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YOUR LEGAL OBLIGATIONS DURING A CONTAGIOUS DISEASE OUTBREAK: WHAT IT MEANS TO STAFF AND STUDENTS

OSBIE RISK MANAGEMENT SEMINAR

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SARS Crisis in Ontario

Ontario's central public health system was "unprepared, fragmented, poorly led, uncoordinated, inadequately resourced, professionally impoverished and generally incapable of discharging its mandate."

Mr. Justice Campbell



World Health Organization

- ❑ H1N1 flu virus is a respiratory disease caused by Type A influenza viruses.
- ❑ As of October 25, 2009, there were more than 440,000 laboratory-confirmed cases and 5,700 deaths in 191 countries and territories.



World Health Organization

- ❑ Countries are no longer required to test and report individual cases.
- ❑ The number reported understates the real number of cases.
- ❑ WHO considers the overall severity to be moderate.
- ❑ WHO is concerned that serious cases and deaths are occurring primarily among young people.



Ministry of Health and Long Term Care

- ❑ As of October 28, 2009, there were 4,814 lab-confirmed cases of H1N1 in Ontario.
- ❑ As of October 21, 2009, there were 30 deaths in Ontario.
- ❑ 68 people who had H1N1 were in hospital.
- ❑ Two new deaths were reported last week.



Vaccine Short of Target

- ❑ On October 29th, GlaxoSmithKline informed federal government that there will be a significant shortage of the vaccine.
- ❑ GSK is forecast to ship 436,000 doses to provinces, far less than 2 million anticipated.
- ❑ Provinces will suspend rollout of the vaccine for a couple of weeks.

Canada's Largest Inoculation Campaign

- ❑ Slower than expected vaccine production.
- ❑ Panicked parents hurried children of all ages to flu-shot clinics.
- ❑ Healthy adults ignoring the carefully planned protocol.
- ❑ Stepped-up public health campaign to persuade Canadians to be immunized.



Five Schools Closed in New Brunswick

- ❑ St. George, N.B. is town of 1,300.
- ❑ At Fundy High School, 11 of 42 teachers, 2 of 6 custodians are 4 bus drivers had the flu.
- ❑ 340 of 640 students were absent with the flu.
- ❑ The local arena was closed on the weekend.



School Closed in Kitimat, British Columbia

- ❑ Mount Elizabeth Secondary School was closed.
- ❑ Absentee rate reached 40 percent on October 29th.



Lower Supply of Vaccine - Ontario

- ❑ Week of November 2nd, Ontario will receive a lower supply of vaccine than had been anticipated.
- ❑ Immunization efforts will focus on priority groups, the people most vulnerable.



Priority Groups Are:

- ❑ People under 65 with chronic conditions;
- ❑ Pregnancy concern;
- ❑ Healthy children 6 months to under five years of age;
- ❑ People in remote communities;
- ❑ Health care workers; and
- ❑ Household contacts and care providers of persons of high risk.



Public Health Agency of Canada

- ❑ On August 19, 2009, the Public Health Agency issued guidelines for schools regarding management of influenza-like illnesses.
- ❑ Widespread school closures are not recommended.
- ❑ Decisions about individual closures are at the discretion of local authorities having regard for school absenteeism and/or staff shortages.



Public Health Agency of Canada

- ❑ Parents and teachers should be monitored for symptoms.
- ❑ Health officials should be informed of major outbreaks.
- ❑ Sick children should be kept at home or isolated if they fall ill at school.
- ❑ Schools with extra-curricular activities may have to curtail travel.

From a Legal Perspective

- ❑ What is a school board's standard of care?
- ❑ What are the rights and obligations of employers and employees?
- ❑ What risk management strategies can be taken to reduce exposure?
- ❑ What steps can be taken to minimize legal liability?



Common Law

- ❑ A serious threat of liability for employers arising from a public health emergency is through claims of negligence.
- ❑ Most suits for personal injuries are brought in negligence.
- ❑ Duty to take reasonable precautions in response to a risk of an emergency situation.



Common Law

- ❑ Range of possible negligence claims that can be brought against a school board, university or college.
- ❑ They can be initiated by staff, student, volunteer or third party.
- ❑ Victim may allege that the organization failed to discharge certain duties.



