



What's New in HR Law

Ontario Labour Relations Board Provides Insight into Statutory Interpretation Related to IDEL Entitlements

May 11, 2022 | By [Stephanie Nicholson](#)

Bottom Line

In [Grand River Hospital v BB and Director of Employment Standards, 2022 CanLII 25508 \(ON LA\)](#), Vice-Chair Rogers held that an employee was entitled to paid Infectious Disease Emergency Leave (“IDEL”) and, in doing so, interpreted the paid IDEL provisions of the *Employment Standards Act, 2000* (the “ESA”) in a way that appeared contrary to previous guidance. Vice-Chair Rogers emphasized that the *ESA* should be interpreted in a manner consistent with the legislative purpose of paid IDEL — namely, to respond to the needs of employees and alleviate the disruption caused by the COVID-19 pandemic.

Background Facts

In this case, the employee had claimed paid IDEL from her employer for two days in June 2021. The employee had been absent from work on those two days to take care of an individual in her household who had exhibited COVID-19 symptoms and, accordingly, she believed that she was

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entitled to IDEL pursuant to section 50.1(1.2) of the *ESA*. This section, which was effective retroactively to April 19, 2021, provides Ontario employees with up to three days of paid IDEL for reasons relating to, *inter alia*, an employee providing care or support to a household member who is in quarantine or isolation related to COVID-19 or under investigation, supervision, or treatment related to COVID-19.

The employer denied the employee's paid IDEL claim on the basis that, under the workplace disability plan, the employee would have been entitled to paid short-term disability leave if she had contracted COVID-19 or was being tested or treated for the same. However, the employee's contract of employment did not entitle her to paid leave for tending to a household member with COVID-19 or because a member of her household was thought to have COVID-19.

In denying the paid IDEL claim, the employer relied on provisions of the *Employment Standards Act Policy and Interpretation Manual*, which suggested that paid leave under a contract could offset paid IDEL even if the reasons for leave under the contract did not "match perfectly" the reasons for paid IDEL under the *ESA*. The *Employment Standards Act Policy and Interpretation Manual* is not binding on decision-makers, but is normally persuasive.

The employee filed an employment standards complaint against the employer, which resulted in the Ministry of Labour finding that the employer had violated the paid IDEL provisions of the *ESA*. The employer applied to the Ontario Labour Relations Board for a review of the Ministry of Labour's decision.

The Decision

Vice-Chair Rogers dismissed the application for review and found that the employer had improperly denied the employee's right to paid IDEL.

In making this determination, Vice-Chair Rogers briefly explained the importance of recognizing new leaves in order to protect the interests of employees and respond to their needs and realities. Vice-Chair Rogers emphasized that the *ESA*, as remedial legislation, should be interpreted fairly, broadly, and liberally to best ensure the attainment of its legislative purpose.

At the centre of the analysis, Vice-Chair Rogers explained that the employer's position would lead to absurd consequences as the employee had no contractual benefit available for the purposes of tending to a household member who had contracted COVID-19. Furthermore, Vice-Chair Rogers stated that the employer's position was even more absurd as it would make paid IDEL available to employees who had exhausted their short-term disability benefits before April 19, 2021, and then required a COVID-19 related absence thereafter. In essence, the employer was relying on the employee's *prospective* entitlement to short-term disability benefits as a means to deny paid IDEL, even though the employee's absence had no connection with her entitlements under the workplace disability plan. Vice-Chair Roger interpreted the employee's right to paid IDEL much more broadly than suggested by the *Employment Standards Act Policy and Interpretation Manual*.

Consequently, Vice-Chair Rogers ordered \$400.00 to be paid to the employee as IDEL pay.

Check the Box

This decision confirms that any ambiguities in the *ESA* should be interpreted by considering the harms and challenges that the legislation was intended to remedy. In the context of IDEL, adjudicators will strive to ensure that the legislation is interpreted and applied in a manner that supports employees through the turbulent times of the pandemic.

Paid IDEL currently remains in effect until July 31, 2022; however, that period could be extended if the Ontario Government amends the Infectious Disease Emergency Leave Regulation (O. Reg. 288/20). The uncertainty and complexity caused by the ever-changing legal landscape has created many workplace challenges, as highlighted by this decision. Employers should carefully consider the relevant legislative framework and, where necessary, consult legal counsel when making decisions to deny paid IDEL or continuing to navigate through the pandemic.

Need More Information?

For more information or assistance with interpreting employment standards or administering infectious disease emergency leave, contact [Stephanie Nicholson](#) at 416-684-7398 or your regular lawyer at the firm.



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