

COVID-19: WHAT IF I CAN'T GO BACK TO WORK?

CUPE

Maybe you have kids at home and remote learning is becoming a full-time job. Or maybe you're caring for vulnerable parents. Or maybe you have an underlying health condition that makes going to the office dangerous during the COVID-19 pandemic.

What do you do if you can't go back to work?

There are two primary concerns: time off and money.

You may want to contact your steward or CUPE National Representative for assistance in creating and negotiating a plan with your employer. There are three options to consider: Is there an **accommodation** that will work for you and your employer? If not, are you eligible for a **job-protected leave**? Finally, what **income supports** are available?

ACCOMMODATION

Your employer has a legal duty to accommodate employees with an **illness or disability** that makes them vulnerable to COVID-19, up to the point of undue hardship. This means that the employer must make adjustments so that employees can continue working in a way that is safe unless it would be unduly costly or unsafe to do so. For example, working from home is a common accommodation for immunocompromised or immunosuppressed employees. If working from home is not possible, attempts should be made to explore the possibility of other accommodations, with an unpaid leave being the last option.

In all cases, accommodation must be the result of an individualized process. Employers and unions cannot adopt a one-size-fits-all solution.

In each province and federally, human rights legislation also prohibits discrimination on the basis of family status. Employers must provide accommodations to allow employees who are responsible for a child to keep working if **childcare** options are unavailable, unless it would be unduly costly or unsafe to do so. Family status protection also includes non-biological parents and those who are in a parent-like role.

If you **voluntarily withdraw** your child from school or childcare over concerns about COVID-19 exposure, but there are no underlying health issues involved, then you do not have a right to be accommodated. That does not prevent your local from advocating for accommodation for parents in such a situation.

Similarly, the obligation to provide care to **elderly parents** is also encompassed by family status protections. While courts and tribunals have not considered all the requirements for a family status accommodation as they relate to COVID-19, it is likely that an employee who lives with a sick family member or who is primary caregiver for family members who are at high risk if they contract COVID-19 (e.g. elderly, immunosuppressed, immunocompromised, or medically vulnerable), the employer has a duty to accommodate the employee unless it would be unduly costly or operationally disruptive to do so.

Once employees have established a need for accommodation, options could include working from home, working a modified schedule, or taking paid leave if available. Employees who work from home may need additional accommodation if they are the primary caregiver during working hours, such as the ability to take irregular breaks, work reduced hours, or modify job duties to allow the employee to work in a position

where the disruptions are not problematic. Taking an unpaid leave would be the last option.

JOB-PROTECTED LEAVE

In March 2020, the Ontario government changed the Employment Standards Act to include a new Infectious Disease Emergency Leave.

If you cannot negotiate an adequate accommodation to allow you to continue working, and have exhausted other options such as paid leaves available through your collective agreement, sick leave, or vacation, then you may want to look at this unpaid job-protected leave.

These leaves are available for several reasons, one of which is caring for family members or because schools or child care centres are closed. If your child's school is open, but you have opted for online learning, you will likely require a doctor's note stating the you or the child are either infected or at high risk.

For more detail, see the [CUPE factsheet on job-protected leaves](#).

INCOME SUPPORT

After September 26, 2020, you will not be able to apply for the Canada Emergency Response Benefit (CERB). If you are already on CERB, you will transition to Employment Insurance (EI) and may need to reapply.

If you are not eligible for EI, you may be eligible for one of three other programs:

The **Canada Recovery Benefit** for workers who stopped working or had hours reduced due to the pandemic. But you must be available and looking for work.

The **Canada Recovery Sickness Benefit** for workers who are ill or must self-isolate.

The **Canada Caregiving Benefit** for workers who have missed at least 60% of their scheduled work week to care for a dependent, whose school or childcare facility is closed, or whose normal caregiver is unavailable.

For more information on income supports, see [CUPE's factsheet on the new Canada Recovery Benefits](#).

Where can I turn for more help?

- Visit cupe.ca/covid-19 for up-to-date information affecting workers across the country, for example, on CERB and other income supports
- At cupe.on.ca/covid-19 you can find resources relevant to workers in Ontario
- Contact your local for help with accommodation. The local also has access to the expertise of your CUPE National Staff Representative, and Human Rights specialists
- Locals should alert their National Staff Representative about any action taken on accommodation related to COVID-19.