

Ontario Government Introduces Infectious Disease Emergency Leave

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Many businesses have been forced to close or reduce operations to comply with emergency orders intended to slow the spread of COVID-19. According to Statistics Canada, Ontario has seen a 2,496 per cent increase in temporary layoffs compared to the previous year.

Employers who initially laid off employees in many jurisdictions, including Ontario, were faced with the reality that any possibility of recall would not be possible within the timeline set out in legislation where employment is deemed terminated from the first date of layoff. Under the Ontario *Employment Standards Act* (the “ESA”), a temporary layoff for a non-unionized employee is a layoff (i) not more than 13 weeks in a period of 20 consecutive weeks, or (ii) less than 35 weeks in a consecutive 52-week period if the employer satisfies one of six prescribed conditions, including the employer providing the employees with substantial payments.

Provinces have been amending their temporary layoff provisions to address this new reality. The Government of Ontario is continuing this trend with a new regulatory amendment that places employees that have been or will be temporarily laid off on “Infectious Disease Emergency Leave.” This change aims to protect both employees from permanent layoffs and businesses from incurring high termination costs while the province’s economy slowly reopens.

The Infectious Disease Emergency Leave permits employees to remain employed with legal protections and to be eligible for federal emergency income support programs, insofar as the reduction of hours is related to the COVID-19 outbreak. Similarly, businesses **will not be forced to terminate their employees** and suffer the financial costs of termination, which can be significant absent proper contractual restrictions.

Now, non-unionized employees that were previously subject to the temporary layoff provisions under the ESA will be put on the Infectious Disease Emergency Leave during the COVID-19 outbreak. Employees will be deemed to be on this leave whenever an employer temporarily reduces an employee’s hours of work due to COVID-19.

What does this mean for employers? Employees are not automatically deemed “terminated” when a temporary layoff exceeds the permitted statutory limits. This amendment is retroactive. It will apply to any layoff beginning on March 1, 2020, and will expire six weeks after Ontario’s declared emergency ends.

This is a considerable initiative by the government and recognizes the practical issues of the deemed termination provisions of the ESA. It will assist employers in managing their workforce and perhaps recalling employees within a time line which avoids a termination.

If you have any questions, please contact a member of our Workplace Law Group.

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