

UNPRECEDENTED TIMES: PANDEMIC TAKEAWAYS FROM YOUR EMPLOYMENT LAWYERS

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September 2022

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Over the past two years businesses have navigated challenging employment issues, from vaccine mandates to mass temporary layoffs. The pandemic has changed the way people work, permanently.

Here are three key takeaways that we expect will continue to inform the workplace going forward:

1. Human Rights

The annual volume of complaints to the BC Human Rights Tribunal almost tripled over the course of the pandemic as employers enforced public health orders and guidelines, including mask mandates and developing mandatory vaccination policies. In an effort to stem the overwhelming number of these complaints and support the legitimacy of mandated health measures, the Tribunal released reasons from several screening decisions.¹

In summary, employers will not be found to have discriminated against individuals where they enforced COVID-19 related policies if: (1) The evidence supports the need for the rule; (2) The rule is made in good faith; and (3) The employer offers reasonable accommodation. We expect the majority of pandemic-related complaints will be unsuccessful, but that the strain on the system will continue for some time.²

¹ See *The Customer v The Store*, 2021 BCHRT 39; *The Worker v the District Managers*, 2021 BCHRT 41 and *Complainant v Dr. Bonnie Henry*, 2021 BCHRT 119. Subsequent decisions from the Human Rights Tribunal have upheld the reasons from these decisions.

² The Employment Standards Branch and Canadian Human Rights Commission are experiencing similar backlogs, which we also anticipate to continue.

2. Remote Work

Love it or hate it, in most workplaces remote work is here to stay, in one form or another. Generally speaking, employers are within their legal rights to implement and enforce return to work policies; however, doing so risks losing top talent to your competitors. For many workers, remote work is now a non-negotiable, and offering flexibility will continue to be key to attracting and retaining qualified employees at a time when there is an unprecedented labour shortage in many industries.

Employers should have clear policies in place with respect to remote work, and ensure that those policies are enforced consistently. Your policy should have language that allows remote work privileges to be removed in certain circumstances, sets out clear expectations around responsiveness and availability³, and addresses health and safety considerations. Beware of implementing a policy you do not intend to enforce, as relying on that in the case of conflict will prove difficult.

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3. Occupational Health and Safety

At the outset of the pandemic, WorkSafeBC, in conjunction with the Provincial Health Officer, required all employers to create and implement a detailed COVID-19 Safety Plan. As of April 8, 2022 it was no longer necessary to have a COVID-19 specific plan. Instead, a Communicable Disease Prevention Plan remains a requirement for all workplaces.

A Communicable Disease Prevention Plan should seek to reduce the risk of transmission in the workplace of communicable diseases by identifying high-touch services or areas and implementing routine cleaning procedures. There should also be a system in place to support workers with common symptoms of a communicable disease. Symptomatic workers should continue to be encouraged to take sick days⁴, work remotely or isolate where possible to avoid spreading any potential infection.

Employers should also be aware that remote workers remain subject to the requirements of applicable health and safety legislation. Employers must ensure that they have a safe workspace, which includes prompt identification and removal of hazards, as well as protocols for evacuating from the worker's home to a safe location if necessary. Where assistance may not be readily available to a worker in the case of emergency, the employer must have a written procedure in place to monitor their well-being, which must include having a designated individual check-in at regular intervals and record the results.

For questions, concerns, or feedback on this article, or other related workplace matters, please do not hesitate to contact [Eleni Kassaris](#), Partner with the [Labour and Employment](#) group of Dentons' Vancouver office.

3 If you operate in Ontario, this needs to take into account mandatory right to disconnect policies.

4 As of January 1, 2022 all employees covered by the *Employment Standards Act* whom have been employed for at least ninety days are entitled to five paid sick days per calendar year. This entitlement is in addition to three unpaid days for sick leave which was previously required.