

# Managing a Non-Profit Organization in a Pandemic:

## Your Legal Obligations and Best Employment Practices

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# **Disclaimer**

## **(because we're lawyers)**

This presentation contains legal information, not legal advice.

The situation is changing rapidly, and you should make sure you look for up-to-date information regularly.

If you would like legal advice pertaining to your specific situation, please contact us and we would be happy to assist you.

# Agenda

1. Introduction
2. Employer responsibilities in the context of COVID-19
3. Benefits and supports available to non-profit employers

# Introduction – What's Going On?

COVID-19 has been declared a global pandemic.

BC has declared a state of emergency to support province-wide responses.

BC, Canada, and many other countries remain in active containment-mode through a series of public health measures to prevent the virus from spreading, including:

- physical distancing,
- travel restrictions
- business and school closures

<http://www.bccdc.ca/health-info/diseases-conditions/covid-19/about-covid-19>

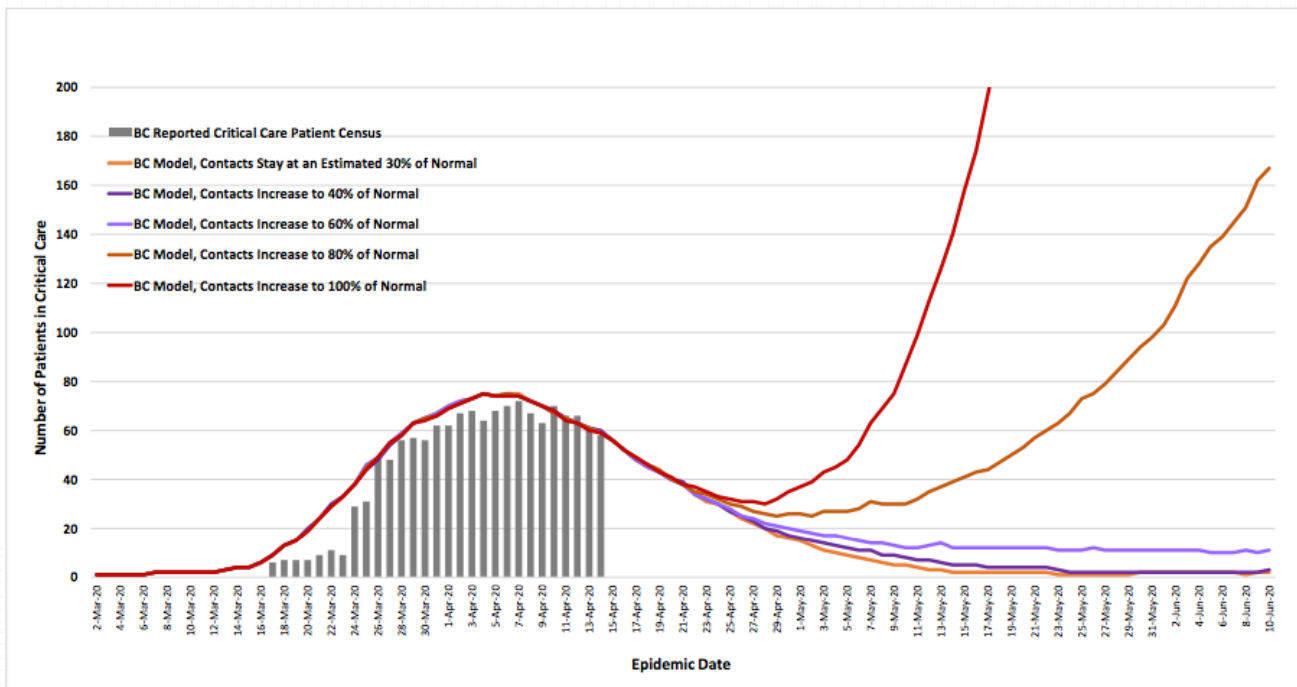
# Status of the Pandemic in BC

Friday April 17, 2020, BC released new modelling data. BC health officials say measures put in place to stem the spread of COVID-19 are working, and we are well ahead of the Canadian average. However, restrictions won't be lifted until the middle of May at the earliest.

They suggested health care services may be the first to re-open, but that we can only re-open business, services, and the economy while maintaining many of the measures we already have in place.

# Going Forward: the long haul

## Example: Critical care implications of dynamic model in BC's context



### Assumptions:

Scenario 11-3-12 assumes that 11% of all COVID-19 cases will be admitted to critical care.

