



What's New in HR Law

Ontario Government Institutes Infectious Disease Emergency Leave to Provide Job Protection amidst COVID-19 Outbreak

March 20, 2020

COVID-19 Update

On March 19, 2020, the [Ontario Government passed legislation](#) in an emergency sitting that will protect the jobs of employees who are required to self-isolate or quarantine. The job protected leave of absence will also apply to employees who are required to care for a person for reasons relating to COVID-19, including as a result of school or daycare closures.

This update is for general discussion purposes and does not constitute legal advice or an opinion.

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Immediate Amendments to the *Employment Standards Act* - Infectious Disease Emergency Leave

The *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020* amends the current emergency leave available to employees under the *Employment Standards Act, 2000* to provide **unpaid** job-protected leave to employees in isolation or quarantine due to COVID-19, or to those who need to be away from work to care for another person for reasons relating to COVID-19, including children because of school or daycare closures. The newly amended infectious disease emergency leave will apply to employees who are unable to work for the following reasons:

- The employee is under medical investigation, supervision or treatment for COVID-19
- The employee is acting in accordance with an order under the *Health Protection and Promotion Act*
- The employee is in isolation or quarantine in accordance with public health information or direction
- The employer directs the employee not to work due to a concern that COVID-19 could be spread in the workplace
- The employee needs to provide care to a person for a reason related to COVID-19 such as a school or day-care closure
- The employee is prevented from returning to Ontario because of travel restrictions

Employees will be able to take the new infectious disease emergency leave if they are required to care for any of the following individuals:

- The employee's spouse
- A parent, step-parent or foster parent of the employee or the employee's spouse
- A child, step-child or foster child of the employee or the employee's spouse
- A child who is under legal guardianship of the employee or the employee's spouse
- A brother, step-brother, sister or step-sister of the employee
- A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
- A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee
- A son-in-law or daughter-in-law of the employee or the employee's spouse
- An uncle or aunt of the employee or the employee's spouse
- A nephew or niece of the employee or the employee's spouse
- The spouse of the employee's grandchild, uncle, aunt, nephew or niece
- A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met
- Any individual prescribed as a family member for the purposes of this section

Although the new legislation stipulates that employers are prohibited from requiring an employee to provide a medical note in support of the infectious disease emergency leave, it allows employers to require the employee to provide other evidence that is reasonable in the circumstances, at a time that is reasonable in the circumstances. In its press release, the Ontario

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Government stated that while a medical note is prohibited, a request for evidence reasonable in the circumstances may potentially include a note from a daycare regarding closure, or proof that an airline cancelled a flight. Employers should consider instructing affected employees to retain hospital parking receipts or other similar forms of evidence to the extent they intended to request such documentation.

The Ontario Government also confirmed that the infectious disease emergency leave is retroactive to January 25, 2020, the date of the first presumptive COVID-19 case in Ontario. An employee is entitled to take this leave for as long as the employee is unable to perform the duties of their position for one of the reasons listed above, and until such time that the Ontario Government determines the leave is no longer available. The new legislation also enables the Ontario Government to extend the infectious disease emergency leave until such time that the COVID-19 outbreak is under control. Practically speaking, this means that the length of an infectious disease emergency leave may vary from person to person, depending on their personal circumstances and the specific reason(s) their individual leave was required.

Future Updates

Our firm continues to closely monitor the developments surrounding the novel coronavirus (COVID-19) outbreak and will continue to provide further updates as new information becomes available.

Need more information?

For more information regarding workplace management amidst the novel coronavirus (COVID-19) outbreak, contact [Derek Klatt](#) at 416-408-5506, or your regular lawyer at the firm.



management labour and employment law



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