

# Frequently Asked Questions about COVID-19 in Canada

April 2, 2020

The information in this article is current through April 1, 2020. However, given the fast changing nature of the nation's response to the COVID-19 pandemic, we acknowledge that facts change quickly. Please contact your Gallagher consultant for the most updated information.

## Disclaimer

We share this information with our clients and friends for general informational purposes only. It does not necessarily address all of your specific issues. It should not be construed as, nor is it intended to provide, legal advice. Questions regarding specific issues and application of these rules to your plans should be addressed by your legal counsel.



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## Frequently asked questions about COVID-19 in Canada

### GOVERNMENT UPDATES

#### 1. What guidelines should employers follow regarding asking employees to stay home due to Covid-19?

Health Canada has published guidelines on limiting contact when an employee is diagnosed or has a pending diagnosis related to Covid-19 and employer should comply with Isolation requirements.

<https://www.canada.ca/en/public-health/services/publications/diseases-conditions/covid-19-how-to-isolate-at-home.html>

These guidelines are subject to change frequently, so it is important to check them regularly. It is critical that employers regularly monitor information from public health authorities in all jurisdictions in which they operate. Public health authorities exist federally, provincially and municipally. Employees have a general duty under health and safety legislation in every jurisdiction to reasonably protect workers from harm. Adhering to the directions presented help to do that.

#### 2. If we become aware that an employee is ill with or has been exposed to Covid-19, what are our privacy responsibilities?

Public health situations are treated somewhat differently and may allow for the collection, use and ability to disclose information being extended depending on the circumstances. We recommend you work with your privacy officer or legal counsel when making decisions about disclosing information about the health of your employees.

The Office of the Privacy Commissioner of Canada has provided resources related to Privacy and the Covid-19 outbreak. Once on their site, you will want to click on the link related to the jurisdiction in which you operate if you are not in a federally regulated industry.

[https://www.priv.gc.ca/en/privacy-topics/health-genetic-and-other-body-information/health-emergencies/gd\\_covid\\_202003/](https://www.priv.gc.ca/en/privacy-topics/health-genetic-and-other-body-information/health-emergencies/gd_covid_202003/)

#### 3. Are my employees entitled to Declared Emergency Leave?

A number of provinces have enacted leaves to deal with a declared emergency due to infectious disease or leaves related specifically to COVID-19.

These leaves vary by jurisdiction. Some apply to:

- those workers that are following public health directives to self-isolate or quarantine;
- those who have had close contact with a person that is confirmed or suspected to have COVID-19;
- those that require leave in order to care for children impacted by school or daycare closures related to COVID-19; and/or
- those that are impacted by the closure of a business due to an emergency order issued by government.

These leaves are generally job protected leaves (often without pay) with a requirement to continue the participation in benefit plans.



We recommend you look at the conditions for these leaves in your jurisdiction to understand the eligibility requirements and employer obligations. If you require support, please connect with your local Gallagher office who can connect you with our Human Resources Consulting team.

## LAYOFFS

### 4. Can I temporarily layoff employees if there is a shortage of work due to COVID-19?

Maybe. In some cases, temporary layoffs are expressly permitted through an employment agreement or a collective agreement, making them a viable option. Although temporary layoffs are contemplated by employment standards legislation in many provinces, they are not always permissible under common law (which is the legal system applied in all jurisdictions in Canada outside of Quebec). Accordingly, there is risk that temporary layoffs may trigger claims of constructive dismissal, particularly in the absence of an employment agreement authorizing temporary layoffs or collective agreement language that explicitly allows them.

In addition to this potential risk, employers considering temporary layoffs will want to be aware of the conditions under which temporary layoffs turn to permanent layoffs under employment standards legislation. This varies significantly by jurisdiction – it can be as little as in excess of 6 days, or as much as in excess of 35 weeks. Once a layoff becomes permanent, termination pay and severance pay (if applicable) obligations typically come into play.

Lastly, employers are advised not to issue layoffs to employees on a leave, particularly those that are on a legislated leave that carries job protection.

### 5. If our employees are not “actively at work” due to layoff, does that result in their loss of benefit coverage?

The employer may choose to either maintain or terminate coverage during a temporary lay-off. In Ontario, this decision can have implications for the duration of the temporary layoff. For unionized environments, the CBA will usually dictate requirements. Most benefit contracts provide for benefit extension during lay-off or some protected leaves. Many insurers are currently reviewing their extension provisions with the current Covid-19 crisis and providing for broader extensions. Please note, these extensions may vary by insurer and contract.

You must apply your coverage decision to continue or discontinue benefits equally to all employees within the same class.

If considering lay-offs, we recommend you contact your Gallagher advisor to review further.

