

## COVID-19 — RETURNING TO WORK

### Labour Standards Code – Emergency Leave

- If an employee is unable to perform their job as a result of an order under the *Health Protection Act (HPA)*, they may qualify for job protection under the emergency leave provisions of the *Labour Standards Code*.
- For example, an employee may be required to self isolate under an HPA order and unable to report to work. An employee may also qualify for emergency leave to care for a family member, such as their child who is affected by a mandated school or daycare closure under the HPA, if the employee is the only person reasonably able under the circumstances to provide the family member with the required care.
- When covered by the emergency leave provisions, an employee is entitled to an unpaid leave and job protection until such time as they are able to return to work or the emergency ends.
- An employer may not discriminate against an employee who has indicated they will be taking an emergency leave, who actually takes such a leave, or who the employer believes may take an emergency leave. “Discrimination” under the *Labour Standards Code* includes discharge, lay-off or suspension within three months of the employee taking, or expressing they may take, the leave. Discrimination does **not** include discharge or suspension for just cause, conduct that would warrant summary dismissal and other circumstances *not associated* with COVID-19.

### Human Rights Legislation

- If an employee is unable to return to work for health reasons, the employer may have accommodation obligations under the *Human Rights Act* based on a physical or mental disability.
- If an employee is unable to return to work because they cannot find childcare — and the situation does not fall under the emergency leave provisions of the *Labour Standards Code* — the employer may have accommodation obligations under the *Human Rights Act* based on family status.

### The Labour Standards Code - Ending Employment

Where the *Labour Standards Code* emergency leave and *Human Rights Act* protections do not apply to the employee’s situation and the employee advises that they are not ready to return to the workplace, the employer might, depending on the circumstances:

- provide the employee with **written notice**, in accordance with the *Labour Standards Code*, that they are being dismissed effective a certain date, provided the employee has less than 10 years of service (employers must have just cause to dismiss employees with 10 or more years of service);

- provide the employee with written notice that they are being dismissed immediately and paying the employee **pay in lieu of notice**, provided the employee has less than 10 years of service;
- advise the employee, in writing, that they are being **dismissed immediately**, if one of the circumstances set out in the *Labour Standards Code* applies, including that the employee:
  - has been offered reasonable other employment by the employer;
- advise the employee that if they do not return to the workplace their **behaviour will be considered misconduct** subject to progressive discipline, which could include warning the employee that if they do not return by a certain date their employment will be terminated for cause;
- treat the situation as a **resignation**.

Courts have established a test for determining if an employee has quit. To find there was a quit, there must be evidence of:

1. a statement by the employee to that effect **or** an act clearly manifesting to the employer an intention to quit; **and**
2. action by the employee carrying out the stated or manifested intent. Employees must provide notice to the employer of their termination of the employment, unless the employer has breached the terms and conditions of the employment.

Labour Standards would need to consider the communications and actions of the employer and employee and the specific circumstances to determine if an employee was dismissed or an employee has quit. These decisions are made on a case by case basis.

## Collective Agreements/Contracts of Employment

There may be other factors to consider if an employee works under a collective agreement or if they have a contract of employment that provides for greater benefits than the *Labour Standards Code*.

## Contact Information

- Labour Standards Division – 1-888-315-0110, [labourstandards@novascotia.ca](mailto:labourstandards@novascotia.ca)
- Nova Scotia Human Rights Commission — 1-877-269-7699, [hrcinquiries@novascotia.ca](mailto:hrcinquiries@novascotia.ca)