

# A Cautious Reopening: Ontario Extends the Deemed COVID-19 Emergency Leave to January 2021

September 4, 2020

By Daniel Wong, Megan Mah, Max Skrow

On September 3, 2020, the Ontario government extended the relief for employers from the temporary layoff provisions under the Ontario *Employment Standards Act, 2000* (ESA) until January 2, 2021 in order to protect businesses from the costs of termination and severance pay, and to ensure that employees retain their positions while on a deemed infectious disease emergency leave.

Ontario's ESA provides that a temporary layoff may not exceed 13 weeks in any period of 20 consecutive weeks, or 35 weeks in any period of 52 consecutive weeks, where certain criteria are met. Once this period expires, the layoff becomes a termination under the ESA, which gives rise to an employer's obligation to provide the employee with his or her termination entitlements.

On May 29, 2020, Ontario enacted a regulation which provided that certain changes to an employee's hours of work and/or wages do not constitute a constructive dismissal or a layoff if they are done for reasons related to COVID-19.<sup>[1]</sup> Under this regulation, employees whose hours and/or wages are eliminated or reduced, or who are temporarily laid off for reasons related to COVID-19 are treated as being on "deemed emergency leave" and are not considered laid off for the purposes of the ESA. This regulation was set to expire six weeks after Ontario's State of Emergency was lifted but has now been extended to January 2, 2021. This means that the "deemed emergency leave" will now end on January 2, 2021 instead of September 4, 2020. The regular rules and time limits regarding temporary layoffs under the ESA will resume on January 3, 2021.

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, Megan or Max.

***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 circumstances. For application of the law to specific situations, the reader should seek professional advice.***

---

[1] <https://www.weirfoulds.com/the-clock-is-ticking-the-expiration-of-the-deemed-infectious-disease-emergency-leave-and-next-steps-for-ontario-employers>

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.



## Max Skrow

Toronto  
416.947.5063

Email:  
mskrow@weirfoulds.com

Max Skrow is an associate in the Commercial Litigation and Employment Law Practice Groups at WeirFoulds. His practice is focused on a broad range of commercial disputes and employment law issues.

**WeirFoulds**LLP

[www.weirfoulds.com](http://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