Plaintiff may allege:

- ❑ Failure to warn of a reasonably foreseeable risk;
- ❑ Failure to maintain a safe workplace;
- ❑ Negligent hiring of a person; or
- ❑ Negligent supervision of a person.



Burden of Proof

Burden of proof is on the plaintiff to show, on the balance of probabilities, that the defendant did not meet the standard of care of a careful and reasonable parent in the given circumstances.



Elements of Negligence

- ❑ Defendant owed a duty of care to the plaintiff.
- ❑ Defendant breached the duty of care.
- ❑ Defendant's breach was cause of plaintiff's injury.
- ❑ Plaintiff suffered actual damage or loss as a result of the injury.



Foreseeability

- ❑ Key in determination of whether an employer had legal responsibility to take action.
- ❑ Not only what an employer knew, but also what it ought to have known.
- ❑ Employer took reasonable steps to reduce risk of injury/illness.



Occupational Health and Safety Act

- ❑ Imposes general duties on employer to provide a safe workplace.
- ❑ Duty requires employers take steps to ensure employees are safe at work from workplace hazards.
- ❑ Reducing the probability of employees contracting H1N1 at work.

Establish a Joint Health and Safety Committee

- ❑ Identify situations that may be a source of danger to workers.
- ❑ Make recommendations for improvement of health and safety.
- ❑ Recommend maintenance and monitoring programs.
- ❑ Obtain information from employer about potential hazards.



Under the OHSA, an employer shall:

- ❑ Provide information, instruction and supervision to a worker to protect the health and safety of the worker.
- ❑ When appointing a supervisor, appoint a competent person.
- ❑ Take every precaution reasonable in the circumstances for the protection of a worker.
- ❑ Prepare and review at least annually a written OHSA policy.

Penalties

- ❑ Ministry of Labour is responsible for carrying out prosecutions under the OHSA.
- ❑ Conviction may lead to a fine of up to \$25,000 or imprisonment of up to 12 months, or both.
- ❑ Where corporation is convicted of an offence, the maximum fine is increased to \$500,000.



Right to Refuse Unsafe Work

- ❑ OHSA permits workers to refuse work they believe is unsafe in appropriate circumstances.
- ❑ Act requires the worker to immediately report the circumstances to their supervisor and employer who will conduct investigation.
- ❑ If, after the inspection, worker still refuses to perform work, an inspector from the Ministry must be summoned to carry out second inspection.



Right to Refuse Unsafe Work

- ❑ Law protects employees who engage in legitimate refusals.
- ❑ Employer may not discipline an employee who has engaged in a legitimate refusal.
- ❑ However, if employee does not have proper grounds for a work refusal, employer may be justified in taking disciplinary action.



Ontario *Human Rights Code*

- ❑ Protects the right to equal treatment with respect to services and facilities without discrimination.
- ❑ The grounds of protection include race, ancestry, place of origin, colour, ethnic origin citizenship, creed, sex, sexual orientation, age, marital status, family status or *disability*.



Ontario *Human Rights Code*

- ❑ Code prohibits harassment in the workplace by the employer or another employee.
- ❑ Harassment is defined as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.”



Ontario *Human Rights Code*

- ❑ Where employee is off work due to a disability resulting from pandemic, Code sets out obligation to provide reasonable accommodation.
- ❑ Must be provided to the point of undue hardship.
- ❑ Must show respect for the dignity of the individual.



Employment Standards Act, 2000

- ❑ Emergency Leave is unpaid, job-protected leave of up to ten days each calendar year.
- ❑ May be taken in case of personal illness, injury or medical emergency.
- ❑ Emergency Leave for Declared Emergencies is leave of absence without pay for term of emergency.
- ❑ Employee is entitled to benefit plans.



Organization Issues

- ❑ Will contractual obligations be affected by a pandemic?
- ❑ Is there a point in time when management may decide to close down?
- ❑ Are there safety measures that should be implemented?
- ❑ What insurance is in place to deal with business interruption issues?



What is your “Core Business”?

- ❑ Will your organization be affected by a pandemic?
- ❑ Identify what activities must continue.
- ❑ Identify what can be scaled back.



