



Provincial Government Extends the COVID-19 Period under the Employment Standards Act's Infectious Disease Emergency Leave Regulation to July 3, 2021 and Provides Greater Flexibility to Employers and Unions in the Hospitality, Tourism and Convention and Trade Show Industries

December 22, 2020

As initially detailed in [one of our early COVID-19 Focus Alerts](#), O. Reg. 228/20 – the Infectious Disease Emergency Leave (“IDEL”) regulation under the *Employment Standards Act* (“ESA”) – was put in place in order to provide employers impacted by the pandemic with temporary relief from the ESA’s ordinary rules on temporary layoffs and constructive dismissal. More specifically, the IDEL regulation deems a non-unionized employee to be on unpaid, job-protected IDEL for the duration of what it refers to as the “COVID-19 Period” in certain specified situations such that termination and severance pay entitlements will not be triggered under the ESA by a temporary reduction or elimination of hours of work or by a temporary reduction in wages during that time.

Until recently, and as referenced in a further COVID-19 [Focus Alert issued in the fall](#), the protections included in the IDEL regulation were only set to remain in place until January 2, 2021, despite the fact that the consequences of the pandemic continue to adversely affect many businesses and workplaces. On December 17, 2020, however, a new regulation under the ESA – [O. Reg. 765/20](#) – was filed and came into force. This new regulation amends the existing IDEL regulation (O. Reg. 228/20) in such a way as to extend its application by modifying the definition of the “COVID-19 Period” contained within such IDEL Regulation. Under the new definition, the COVID-19 Period – and all the protections of the IDEL regulation that apply during it – will now extend to **July 3, 2021**.

On the same day as the filing of the regulation amending the definition of the COVID-19 Period as mentioned above, another new regulation under the ESA was also filed, being [O. Reg. 764/20](#). This new regulation deals with the terms and conditions of employment in the hospitality, tourism and convention and trade show industries specifically in that it provides that unionized employers in the enumerated industries will be permitted to voluntarily negotiate alternative arrangements to the ordinary rules under the ESA applicable to recall rights in cases of temporary layoffs lasting 35 weeks or more with the union representing the employees of the employer. More specifically, where such an employer and a union agree to apply the terms of the new regulation:



- The union will be able to elect to retain recall rights for some or all of the employees it represents, and the union's election will be binding on the affected employees unless such employees had already elected to receive their termination and severance payment entitlements under the ESA;
- Where the union has elected to retain recall rights on behalf of an employee, that employee will not be permitted to renounce the right to be recalled prior to a date agreed to by the employer and the union; and
- Where the union has elected to retain recall rights on behalf of an employee, the union will similarly not be permitted to renounce the right to be recalled on the employee's behalf.

This new regulation does not apply to the Crown, a Crown agency or an authority, board, commission or corporation at least one of whose members is appointed by the Crown, or to any employees of such an employer.

Like the most recent extension of the COVID-19 period, the impact of this new regulation is intended to be temporary. As it currently stands, this new regulation is set to remain in force until December 17, 2021, giving unionized employers in these listed industries potential flexibility in regard to some of the usual ESA rules related to temporary layoffs and recall rights for a period of up to one (1) year.

In Our View

The coming into force of these new regulations should be welcome news all around. The extension of the COVID-19 period under the IDEL regulation will not only permit eligible employees to continue to benefit from the ability to take IDEL leave when needed in a variety of circumstances well into next year but similarly, employers will continue to benefit from temporary protection against claims by non-unionized employees of termination or severance of employment under the ESA due to a temporary reduction in hours of work or wages. Furthermore, unionized employers in the hospitality, tourism, convention and trade show industries have been provided greater flexibility to reach alternate arrangements with the union representing their employees in a manner that will hopefully assist in keeping business doors open and allowing further time for recovery within these particularly hard-hit industries.

For more information on your rights and obligations as an employer dealing with COVID-19 or other matters, please contact [Sheri Farahani](#) at [613-940-2745](#), [Erica Bennett](#) at [613-940-2748](#), [Colleen Dunlop](#) at [613-940-2734](#) or [George Rontiris](#) at [613-940-2732](#).