

**NEW REGULATION: INFECTIOUS DISEASE EMERGENCY LEAVE**

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[Ontario Regulation 228/20: Infectious Disease Emergency Leave](#) was filed under the *Employment Standards Act, 2000* (the "Act") on May 29, 2020 to address certain workforce changes that have arisen due to the COVID-19 pandemic. Non-unionized employees who have had their hours reduced or eliminated as a result of the COVID-19 pandemic will be deemed to be on Infectious Disease Emergency Leave, which is unpaid, job-protected leave. The Regulation applies throughout the COVID-19 period, which is from March 1, 2020 until the date that is six weeks after the day that the emergency is declared terminated.

**Deemed to Be on Leave of Absence**

An employee whose hours of work are temporarily reduced or eliminated by the employer or whose wages are temporarily reduced by the employer (for reasons related to the COVID-19 pandemic during the COVID-19 period) is exempt from the relevant sections of the Act for the purpose of determining whether the employee has been laid off. For clarity, the employee will not be considered to be laid off. However, this only applies where there has not already been a deemed termination of the employment as a result of the lapsing of a temporary layoff period under the Act before May 29, 2020. These measures are retroactive to March 1, 2020 and apply until the end of the COVID-19 period. A layoff that meets the requirements of the Regulation will not count for any statutory temporary layoff calculations in the future.

**How Does This Affect Constructive Dismissal?**

The Regulation also establishes that a temporary reduction or elimination in an employee's hours or a temporary reduction in an employee's wages for reasons related to COVID-19 will not constitute constructive dismissal. This does not apply where there has already been a resignation by the employee following a constructive dismissal before May 29, 2020. The new Regulation therefore helps to alleviate the enormous burden placed on employers during this difficult period.

If you have questions about how the new regulation affects your business, contact a member of the employment group at Fogler, Rubinoff LLP.

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