Critical care admissions will commence 3 days (range 1-5 days) after symptom onset; ALOS in Critical Care will be 12 days (interquartile range 5-16 days).

The Scenario 11-3-12 is based on analysis of BC data on COVID-19 patients admitted to critical care by April 10<sup>th</sup> 2020.

Note: This epidemic curve is aligned with the date that BC reached 2 cases per million to align with international comparators.

Note: Confidence intervals exist around the lines presented; however, these are not depicted in this image.

Source: BC Ministry of Health Press Briefing, April 17, 2020

[https://news.gov.bc.ca/files/COVID19\\_Update\\_Modelling-DIGITAL.pdf](https://news.gov.bc.ca/files/COVID19_Update_Modelling-DIGITAL.pdf)

# Public Health Orders

The Provincial Health Officer, Dr. Bonnie Henry, has made a number of orders which British Columbians must follow. These include:

Prohibiting gatherings of 50 or more people (March 16, 2020)

Ordering the closure of food and drink establishments, except for take-out (March 20, 2020)

Ordering that staff at long-term care facilities work only at a single site, and associated orders (March 26, 27, April 10, 15, 2020)

Mandatory 14-day self-isolation after returning to Canada, except for essential workers who are critical to the delivery of an essential service (Canada: March 25; BC: April 14)

<https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/covid-19-novel-coronavirus>

# Public Health Guidelines

Public Health officials have also issued guidance to Canadians and British Columbians about best practices to slow the spread of COVID-19



## Guidance to social service providers

Includes shelters, friendship centres, group homes and others

(April 4, 2020)

Self-isolate  
when sick

Physical  
distancing

Hand  
hygiene

Frequently  
clean and  
disinfect

Respiratory  
etiquette

Masks may  
reduce  
transmission

Screen  
staff and  
clients for  
respiratory  
symptoms

<https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-guidance-social-service-providers.pdf>

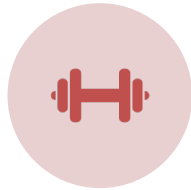


# Physical Distancing

PHYSICAL DISTANCING MEANS MAKING CHANGES IN YOUR EVERYDAY ROUTINES IN ORDER TO MINIMIZE CLOSE CONTACT WITH OTHERS AND KEEPING 2 METRES APART.



GREET WITH A  
WAVE



EXERCISE AT  
HOME OR  
OUTSIDE



GET GROCERIES,  
MEDICINES, AND  
USE PUBLIC  
TRANSIT AT OFF-  
PEAK TIMES



USE DELIVERY  
SERVICES  
INSTEAD OF  
SHOPPING



WORK FROM  
HOME

<http://www.bccdc.ca/Health-Info-Site/Documents/COVID19-Physical-distancing.pdf>

# Issues Employers May Face

Employees who present at work with symptoms of COVID-19

Employees who are at higher risk of severe illness from COVID-19

Employees who have new/different child-care responsibilities as a result of COVID-19 school or daycare closures

Need to manage the workplace and care for employees, while providing services to vulnerable and marginalized individuals

# Employer Responsibilities

We  
will  
cover:

- Best practices
- Legal obligations
  - Mandatory leaves of absence
  - Duty to Accommodate
  - Obligation to provide a safe work environment
  - Terminations and “lay-offs”

# Best Practices

Stay informed about updates and guidance from the World Health Organization, Public Health Agency of Canada, and provincial and local public health agencies.

Make hygiene products available and increase cleaning

Allow employees to work from home where practicable

Create distance or barriers between work or service stations

Ensure that sick-leave policies don't deter workers from staying home when sick

# Best Practices

## Facilitating working from home

- Employers retain the right to direct and manage the workforce
- Employees are still covered by WorkSafe BC
- Develop a Health and Safety policy
  - Protocol for evacuation, reporting injuries, and ergonomic assessments
  - Plan for education and training about duty to follow safe work procedures
  - Plan for check-ins and isolation procedures, especially if worker lives alone

<https://www.worksafebc.com/en/about-us/news-events/announcements/2020/March/health-safety-responsibilities-when-working-from-home>

# Best Practices

## Supporting employees working from home

- Morale is important – how do you normally foster community in your workplace?
- Ideas for creating digital community
  - Workplace chat platforms
  - Informal gatherings
  - Buddy system

# Legal Obligations: Duty to Accommodate

Employers have an obligation to accommodate employees with characteristics protected by the *Human Rights Code*, RSBC 1996 c 210, to the point of undue hardship.

Protected characteristics which may be relevant in the context of COVID-19 include:

Disability

Age

Family status

Race (etc.)

