

Best Practice Guidelines for Work Refusals

As provinces and territories gradually re-open their economies, Clinics may begin to receive work refusals from staff (both employees and independent contractors) based on a number of different reasons including: the risk of exposure in the practice, concern about inadequate Health and Safety protocols, concerns over family/childcare obligations or a generalized anxiety of contracting COVID-19. If staff members are refusing to return to work, Clinics are urged to probe for the reason(s) for the refusal and treat each situation on a case-by-case basis. With that in mind, we have prepared Best Practice Guidelines that Clinics may follow when faced with work refusals.

Please note that “Clinics” will be used throughout these guidelines to refer to Chiropractic and/or other multi-disciplinary clinics.

WORK REFUSAL DUE TO HEALTH AND SAFETY CONCERNS

Under the applicable Occupational Health and Safety legislation across Canada, Workers have the right to a work environment that protects their health and safety. Clinics should exercise due diligence to ensure that every reasonable precaution is taken to protect staff, which means implementing health and safety policies and procedures based on Public Health, provincial directives and regulator guidelines. To ensure that staff members are aware of the measures that are in place, Clinics should communicate, train, and ensure that all staff sign off on applicable policies and procedures.

If a staff member is still hesitant about returning to work due to safety concerns, Clinics should speak with them to determine the root cause and reiterate the health and safety policies and procedures that are currently in place.

If it is determined that a staff member is refusing work due to legitimate health and safety risks, Clinics are mandated follow the work refusal process as per Occupational Health and Safety legislation of the applicable province or territory. Below are general guidelines for health and safety work refusals across Canada. *Please note these are general guidelines and it is important to review the specific Occupational Health and Safety legislation in your province.*

Step 1	<ul style="list-style-type: none">• The staff member must report the work refusal and explain why the work is unsafe;• The Clinic must remove the staff member from the perceived workplace hazard and investigate to determine the risk involved;• If there is no hazard/risk found, the staff member is required to return to work; and• If the work is found to be unsafe, the Clinic must control the hazard/risk, and then the staff member will be requested to return to work.
Step 2	<ul style="list-style-type: none">• If measures have been implemented to eliminate and/or control the workplace hazard or it has been determined that there is no hazard present and the staff member still refuses to return to work, Occupational Health and Safety authorities must be contacted; and• The Ministry of Labour will investigate the hazard at the Clinic and determine if the work is likely to endanger the staff member.
Step 3	<ul style="list-style-type: none">• If the Ministry of Labour Officer determines that there is a risk, they will issue an order for the Clinic to remove and/or control the hazard/risk; and

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	<ul style="list-style-type: none"> If the Ministry of Labour Officer determines that no risk is present, the staff member is required to return to work.
Step 4	<ul style="list-style-type: none"> If the staff member still refuses to return to work after the Ministry of Labour Officer has deemed that no hazard exists or the clinic has complied with their order to eliminate or control the risk, the staff member can be performance managed in accordance with Clinic policies and procedures.

WORK REFUSAL DUE TO CHILD AND FAMILY CARE OBLIGATIONS

Staff may refuse to return to the Clinic due to child and family care obligations, they may need to self-isolate as per Public Health orders or they may be caring for a family member who has tested positive for COVID-19. *Please note, childcare and family care obligations during COVID-19 are currently job-protected in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, and Newfoundland.*

Step 1	<ul style="list-style-type: none"> The Clinic may work in conjunction with staff members to inquire about possible alternate arrangements regarding support for child and family care obligations.
Step 2	<ul style="list-style-type: none"> The Clinic is encouraged in consultation with the staff member to identify potential accommodation options such as a flexible work schedule, variable or part-time hours, permitting these staff members to return to the clinic last, etc.; and The Clinic should reassess the accommodation arrangement with the staff member on a regular basis and adjust as appropriate to meet the needs of the business It is important to ensure that any accommodation plan is time-limited and has parameters placed around it.
Step 3	<ul style="list-style-type: none"> If adequate accommodation options cannot be achieved, staff members should be permitted to remain a job-protected leave of absence (if applicable); The Clinic is recommended to regularly follow-up with the staff member to determine if their situation has changed and if they can return to work; and If childcare and family care obligations during COVID-19 are not job-protected in your province or territory, there are other ways in which staff members are protected (e.g., Family Status obligations under the Human Rights Code or other types of unpaid Leaves of Absence under Employment Standards legislation in your jurisdiction). It is important to be updated on these various protections that are available.

