
COVID-19 and Construction Businesses

Employment, Labour and other Workplace Issues

Keith P. Burkhardt

April 14, 2020



 Follow @sherrardkuzz

250 Yonge Street Suite 3300
Toronto, Ontario M5B 2L7
Tel 416.603.0700
Fax 416.603.6035
24 Hour 416.420.0738
www.sherrardkuzz.com

Agenda

- Update on courts and administrative tribunals
- Essential businesses and considerations
- Employment issues
 - Layoffs and terminations
- Government programs and subsidies
- Labour relations
- Workplace Safety and Insurance Board issues
- Occupational health and safety

Courts and Administrative Tribunals

- Ministry of Labour – day-to-day operations
- Applications can still be filed electronically
 - Courts, Labour Board, Human Rights Tribunal, WSIB, etc.
- Most court dates/hearings have been cancelled
- Discussions regarding Zoom and other videoconferencing options for court dates and hearings

Essential Businesses - Background

- *Emergency Management and Civil Protection Act*
 - Government may make orders “*closing any place, whether public or private, including any business, office, school, hospital or other establishment or institution*”
- *Ontario Regulation 82/20 - Order Under Subsection 7.0.2 (4) — Closure Of Places Of Non-essential Businesses*
 - April 3 – Revised (narrower) list released

Essential Businesses – Supply Chain and Maintenance

- 1. Businesses that supply other essential businesses or essential services within Ontario ...with the support, products, supplies, systems, or services, including processing, packaging, warehousing, distribution, delivery, and maintenance necessary to operate*
- 20. Maintenance, repair and property management services strictly necessary to manage and maintain the safety, security, sanitation and essential operation of institutional, commercial, industrial and residential properties and buildings*

Essential Businesses – Construction

- 27. Construction projects...associated with the healthcare sector, including new facilities, expansions, renovations and conversion of spaces that could be repurposed for health care space*
- 28. Construction projects and services required to ensure safe and reliable operations of, or to provide new capacity in, critical provincial infrastructure, including transit, transportation, energy and justice sectors beyond the day-to-day maintenance*

Essential Businesses – Construction

29. Critical industrial construction activities required for,

- significant industrial petrochemical projects where preliminary work has already commenced,*
- industrial construction and modifications to existing industrial structures limited solely to work necessary for the production, maintenance, and/or enhancement of Personal Protective Equipment, medical devices (such as ventilators), and other identified products directly related to combatting the Covid-19 pandemic.*

Essential Businesses – Construction

30. Residential construction projects where,

- a footing permit has been granted for single family, semi-detached and townhomes,*
- an above grade structural permit has been granted for condominiums, mixed use and other buildings, or*
- the project involves renovations to residential properties and construction work was started before April 4, 2020*

31. Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure ongoing public safety

Essential Businesses – Community Services

- *Businesses that deliver or support the delivery of services including:*
 - *Sewage treatment and disposal*
 - *Potable drinking water*
 - *Critical infrastructure repair and maintenance*
including roads, dams, bridges etc.
 - *Environmental rehabilitation, management and monitoring, and spill clean-up and response*

Essential Businesses – Construction

NEW – April 10, 2020

29.1 Construction projects that are due to be completed before October 4, 2020 and that would provide additional capacity in the production, processing, manufacturing or distribution of food, beverages or agricultural products

Essential Businesses – The Decision

- Compare to March 23 list
 - Narrowing of classifications
 - Qualifiers – “necessary”, “required”, “critical”
- Stated intent of government
- Position of owners/general contractors
- Consider the downside
 - Risks to employees
 - Financial penalties

Limited Access to Closed Business

- Temporary access permissible only to
 - ❑ Comply with any applicable law
 - ❑ Allow for inspections, maintenance and repairs
 - ❑ Allowing for security services
 - ❑ Deal with other critical matters relating to the closure of the place of business, if the critical matters cannot be attended to remotely
 - ❑ Access materials, goods or supplies that may be necessary for the business to be operated remotely

Employment Considerations

■ Consider:

- “Temporary” reductions in hours/rates of pay
- Reduce to “skeleton crew”
- Complete office closure
- Employees may take vacation or use lieu time

