed by their employer just as they would have been had the travel been carried out. This includes, for example, cancellation costs.

Except in extraordinary cases, an employer does not have the right to restrict personal or leisure travel by employees. Different considerations may apply with respect to international travel for critical employees, as the federal government has recommended that Canadians avoid all non-essential international travel, and the risk that employees will be stuck outside of Canada and be unable to return, or unable to return within a reasonable time frame is increasing. Additionally, public health authorities recommend that all individuals returning to Canada after travelling abroad self-quarantine for 14 days.

While employees are not required to inform their employer that they have travelled outside of Canada in the last 14 days, doing so is a good practice to ensure that all employees in the workplace are protected from the spread of COVID-19. If an employee is self-quarantining in accordance with the direction of public health authorities, they should inform their employer of the reason why to avoid being considered absent without leave.

**Additional resources:**

- Health Canada

- o <https://www.canada.ca/en/public-health/services/diseases/coronavirus-disease-covid-19.html>

- Government of Manitoba

- o <https://www.gov.mb.ca/covid19/index.html>