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March 20, 2020

Dear Local 46 members,

As we continue to adjust to the COVID-19 pandemic situation, the health of our members and our staff is paramount. We realize that with the constant stream of information available, it can be overwhelming and difficult to know where to find the information you need. We would like to take this opportunity to reassure you our team of Officers and staff are working hard to provide you with information you can trust – information that may impact you and your family, friends and neighbours.

As the situation continues to evolve, the union is committed to sharing regular updates about the impact to members of Local 46. You can find the most up-to-date information on our website at [ualocal46.org](http://ualocal46.org). We will be regularly monitoring the evolution of this crisis and providing periodic updates to the membership whenever possible. As always, please contact your Union Representative if you have any specific question or concern.

## **When Can I Refuse Work and What is the Process to Refuse Work?**

With the ever-evolving nature of the COVID-19 crisis, a number of questions have been raised with respect to the right of employees to refuse to work. Under the *Occupational Health and Safety Act*, a worker may refuse work where “the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself.” When a worker exercises the right to refuse work, the worker must immediately report the circumstances to the worker’s employer who is required to undertake an investigation into the work refusal. During the employer’s investigation, the worker must remain in a safe location as reasonably close to work as possible and be available to participate in the employer’s investigation into the work refusal.

If, after the employer’s investigation has concluded, the worker has reasonable grounds to believe that “the physical condition of the workplace or the part thereof in which he or she works continues to be likely to endanger himself or herself”, the worker may continue to refuse to work and an inspector from the Ministry of Labour must be contacted to investigate the matter. The worker must remain in a safe location as reasonably close to the workplace as possible during the Inspector’s investigation. Upon the conclusion of the Inspector’s investigation, he/she will issue a decision on the work refusal.

In addition, special provisions under the *Occupational Health and Safety Act* exist to address a situation in which a “dangerous circumstances” exist in the workplace. A “dangerous circumstance” is defined as a situation in which there is a contravention of the *Occupational Health and Safety Act*

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or its regulations, the contravention poses a hazard or danger to a worker and the danger or hazard is such that a delay may seriously engage a worker. Where such circumstances are present, a certified member(s) of the workplace health and safety committee may raise such concerns with the employer and, in some cases in accordance with the Occupational Health and Safety Act, direct that the work giving rise to the dangerous circumstance be stopped pending an investigation by an Inspector.

It is imperative to note that the right to refuse work under the *Occupational Health and Safety Act* does not extend to all types of employment. For instance, employees employed in connection with the operation of a hospital or similar type of health care institutional are not permitted to refuse work. Further, workers are not permitted to refuse work where doing so “would directly endanger the life, health or safety of another person”.

Only workers have the right to refuse work when appropriate and in accordance with the *Occupational Health and Safety Act*. UA Local 46 does not have the legal right to do so. However, members with specific concerns related to work refusals may contact their Union Representative for further information and guidance.

It is also important to note that under the *Occupational Health and Safety Act*, employers have the obligation to take all reasonable steps to ensure a healthy and safe workplace.

### **What about Job Protected Leave?**

The Ontario Legislature has passed the *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020* to provide job-protected leave to employees in isolation or quarantine due to COVID-19, or those who need to be away from work to care for children because of school or day care closures or to care for other relatives.

The Act amends the Employment Standards Act, 2000 and provides job protection for employees unable to work for the following reasons:

- The employee is under medical investigation, supervision or treatment for COVID-19.
- The employee is acting in accordance with an order under the *Health Protection and Promotion Act*.
- The employee is in isolation or quarantine in accordance with public health information or direction.
- The employer directs the employee not to work due to a concern that COVID-19 could be spread in the workplace.
- The employee needs to provide care to a person for a reason related to COVID-19 such as a school or day-care closure.
- The employee is prevented from returning to Ontario because of travel restrictions.

Further, under the new legislation, an employee will be able to take infectious disease emergency leave to care for the following individuals:

- The employee's spouse.
- A parent, step-parent or foster parent of the employee or the employee's spouse.
- A child, step-child or foster child of the employee or the employee's spouse.
- A child who is under legal guardianship of the employee or the employee's spouse.
- A brother, step-brother, sister or step-sister of the employee.
- A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
- A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
- A son-in-law or daughter-in-law of the employee or the employee's spouse.
- An uncle or aunt of the employee or the employee's spouse.
- A nephew or niece of the employee or the employee's spouse.
- The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
- A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
- Any individual prescribed as a family member for the purposes of this section.

The legislation also makes it clear that an employee will not be required to provide a medical note if they need to take the leave. However, the employer may require the employee to provide other evidence that is reasonable in the circumstances, at a time that is reasonable in the circumstances. This could include such requests as a note from the daycare or for evidence that the airline cancelled a flight, but not a medical note.

These measures are retroactive to January 25, 2020, the date that the first presumptive COVID-19 case was confirmed in Ontario. They will remain in place until COVID-19 is defeated.

UA Local 46 will continue to monitor the development of this legislation and its impact on our members and will provide further information as it becomes available.

### **What about Access to Government Financial Assistance?**

Employees who are laid off or terminated through no fault of their own and who have sufficient banked hours may be entitled to access regular EI benefits. Employees with sufficient banked hours who are sick or quarantined and unable to work may have access to EI sickness benefits. The Federal Government has announced that it will waive the one-week waiting period for new claimants who are quarantined as a result of COVID-19 and will not require a doctor's note to support a claim for COVID-19 related EI sickness benefits.

If an employee does not qualify for EI regular or sickness benefits, they may be entitled to the Emergency Care Benefit or the Emergency Support Benefit announced by the Federal Government. The Emergency Care Benefit provides up to \$900 every two weeks for up to 15 weeks, to those affected by COVID-19. It's intended for those who don't qualify for EI, can't go to work and don't have paid sick leave. Employees, including the self-employed, who are quarantined or sick with COVID-19 can apply, as can those staying home to take care of a family member with COVID-19 who does not qualify for EI benefits. Parents staying home to care for children because of school closures are also covered and can apply whether or not they qualify for EI.

The Emergency Support Benefit will give up to \$5 billion to workers ineligible for EI who face unemployment. It is intended to be a long-term income support.

Applications for the Emergency Care Benefit and Emergency Support Benefit will be available to apply for in April, through the CRA website.

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