

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

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By Daniel Wong, Megan Mah, and 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.^[1] 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>

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