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Community Legal Education Ontario  
Éducation juridique communautaire Ontario

# Workers' rights during COVID-19

Hosted by CLEO in partnership with:

**Nabila Qureshi**, Income Security Advocacy Centre (ISAC)  
**John No**, Parkdale Community Legal Services (PCLS)

October 22, 2020

Supported by:





# Disclaimer

This webinar is for general information purposes only and is not legal advice. It is not intended to be used as legal advice for a specific legal problem. This webinar was recorded on October 22, 2020 and reflects developments in the law before that date.



## Land Acknowledgement

We acknowledge that the land from which we are presenting this webinar is the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples and is now home to many diverse First Nations, Inuit and Métis peoples. We also acknowledge that Indigenous Peoples are the first educators on this land.



# Outline

1. Right to refuse work, leaves and benefits (Nabila Qureshi)
  - presentation
  - Short Q & A
  
2. Returning to work and ending employment (John No)
  - presentation
  - Short Q & A
  
3. Phone support and other resources for workers' rights issues during COVID-19
  
4. Longer Q & A



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# Workplace Rights during the COVID-19 Pandemic

Nabila F. Qureshi, Staff Lawyer, Income Security Advocacy Centre  
October 22, 2020

# Returning to Work

- ▶ Ontario experiencing a “second wave” of COVID-19
- ▶ Toronto, Ottawa, York and Peel Regions currently under modified Stage 2 regulations
- ▶ Canada Emergency Response Benefit and the Canada Emergency Student Benefit have ended
- ▶ **Questions**
  - ▶ Do I have to return to work?
  - ▶ What leaves can I take if I cannot return to work?
  - ▶ What benefits are available to me?

# Do I have to go back to work?

- ▶ If the employer is taking all reasonable health and safety precautions, they can probably require you to return to work.
- ▶ You may not have to return to work if:
  - ▶ You have a reasonably held belief that your workplace is **unsafe**
  - ▶ You have childcare/eldercare or disability-related needs that require accommodation



# Right to Refuse Work

- ▶ You can refuse to work if you have reason to believe that the physical condition of the workplace is likely to endanger you.
- ▶ Report your refusal and your reason for the refusal to your supervisor, employer or health and safety representative. Employer must investigate your complaint.
- ▶ If you are unsatisfied with your employer's response, you or your employer can contact the Ministry of Labour Health & Safety Contact Centre. The Ministry of Labour will then inspect the workplace.
- ▶ You have the right to not be punished if you complain about safety at work

# *Human Rights Code*

- ▶ Employers are required to provide reasonable accommodation up to the point of undue hardship.
- ▶ Some bases for requesting accommodation frequently arising during the pandemic:
  - ▶ Disability (e.g. medical conditions that make you high-risk; being immunocompromised)
  - ▶ Family status (e.g. child care or elder care obligations)
  - ▶ Marital status (e.g. spousal or common law partner care obligations)

## Unpaid, job-protected leaves currently available under the *Employment Standards Act*

- ▶ Infectious Disease Emergency Leave
- ▶ Sick leave
- ▶ Family responsibility leave
- ▶ Family caregiver leave
- ▶ Family medical leave
- ▶ Critical illness leave

# Benefits available if you cannot work

- ▶ Employment Insurance
  - ▶ Regular benefits
  - ▶ Sickness benefits
  - ▶ Caregiving benefits
- ▶ Canada Recovery Benefit
- ▶ Canada Recovery Sickness Benefit
- ▶ Canada Recovery Caregiving Benefit

# Scenario

- ▶ Maryam works as a receptionist at an office. She has a toddler and is afraid to send the child to daycare because of potential exposure to COVID-19. She, her partner and her child have no underlying health issues. Maryam wants to stay home.
- ▶ She has also been working hard over the last few years and is hoping for a promotion to office manager. She is worried that if she does not return to work, she will not be seen as a team player and will not be promoted.
- ▶ What are Maryam's options?



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# Questions?

## Creating a safer work environment

- ✓ Ensure all high-touch tools and surfaces are cleaned regularly. For detailed information.
- ✓ Create distance between workers, keeping a distance of at least 2 metres from others, as much as possible.
- ✓ Reduce the number of passengers on elevators and avoid crowding in stairwells and other tight spaces.
- ✓ Give workers more opportunities to keep their hands clean, for example by providing soap and water or hand sanitizer if soap is not available.
- ✓ Ensure workers are using any required personal protective equipment appropriately.
- ✓ Schedule breaks at different times to avoid large groups.
- ✓ Hold meetings in outdoor spaces.

## Human Rights Code

Human Rights Code protects employees from direct, indirect, or adverse effect/constructive discrimination based on personal attributes called “grounds”. Some of the grounds that may be more susceptible to discrimination during COVID19 pandemic are:

- Disability, e.g. immunocompromised.
- Family status, e.g. child care or elder care obligations.
- Marital status, e.g. spousal care obligations.
- Race, ethnic origin, ancestry, e.g. scapegoating, assumptions about infections.



## Human Rights Code

If you have needs based on a human rights ground, you have the right to be provided with equipment, services or devices that will allow you to do your job, this is your employer's “**duty to accommodate**”.

## Human Rights Code

Employers can only decline to accommodate if they can prove that accommodation would amount to “**undue hardship**”. This is determined by examining:

- The costs of the accommodation. It is important to note that the mere fact that the employer will have to spend money is not “undue hardship”.
- Whether outside sources of funding can help alleviate the costs
- Any effect on the health and safety of others.