Public Health Agency of Canada (August 19, 2009)

- ❑ Early identification of ill students, staff and children exhibiting symptoms of influenza-like illness.
- ❑ Exclusion from the setting of anyone with symptoms.
- ❑ Practicing cough/sneezing etiquette and frequent hand-washing.
- ❑ Provide supplies, such as disinfectant wipes, to clean work surfaces.



Public Health Agency of Canada

- ❑ Sick children should be kept home and isolated if they fall ill.
- ❑ Schools with extra-curricular activities may have to curtail travel.
- ❑ Consider restricting or cancelling public gatherings.
- ❑ Schools with dormitories should consider isolation, if students get sick.



Public Health Agency of Canada

- ❑ Federal health officials do not recommend closing a school, unless there are so many students and teachers absent, school can not effectively operate.
- ❑ Take a controlled situation and create an uncontrolled situation.
- ❑ Parents may be forced to stay home, disrupting their work.
- ❑ Parents may continue at work, leaving children and young teens unsupervised.



Human Resources

- ❑ Who in the organization will be in “charge” and what is the appropriate hierarchy and set of responsibilities?
- ❑ Are there staff members who, because of age or other factors, should be re-assigned?
- ❑ Are there obstacles in the collective agreement?



Redeployment Centre

- ❑ HR to manage operation of centre.
- ❑ Develop a generic framework for a redeployment centre.
- ❑ Redeployment will require skills and expertise.
- ❑ Requires an ability to track all staff.



Recruitment plan

- ❑ Proactively discuss with part time and casual staff the need for a commitment.
- ❑ Deploy retirees, students etc.
- ❑ Discuss canceling of holidays etc.
- ❑ Redeploy non-clinical and clinical staff.
- ❑ Negotiate with agencies re. use of their staff.



Determine essential work

- ❑ Ensure there is an effective way of identifying essential talent during a pandemic and those staff who can be redeployed.
- ❑ Recommend colour coding of job classes.



Volunteers

- ❑ Determine how volunteers are going to be used.
- ❑ Proactively discuss with volunteers their possible roles.
- ❑ If volunteers may be asked to fill union roles, discuss with unions proactively.



Compensation

- ❑ Part time and casual staff should be awarded sick pay coverage.



Vaccine compliance

- ❑ Unclear whether vaccination will be mandatory/enforced by the Ministry of Health.
- ❑ Ensure all staff are aware of the organization's vaccination policy in the event of an outbreak/pandemic.



General HR policy issues

□ Be prepared for:

- Demands for sick time wages
- Changes to collective agreement language
- Vacation entitlement challenges
- Work refusal
- Staff non-compliance
- Stress leaves
- Resignations



Risk Management

Risk management is the process of planning, organizing and controlling activities that contain an element of risk of injury to an individual.



Risk Management

- ❑ Important to plan ahead for a pandemic.
- ❑ Pandemics evolve quickly and require a coordinated and timely response.
- ❑ Organization should develop an influenza pandemic plan in collaboration with professionals.



Preparedness Planning

- ❑ An Influenza Pandemic Plan cannot anticipate or address every possible contingency.
- ❑ Develop plan in collaboration with:
 - Employees
 - Hospitals
 - Ministry of Health
 - Emergency Services
 - Public Health Department
 - Government Agencies



Purpose of a Plan

- ❑ Practice active surveillance to identify the earliest signs of a pandemic.
- ❑ To minimize disruption to the organization.
- ❑ To communicate with all stakeholders.



Preparedness

- ❑ Integrate health pandemic planning with emergency response planning.
- ❑ Identify emergency resources that will be available during a pandemic.
- ❑ Establish clear roles and responsibilities.



Influenza Pandemic Plan

- Ideally, a pandemic plan should include the following components and information:
 - Identification of key emergency response team members.
 - Evacuation location(s).
 - First aid/emergency kit location(s).
 - Resources and support that will be available to staff.



Develop a Communication Plan

- ❑ Inform staff of pandemic health information.
- ❑ Identify emergency resources.
- ❑ Establish clear roles and responsibilities.
- ❑ Ensure access to accurate and timely information.



