

New Job-Protected Leaves for Employees

Kristin Taylor

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Prior to the onset of the public health crisis caused by COVID-19, employment standards legislation in most Canadian jurisdictions contained leave protection that would permit employees experiencing illness as a result of COVID-19 or caring for ill family members to take job-protected leaves of absence. In addition, human rights legislation in every Canadian jurisdiction required employers to accommodate an employee's disability. On March 13, 2020, the Ontario Human Rights Commission released a statement detailing its position that employers are required to accommodate employees who cannot work because of COVID-19. Even so, some provinces have now passed laws to provide specific protections for employees dealing with issues related to COVID-19.

Ontario

With few members in the Legislature to respect social distancing recommendations, on March 19, 2020, the Ontario government introduced and passed the *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020*. This Act also received royal assent on March 19, 2020, and is now in force. The Act provides that an employee is entitled to an unpaid leave of absence if the employee is:

- a. under medical investigation, supervision or treatment related to COVID-19;
- b. in quarantine or isolation because of COVID-19 recommendations or directions issued by public health or a physician;
- c. in quarantine or isolation under the direction of their employer in response to a concern the employee might expose coworkers to COVID-19;
- d. providing care or support to a designated family member because of a matter related to COVID-19 that concerns the employee, including school or day-care closures;
- e. directly affected by travel restrictions relating to COVID-19 and cannot reasonably be expected to travel back to Ontario.

It is important to note that the definition of designated family member is a very broad and lengthy list. It

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includes the employee's spouse; a parent, step-parent or foster parent of the employee or the employee's spouse; a child, step-child, foster child or child 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; and a person who considers the employee to be like a family member and/or who has been prescribed.

Employers are expressly prohibited from requiring employees to provide medical certificates to prove entitlement to take this leave, although they can otherwise request reasonable evidence at a reasonable time.

The Ontario government has announced that these entitlements are retroactive to January 25, 2020, when the first presumed case of COVID-19 in the province was confirmed and that they will run until Ontario is no longer under a state of emergency.

In its press release, the Ontario government also noted its interpretation of an often overlooked reporting obligation found in the *Occupational Health and Safety Act*. Where an employer has been advised that a worker or former worker has an occupational illness or is claiming benefits from the Workplace Safety and Insurance Board for an "occupational illness," the employer has four days to notify the Ministry of Labour as well as its joint health and safety committee or health and safety representative, as applicable and union. The Ontario government has clarified that COVID-19 will be considered an occupational illness.

Alberta

On Friday March 13, 2020, Alberta Premier Jason Kenney announced that the *Employment Standards Code* would be amended to create a 14-day job-protected leave for employees required to self-isolate or caring for a child or dependent adult who is required to self-isolate. No medical note would be required to support this leave. While it was initially announced that this leave would be paid creating confusion and concern for employers, the Employment Standards (COVID-19) Regulation passed under the *Employment Standards Code* confirms that the leave will be unpaid. The Alberta government has announced, however, an emergency payment program for Albertans in self-isolation due to COVID-19 who are not receiving Employment Insurance. Eligible Albertans will be able to apply online to receive a one-time benefit of \$573 per week for a total of \$1,146 per individual to bridge the gap until the federal government's Emergency Care Benefit becomes available in April.

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British Columbia

The government in British Columbia also has announced its intention to implement new leave protections for employees in that province, likely on Monday, March 23, 2020. At the time of writing, draft legislation has not been released.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.