

Ford Keast HR Fast Facts

This Fast Facts focuses on recalling laid off employees in a non-unionized environment.

As of mid-April, approximately 5.4 million Canadians were receiving federal aid through the CERB (Canada Emergency Response Benefit). Many of these people are on layoff. As the economy slowly opens up, employers will be looking to return people to work.

Please note this Fast Facts is as of April 28, 2020.

The Federal government has provided employers with a number of programs which make the possibility of a return from layoff more viable. There is also a potential up-coming reduction in the need to self-isolate and a return to work.

Premier Ford said in his news conference on April 27th that the provincial Government's plan is a "roadmap, not a calendar"; and that Ontario needs to see "a consistent two-to-four week decrease in the number of new daily COVID-19 cases" before loosening current restrictions.

When the province does approach re-opening, there will be a three-stage process with each stage expected to last at least two to four weeks at which point Ontario's Chief Medical Officer of Health will be able to tighten certain restrictions, extend the stage or advise that the province can move into the new phase. The stages are outlined as follows:

- **Stage 1:** For businesses that were ordered to close or restrict operations, opening select workplaces that can immediately modify operations to meet public health guidance. Opening some outdoor spaces like parks and allowing for a greater number of individuals to attend some events. Hospitals would also begin to offer some non-urgent and scheduled surgeries, and other health care services.
- **Stage 2:** Opening more workplaces, based on risk assessments, which may include some service industries and additional office and retail workplaces. Some larger public gatherings would be allowed, and more outdoor spaces would open.
- **Stage 3:** Opening of all workplaces responsibly and further relaxing of restrictions on public gatherings.
- **Note:** So far, the understanding is that schools will remain closed until at least May 29.

Recalling People to Work:

- ❖ In a non-union environment, seniority is not a recall criteria. But it is up to the employer to return individuals to their work 'in good faith'. That might mean, returning people by length of service, or it might mean returning people with shorter tenure but specifically relevant skill sets based on business requirements.
- ❖ It is important to provide a notice period for a recall. Regardless of reason, being laid off is a traumatic experience. Even in these times, where everyone is dealing with the pandemic, being laid off can affect self-esteem and self-worth so it is understandable that people might be a bit nervous about the return. Getting used to the idea is helpful. Depending on length of layoff, a recall notice can be three days, a week or two weeks. Always keep an eye on the required 13 week layoff requirements. Failure to return an individual within the defined parameters of the layoff will be considered to be a dismissal with pay in lieu of notice, etc. requirements back-dated to the first day of layoff.



- ❖ The recall should be in writing either hard copy or email. It does not need to be a formal communication and should include the following items:
 - ❖ the date of the recall
 - ❖ what time to report to work
 - ❖ who to report to
 - ❖ any changes (Ex. perhaps employees are returning to work as remote workers vs. on site at the business' premises)
 - ❖ compensation resumption
 - ❖ benefits information
 - ❖ what to expect on the first day back
 - ❖ a request that the person confirm their receipt of the notice.

- ❖ In the time of COVID-19, people who are returning to the physical site, either from layoff or from working remotely, will want to know what to expect related to their health and safety.
- ❖ This includes providing them with information such as:
 - ❖ Is the business returning everyone at once or will there be phased-in returns?
 - ❖ What will social distancing parameters be upon return?
 - ❖ Will masks or face shields be available?
 - ❖ Will people be expected to wear masks or face shields?
 - ❖ What cleaning has been done during closure or the remote working period?
 - ❖ What are ramped up cleaning plans going forward?
 - ❖ Is there a possibility the business may close again?

Here are some further scenarios to consider:

If the employee	Then
Does not wish to return to work at all.	Provide lots of time for the person to consider; document the conversations and retain any emails. Quitting is a very big decision and generally means that a person cannot collect EI (or CERB in our current circumstances) because they have voluntarily given up income. If they continue to decide not to return to work, ask for a letter of resignation. Note: since vacation pay is not paid out at the time of layoff, then the employee may be owed vacation pay.
Does not respond.	There is a school of thought that the recall communication should include a phrase related to "failure to report to work on the prescribed date will result in termination of employment". This is a very heavy-handed approach to a



	<p>layoff situation that the employer and employee did not want in the first place.</p> <p>It is a preferable stance to continue to reach out to the person and ascertain their status. In some cases, they may request additional time away. It is up to the employer to approve this or not. There are also unpaid leaves of absence that may be considered.</p> <p>The critical consideration here is to continue to try to contact the employee and document all out-reach.</p>
Says they will not return because of fears of COVID-19.	<p>In this COVID-19 environment, it is recommended that the employer be open to this and review leaves of absence which might suit the situation. Given that it will be an unpaid leave of absence, the employer may also decide to hire while awaiting the employee's return.</p> <p>Note: Bill 186, passed by the Ontario Government in March to respond to COVID-19, provides for job protected leave of absence.</p> <p>Having said that, if employers have done everything to adhere to a healthy and safe environment, the employee can be required to return to work.</p>
Has been working remotely and would like to continue doing so.	<p>This is an employer decision; the employee can be required to return to the workplace. However, if it is possible to continue a remote work environment, then this will help with social distancing for those who are in the workplace. Review your business' measures and potentially implement a remote work team to develop policies and programs related to remote work. It is likely that remote work will become part of our future so businesses should consider all the ramifications and document how this process will work.</p>
Refuses to work based on Health & Safety concerns	<p>The employer will be required to implement an investigation. During this period of time, the employee can be assigned alternate work.</p>
Has family issues and needs accommodation.	<p>These should be reviewed on a case by case basis, but employers are required to accommodate certain situations.</p>

Please feel free to contact me at any time if I can assist you with your HR challenges.

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