■ Temporary layoff

- 13 weeks if benefits are not continued
- 35 weeks if benefits are continued

Termination of Employment

- Importance of employment contracts

- *Employment Standards Act*

- Termination Pay

- ~1 week per year to maximum of 8 weeks

- Severance Pay

- Large employers – Payroll over \$2.5 million

- 5+ years of service

- 1 week per year to maximum of 26 weeks

- Exception for “construction employees”

Termination of Employment

- Common law – “reasonable notice”
 - If no enforceable employment contract limiting to *ESA* or other amount
 - Judge will consider
 - Age, tenure, role and salary, available positions, etc.
 - ~1 month per year to max of 24
- Recommendation
 - Make an offer and get a release

Record of Employment (ROE)

■ Timing

- Per collective agreement or five calendar days

■ Block 16 - Reason for ROE

- Sick or self-isolation – Code “D” (Illness/injury)
- Layoff – Code “A” (Shortage of Work)
- Termination – Code “M” (Dismissal)
- Employee chooses not to come to work but is not sick or self-isolating – Code “E” (Quit) or “N” (Leave of Absence)
- Frustration – Code “K” (Other) with a Note - “Closure of business due to Government order”

Government Programs - CERB

- Canada Emergency Response Benefit (CERB)
 - Income relief of \$2,000 per month for four months
 - Includes self-employed/pieceworkers and individuals who remain home with family member who is ill or children out of school
 - Online portal opened April 6, 2020

Government Programs – Wage Subsidies

- **Small Employers** (taxable capital under \$15 million)
 - ❑ 10% subsidy for all employers over 3 months
 - ❑ Maximum - \$1,375/employee or \$25,000/employer
 - ❑ Calculated in remittances to Canada Revenue Agency

- **Company revenues must drop at least 30%**
 - ❑ Month-to-month calculation
 - ❑ 75% subsidy (max of \$847 per week per employee)
 - ❑ Not combined with 10% subsidy

Labour Relations Considerations

- Review collective agreements
- Layoffs
 - Timing of layoffs, final pay and records of employment
 - Recall from layoffs
- Addressing shortage of workers
 - Additional workers from union(s)
 - Subcontracting of work

Workplace Safety and Insurance Act

- Requires work-related exposure
- Consider objection to entitlement in a Form 7
- Any entitlement attributed Schedule-wide
 - Not attributed to individual employer
- COVID-19 related layoffs do not impact Loss of Earnings or claims history

Occupational Health and Safety Act

- Duties in Act and regulation
 - *Construction Projects, O Reg 213/91*
- Obligation to provide “facilities”
 - Toilets and hand washing stations
- Obligation to provide potable drinking water

