

State of Emergency Ends in Ontario - Implications of Bill 195 for Employers

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On July 24, 2020, the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (Bill 195) came into force and officially brought an end to the declared State of Emergency in Ontario.

Pursuant to Bill 195, most orders made under Ontario's *Emergency Management and Civil Protection Act* (EMCPA) remain in effect for at least 30 days from July 24, 2020 notwithstanding the end of the declared State of Emergency. However, Bill 195 may nonetheless have a significant impact on employers – particularly those who continue to operate at reduced capacity or who are not yet able to resume operations – as it ends two temporary leaves of absence under Ontario's *Employment Standards Act, 2000* (ESA).

Infectious Disease Emergency Leave (IDEL)

At the outset, it is worth noting that Bill 195 has no impact on an employee's entitlement to IDEL. An employee's eligibility for IDEL does not require there to be a declared emergency. Instead, an employee's eligibility is connected to whether COVID-19 is designated as an infectious disease under the ESA. At present, it is. As long as COVID-19 remains a designated infectious disease under the ESA, employees who cannot work due to one of the reasons listed in the ESA related to COVID-19 will continue to be entitled to IDEL. A more fulsome discussion of IDEL, including the grounds for which employees can claim IDEL, can be found [here](#).

Deemed IDEL Under Regulation 228/20

On May 29, 2020, the government amended the ESA to deem employees whose hours or wages were reduced or eliminated due to COVID-19 to be on a deemed IDEL (previously discussed here). This temporary change resulted in employees' temporary layoffs converting into a deemed IDEL for the duration of the "COVID-19 Period" (i.e., March 1, 2020 until six weeks after the end of the declared State of Emergency). As a result of Bill 195, the COVID-19 Period will expire six weeks after July 24, 2020 – on September 4, 2020.

As such, employers should start putting together recall plans for employees who are on a deemed IDEL. If employers cannot recall employees back to work or restore their hours and wages by September 4, 2020,

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the standard ESA rules will be re-engaged, limiting employers' ability to defer their termination-related liabilities. Employers may be able to temporarily lay off employees who are currently on a deemed IDEL as of September 4, 2020, but should ensure they understand the employment law implications of such measures and, in particular, the potential risk for constructive dismissal claims (previously discussed here).

Declared Emergency Leave (DEL)

The second notable impact of Bill 195 for employers is that all employees who are currently on DEL because of an order under EMCPA, the *Health Protection and Promotion Act* or because an employee is needed to provide care or assistance to "specified individuals" are ineligible for DEL as of July 24, 2020 as eligibility for DEL depends upon the existence of a declared State of Emergency.

However, when contemplating whether employees on expired DELs are obligated to return to work, employers should be mindful of individual circumstances and the potential for overlap between DEL and IDEL as well as the employer's duty to accommodate under Ontario's *Human Rights Code* (the Code). An employee who may have claimed entitlement to DEL because they were "providing care or assistance" to an immunocompromised child may also meet the entitlement criteria for job protected IDEL and, even if they do not, the employer may nonetheless have a duty to accommodate the leave under the Code to ensure the employee does not experience discrimination on the basis of a characteristic protected by the Code, such as family status. These issues should be dealt with on a case-by-case basis and with guidance from legal counsel.

We will continue to monitor all developments in this area, including any future changes that the government might make to the ESA and its regulations in response to the ongoing pandemic.

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