



## Resources to assist First Nations in responding to the COVID-19 Pandemic

As the number of COVID-19 confirmed cases is rising across Canada, First Nations are responding to protect their community members and encourage actions to prevent the spread to their communities. We have prepared this blog in an effort to provide general assistance to First Nations seeking information about pandemic planning, funding considerations and some legal issues to keep on top of. We are not providing public health advice or information, and encourage First Nations to obtain such information from reliable sources such as the Public Health Agency of Canada. We also encourage First Nations to work with their own public health staff (some First Nations may have funding through the Communicable Disease Control Program of Indigenous Services Canada for their own public health nurses) to educate community members about taking preventive measures and responding to potential cases of people infected with the virus.

**Pandemic Response Plans:** Some First Nations may already have prepared Pandemic Response Plans. If not, the BC First Nations Health Authority has an online template (relevant to BC of course, but it is adaptable) for such a plan that provides useful information about key components of such a plan. The importance of clear lines of authority and clear communications to the community cannot be overemphasized. A copy of the template plan can be downloaded from this page: <https://www.fnha.ca/what-we-do/communicable-disease-control/coronavirus>.

**Work travel bans, office closures, etc. :** Employers across the country are requiring employees to work remotely, sometimes with exceptions for certain staff, and/or are instructing their employees to not engage in any non-essential work-related travel. Requiring that employees who have returned from travel outside of Canada not come into the workplace, and urging that they self-isolate, are also tools that employers are using. Also, requiring that employees who are sick not come into the workplace (or be sent home if they do) is also an important tool to seek to prevent spreading, even if the person who is sick may not themselves be infected with COVID-19.

There may be a need for temporary layoffs during this time. If you feel you need to temporarily lay off employees, please seek legal advice about your community's situation. We have also prepared a general information sheet regarding employment, health and safety, and human rights obligations of employers at this time. We will keep it updated as new legislation is introduced.

**Track your spending for potential future recovery:** Indigenous Services Canada's Deputy Sr. ADM for Health, Valerie Gideon, has suggested that First Nations track your spending on COVID-19 response measures. Canada has announced that there is funding for Indigenous Services Canada "to support First Nations and Inuit communities in sustaining health services and managing impacts of COVID-19," so First Nations may be able to recover some of their expenditures on response measures.

**Tracking deadlines in agreements – check your contracts:** Despite the obvious disruption created by COVID-19, it is important to not assume that parties that have signed contracts will not insist on performance. For example, many contracts contain deadlines by which a First Nation must provide documentation in order to obtain certain benefits or payments. In other contracts, First Nations will have required other parties to meet certain deadlines. Some of those may contain

“force majeure” clauses that may be applicable in order to avoid meeting those deadlines, but that cannot be assumed. Each contract should be checked. If the party on the other side is prepared to waive compliance with a deadline, a signed waiver agreement that complies with the requirements of the agreement should be sought long before the deadline is upon you.

**Court deadlines still apply:** Although courts in some provinces are shutting down jury trials or not holding some types of court hearings, procedural timelines in the court rules and in court orders still apply. Your legal counsel will need to be in touch with you as necessary to ensure that applicable court deadlines are not missed.

OKT continues to operate through the COVID-19 emergency to ensure the legal needs of all of the communities that we work for continue to be met. If you have any questions about the foregoing, including the legal implications of implementing a certain course of action, please contact us and we will work to answer your questions as quickly as we can.

*This briefing is not legal advice.*

*OKT LLP has worked with Chiefs of Ontario to provide this briefing for First Nations Administrators and Managers. If you need legal advice about your particular situation we would be happy to assist. We are working remotely at this time but remain available to provide advice. During this time email is the best way to get in touch, and we can arrange a call or teleconference thereafter. While any of our lawyers are able to assist you, you can contact the below persons for legal advice:*

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