

Ontario's Infectious Disease Emergency Leave Extended to January 2, 2021

Sep 11, 2020

By Daria (Dasha) Peregoudova

Further to our recent article regarding the lifting of the state of emergency in Ontario, on September 4, 2020, the clock was expected to start ticking again on regular temporary layoff timeframes under the Ontario *Employment Standards Act, 2000* (the "ESA"). However, on September 3, 2020, the Government of Ontario announced that the temporary measures introduced by O. Reg. 228/20: Infectious Disease Emergency Leave (the "Regulation") under the ESA have been extended until January 2, 2021. The extension responds to and attempts to mitigate ongoing challenges faced by employers during the COVID-19 pandemic by providing temporary relief from the notice of termination and severance pay provisions of the ESA during the "COVID-19 Period" as defined in the Regulation.

During the COVID 19 Period (a.k.a. until January 2, 2021):

- A non-unionized employee whose employer has temporarily reduced or eliminated their hours of work for reasons related to COVID-19 is deemed to be on a job-protected infectious disease emergency leave (commonly referred to as "IDEL"), which extends to parents who have elected not to send their children back to school due to COVID-19;
- A non-unionized employee is not considered to be laid off if their employer temporarily reduces or eliminates their hours of work or wages for reasons related to COVID-19;
- A non-unionized employee is not considered to be constructively dismissed under the ESA if their employer temporarily reduces or eliminates their hours of work or wages for reasons related to COVID-19.

Practically, this now means that the temporary layoff clock under the ESA will reset on January 3, 2021, and regular timeframes will resume. At that point, the regular rules about deemed terminations of employment upon expiry of the timeframes and resulting employee entitlements to notice of termination and severance pay, if applicable, will apply.

Despite the extension and further flexibility to employers during the pandemic, there remains an ongoing tension about whether the temporary layoff provisions will receive generous judicial interpretation in cases where employees have claimed constructive dismissal in the absence of layoff clauses in their employment agreements.

Please don't hesitate to contact a member of the Workplace Law Group for a further discussion.

Author



Daria (Dasha) Peregoudova
Associate
T 416.865.3417
dperegoudova@airdberlis.com

This communication offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.