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## FAQ – OBLIGATIONS AND RESPONSIBILITIES

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*Prevention obligations are shared between the employer and the employees. Both parties must pay particular attention to hygiene and social distancing.*

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### 1. What are the employer's obligations regarding the management of the COVID-19 pandemic?

Needless to say, laws, regulations and government directives must be followed.

The employer must take the necessary measures to protect the health, safety and physical well-being of workers. The employer has a duty of due diligence.

Due diligence can be defined based on the following three duties:

**Duty of foresight:** the development of concrete preventive measures combined with clear and appropriate directives communicated to workers by effective means of communication: the directives must be known and understood by the workers, applied uniformly, accompanied by adequate control and supervision measures.

**Duty of efficiency:** demonstrate all the monitoring carried out in the field to ensure that effective and concrete measures are put in place to eliminate or, in the case of this pandemic, to control the health risks of your workers: ensure a rigorous monitoring from your supervisor's

**Duty of authority:** firmly exercise your authority in the event of non-compliance with the procedures established for COVID-19. As it is your responsibility, any tolerance or passivity will be condemned. Firmness is expected in cases of non-compliance with procedures.

It should also be noted that section 217.1 of the Criminal Code of Canada states that *“everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.”*

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### 2. What are the risks of not implementing the preventive measures recommended by government authorities?

- Fostering a transmission of the disease that will generate absences and therefore an interruption of operations;
- The exercise of rights of refusal by employees which could be considered valid by Work Safe NB;
- Exposure to criminal and penal proceedings, in addition to the legal recourses provided by worker health and safety regulators, depending on the case and the seriousness of the breaches;
- Significant reputational risks

### 3. What types of lawsuits am I exposed to as an employer?

A work environment where there is a significant risk of contagion caused by deficiencies in working conditions, measures or methods could justify a notice of correction by a Work Safe NB inspector and, in certain circumstances, the suspension of activities. It could also result in fines.

Failures to comply with the employer's obligations under the Occupational Health and Safety Act could, in the context of a pandemic, have very serious consequences on the health of a worker and, if need be, justify criminal sanctions.

Following a criminal charge in Occupational Health and Safety, an employer can defend himself by using the concept of due diligence. To assert such a defense, the employer must demonstrate that the alleged offense was committed without his knowledge or consent, and despite the measures taken to prevent such offense.

Without becoming unduly alarmed, remember that any offense under section 217.1 of the Criminal Code of Canada stipulating that *“everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task”* would result in sanctions.

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### 4. What are the employee's obligations?

Here is an excerpt from the Work Safe NB site: The New Brunswick Occupational Health and Safety Act sets out a variety of employee responsibilities designed to help ensure a healthy and safe work environment. Employees must:

- Comply with the OHS Act and regulations.
- Conduct themselves in a safe manner and not put themselves or others at risk.
- Report any workplace hazards.
- Wear appropriate personal protective equipment.
- Co-operate with the joint health and safety committee (JHSC) or safety representatives.
- Co-operate with WorkSafeNB and its health and safety officers.



#### Concretely :

1. Get familiar with the applicable prevention program;
2. Take the necessary measures to protect your health, safety or physical well-being;
3. Ensure not to compromise the health, safety or physical well-being of other people in or near the workplace;
4. Submit to health examinations required for the implementation of preventive measures;
5. Participate in the identification and elimination of the risks of contamination in the workplace;
6. Collaborate with the health and safety committee and with any other person responsible for the implementation of this act and the policies of the company regarding preventive measures

### 5. What to do if my employee does not respect the measures put in place?

If your employee does not live up to their responsibilities, a Work Safe NB health and safety officer may write an order to do so. Also, they are exposing themselves to your disciplinary measures and in the event of an act of sabotage, can engage their civil and penal responsibility.

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### 6. What to do if an employee does not respect the measures put in place regarding COVID-19?

1. Ensure a calm, non-threatening approach that encourages the employee to collaborate
2. Speak in the first person("I"), state the facts and talk about their personal reaction.
  2. Understand the reasons for this unsafe behaviour and listen attentively: "Hello Jean-Marc. I see that you... It's worrying. Why ...? "
3. Is the employee afraid of not being paid? Explain how they will be taken care of, as this may help to reassure, even if the situation is not perfect.
4. Discuss with the employee the consequences for their health and physical integrity, and that of others, if unsafe behavior is maintained. Make them understand that everyone must contribute to the efforts!
5. Work with the employee to agree on a solution based on the reasons that were revealed.
6. If the problem persists, exercise your duty of authority and sanction insubordination.

### 7. What explanation should be indicated on a work severance slip, so that employees may benefit from employment insurance coverage linked to the COVID-19 measures?

Note that government authorities may give specific instructions on specific codes to use. It is important to inform yourself before issuing a statement of termination of employment. For the moment, as no indication exists to our knowledge, we recommend the following, depending on the circumstances:

1. If the employee is sick: **code D** and precision "Withdrawal COVID19";
2. If the employee is absent for an isolation period: **code K** and details "Linked isolation period - COVID19";
3. If it is for a layoff: **code A**: (layoff due to the situation related to COVID19).

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### **SOME ELEMENTS TO RETAIN:**

You already have a joint health and safety committee in place.

You already have quality assurance staff in place who are specialized in your business to carry out risk assessments and hazard analysis with regard to contamination risks.

This is a perfect opportunity to take charge, be an ambassador and monitor the preventive measures in place! **Join in and support them!**

- Stay positive and give the desired orientation clearly (e.g., organize work to make it safe for everyone, prioritize safety rather than productivity).
- Be transparent with employees, give accurate information even if it is not easy to say or hear;
- Use reliable and credible sources of information. Avoid rumors, gossip or myths, but opt for sites such as Health Canada and government departments.
- Maintain your credibility at all times by setting an example and maintaining a reassuring dialogue with your team.
- Use the leadership of other team members (Empower your supervisors!) to reinforce your message and reach those who require specific follow-up (ex: new employees and workers from an immigrant background).
- Identify ambassadors who can positively influence other members whether management or workers. Young people, older people and immigrants often need a representative leader to convince them to change a behavior; they are your custodians of values.
- Finally, develop a sense of belonging to the group that will allow the members to support each other and cope with the critical situation.