

Employment and Labour

MAY 2003

SARS Information for Human Resources Professionals

Over the past few weeks, many clients have had questions regarding Severe Acute Respiratory Syndrome (SARS) related issues in the workplace. As the outbreak has continued, we are providing this bulletin to provide answers to many of the common questions that we have received.

Questions and Answers

What is SARS?

SARS stands for Severe Acute Respiratory Syndrome, and is a severe form of pneumonia, accompanied by a fever. A small number of people with SARS can become severely ill.

Is it safe for employees to come to work?

According to government officials there have been no cases which appear to have been contracted in the workplace, except for health care workers. Therefore, there is no reason to believe that there is any health and safety risk for employees to come to work.

Who should be quarantined?

Only people who have been exposed to SARS need to be isolated or quarantined at home, even if they are not displaying symptoms. Home isolation or quarantine starts from the first day after a person is exposed to SARS and ends after ten days. Isolation or quarantine at home is required if you have had direct contact with a person known to have SARS.

Can an employee insist on wearing a mask at work?

At the present time, masks are not required unless a person works in a health care setting where it is possible that they may come into contact with a SARS patient. There is no evidence that wearing a mask in an office or in a workplace environment is necessary or helpful.

Can an employee be disciplined or fired for refusing to come to work because of a *fear* of SARS?

Given the current level of information available, employers are within their rights to expect employees to report to work. Fear of SARS, without any specific evidence of any increased risk at the workplace, would not likely be a sufficient reason to refuse to report to work. However, employers must comply with the work refusal procedure for "work refusals" as prescribed by the *Occupational Health and Safety Act*. Employers cannot threaten to discipline or terminate an employee who refuses to report to work, without first following these procedures.

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If an employee is under quarantine what are the employer's obligations with respect to pay?

Employers do not have to pay employees for their time-off while the employee is under quarantine unless the employee is entitled to paid sick leave and has symptoms of SARS.

Although an employee may not be entitled to be paid by their employer, they may be entitled to certain benefit payments. Based on recent amendments to the *Employment Insurance Act*, an employee may be entitled to sickness benefits during the quarantine period and the usual two week waiting period will be waived. An employee with symptoms of SARS who is infected in the course of their employment may be entitled to the usual benefits and services available under *Workplace Safety and Insurance Act*. However, the Workplace Safety and Insurance Board has stated that it will not cover a quarantined employee who is symptom free even if the quarantine arose "out of and in the course of employment".

Employers should also consider allowing the employee to use vacation time, or days off in lieu time, if possible.

What should an employer do if it learns that an employee is under quarantine?

As part of their duty under the *Occupational Health and Safety Act*, employers should contact a public health office to confirm if there is any risk to other employees. If there is no risk, then there is likely no requirement for the employer to inform other employees and the employer should follow their usual procedures with regard to the release of medical information.

Are there any human rights considerations when dealing with an employee suspected of having SARS?

The Ontario Human Rights Commission has publicly stated that it will treat SARS as a disability for the purposes of the *Human Rights Code*. The Commission has also expressed concern about possible discrimination or harassment against Ontario's Asian-Canadian community, because the

SARS outbreak is believed to have originated in China's Guangdong province. According to the Commission, "barring someone from a public place, place of employment or refusing services because of their race or place of origin is unlawful and contrary to the Code."

What actions can an employer take to protect their workplace?

Employers should take the following actions to ensure the protection of the health and safety of their workers:

- If an employee is exhibiting symptoms, he/she should be denied access to the workplace, sent home for quarantine, and advised to seek medical treatment.
- If an employee has been in direct contact with someone who has symptoms of SARS but the employee does not exhibit any symptoms, he/she should also be denied access to the workplace, sent home for quarantine, and advised to seek medical advice.
- Employers should postpone all non-essential travel and all non-essential contact between employees in the workplace should be minimized.
- Employers should provide supplies such as disinfectant wipes to clean work surfaces or counters periodically, though there does not appear to be hard evidence that such measures are effective against SARS; and
- Employers should keep apprised of all recommendations made by the Ontario Ministry of Health or long term care, Health Canada, and the Toronto Public Health Department.

Where can I get more information?

Further information about SARS is available from the following contacts:

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Local Information:

SARS - 24 Hour Clinic - 416.323.6222

Toronto Public Health - 416.338.7600

Scarborough Public Health Department -
416.338.7454

Mississauga Public Health Department -
905.799.7700

York Region Public Health - 905.895.4511

Websites:

Health Canada: www.hc-sc.gc.ca

Ontario's Ministry of Health:
<http://www.health.gov.on.ca/>

For further information about legal issues surrounding SARS in the workplace, please feel free to contact any of the following lawyers in Goodmans' Employment and Labour law group:

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