Alberta Doctors' Digest

Resuming practice and providing a safe workplace

As Alberta moves through its phased re-opening of the economy, more and more employers, including medical practices and clinics, are starting to see a return to normal operations – or at least some version of it. While this is certainly cause for optimism, the resumption of practice in the current COVID-19 environment comes with many challenges. We continue to see new COVID-19 cases day-by-day, although the increase in new infections appears to be relatively stable. Nevertheless, the threat of COVID-19 infection remains real.

As employers all over Alberta are recalling employees to work as part of the province's staged re-opening, one of the more common questions that arises is how employers can ensure they are maintaining a safe workplace for their employees – both, to give their staff the confidence and peace of mind to return to a regular work schedule, and of course to mitigate the risks of COVID-19 infection in the workplace.

Responding to preliminary re-opening concerns

One of the first issues that employers may encounter as they are preparing to resume more standard operations are issues in recalling staff to the workplace. Staff may be fearful of returning to work due to a perceived risk of COVID-19 infection. In extreme circumstances, staff might refuse to return to work as a result of such a perceived risk. Similarly, staff that are currently working or intending to return need to feel that they are operating in a safe and healthy environment.

While employers are entitled to manage their workforce and require attendance at the workplace, it is important to handle these situations with caution and to seek advice if you are uncertain. Refusals and concerns may give rise to the employer's duty to inquire further about the underlying cause for the employee's hesitancy to return. For example, employees who are unable to return to work due to child care responsibilities in light of restrictions on day care or child care operations may have protection under our human rights legislation.

It is also important to keep in mind that Alberta's occupational health and safety legislation places a positive obligation on employers to ensure that employees are working in a healthy and safe environment at all times. This duty is not unique to mitigating the impacts of COVID-19, but the current pandemic crisis and the risks of community transmission (especially given the heightened scrutiny that the health care industry is receiving in this respect) poses some unique challenges. Ultimately, it is the employer that shoulders the burden of ensuring that the workplace is safe and mitigates against hazards such as contracting COVID-19 at work.

It is therefore of key importance for employers to ensure that their workplace policies and procedures are clear, communicated, monitored for compliance and responsive to the current COVID-19 environment.

The following are some general guidelines to assist medical clinics in ensuring their workplace is safe and mitigating the risk of COVID-19 transmission among staff and patients.

To meet physical distancing and sanitation requirements in the workplace, there will likely be some modifications necessary (photo credit: Elisa Riva, Pixabay.com)

Policies and protocol

Implement a clear COVID-19 policy or protocol that, at minimum, reiterates the Government of Alberta's public health directions regarding travel, symptoms, or being in the proximity of someone who is subsequently diagnosed as having COVID-19 (CMOH Order 05-2020). This means that staff who would otherwise be required to self-isolate (for example, if experiencing symptoms) are prohibited from attending the workplace.

To meet physical distancing and sanitation requirements in the workplace, there will likely be some modifications necessary. In addition to adopting the public health guidelines established by the Government of Alberta into policy, employers should consider adding policies or protocols to help maximize the safety of your workforce and minimize the potential for spread of the virus. Examples of such procedural changes may include:

- Staggering start and finish times for employees to limit the number of people in close contact if taking elevators, stair cases etc.;
- Staggering work breaks to limit employees gathering in communal areas and to allow time for surfaces to be sanitized in-between patient visits and breaks;
- Scheduling appointments in a manner to allow sufficient time to implement sanitation protocols between visits;
- Scheduling employee vacations in a manner to limit absenteeism, but also limit overcrowding;
- Entering into a work share arrangement and thereby allowing fewer people to be at the workplace on a rotating schedule;
- Implementing sanitization protocols of multi-touch objects and areas (i.e., pens, computers, meeting rooms, fridges, washrooms, etc.);

- Reducing allowable capacities in any enclosed spaces (e.g., one to two people in meeting or examination rooms, limiting the number of individuals in smaller rooms where social distancing is not easily achieved; and
- Encouraging the use of teleconference, rather than face-to-face meetings where possible.

Employers also need to prepare for possible instances of workplace infection. In the event of a positive COVID-19 case in the workplace, it will be important that employers are able to provide information for the purposes of public health tracing of individuals in close contact with the infected individual. This will include information on who was working in the clinic at any given time, the names of patients who accessed the clinic at any given time and the names of staff members who worked any given shift.

Implementing such changes to the workplace may result in modification to other workplace policies related to hours of work, vacation, overtime, technology use and information privacy. In particular, employers need to review their sick leave policies to ensure they do not create disincentives for employees to stay home in the event they have to self-isolate. Employees who do so, are entitled to apply for federal aid if they are required to miss work due to COVID-19 related impacts like mandatory self-isolation.

