

The Clock is Ticking: The Expiration of the Deemed Infectious Disease Emergency Leave and Next Steps for Ontario Employers

August 5, 2020

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On July 24, 2020, the Ontario state of emergency quietly ended with the passing of the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (the "Act").^[1] The end of the state of emergency carries significant implications for Ontario employers – one of the most notable being that the clock has started ticking for the expiration of "deemed" Infectious Disease Emergency Leave ("IDEL").

The Infectious Disease Emergency Leave was created by a regulation^[2] under the *Employment Standards Act, 2000* (the "ESA")^[3] in March of 2020. Employees have the right to take unpaid, job-protected IDEL if they are not performing their duties because of a prescribed reason related to COVID-19. Employers cannot threaten, fire, or penalize an employee in any way because the employee has taken or intends to take IDEL.

On May 29, 2020, Ontario Regulation 228/20 came into force, which made further amendments to the ESA by deeming employees whose hours of work are temporarily reduced or eliminated by the employer for reasons related to COVID-19 to be on IDEL.^[4] O. Reg 228/20 also affected the application of termination, severance, and constructive dismissal rules under the ESA during the COVID-19 period. Specifically, under O. Reg 228/20, an employee is not considered to be laid off or constructively dismissed if their employer temporarily reduces or eliminates their work hours or wages for COVID-19 related reasons.

The rules under O. Reg 228/20 apply retroactively to absences from March 1, 2020 onward and are scheduled to expire six weeks after the declared emergency ends. As a result of the passing of the Act on July 24, 2020, the deemed IDEL period will expire on September 4, 2020.

Now that the clock has started ticking for the expiration of the deemed IDEL period, it is important that employers are aware of the next steps. For employers who continue to operate at reduced capacities and wages to their pre-pandemic state, the usual ESA rules will begin to apply on September 4, 2020.

Key Takeaway for Employers

Employers should assess how the end of the deemed IDEL period and the application of the ESA provisions regarding temporary layoffs, and constructive dismissal will impact their workplace. Employers are encouraged to continue monitoring the WeirFoulds website and government updates for additional guidance in the coming weeks, and to speak with a member of WeirFoulds' [Employment Law Group](#) for assistance.

[1] *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, SO 2020, c.17, s 17.

[2] O Reg 66/20.

[3] *Employment Standards Act, 2000*, SO 2000 c.41.

[4] O Reg 228/20.

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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