

Ontario Government Introduces Significant Changes to Temporary Layoffs and Constructive Dismissals under the ESA, 2000

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On May 29, 2020, the Ontario government filed *Ontario Regulation 228/20* (the “**Regulation**”).^[1] This Regulation, made under Ontario’s *Employment Standards Act, 2000*, (the “**ESA**”) provides some clarity under the *ESA* regarding the legal implications of employee leaves and employer layoffs during the “COVID-19 period,” which the Regulation defines as the period beginning on March 1, 2020 and ending six weeks after the end of Ontario’s COVID-19 state of emergency.

The most significant change introduced by this Regulation relates to employee layoffs. The Regulation provides that, during the COVID-19 period, where an employee’s hours of work or wages are temporarily reduced, or where an employee is temporarily laid off, most of the provisions of the *ESA* which normally apply to layoffs do not apply. This means that a layoff due to COVID-19 is not subject to the *ESA* limits on the length of a layoff, and does not become a termination of employment if that limit is exceeded.

The Regulation also provides that a temporary layoff or a temporary reduction in employee wages or hours does not constitute a constructive dismissal under the *ESA* if it occurred during the COVID-19 period – subject to a few exceptions.

In addition, during the COVID-19 period, coronavirus, as well as SARS and MERS,^[2] are designated as infectious diseases for which an unpaid infectious disease emergency leave is available under section 50.1 of the *ESA*. This leave is available where the employee will not be performing the duties of his or her position for reasons related to COVID-19, including where the employee’s hours of work are temporarily reduced or eliminated by the employer because of COVID-19. This leave is not available, however, where the employee’s employment is *terminated* because of COVID-19 or otherwise.

WeirFoulds’ employment law group is monitoring these developments and will be providing updates as the COVID-19 situation progresses. For more information on how to respond to COVID-19 in your workplace or organization, please contact Daniel, Sean or Megan.

^[1] The regulation is available online here: <https://www.ontario.ca/laws/regulation/r20228>

^[2] Severe Acute Respiratory Syndrome and Middle East Respiratory Syndrome, respectively.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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