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BY EMAIL

(Minister.MLTSD@ontario.ca)

The Honourable Monte McNaughton
Minister of Labour, Training and Skills Development
400 University Ave, 14th Floor
Toronto, Ontario
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Dear Minister McNaughton:

Re: Actions to Support Small and Medium-Sized Employers During COVID-19 Pandemic

We are one of Ontario's largest boutique-style labour and employment law firms, exclusively representing the interests of Ontario's various employers in both official languages.

Recent events have disproportionately impacted the operations of small and medium-sized businesses in the province of Ontario. As a result of these disruptions, thousands of employees have been temporarily laid off since early March 2020.

Pursuant to the *Employment Standards Act, 2000* ("**ESA**"), and absent certain conditions that most small and medium-sized enterprises cannot meet, a temporary layoff cannot last more than thirteen (13) weeks in any period of twenty (20) consecutive weeks. If a temporary layoff exceeds this 13-week window, the employer is deemed to have terminated the employment relationship on a without cause basis. As the 13-week window is rapidly approaching, we are concerned about the significant impact that such "deemed terminations" will have on the continued viability of small and medium-sized businesses.



Further, the discrepancy between the duration of numerous federal economic measures (e.g., the Canada Emergency Response Benefit, Employment Insurance and the Canada Emergency Wage Subsidy) and the prescribed length of temporary layoffs in the *ESA* has led to confusion. Ideally, the *ESA* layoff provisions should align as much as possible with the federal measures to avoid unnecessary conflict and unintended consequences.

Likewise, it would be prudent to remove the requirement of employers having to continue to make payments for the benefit of employees (e.g., an employee insurance plan) for the duration of the temporary layoff to qualify for the extended prescribed period of less than 35 weeks in a 52 consecutive week period. Such a removal would allow small and medium-sized employers much needed relief while they earn little to no revenue and would provide workers with better hope that their employer will be able to recall them when the economy is rebooted and Ontario is open for business once again.

In our view, and given the unprecedented crisis facing Ontario's workplaces and economy, the Government of Ontario ought to act to temporarily lengthen or suspend the 13-week window and the above-noted requirements in order to qualify for a temporary layoff of less than 35 weeks.

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Moreover, in our view, the Government should use this opportunity to provide legislative clarity to employers, namely by protecting their management rights to place employees on a temporary layoff without facing the risk of lawsuits alleging constructive dismissal.

Such measures would prevent the unintended consequences of thousands of deemed terminations in Ontario's workplaces, including the very real possibility that such terminations would debilitate many small and medium-sized businesses and force many of them to permanently close their doors. Not only do the deemed terminations trigger statutory obligations to provide sizeable payments, these unwanted terminations and the potential torrent of lawsuits will jeopardize the quick start-up of the economy that will be critical once emergency measures are lifted.

We request that you give consideration to these measures that could relieve impending financial challenges for employers and the employees who depend on them. We note that similar action has already been taken by the Government of Alberta.

We remain, as ever, at your disposal.

Yours Truly,

EMOND HARNDEN LLP

Jacques A. Emond

cc.: The Honourable Doug Ford, Premier of Ontario
James Wallace, Chief of Staff to the Premier (Acting)
Joshua Workman, Chief of Staff - Minister of Labour, Training and Skills Development
Ontario Chamber of Commerce
Ottawa Board of Trade