

ONTARIO AMENDS ITS EMPLOYMENT STANDARDS ACT IN RESPONSE TO COVID-91

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On March 19, 2020, in response to the measures imposed on employers and businesses by the government to curb the spread of COVID-19, Bill 186, titled "An Act to amend the Employment Standards Act, 2000" (the "**Bill**") received Royal Assent from the provincial legislature. Emergency Leave under the *Employment Standards Act* (the "**Act**") now includes both declared emergencies and infectious disease emergencies.

Additionally, terms such as "board of health", "designated infectious disease", "public health official", and "qualified health practitioner" are now defined in the Act; however, a "designated infectious disease" is designated by the regulations, which regulations are not public at the time of writing this article (Subsection 50.1 (1)). Considering the circumstances in which the Bill was drafted, readers can assume that Coronavirus (COVID-19) is a designated infectious disease.

Most importantly, an employee is now entitled to a leave of absence without pay if the employee will not be performing the duties of his or her position if (Subsection 50.1 (1.1)(b)):

- (i) the employee is under individual medical investigation, supervision or treatment related to the designated infectious disease;
- (ii) the employee is acting in accordance with an order under section 22 or 35 of the *Health Protection and Promotion Act* that relates to the designated infectious disease;
- (iii) the employee is in quarantine or isolation or is subject to a control measure, and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease by a designated body;
- (iv) the employee is under direction given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the designated infectious disease;
- (v) the employee is providing care or support to an individual family member because of a matter related to the designated infectious disease; or
- (vi) the employee is directly affected by travel restrictions related to the designated infectious disease and, under the circumstances, cannot reasonably be expected to travel back to Ontario.

An employer may require an employee who takes the leave of absence to provide evidence reasonable in the circumstances but will not be permitted to require an employee to provide a certificate from a qualified health practitioner as evidence (Subsection 50.1 (4.1)). There have also been more family members added to the group of individuals who qualify as family members when an employee requires leave due to providing care for an individual family member related to an infectious disease.



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These family member categories can now be found at subsection 50.1(8) of the Act. These measures are retroactive to January 25, 2020, the date the first presumptive COVID-19 case was confirmed in Ontario.

Additionally, the Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020* (Subsection 141 (2.3)).

What does this mean for employers?

Employers must now provide employees with an unpaid leave of absence for those employees who are unable to work due to the above-noted reasons if the employee requests the leave.

While the legislation does not impact an employer's ability to temporarily lay-off employees due to a shortage of work, should an employee already be on this unpaid leave (or any other unpaid leave for that matter), the lay-off of that employee may be redundant as they would already be on an unpaid leave, and they may have applied for and be in receipt of Employment Insurance benefits and/or other government financial assistance in connection with that unpaid leave.

If you have any questions about your options as an employer, please contact a member of Fogler, Rubinoff LLP's employment group.

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