

The Home Stretch: Ontario Extends Temporary ESA COVID-19 Rules to September 25, 2021

June 9, 2021

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On May 29, 2020, as Ontario was in the midst of the first wave of the COVID-19 pandemic, the Ontario government introduced *Ontario Regulation 228/20* (the “**Regulation**”) under Ontario’s *Employment Standards Act, 2000* (the “**ESA**”), which introduced temporary, but significant changes to employee leaves and employer layoffs during the “COVID-19 period” (as defined in the Regulation).^[1] We have written about the significance of this Regulation before,^[2] but in short, the Regulation provides that where an employee’s hours of work and/or wages are temporarily reduced due to a shortage of work associated with the COVID-19 pandemic, that employee is deemed to be on “Infectious Disease Emergency Leave” (“**IDEL**”) for the purpose of the ESA. This is significant because an employee who is placed on IDEL is not considered laid off nor constructively dismissed under the ESA.

Originally set to expire six weeks after the end of Ontario’s State of Emergency, the “COVID-19 period” was extended to January 2, 2021,^[3] and then to July 3, 2021.^[4] Despite the fact that Ontario is experiencing rising vaccination numbers and declining COVID case numbers, the pandemic is not yet behind us. Accordingly, Ontario is extending the “COVID-19 period” again, this time until September 25, 2021.^[5] The brevity of this extension (being only 3 months, compared to the previous, more lengthy extensions of the COVID-19 period) can be interpreted as a sign of optimism that we are in the home stretch of this pandemic. But until we reach the finish line, employers and employees alike should bear in mind the Regulation’s significant changes to the ESA’s layoff and constructive dismissal provisions, and should monitor potential extensions (or more significantly, the absence of further extensions) come September 2021.

WeirFoulds will be monitoring this and other COVID-19 employment law developments. Stay tuned for updates.

^[1] <https://www.weirfoulds.com/ontario-government-introduces-significant-changes-to-temporary-layoffs-and-constructive-dismissals-under-the-esa-2000>

^[2] *Ibid.*

^[3] <https://www.weirfoulds.com/a-cautious-reopening-ontario-extends-the-deemed-covid-19-emergency-leave-to-january-2021>

^[4] <https://www.weirfoulds.com/stop-the-clock-ontario-again-extends-the-deemed-covid-19-emergency-leave-and-introduces-flexibility-for-layoffs-in-unionized-workplaces>

^[5] <https://www.ontario.ca/document/your-guide-employment-standards-act-0/covid-19-temporary-changes-esa-rules>

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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