

COVID-19: Ontario government passes new emergency leave legislation

March 20, 2020

On March 19, 2020, the Ontario government passed Bill 186, the *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020* (the Act). This legislation amends Ontario's *Employment Standards Act, 2000* to address when an unpaid, job-protected emergency leave is available to employees in case of infectious disease emergencies. Tabled as a part of Ontario's emergency response to COVID-19, the Act provides job protection for employees in isolation or quarantine due to COVID-19, as well as those that need to be absent from work to care for children due to school or daycare closures, or to care for other relatives.

What you need to know

The Act entitles an employee to a leave of absence *without pay* where they are unable to work for any of the following reasons:

- the employer directs the employee not to work due to a concern that the employee may expose other individuals in the workplace to the designated infectious disease;
- the employee is in quarantine or isolation, or is subject to a control measure implemented in relation to a designated infectious disease by a public health official, qualified health practitioner, or governmental body;
- an emergency is declared under the *Emergency Management and Civil Protection Act*;
- the employee is under medical investigation, supervision, or treatment related to a designated infectious disease;
- the employee is acting in accordance with an order under the *Health Protection and Promotion Act*;
- the employee cares for a person(s) for a reason related to a designated infectious disease, such as a school or daycare closure; or
- the employee cannot return to Ontario due to travel restrictions.

An employee may take infectious disease emergency leave to care for the following individuals:

- their spouse;

- a parent, step-parent or foster parent of the employee or the employee's spouse;
- a child, step-child or foster child of the employee or the employee's spouse;
- a child who is 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;
- a person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met; or
- any individual prescribed as a family member for the purposes of this section.

Notably, the Act specifies that an employee is not required to provide a medical note should they need to take infectious disease emergency leave. However, the employer may require an employee to provide other evidence that is “reasonable in the circumstances, at a time that is reasonable in the circumstances” to support such a leave. Such evidence could include, for example, a notice of a school or daycare closure, cancelled airline tickets or other travel documents.

The measures within the Act are retroactive to January 25, 2020, when the first presumptive case of COVID-19 was confirmed in Ontario, and will remain in place until COVID-19 is eliminated.

Takeaways

The measures under the new *Employment Standards Amendment Act (Infectious Disease Emergencies)*, 2020 apply to most employers and employees in Ontario.

The changes can be read in conjunction with federal changes to the *Employment Insurance Act*. Those changes waive the one-week waiting period for employees on sick leave, extend EI benefits to employees required to quarantine or self-isolate, waive the requirement to provide a medical certificate and introduce the Emergency Care Benefit that extends EI to, amongst others, the self-employed who are sick or required to quarantine and to parents who are cannot work because of school closures.

BLG will continue to monitor this unfolding situation and its implications in the employment context.

BLG has created a [COVID-19 Resource Centre](#) to assist businesses on a variety of topics, including labour and employment, contractual risks, public disclosure requirements, schools and criminal law.

The author gratefully acknowledges the assistance of Neva Lyn-Kew, articling student, in writing this article.

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