### 6. How are benefits impacted if the lay-off becomes permanent?

Generally speaking, when a layoff becomes permanent, employers are required under employment standards legislation to continue benefits for the statutory notice period. This includes the need to reinstate benefits if benefits had been discontinued during the temporary layoff.



Employment agreements or common law obligations may also require benefit continuation. In the absence of some form of agreement with the affected employee, terminating benefits during what would likely fall within the common law notice period can be risky.

It is recommended that you contact your Gallagher advisor to review the minimum obligations for your industry in your jurisdiction, or an employment lawyer if you have questions regarding the common law notice period.

## 7. Will employees continue to be eligible for benefits if they no longer meet minimum eligibility requirements due to a reduction in hours worked?

Plan terms govern plan eligibility. If the plan has an “active at work” requirement or even a general full-time status requirement, the carrier may take the position that employees lose their eligibility for coverage during a work stoppage. Many insurers are taking a lenient approach to eligibility during the current crisis and have indicated benefits can be continued during this period at current levels if employees are not meeting the eligibility requirement due to a reduction in hours worked. They have indicated that salaries should be maintained at the former level.

If considering reducing hours or establishing work share programs, we recommend you contact your Gallagher advisor to review further.

## EMPLOYEE LEAVES

### 8. What happens if an employee becomes disabled while on legislated leave or lay-off?

Disability benefits must be in force with premiums paid at the date of disability. Typically, the insurers will not consider the claim until the scheduled return to work date. Some insurers may start the elimination period based on the actual date of disability while others will base it on the scheduled return to work date.

### 9. Can we pay LTD premiums on behalf of the employee during a lay-off or leave of absence?

If your LTD benefit is currently a taxable benefit (employer pays some part of the premium), the employer can fully fund the LTD premium during the lay-off or leave and no recovery is required.

If your LTD benefit is non-taxable with employees paying 100% of the premium, under CRA guidelines this requirement must be maintained. Some insurers have indicated employers can fund this during periods of lay-off or leave; however, any premiums paid on behalf of the employee must be recovered upon employees return to active employment.

### 10. Is benefit continuation required under a Declared Emergency Leave or other legislated leave related to COVID-19?

Similar to other statutory leaves under employment standards legislation, an employee on these leaves has the right to continue to participate in the employer’s benefit plans. Employees are required to pay their share of premium contributions.



## OUT-OF-COUNTRY COVERAGE

### 11. Are there any changes to the Out-of-Country (OOC) coverage offered under my benefit program?

Insurers have been reviewing their OOC coverage and in some cases contracts have exclusions related to travel advisories. Given the Government of Canada announcement to avoid all non-essential travel outside of Canada until further notice, this may impact your coverage. Most insurers have indicated coverage will be continued to those who commenced travel prior to the March 13, 2020 announcement. We recommend anyone considering travel pay close attention to advice provided by experts and check the Government of Canada's website.

Some insurers have also extended their trip limit duration to assist those stranded outside of Canada.

We recommend reviewing your carrier resources or contacting your Gallagher advisor for additional details should you have employees outside of Canada.

### 12. What resources are available to my employees?

Below you will find numerous links to EFAP and Virtual Health Care resources you can provide to employees to support them through this challenging time.

#### Notes:

The COVID-19 situation is evolving quickly. Please be aware insurers are reviewing each day as new information becomes available. At Gallagher, we will endeavor to provide you with updates as soon as possible.

Each contract is unique and we recommend you involve your Gallagher advisor in any benefits related decisions at this time.

## HOW TO STAY UP-TO-DATE ON COVID-19

- Visit the **Government of Canada** website for general information about COVID-19 in Canada.
- Visit **Canada's Economic Response plan** for more information about the Government's economic response to COVID-19 plan.
- Visit **Employment Insurance benefits and leave**, for more information about employment insurance benefits, including information about the impacts of COVID-19.
- Continue to monitor provincial COVID-19 update pages for new measures:
  - [Ontario](#)
  - [Quebec](#)
  - [BC](#)
  - [Saskatchewan](#)
  - [Alberta](#)



- [Manitoba](#)
  - [Nova Scotia](#)
  - [Newfoundland & Labrador](#)
  - [New Brunswick](#)
  - [PEI](#)
  - [Northwest Territories](#)
  - [Yukon](#)
  - [Nunavut](#)
- Visit your insurer update page to stay up to date on any new changes:
    - [Blue Cross](#)
    - [Canada Life \(GWL\)](#)
    - [Desjardins](#)
    - [Empire Life](#)
    - [Equitable Life](#)
    - [GreenShield](#)
    - [Industrial Alliance](#)
    - [Manulife](#)
    - [SSQ](#)
    - [Sun Life](#)

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