

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

June 1, 2020

By Daniel Wong, Megan Mah, Sean Foran, and Max Skrow

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.

For more information or inquiries:



Daniel Wong

Toronto
416.947.5042

Email:
dwong@weirfoulds.com

Daniel Wong is Chair of the Firm's Employment & Labour Practice Group with a practice that is focused on employment and labour relations.



Megan Mah

Toronto
416.947.5098

Email:
mmah@weirfoulds.com

Megan Mah has a diverse practice that focuses on human rights, employment, civil litigation, administrative and constitutional law.



Sean Foran

Toronto
416.947.5019

Email:
sforan@weirfoulds.com

Sean Foran is a leading expropriation lawyer, with extensive experience as counsel in large-scale infrastructure projects. Sean also practises real-estate, employment, business and government litigation.

Toronto

Email:

WeirFoulds LLP

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035