



## COVID-19 Temporary Layoff Questions and Answers for Manitoba Dental Association Members

### What is a Temporary Layoff?

Generally, a layoff is a period when an employer ceases to provide work and (in most cases) compensation to an employee temporarily. Where permitted by Manitoba employment legislation, the parties treat the employment relationship as ongoing, despite this interruption of work and/or compensation, with the understanding that work and compensation may resume in the future.

### Manitoba Employment Standards Definition

A layoff is a **temporary** break in employment where employees are likely to return to work. Employers do not need to provide notice to employees that they are being laid off. However, if the layoff is longer than 8 weeks in a 16 week period, the layoff becomes a termination and notice is required.

### Steps to take

### Factors to consider...

#### Step 1

Determine who will be laid off and the effective date.

Who needs to be consulted?

Who is included in making the final decision?

What is your approach around employee/employer company paid benefits?

- Look at all positions and what are the roles?
- What work needs to be done?
- Does the work need to be done (is it an essential role)?
- Who can do the work?
- Can you move people around?
- Can this role work remotely?
- Is there the opportunity to share the work?
- Can you reduce an employee's hours?

#### Step 2

Meet individually with the impacted employee in person.

*Remember it is a difficult time and a difficult conversation.*

- Provide the employee with a letter (see Q&A below as to what to include in the letter).
- Who is going to meet with the individual (best practice is direct Supervisor)?
- Ensure you find a place to meet with the employee in private.
- Consider the timing of the conversation (best practice is at the start of the employee's shift).
- Consider having a support person in the meeting.
- Keep the meeting short (under 15 minutes).
- The decision has been made, no debating.
- Inform the employee that you would be contacting them if there are any available working hours and if there is an emergency situation that requires coverage.
- You would also advise the employee that they would be informed of any business updates that impacts their position.
- Ensure that you have the employee's current contact information (phone, email and address).
- Do you have an Employee Assistance program that can assist the employee managing through this difficult time?

<p><b>Step 3</b> Exiting the Employee.</p>	<ul style="list-style-type: none"> <li>• If a few employees are impacted, it is essential to maintain their dignity and minimize distraction to the remaining staff.</li> </ul>
<p><b>Step 4</b> Advise the individual that does payroll. They will need to prepare of the Record of Employment (ROE).</p>	<ul style="list-style-type: none"> <li>• What is the effective date?</li> <li>• Is accrued vacation requested to be paid out by the employee?</li> <li>• Recommendation when selecting the reason on the ROE: Ensure that you are using the correct code that pertains to the reason of separation (i.e.: Code A - Shortage of Work, Code D - Illness or Injury, Code H - Work Sharing Program)</li> </ul> <p><b>REFRAIN:</b> from using 'other' and having a comment in Block 18.</p> <p><b>NOTE:</b> Service Canada has automated the way they process ROEs. When you include a comment in Block 18, the ROE is removed from the automated processing system and a Service Canada agent has to review it manually. This review slows the process down, and sometimes requires the agent to call you for clarification. For this reason, you should now only enter comments in Block 18 in exceptional circumstances. Do not include comments that only confirm information you have already entered on the form.</p>
<p><b>Step 5</b> Communicate to the remaining staff.</p>	<ul style="list-style-type: none"> <li>• Remember that this impacts all employees differently- this is a critical time to be 'available' for the remaining employees.</li> <li>• Are you meeting with the rest of the employees individually or in a team meeting (best practice is to meet in person)?</li> <li>• Consider an email communication (best practice is to use this format if you have a larger organization).</li> <li>• With the reduction of employees, who will be reassigned to which role?</li> <li>• What are the new responsibilities of these role?</li> <li>• Is there any training that is required to be effective in this role - who will train?</li> </ul>
<p><b>Step 6</b> Communicate to external clients/parties.</p>	<ul style="list-style-type: none"> <li>• Who do you need to advise?</li> <li>• Only share as required - limit the amount of detail; patients, suppliers, internal or external service providers.</li> <li>• Establish what and how you will be communicating?</li> </ul>
<p><b>Step 7</b> Security Management.</p>	<ul style="list-style-type: none"> <li>• Ensure that emails and/or phone are forwarded with the contact information of the person that will be covering.</li> <li>• If you are unable to access their computer, ensure that you gather the passwords from the exiting employee.</li> <li>• Do you want the exited employee to have access to the building/office? Do you need to collect keys or security/access/pass card?</li> <li>• Do you want them to have access to company's systems/emails/programs? (best practice is that the exited employee does not have access).</li> </ul>