WORK REFUSAL DUE TO HEALTH VULNERABILITIES

A staff member may refuse to return to work as they are part of the vulnerable population and are at a higher risk for severe illness from COVID-19 due to an underlying medical condition, a weakened immune system, or age. This reason falls under job-protected leave in the provinces that introduced job-protected COVID-19 leave legislations and provincial or territorial Human Rights.

Step 2	<ul style="list-style-type: none"> Staff members who are part of the vulnerable population can request for certain accommodations that will allow them to continue to work (i.e. flexible work arrangements, variable or part-time hours, and working from home, etc.);
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	<ul style="list-style-type: none"> • The Clinic has the legal duty to accommodate these requests to the point of undue hardship; • Both parties should work collaboratively, in consultation the staff member’s medical practitioner, to determine adequate accommodation options; and • The Clinic should reassess the accommodation plan with the staff member on a regular basis and adjust as appropriate.
Step 3	<ul style="list-style-type: none"> • If adequate accommodation options cannot be achieved, or the staff’s medical practitioner requests for the individual to go on a medical leave of absence, the staff member may initiate a job-protected COVID-19 related leave; and • The Clinic is recommended to regularly follow-up with the staff member to determine when they can return to work.

WORK REFUSAL DUE TO TRAVEL RESTRICTIONS

Staff members may be unable to return to Canada due to travel restrictions levied by the government that has resulted in cancelled flights and/or border lockdowns, except for ‘essential’ business.

Step 1	<ul style="list-style-type: none"> • Clinics operating in British Columbia, Manitoba, Ontario, New Brunswick, and Newfoundland are required to place these affected staff members on a job-protected COVID-19 related leave; • In Alberta and Saskatchewan, where there is currently no job-protected provision implemented by the provincial government, the Clinic has the discretion to decide how they will proceed with the staff member; and • Clinics are urged to be practical when making employment decisions (i.e. a 10-year employee should be treated differently than a 3-month employee.).
Step 2	<ul style="list-style-type: none"> • The Clinic should regularly follow-up with the staff member to determine if travel restrictions have been lifted, when the staff member has returned to Canada to complete the 14 day quarantine period, and when they can safely return to work.

WORK REFUSAL DUE TO TRANSIT AND COMMUTING CONCERNS

Staff members who use public transit to commute to work may be fearful of contracting and/or or being exposed to COVID-19 from transport vehicles or other commuters. However, there is currently no Public Health advice recommending that individuals should avoid using public transportation. Staff members with these challenges should make necessary arrangements for getting to and from work.

Step 1	<ul style="list-style-type: none"> • Clinics may implement some or all of the following measures: <ul style="list-style-type: none"> ○ Consider recalling these staff members to the workplace last; ○ Adjust working hours to allow staff members to avoid busy commuting periods; ○ Provide a transportation stipend or “taxi tokens”; ○ Supply adequate Personal Protective Equipment (“PPE”) (e.g., face masks, shield, and gloves); and ○ Set up hand sanitizing stations at the entrance of the practice.
Step 2	<ul style="list-style-type: none"> • Clinics are recommended to encourage staff to:

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	<ul style="list-style-type: none"> ○ Use their private motor vehicle, practice social distancing by promoting safe carpooling or avoiding it altogether, wherever possible; ○ Use taxis or Uber/Lyft as an option to commute to work; and ○ Practice risk mitigation guidelines while on public transit such as wearing a mask and gloves and maintaining social distancing from other commuters.
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WORK REFUSAL DUE TO CLOSE CONTACT WITH COWORKERS AND PATIENTS

Staff may refuse to return to the clinic as they have concerns about being exposed and/or contracting COVID-19 from working in close proximity with coworkers and patients. This refusal falls under health and safety.

Step 1	<ul style="list-style-type: none"> ● Clinics are recommended to: <ul style="list-style-type: none"> ○ Review and update their Patient Care, Pandemic, and Sick Time Policy which should include the requirement for both patients and staff to disclose to the Clinic if they have been exposed to or have contracted the virus; ○ Advise staff of the health and safety precautions that have been put in place and ensure they sign-off on the policies; ○ Obtain sign-off on COVID-19 consent forms from all staff; and ○ If staff members refuse to sign-off on applicable policies pertaining to health and safety, initially coach them and, if necessary, commence the disciplinary process
Step 2	<ul style="list-style-type: none"> ● To ensure staff members are provided with a safe workplace, Clinics should review any patient-care practices and integrate Public Health, provincial directives, and regulatory body guidelines into policies and procedures.