Accommodation often requires treating people with protected characteristics differently, to facilitate their equal participation in public life.

<http://www.bchrt.bc.ca/>

<https://bchumanrights.ca/>

# Legal Obligations: Duty to Accommodate

## Disability/Age

- The BC Human Rights Commissioner has opined that COVID-19 is a disability, akin to HIV, is stigmatizing
- Some people with pre-existing conditions, or in certain age groups, are at higher risk of serious illness from COVID-19
- Individuals with mental disabilities may be at higher risk for their condition being exacerbated by the pandemic
- [https://bchumanrights.ca/wp-content/uploads/2020/03/BC-OHRC\\_COVID19\\_Policy-V5.pdf](https://bchumanrights.ca/wp-content/uploads/2020/03/BC-OHRC_COVID19_Policy-V5.pdf)

## Family Status

- Individuals with children, or caring obligations for elders or other family members, may need accommodation



# Legal Obligations: Duty to Accommodate

Employers  
may be  
required  
to:

- Allow employees to work from home
- Bundle job duties to enable working from home
- Provide some equipment to enable working from home
- Consider job-sharing where multiple workers have child-care obligations
- Provide flexible working conditions

# Legal Obligations: Safe Work Environment

Employers must provide a safe work environment, which currently includes:

- Physical distancing
  - Do all your workers need to come to work? What can you prioritize?
  - Can you stagger shifts?
  - Can you minimize the number of people on site at one time?
- Cleaning
  - Providing soap, water, disposable towels, and hand sanitizer
  - Increased cleaning of high touch surfaces

Employees can refuse to work in the face of “undue hazard”

Failure to implement physical distancing and sanitization measures could result in WSBC assessments, and civil liability to third parties

# Legal Obligations: ESA Leaves Under Section 52.12

Unpaid leave must be granted under the following circumstances:

- Employees diagnosed with COVID-19, and acting in accordance with an order of a public health officer, or instruction of a medical practitioner
- Employees in quarantine or self-isolation in accordance with an order of the provincial health officer, an order made under the *Quarantine Act*, guidelines of the BCCDC or Public Health Agency of Canada
- The Employer has directed the employee not to work due to concerns about exposure to others
- The employee is providing care to a child or a person over 19 who is unable to care for themselves
- The employee is outside the province and cannot return due to travel restrictions

<https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards>

# Legal Obligations: ESA Leaves

Requested leave can last as long as the situation requiring leave persists.

Employers can ask for “reasonably sufficient proof”, but cannot require a note from a medical practitioner, nurse practitioner, or registered nurse.

Section 49.1 Now provides for 3 days unpaid sick leave each employment year, for employees with at least 90 days’ service. \*This provision is not temporary.

# Legal Obligations: Reasonable Notice

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There is no statutory right to temporarily layoff employees. Employees must agree to a layoff, and it can last no longer than 13 weeks (*ESA*, ss 1, 65)

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If any employee does not agree to a layoff, and you cannot employ them, you must terminate their employment

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Termination includes obligations to provide reasonable notice (aka: severance)

<https://www.mooreedgarlyster.com/blog/2020/3/18/covid-19-lay-offs-terminations-and-severance-pay>

# Legal Obligations: Reasonable Notice

When terminating an employee without cause, they are owed reasonable notice.

Minimum notice is set out at Part 8 of the *Employment Standards Act*, RSBC 1996 c 113.

At common law, notice may be much longer than the statutory minimums.

We don't know how notice periods, or other employment law principles (such as the duty to mitigate, or frustration of contract) will apply in the current circumstances.

**If you are considering terminating an employee, you should seek legal advice.**

# Example: Employee with a fever and cough



This employee is directed to self-isolate by the BC Centre for Disease Control



The employee is entitled to an unpaid leave of absence under the *ESA*



The employee has a right to privacy



Other employees have a right to a safe work environment, and clients are entitled to a safe environment in which to receive services

# Employee with a fever and cough

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## The Employer

Must allow/require the employee to self-isolate for at least 10 days from the onset of symptoms, and until their fever is gone, and they are feeling better.

