

Recent Legislative Updates Affecting Canadian Employers

Maria Constantine

June 1, 2020

Since March 2020, the Government of Canada has introduced a number of relief programs aimed at supporting Canadian businesses and workers through the COVID-19 pandemic, including the Canada Emergency Wage Subsidy (CEWS) and Canada Emergency Response Benefit (CERB). In addition, provincial and territorial governments across the country have expanded the availability of job-protected leaves of absence and modified the rules governing temporary layoffs and group terminations. This article summarizes some important legislative developments relating to these recent governmental relief measures.

1. Extension of the Canada Emergency Wage Subsidy

As previously reported, the Government of Canada enacted legislation creating the CEWS effective April 11, 2020. The CEWS was originally intended to be available for a 12-week period, retroactive to March 15, 2020 and ending on June 6, 2020. However, on May 15, 2020, the federal government announced that it would be extending the CEWS for a further 12 weeks to August 29, 2020.

2. SUB Plans Cannot be Used to Supplement CERB Payments

Following the creation of the CERB program (previously reported on here and here), employees who became eligible for employment insurance (EI) benefits on or after March 15, 2020 were required to apply for benefits through the CERB program, rather than EI. This created some uncertainty as to whether employers would be permitted, under the regulations to the *Employment Insurance Act*, to supplement CERB payments in the same way that they would otherwise have been able to supplement EI benefits through a registered Supplemental Unemployment Benefit (SUB) plan. The Government of Canada has since updated its Questions and Answers on the Canada Emergency Response Benefit webpage to confirm that employers cannot top up CERB payments through a SUB plan.

3. New Job-Protected Leaves of Absence

As previously reported, shortly after the COVID-19 crisis began, the governments of Ontario and Alberta amended their employment standards legislation to create job-protected, unpaid leaves of absence for employees who were unable to work for reasons relating to COVID-19. Since that time, many other

provinces and territories have followed suit:

- **British Columbia:** The *Employment Standards Act* has been amended to create two new leaves of absence: (a) Illness or Injury Leave, which provides three unpaid leave days for an employee who is unable to work due to personal illness or injury; and (b) COVID-19 Leave, which provides unpaid leave to an employee who requires time off for reasons related to COVID-19, including because the employee is required to self-isolate or quarantine, care for a family member due to a school closure, or is prevented from working due to travel interruptions. Notably, Illness or Injury Leave is a permanent change and will remain available to employees after the temporary COVID-19-related provisions of the *Employment Standards Act* are repealed.
- **Manitoba:** Manitoba has introduced a temporary, unpaid Public Health Emergency Leave which employees may take for as long as required for reasons related to COVID-19, including because they are in self-isolation or quarantine or providing care or support to a family member for reasons related to COVID-19.
- **New Brunswick:** Employees in New Brunswick may take unpaid COVID-19 Emergency Leave if they are unable to work for reasons related to COVID-19, including because they are being treated for COVID-19, self-isolating or in quarantine, or caring for a family member because of a matter relating to COVID-19 that concerns that family member.
- **Newfoundland & Labrador:** The government of Newfoundland & Labrador has amended its *Labour Standards Act* to create an unpaid Communicable Disease Emergency Leave, which is available to employees who are unable to work for reasons related to a communicable disease (including COVID-19).
- **Saskatchewan:** Further to recent amendments to the *Saskatchewan Employment Act*, employees are entitled to job-protected, unpaid Public Health Emergency Leave if they have been ordered to self-isolate as a result of the COVID-19 pandemic or if they are required to provide care or support to a child or adult family member who is affected by a direction or order of the government of Saskatchewan or of a Chief Medical Officer.
- **Yukon:** The Yukon government has enacted a new regulation under its *Employment Standards Act* which entitles an employee to up to 14 days of unpaid COVID-19 Leave if they or someone in their care is ordered to follow a health protection measure such as self-isolation. Employers may also apply for reimbursement through the new Paid Sick Leave Rebate if they continue to pay employees while they are ill or in self-isolation. The rebate covers a maximum total of 10 days of wages per employee.

4. Temporary Layoffs and Group Terminations

In response to COVID-19, several jurisdictions have extended or eliminated the maximum duration of a temporary layoff before a termination will be deemed to have occurred and/or modified certain rules relating to group terminations:

Cassels

- **Federal:** Amendments to the Canada Labour Standards Regulations temporarily extend the maximum period before a layoff becomes a termination by up to six months. Specifically, for employees laid off prior to March 31, 2020, the maximum period has been extended by six months or to December 30, 2020, whichever occurs first. For employees laid off between March 31, 2020 and September 30, 2020, the maximum period has been extended until December 30, 2020, unless a later recall date was provided in a written notice at the time of the layoff. These changes, which came into effect on June 22, 2020, do not apply to employees who are covered by a collective agreement that contains recall rights.
- **Ontario:** On May 29, 2020, the Ontario government enacted a new regulation which provides that non-unionized employees whose hours of work or wages have been temporarily reduced or eliminated due to the COVID-19 pandemic are deemed to be on Infectious Disease Emergency Leave throughout the "COVID-19 period," rather than on a temporary layoff. The COVID-19 period is defined as the period beginning on March 1, 2020 and ending six weeks after the day that the COVID-19 emergency order is lifted. This change ensures that employers are not forced to terminate employees after their ESA temporary layoff periods have expired. The regulation further provides that a temporary reduction or elimination of a non-unionized employee's hours of work or reduction in wages for reasons related to COVID-19 does not constitute a constructive dismissal for the purposes of the *Employment Standards Act, 2000*.
- **Alberta:** The maximum layoff period before a termination will be deemed to occur has been extended from 60 days to 120 days. This applies to layoffs that commenced on or after March 17, 2020 or those that were a result of COVID-19 and commenced prior to March 17, 2020. In addition, employers are not required to provide additional notice of termination to employees in the event of a group termination that occurred on or after March 17, 2020.
- **British Columbia:** The maximum layoff period has been extended from 13 weeks in a period of 20 consecutive weeks to 16 weeks in a period of 20 consecutive weeks. This applies only if the cause of a layoff is related to COVID-19.
- **Manitoba:** Any period of layoff occurring after March 1, 2020 will not be counted toward the threshold of eight weeks in a 16-week period used to determine when a temporary layoff becomes a termination.
- **Saskatchewan:** The normal maximum period after which a layoff becomes a deemed a termination has been suspended until two weeks after the public emergency ends. In addition, employers are not required to provide employees with notice of a layoff or provide a group of employees with group termination notice but must still notify the Minister of Labour Relations and Workplace Safety of a group termination.

The Cassels Employment & Labour Group is continuing to monitor legislative developments relating to COVID-19 that impact employers and employees in Canada and will provide updates as they become available.

Cassels

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