



# Obligations to Your Retail Employees

## I. Statutory obligations

In the event of an influenza pandemic, retail employers may have obligations to their employees under:

- **Occupational Health and Safety Legislation**

Employers have a duty to take reasonable precautions to protect their employees. Employees may also have the right to refuse unsafe work. Employers should remember that most occupational health and safety legislation imposes a broad duty on employers to take every reasonable precaution to protect their workers.

- **Employment Standards Legislation**

Employees may be able to take job protected leave for emergency or compassionate care reasons. In addition, although most provincial and territorial employment standards legislation contains “exceptional circumstances” provisions to permit excess hours of work in certain circumstances. If excess hours of work are required on an ongoing basis, employers may have to comply with legislated “hours of work” provisions.

- **Human Rights Legislation**

Employers are prohibited from discriminating, harassing or punishing employees and applicants on the basis of protected groups such as ethnic origin, race or ability. For exam-

ple, denying employment to an applicant of Vietnamese descent because Vietnam is a country which has reported human cases of avian influenza, would be discrimination prohibited by human rights legislation. Employers also have a duty to prevent and prohibit workplace harassment by co-workers of employees who fall within one of the protected grounds.

- **Privacy Legislation**

Employers may be obligated to disclose employee personal health information to the extent that it is reasonably necessary to protect the life, health or security of their other employees.

- **Employment Insurance Legislation**

Employees may be eligible to receive special sickness or compassionate care benefits.

- **Health Protection and Promotion Legislation**

Employers and employees may be subject to orders by medical officers which restrict their mobility, thereby affecting the operation of the workplace.

## 2. Contractual obligations

In addition to statutory obligations, retailers may have contractual obligations to their employees.

Express and implied terms and conditions of employment with non-unionized employees may exist which will dictate how an employer handles staffing circumstances in the event of a pandemic. For example, a retailer may be forced to reduce employees' hours or work due to a significant down-turn in business. Many employment agreements do not contemplate an occasion where a full-time employee's hours are reduced without terminating the employees.

Although it is generally easier to change the terms and conditions of employment of non-unionized employees, unilateral changes to a condition of employment may require notice to employees to reduce the likelihood of a successful allegation of constructive dismissal. In the context of an influenza pandemic, however, it may be unlikely that temporary “emergency responses” to unforeseen circumstances will result in claims of constructive dismissal, especially if employers are seen as treating their employees in a fair manner at all times.

With new hires, employers may want to consider implementing an offer letter that provides more flexibility to temporarily



change terms and conditions of employment so as to respond to unforeseen circumstances.

### 3. General obligations

Although not a “legal” obligation per se, it is important for retail employers to always treat their employees in a respectful, courteous and professional manner. Employers are often judged on how they treat their employees in “difficult” times. For example, it is common for a court to examine how an employee was treated in a termination meeting when deciding whether the employee is entitled to punitive damages. Employers who act in good faith toward employees during an emergency time of crisis are likely to receive fewer complaints and more cooperation from their workforce.

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