COVID-19: Managing Discipline and Absences for Medical Reasons in the Context of Restarting a Business

While we wait for a vaccine, the time has come to prepare your business for the resumption of regular activities, if you have not already done so. To this end, a prudent employer will be well advised to put together a discipline management plan in line with the required health and safety instructions as well as a plan for managing absenteeism for medical reasons.

Discipline Management

In this time of global pandemic and increased risk, the employer’s obligation to protect the health, safety and physical integrity of its workers is more crucial than ever. An employer must be aware that the door has been opened to potential workplace accident claims related to the COVID-19 and that a clear plan for the management of preventive measures will benefit both the employer and workers.

Of course, prevention in terms of health and safety is largely a matter of raising awareness among employees, but this awareness must be accompanied by discipline management.

In terms of awareness, the employer may send to each employee, as well as post in its establishment, a notice indicating the health instructions to be followed, in particular:

• the requirement to keep a physical distance of two metres from each other during work and during lunch breaks
• the increased use of technology to interact with co-workers
• the wearing of protective equipment where appropriate.

In disciplinary matters, a prudent employer should review its internal health and safety policy in order to adapt it to the present situation or to establish one specifically for this crisis. This policy must be clearly communicated to workers. Like any other policy, the clearer the policy as a whole and the clearer the applicable, while flexible, discipli-
nary measures, the more effective the policy will be to apply.

Finally, the escalation of sanctions remains the cardinal principle in discipline management. Indeed, unless gross negligence is involved, and although breaches of health and safety instructions are quite often objectively serious incidents, the prudent employer will firmly apply progressive discipline that can culminate in dismissal.

**Managing Absences for Medical Reasons**

The issue of managing absences for medical reasons pits employee privacy rights against an employer’s right to manage its operations.

**Employers under Quebec Jurisdiction**

Unlike other Canadian provinces, Quebec did not make any changes to labour standards with respect to medical absences in the context of the COVID-19 crisis.

The rules therefore remain essentially the same, namely that an employer will generally be able to require a medical certificate for an absence of more than three days. As for short-term absences, this is a case-by-case matter and depends on the company’s policy or collective agreement. Generally speaking, an employer will be able to require a medical certificate in cases of suspicious or fraudulent absenteeism or repetitive absences. As for the specific circumstances of the current crisis, for the purposes of determining the worker’s ability to return to work, it is reasonable to believe that an employer would be entitled to require a medical certificate if it has reasonable grounds to believe that a worker is exhibiting symptoms related to COVID-19.

**Employers under Federal Jurisdiction**

In connection with COVID-19, amendments have recently come into force in the *Canada Labour Code*.

The legislation now provides for **COVID-19 related leave of up to 16 weeks** for a worker who is unable to work or unavailable for reasons related to COVID-19. A worker who wishes to take this leave will have to give written notice to his or her employer of the duration and reasons for the leave. It should also be noted that during the leave, the worker will continue to accumulate seniority and the employer will, in principle, continue to pay into his retirement contributions, and for sickness and disability benefits.

Another major amendment to the *Canada Labour Code*, in force until September 30, 2020, unless extended thereafter, is that the employer cannot currently require a medical certificate in the context of a leave taken for medical reasons.

It is possible, however, that this will not prevent the employer from requiring a medical certificate, not to justify the worker’s absence, but rather to establish the worker’s ability to return to work in the event that an employer is aware that an employee has presented symptoms related to COVID-19 or in other specific circumstances related to an illness or accident. After all, the employer’s obligation to protect the health and safety of its workers remains.
Other amendments have also been made to the *Canada Labour Code*, again in the context of the current crisis.

If you have any questions or need clarification regarding the management of discipline with respect to the current instructions on health and safety or the management of absences for medical reasons in these turbulent times, Robinson Sheppard Shapiro’s Labour and Employment Law team remains available to provide you with further guidance.