WORK REFUSAL DUE TO A MENTAL HEALTH ISSUE

A staff member may be reluctant to return to work due to mental health challenges. This work refusal is job-protected under Human Rights given that mental health issues have been deemed as a “disability” under the legislation.

Step 1	<ul style="list-style-type: none"> ● Clinics are recommended to: <ul style="list-style-type: none"> ○ Advise of the health and safety precautions put in place to protect staff; ○ Share services and resources available to staff, such as an Employee Assistance Program (“EAP”) to support in managing stress and anxiety (if applicable); ○ Encourage staff to practice self-care activities and coping strategies to manage stress and anxiety; and ○ Encourage ongoing communication in your Clinic so that staff members can share their concerns with others and help each other identify potential solutions
Step 2	<ul style="list-style-type: none"> ● Staff members who experience mental health challenges may request accommodations that will allow them to continue to work (i.e. flexible work arrangements, variable or part-time hours, and working from home, etc.);

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	<ul style="list-style-type: none"> • The Clinic has the legal duty to accommodate these requests with medical guidance to the point of <i>undue hardship</i>, as per Human Rights legislation; • There is joint obligations of both the Clinic Owner/Manager and staff member to work collaboratively, along with the staff member’s medical practitioner, to determine adequate accommodation options; and • The Clinic should reassess the accommodation plan with the staff member on a regular basis and adjust as appropriate. As noted above, any accommodation plan should be time limited and have clear parameters around its scope.
Step 3	<ul style="list-style-type: none"> • If adequate accommodation options cannot be achieved and the staff’s medical practitioner request for the individual to go on a medical leave of absence, staff can go on a job-protected medical leave; and • The Clinic is recommended to regularly follow-up with the staff member to determine if their situation has changed and if they can return to work.

WORK REFUSAL DUE TO MULTIGENERATIONAL AND/OR IMMUNE-COMPROMISED FAMILY LIVING TOGETHER

Staff members may refuse to return to work if they live in a multigenerational household or have an immune-compromised family member who are at a higher risk of severe medical complications if exposed to COVID-19. Staff members may be fearful of contracting or exposing their family members to the virus if they physically go the Clinic. Please note, there is a difference between living with an individual who is considered vulnerable and taking care of them. Whereas, living with a vulnerable individual is not job-protected, *taking care of them* may fall under a job-protected leave.

Step 1	<ul style="list-style-type: none"> • It is recommended that the Clinic provide options to minimize exposure such as a flexible work arrangement, variable or part-time hours, permitting these staff members to be recalled back to work last, etc.; and • Clinics should reassess the arrangement on a regular basis with the staff member and adjust as appropriate.
Step 2	<ul style="list-style-type: none"> • If adequate options cannot be achieved, the Clinic may consider allowing staff member to go on an approved leave of absence; and • The Clinic is recommended to regularly follow-up with the staff member to determine if their situation has changed and if they can return to work.

WORK REFUSAL DUE TO STAFF MEMBER RECEIVING THE CANADA EMERGENCY RESPONSE BENEFIT

As Clinics are reopening their practices and recalling staff, a staff member may refuse to return to work as they prefer to receive funds through the Canada Emergency Response Benefit (the “CERB”), or other financial initiatives provided by the Federal and Provincial Governments. The Clinic has three (3) options in the circumstances and it is recommended that Clinics seek out proper legal in the circumstances.

Option 1	<ul style="list-style-type: none"> • Clinics may permit the staff member to remain on an approved leave of absence and reassess the arrangement as the COVID-19 situation evolves. This is a low risk options for Clinics.
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Option 2	<ul style="list-style-type: none">• Clinics may allow the staff member to remain on a leave of absence, but should advise them that their job may not be guaranteed in the next few weeks or months. This is moderate risk option for Clinics.
Option 3	<ul style="list-style-type: none">• The Clinic may communicate to staff that if they do not return to work, their job is in jeopardy as they are within their rights to consider that a form of job abandonment and/or resignation; and• If a staff member is presumed to have abandoned or resigned from their job due to a refusal to return to work, they may lose their right to severance (if applicable) as well as any funds they are receiving from the government, making them ineligible to collect funds from the CERB or Employment Insurance benefits.• <i>Note: This is a high-risk option for Clinics.</i>

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