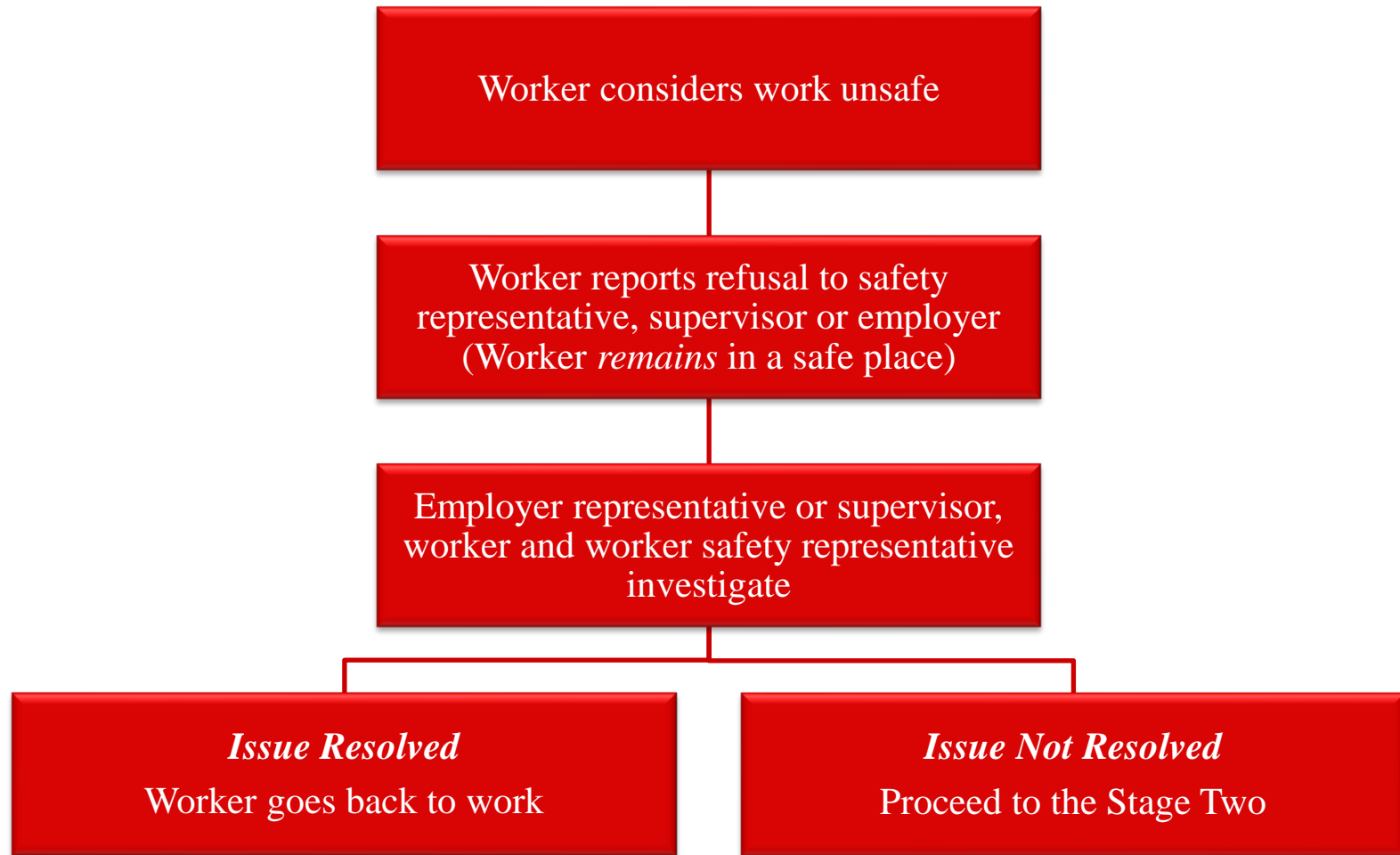
Health and Safety – COVID-19

- Minimize groups of workers
 - Stagger start and end times, breaks and lunch
 - Changes to toolbox and safety talks
 - Limits on workers in a hoist or on site
 - Remove coffee truck, stagger deliveries
- Sanitize tools, equipment and work locations
- Remind workers of actions to minimize transmission of COVID-19