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When the employee is well enough to work, should enable them to work from home if practicable

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Must avoid disclosing the employee's private medical information, unless reasonably necessary to maintain a safe workplace

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Can ask for reasonably sufficient proof, but cannot require a note from a physician or doctor

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<http://www.bccdc.ca/Health-Info-Site/Documents/Self-isolation.pdf>



# Example: Employee at High-Risk of Severe Illness



Triggers duty to accommodate due to disability (e.g. immuno-compromised) or age



Accommodation to the point of undue hardship, which can require some expenditure



Accommodation doesn't have to be perfect, but it must be reasonable



An “undue hazard” to a worker at high-risk may be different than “undue hazard” to others

# Employee at High-Risk of Severe Illness

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The Employer should

Consider whether the employee can work from home in their current job

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Consider whether tasks can be bundled to allow the employee to work from home

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If working from home is not possible, consider allowing paid leave

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If paid leave is not feasible, provide unpaid leave

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# Example: Employee with family-care obligations



MAY TRIGGER A DUTY TO ACCOMMODATE



EMPLOYEE IS ENTITLED TO UNPAID LEAVE UNDER THE ESA

# Employee with family-care obligations

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Employers should

Consider whether the employee can work from home with flexibility to allow for child-care

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Consider bundling tasks to allow flexible work from home

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Consider work-sharing

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Permit a leave of absence

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# Employee who does not want to come in to work



Employees are not entitled to refuse to work in the absence of undue hazard



All British Columbians and Canadians have been instructed to stay home, except for essential reasons



Workers who voluntarily leave their jobs are not entitled to EI, or CERB

# Employee who wants to work from home

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The Employer should

Consider allowing the employee to work from home, if at all possible

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Implement physical distancing and sanitization measures at the workplace

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Clearly communicate physical distancing and sanitization measures to employees

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# Benefits Available for Non-Profit Employers

Eligible Canadian employers may be eligible for wage subsidies of up to 75%, covering 12 weeks, retroactive from March 15, 2020 – June 6, 2020.

Eligible Employers include non-profit organizations and registered charities who have experienced eligible reduced revenue.

## Wage Subsidies

Non-profits and charities can choose to include revenue from government sources, such as grants, when applying for the subsidy, but must take the same approach for each period for which they are applying.

Temporary wage subsidy of 10% is available to organizations who have not experienced eligible drops in revenue.

<https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy.html>

# Benefits Available for Non-Profit Employers

## Work Sharing

An adjustment program designed to help employers and employees avoid layoffs when there is a temporary reduction in the normal level of business activity that is beyond the control of the employer.

The measure provides income support to employees eligible for Employment Insurance benefits who work a temporarily reduced work week while their employer recovers.

Must have experienced a shortage of work; reduction in revenue alone is insufficient

Slow-down must be temporary

Must show a recovery plan

<https://www.canada.ca/en/employment-social-development/services/work-sharing.html>



# Benefits Available for Non-Profit Employers

## Canada Emergency Business Account (CEBA)

Provides interest-free loans of up to \$40,000 to help cover operating costs where revenues have been temporarily reduced

To qualify, organizations need to demonstrate they paid between \$20,000 and \$1.5 million in total payroll in 2019.

Apply for support through your bank or credit union.

<https://ceba-cuec.ca/>

# Benefits Available for Non-Profit Employers

## Canada Emergency Commercial Rent Assistance (CECRA)

For small businesses (not clear if includes non-profits)

Will seek to provide loans and/or forgivable loans to commercial property owners who in turn will lower or forgo the rent of small businesses for the months of April (retroactive), May, and June.

Implementation of the program will require a partnership with provincial and territorial governments who are responsible for owner-tenant relationships.

More details will be available soon.

<https://www.canada.ca/en/department-finance/economic-response-plan.html>

# Benefits Available for Non-Profit Employers

## Other

Tax filing delays for non-profits, registered charities, and social enterprises

[https://docs.google.com/document/d/e/2PACX-1vQbkT4Zr5isIGI6EAluwm0-eO8-Y7xP8KNVMXasavT4Dloll8Qldc rxPKMt\\_4p\\_LApkYCpdcSvriJps/pub](https://docs.google.com/document/d/e/2PACX-1vQbkT4Zr5isIGI6EAluwm0-eO8-Y7xP8KNVMXasavT4Dloll8Qldc rxPKMt_4p_LApkYCpdcSvriJps/pub)

(chart from Imagine Canada)

Extra funding to sexual assault and domestic violence centers:  
<https://cfc-swc.gc.ca/fun-fin/shelters-refuges-en.html>

Extra funding for local organizations who serve people experiencing food insecurity:  
<http://www.agr.gc.ca/eng/agricultural-programs-and-services/local-food-infrastructure-fund-infrastructure-and-equipment-improvement-projects/supporting-people-experiencing-food-insecurity-in-canada-because-of-covid-19/?id=1585855025072>

# Questions?

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