It is also important to keep in mind that significant changes to employee's schedules or other fundamental terms of their employment may be viewed as a constructive dismissal at law. An employee subject to such significant changes made unilaterally by the employer can, in the right circumstances, choose to resign and treat that as a termination. This would typically result in a claim by the employee for the full complement of termination benefits. As such, employers need to be careful not to get overzealous in making sweeping and dramatic changes to employee pay or working hours. In all cases, employers should seek consent or agreement or try and make smaller, rather than significant modifications.

Sanitization and personal protective equipment

The College of Physicians & Surgeons of Alberta has provided clear guidance on PPE in the medical setting. All staff working in positions where they are providing patient or client care, must wear a surgical/procedure mask continuously at all times. This requirement also applies to staff who do not have direct client contact but who cannot maintain social distancing or where there is a lack of physical barriers (e.g., plexiglass).

Staff providing care to any patient/client with COVID-19-like symptoms are required to perform a point of care risk assessment and utilize appropriate PPE accordingly.

Hand hygiene needs to be stressed and enforced with staff being instructed to wash their hands often with soap and water for at least 20 seconds. Alternatively, alcohol-based hand sanitizer should be available. Similarly, respiratory etiquette ought to be practiced, including coughing into the elbow and prompt discarding of tissues.

Screening practices

It has been recommended by the CPSA that medical clinics develop and implement daily screening of all staff and customers prior to the start of a shift. It has been held appropriate that employers administer a pre-work screening protocol, including temperature testing of employees.

A large part of this screening will be reliant on your employees and patients conducting a personal assessment based on the communications you provide. As such, it should be clear that individuals suffering from COVID-19 symptoms, such as fever, sore throat, cough, runny nose or difficulty breathing, are not permitted to enter the workplace.

Employers may opt for a short form to be completed by employees prior to entering the workplace, encouraging each employee to consider personal health and the potential implications of having symptoms in the transmission of COVID-19 to co-workers and the general public.

Many employers have also opted to use infrared thermometers to check for fevers as part of a daily screening protocol.

Employers must be mindful that any health or other personal information that is collected from their employees as part of this screening is done in accordance with privacy laws. This includes ensuring that personal information is only collected for the purposes of assessing fitness for work and shared on an as-needed bases. More aggressive screening protocols may be appropriate in some circumstances, but should be done after seeking legal advice.

Communication

Policies and operational changes are meaningless if they are not clearly communicated. Communication is the key to maintaining the safety of your employees and patients. Employers should stay up-to-date on the COVID-19 information provided by the Government of Alberta, and any updated policies should be provided to employees and posted in an easily accessible location. Clear communication of what is expected on the part of your employees will help them understand the crucial role they play in maintaining a safe and functional workplace. This can involve sending copies of updated or new policies to employees via email or posting them in the workplace.

Training of employees on COVID-19 policies and protocols is also of key importance. Employers should also encourage their employees to stay updated on developments related to COVID-19.

Another important piece of effective communication involves reminding employees about any available mental health or family assistance supports that are available and encouraging staff to utilize these resources as needed.

Dealing with refusals to return to work

As noted above, in some instances employees may not feel comfortable returning to work due to the perceived risk of contracting COVID-19 at the workplace. Section 31 of Alberta's *Occupational Health and Safety Act* permits a worker to refuse work if the worker believes on reasonable grounds that there is a dangerous condition at the work site or that the work constitutes a danger to the worker's health and safety or to the health and safety of another worker.

Although what constitutes a "dangerous condition" is not defined in the current OHS Act, Alberta OHS has described it as something that is "not normal for the job" or "normal hazards that are not properly controlled." Alberta OHS suggests that while a worker is obligated to bring theoretical, anticipated or potential risks to the attention of the employer, they do not constitute grounds for a refusal to work.

That is to say, the fear of contracting COVID-19 would generally not qualify as a dangerous condition where a worker could legally refuse to work. On the other hand, if a worker contracts COVID-19 and has recently been present at the work site, this could constitute a dangerous condition giving justification for a work refusal.

The worker's right to refuse comes with the duty to promptly report the refusal to the employer or supervisor with reasons. In response, the employer must immediately remedy or inspect the dangerous condition. The employer cannot take any discriminatory action (e.g., warning letters, suspensions or terminations) against a worker for refusing to work.

The best way for an employer to avoid a refusal to work is to implement a clear plan through policies and protocols on how it plans to mitigate the risks of COVID-19 in the workplace. Clear communication and consistent enforcement of such a plan should assuage any fears that the workplace is unsafe or dangerous. To date, we have not seen any examples of employers who followed recommended health and safety guidelines in response to COVID-19 and were nevertheless subject to a valid work refusal.

Conclusion

While the current environment including the staged reopening of the Alberta economy is certainly encouraging, we have not yet weathered the storm. It remains as important as ever to ensure that the workplace is a safe and healthy environment for staff and visitors. The legal obligation to do so falls squarely on the shoulders of each individual employer and as such it is important to remain mindful and vigilant about the many legal and practical issues that will affect the success of return to work efforts.

Editor's note: The views, perspectives and opinions in this article are solely the author's and do not necessarily represent those of the AMA.

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