Question	Answer
<p>Is a temporary layoff considered constructive dismissal?</p>	<p>There has been no change to the general common law that a unilateral reduction of hours, or a temporary layoff could be considered constructive dismissal. As long as processes are communicated and done in an orderly fashion, particularly if the layoff or reduction is temporary there is a low risk of constructive dismissal claims as employees will be glad to have a position to return to.</p> <p><b>NOTE:</b> It is recommended that getting acknowledgement from employees is a good approach and will mitigate the risk.</p>
<p>I have an employee with a special consideration. How do I handle this? i.e.: going on Maternity leave / needs to be at home to care for child / needs to care for quarantined family member.</p>	<p>The Prime Minister's announcement from March 18th indicated that there will be an Emergency Support Benefit delivered through the CRA to provide up to \$5.0 billion in support to workers who are not eligible for EI and who are facing unemployment. (see link #2 below)</p> <p><b>NOTE:</b> Depending on when the employee is scheduled to go on Maternity leave, the insurable hours (600 hours) and insurable earnings (less income) may be impacted.</p>
<p>I have a new employee that is scheduled to start. How do I handle this?</p>	<p>You will need to contact the individual to advise that the start date will need to be postponed to a future date that will be determined once the business operations resumes.</p> <p>The offer letter will need to be amended to reflect the following: <i>Due to unforeseen circumstances of COVID-19, we will need to postpone your start date to a future date...</i></p>
<p>Do I need to pay out the accrued vacation pay as part of laying off an employee?</p>	<p>It is not mandatory unless the employee requests it.</p> <p><b>NOTE:</b> If requested, it is the accrued vacation up to and including the effective date of layoff. The ROE will need to reflect the vacation earning if applicable.</p>
<p>Do you have a sample of what should be included in the letter?</p>	<p>It is recommended that during your conversation with the employee and indicated in the layoff letter that the employer clearly communicates that employee would be contacted if working hours are available or if support is required in an emergency situation.</p> <p><b>SAMPLE:</b> <i>Name of Office</i> has been impacted by the recent COVID-19 pandemic. Due to shortage of work, this letter is to notify you of your temporary layoff effective <b>DATE</b> . We sincerely regret this decision. At this point, it is our hope that you will be recalled to work in the near future or if your support is required for an emergency procedure. If and when business operations resume we will be sure to provide you with an update.</p>

<p>What other information to add to the layoff letter?</p>	<ul style="list-style-type: none"> <li>• Indicate how the ROE will be submitted - electronically or is it paper based?</li> <li>• Provide the employee with the Employment Insurance link (see link #3 below).</li> <li>• Advise the employee to be in touch if their contact information changes.</li> <li>• Something to consider: If they have company benefits - does the coverage (health and dental) continue during the lay off? If so, are they required to prepay their portion of the premiums?</li> <li>• Arrange payment of premiums. i.e.: request post dated cheques.</li> </ul>
<p>What is the waiting period when an employee is laid off?</p>	<p><b>For Layoff:</b> Currently the waiting period is 5 days, an eligible employee(s) would have to go at least 5 days without earnings to be eligible for EI.</p> <p><b>NOTE:</b> For all other reasons i.e.: COVID-19 related, please direct the employees to the Service Canada website (see link #8 below).</p>
<p>I've been trying to call Service Canada for some paper ROE's but have been unable to reach them due to their high call volume.</p>	<p>Service Canada encourages you to submit ROEs electronically. ROE Web is an efficient, reliable and convenient way to submit ROEs. (see link #5 below)</p>
<p>Which code should I be using on the ROE?</p>	<p>Code A - Shortage of Work</p>
<p>We might not need to lay off but rather reduce the hours. Do you have more information regarding the Work Share program?</p>	<p>The Work-Sharing program is implementing temporary special measures to support employers and employees affected by the downturn in business caused by COVID-19. The new temporary special measures are available to employers impacted directly or indirectly by COVID-19. The measures allows for eligible employers to retain skilled employees and workers to remain employed during the temporary downturn in business due to COVID-19 (see link #7 below).</p>
<p>Who applies for the Work Share?</p>	<p>The Employer completes the application through Service Canada and the Employee would still need to complete the EI application. The Work Share program provides EI benefits to workers who agree to reduce their normal working hours as a result of developments beyond the control of their employers, by extending the eligibility of such agreements to 76 weeks, easing eligibility requirements, and streamlining the application process. This was announced by the Prime Minister on March 11, 2020.</p>
<p>What was mentioned during the Prime Minister's announcement on March 18th in regards to helping businesses keep their employees?</p>	<p>To support businesses that are facing revenue losses and to help prevent lay-offs, the government is proposing to provide eligible small employers a temporary wage subsidy for a period of three months. The subsidy will be equal to 10% of remuneration paid during that period, up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer. Businesses will be able to benefit immediately from this support by reducing their remittances of income tax withheld on their employees' remuneration. Employers benefiting from this measure will include corporations eligible for the small business deduction, as well as non-profit organizations and charities.</p>