## **Involuntary Reduced Hours or Temporary Layoffs**

Under certain circumstances, if your employer changes the terms of your employment, e.g. reduced hours, pay cut, not being provided with any work, you can quit and declare that you have been constructive dismissed.

If you have been constructively dismissed, you are entitled to the same types of damages/compensation that you would have received if you were fired without just cause.

## Constructive Dismissal and Wrongful Dismissal Damages

- Broadly speaking, your rights to dismissal damages/compensation arise from the *Employment Standards Act* and the common law (certain exceptions apply, e.g. human rights discrimination).
- Currently, your ability to seek damages from the *Employment Standards Act* for constructive dismissal is suspended during COVID-19.
- Determining how much you are entitled to under common law is complicated. Do not sign any releases or termination documents without seeking legal advice!

## Scenario

Jordan has been a server at the Sunshine Restaurant for the past 10 years. A year ago, Jordan developed back pain issues and had not been as quick as she would like to be at her work.

Her employer did grumble at Jordan's reduced capacity, but Jordan otherwise enjoyed her work.

The restaurant initially closed when the COVID-19 pandemic started, but it re-opened 3 months ago, albeit in a very limited capacity (takeout and patio service).

(continued on next page)

## Scenario

(continued)

Jordan has not been called back into work at all. When she asked her employer, the employer stated that she is trying her best to bring Jordan back but that the restaurant is struggling.

When Jordan asks why some others had been called back before her, the employer responded that the call back decisions were made based on “business needs”.

Jordan wants to know what her options are.



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# Questions?



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[stepstojustice.ca](http://stepstojustice.ca)

# COVID:19 Updates on the law and legal

The screenshot shows a web browser window displaying the homepage of stepstojustice.ca. A blue arrow points to the browser's back button. The website features a prominent red banner at the top with the text "COVID-19: Updates on the law and legal services". Below the banner is the "Steps to Justice" logo and tagline "Your guide to law in Ontario". The navigation menu includes "Legal Topics", "About Steps to Justice", "Latest Updates", and "Embed & Share". A large hero image of a woman is on the left, and the main heading "Steps to Justice" is on the right, followed by the text "Step-by-step information about legal problems. Reliable, practical, and easy to understand." A search bar is located below the main text, and a live chat widget is visible in the bottom right corner.





## COVID-19 Employment and Work

### Canada Recovery Benefits

[Who qualifies for the Canada Recovery Benefit \(CRB\) and how do I apply?](#)

[Who qualifies for the Canada Recovery Sickness Benefit \(CRSB\) and how do I apply?](#)

[Who qualifies for the Canada Recovery Caregiver Benefit \(CRCB\) and how do I apply?](#)

### Employment Insurance (EI) benefits

[The CERB is ending, Will I be able to get EI?](#)

[Can I apply for Employment Insurance \(EI\) if I'm in quarantine?](#)

[Can I get Employment Insurance \(EI\) if I work for an app-based company doing work like driving or food delivery?](#)

[Can I get Employment Insurance \(EI\) if my employer reduces my hours of work?](#)

[Do I have to get a doctor's certificate if I'm ill because of COVID-19?](#)

### COVID-19 Topics

[COVID-19 Home](#)

[Abuse and Family Violence](#)

[Criminal Law](#)

[Debt and Consumer Law](#)

[Education](#)

[Employment and Work](#)

[Family Law](#)

[Health and Disability](#)

[Housing Law](#)

[Immigration and Refugee](#)

[Income Assistance](#)

[Provincial Offences](#)

[Tribunals and Courts](#)

[Wills and Powers of Attorney](#)

### COVID-19 NEWS

**COVID-19: Updates on the law and benefits**

Monday, October 05, 2020



Live Chat  
M, T, W, F: 11am-1pm; 2-4  
Thursday: 11-1; 7-9pm



## For support by phone (1):

- Community legal clinics
  - Find your local clinic at: [legalaid.on.ca/legal-clinics/](https://legalaid.on.ca/legal-clinics/)
- Workers Action Centre
  - [workersactioncentre.org](https://workersactioncentre.org)
  - 1-855-531-0778
- The Sudbury Workers Education and Advocacy Centre (serves all of Northeastern Ontario)
  - <https://sudburyworkerscentre.ca/>
  - 1-866-470-2173
  - [helpline@sudburyworkerscentre.ca](mailto:helpline@sudburyworkerscentre.ca)



## For support by phone (2):

- Ontario Legal Information Centre
  - [centreinfojuridique.ca](http://centreinfojuridique.ca)
  - 1-844-343-7462
- Law Society Referral Service
  - [findlegalhelp.ca](http://findlegalhelp.ca)
  - 1-855-947-5255
- Ministry of Labour's Employment Standards Information Centre
  - [labour.gov.on.ca/english/feedback](http://labour.gov.on.ca/english/feedback)
  - 1-800-531-5551



## Campaign to improve workers' rights

- **\$15 and Fairness Campaign**

- take action to make the new EI program permanent and accessible to migrant workers.
- <https://www.15andfairness.org/callnow>

- **Colour of Poverty Colour of Change**

- reconstruction and reset plan for Canada
- <https://colourofpoverty.ca/2020/09/08/cop-coc-reconstruction-and-reset-plan-for-canada/>
- encouraging people to contact their MPs to support this plan



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