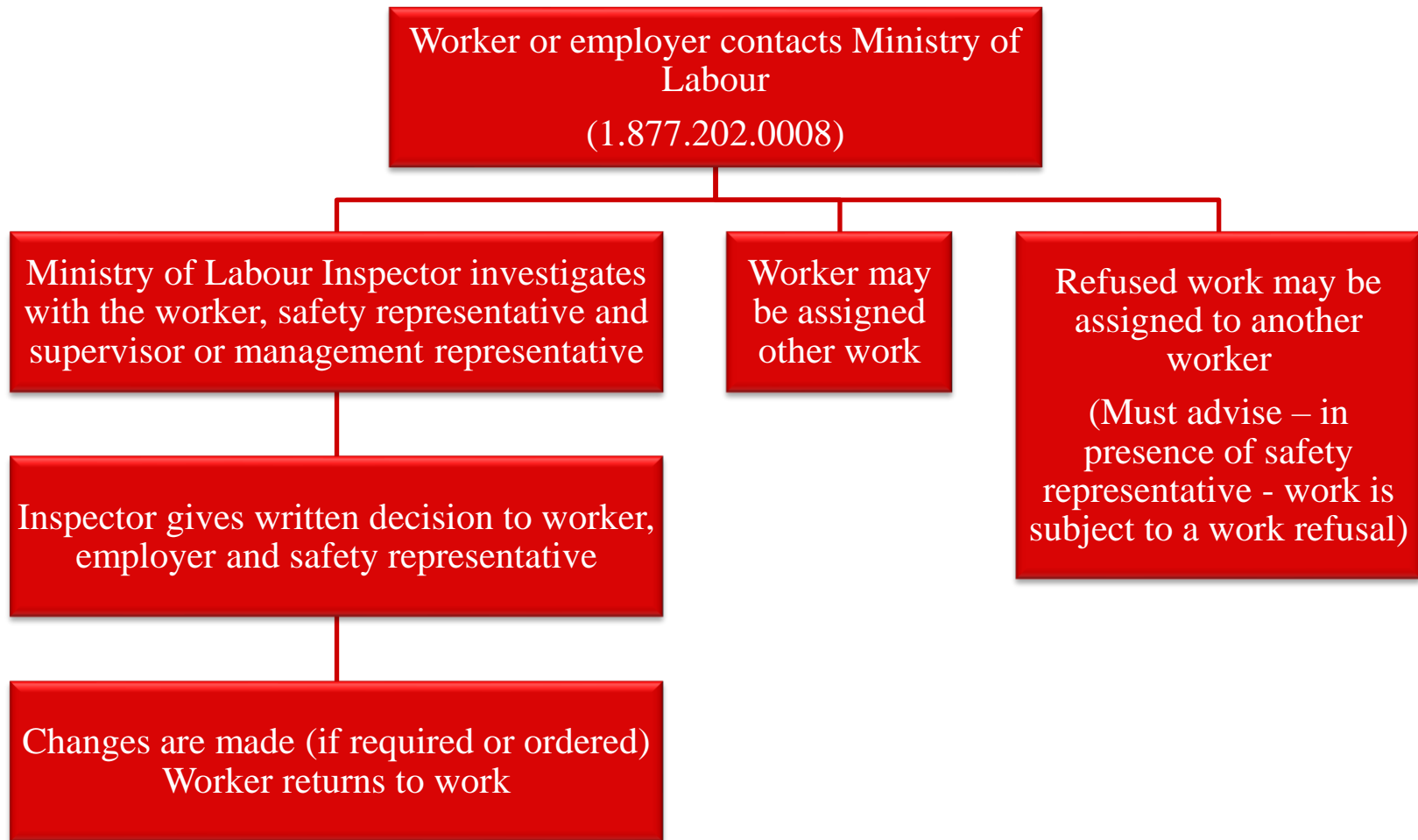
Health and Safety – COVID-19

- What about working 6 feet apart?
- Ministry of Labour guidelines (March 29)
 - Construction site health and safety during COVID-19
 - Best practices
 - Reporting illnesses
 - Obligation to post policies
 - Adjusting schedules and tracking workforce

Work Refusals – Stage One



Work Refusals – Stage Two



Next Steps

- Are you really “essential”?
 - Be on the right side of history
- Be a “best boss”
- Consider office operations
- Communicate with workers and unions
- Ensure health and safety measures are met
- *Wash your hands...*

Questions?



- Sherrard Kuzz LLP
 - Office - 416.603.0700
 - www.sherrardkuzz.com
- Keith Burkhardt
 - kburkhardt@sherrardkuzz.com
 - Office - 416.603.6252
 - Cell – 416.788.4893
- Frequently Asked Questions
 - [General FAQs re: COVID-19](#)
 - [Construction FAQs re: COVID-19](#)



250 Yonge Street, Suite 3300
Toronto, Ontario, Canada M5B 2L7

416.603.0700 Phone
416.420.0738 24 Hour
416.603.6035 Fax
www.sherrardkuzz.com



-
- *The information contained in this presentation/article is provided for general information purposes only and does not constitute legal or other professional advice, nor does accessing this information create a lawyer-client relationship. This presentation/article is current as of April 14, 2020 and applies only to Ontario, Canada, or such other laws of Canada as expressly indicated. Information about the law is checked for legal accuracy as at the date the presentation/article is prepared, but may become outdated as laws or policies change. For clarification or for legal or other professional assistance please contact Sherrard Kuzz LLP (or other counsel).*