## Returning an employee to work during and/or after a layoff

### Things to consider when returning an employee for a few hours or in an emergency situation

- The employer must reach out and connect with the employee as soon as possible to advise of the additional hours or of an emergency situation. Employers need to whenever possible inform the employee of the date, time and approximate duration of the work.
  - Employers and employees must track the days and hours worked as well as the gross pay on a calendar (see link #4 below for example of biweekly calendar from EI).
  - Employers can add the hours worked to be processed and paid out on the next scheduled pay run.
  - Employees must declare their earnings using the online EI system. The link, instructions and steps should be provided to the employee.
- NOTE:** Be aware that the total number of hours worked could impact whether the employee continues to qualify (see link #4 below).
- There is a minimum of 3 hours/day that would need to be paid for calling in an employee.
  - An employer does not need to reissue an ROE for the additional hours worked. It is up to the employee to inform and declare their hours worked to EI.
  - Consider access to office, systems, etc. when bringing an employee back to the office to work.
  - If you have an employee who is on leave, collecting EI, they will need to claim any monies that is paid out to them while still collecting EI.

### Things to consider when returning an employee back to their regular position/schedule

- Reach out and connect with the employee as soon as possible to advise them of the effective date of their return to their regular position and hours of work.
- The employer does not need to notify EI of the return to full duties, it is up to the employee to advise EI.
- It is recommended that documentation (letter and/or email) is provided to the employee indicating the effective date of the return to work as well as confirmation of the position. If no changes to the terms and conditions of the employment offer, the employer can indicate this on the documentation (i.e.: rate of pay, vacation accrual, etc.).
- If the employee returns to a different position, it is best practice to ensure the employee has the skills and abilities to perform all of the functions of that new role. (When returning an employee to work they must return in a like or similar role with the same wage.)

**NOTE:** This would require a new employment contract, job description and orientation or training for the new role.

## Helpful Links

1) Manitoba Employment Standards	<a href="https://www.gov.mb.ca/labour/standards/index.html">https://www.gov.mb.ca/labour/standards/index.html</a>
2) Prime Minister's announcement March 18, 2020 Economic Response Plan: Support for Canadians and Businesses	<a href="https://www.canada.ca/en/department-finance/news/2020/03/canadas-covid-19-economic-response-plan-support-for-canadians-and-businesses.html">https://www.canada.ca/en/department-finance/news/2020/03/canadas-covid-19-economic-response-plan-support-for-canadians-and-businesses.html</a>
3) Link to provide employee in the Layoff letter - EI Regular Benefits - Apply	<a href="https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit/apply.html">https://www.canada.ca/en/services/benefits/ei/ei-regular-benefit/apply.html</a>
4) Working while on Employment Insurance	<a href="https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/working-while-claim.html">https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/working-while-claim.html</a>

5) How do I order paper ROE	<a href="https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-roe.html#s3">https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-roe.html#s3</a>
6) How do I complete a ROE	<a href="https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/roe-guide.html">https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/roe-guide.html</a>
7) Work Share Information	<a href="https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html">https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html</a>
8) Service Canada website	<a href="https://www.canada.ca/en/employment-social-development/corporate/portfolio/service-canada.html">https://www.canada.ca/en/employment-social-development/corporate/portfolio/service-canada.html</a>

<b>Helpful Contact Information</b>	
People First HR Services	1-866-899-1340 <a href="mailto:hroncall@peoplefirsthr.com">hroncall@peoplefirsthr.com</a>
Service Canada Employer Contact Centre	1-800-367-5693
Manitoba Employment Standards	204-945-3352 or toll free in Canada 1-800-821-4307

**This document is intended as a resource document - it does not replace legal advice.**

All information is current to March 24, 2020