Inform Employees of Steps Needed to Protect Themselves

- ❑ Get a flu shot;
- ❑ Frequent hand-washing;
- ❑ Avoid public places;
- ❑ Reduce non-essential travel;
- ❑ Cough into a disposal tissue;
- ❑ Stay home if feeling sick; and
- ❑ Maintain fitness.



Response

- Decision to declare a pandemic will trigger implementation of plans, strategies and systems.
- Organization will implement public health measures, in consultation with authorities, such as:
 - Possible closure.
 - Isolation of personnel.
 - Containment strategies.



Response

- ❑ Organization will implement a communication strategy directed at all employees.
- ❑ Provide up-to-date information and bulletins from Ministry of Health.



Communication Strategy would include:

- ❑ Information on school board's website.
- ❑ Bulletins from the Ministry of Health and Public Health Department.
- ❑ Frequent communiqués to staff.
- ❑ A telephone hotline to answer inquiries and provide advice.
- ❑ Newspaper ads.

Recovery

- ❑ Terms regarding transition back to the workplace.
- ❑ Employees should be informed about work status.
- ❑ Students should not be academically disadvantaged.
- ❑ Students and parents should be contacted.
- ❑ Consider having a health professional available to answer questions and provide information.



Issues to be addressed:

- ❑ Status of pay
- ❑ Benefits
- ❑ Sick leave
- ❑ Vacation
- ❑ Coverage under disability plan
- ❑ *Workplace Safety and Insurance Act* coverage



Conclusion

- To effectively prepare for a pandemic, the organization needs:
 - A sense of urgency;
 - A guiding coalition; and
 - Vision and strategy.



Conclusion

- ❑ Commitment of the employer to make pandemic response planning a priority.
- ❑ Organization's management team must recognize the need to change.
- ❑ Overall will and allocation of resources to create a pandemic plan and communicate it to stakeholders.

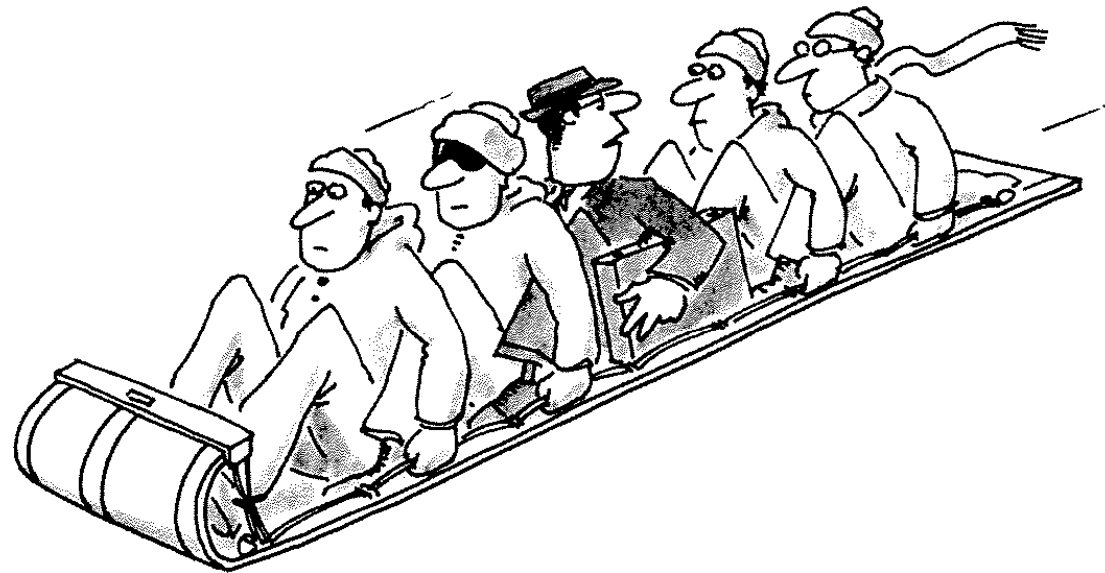


“Somebody has to do something, and
it’s just incredibly pathetic that it
has to be us.”

Jerry Garcia



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“Look, I’m not saying it’s going to be today. But someday - someday - you guys will be happy that you’ve taken along a lawyer.”

Thank you!

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