



## COVID-19 UPDATE

### What Employers Need to Know

Your Local Human Resources Partner in Muskoka

As Employers work diligently to maintain continued operations while ensuring the health and safety of themselves and their employees, they are no doubt contemplating the potential implications of COVID-19 on their workplaces. Many businesses have already experienced change and will continue to do so as circumstances evolve.

Over the last couple of weeks, we have certainly been inundated with a great deal of information which led to questions from our clients. One of the main concerns right now seems to be the Employer - Employee relationship and the options available.

#### **Reduction in Workforce (non-unionized)**

Many Employers are considering the need to temporarily reduce their staff. The Ontario Employment Standards Act (ESA) provides for the ability to layoff an employee. A layoff is different from a termination. In simplistic terms, a layoff implies you have every intent to recall that employee to work whereas terminating an employee severs the employment relationship and notice or severance must be provided to the employee.

In order for an Employer to lay off staff it must be stated in an employment contract or be a general and existing practice of the company (e.g. seasonal employment) otherwise this could be construed as 'constructive dismissal'. Constructive dismissal means the Employer changed the terms of the employment agreement. For example, nowhere in the employment contract does it permit the Employer to advise the employee not to come to work and the Employer will not pay. Void of this provision the layoff would be deemed a termination and the employee would be entitled to notice and/or severance.

Having said all that, Employers who still chose to temporarily layoff staff void of this provision assume a level of risk. The hope is that employees take the position that they prefer to be laid off with the potential to return to work in the foreseeable future. These are unique circumstances and in fact some employment law firms are hopeful that the courts would take the position that an Employer was not abandoning their contractual obligation to their employee by laying them off but that the decision was necessary as they are unable to maintain their current workforce.

Employers must be mindful that there are maximum lengths to layoff periods as well as other requirements. More importantly, Employers must not impose layoffs if an employee could be eligible for a leave of absence under the ESA.

#### **Helpful Websites to Stay Informed**

[Public Health Agency of Canada](#)  
(24-hour hotline:  
1-800-454-8302)

[Ontario Ministry of Health The 2019 Novel Coronavirus \(COVID-19\)](#)

[Infection & Prevention Control Canada](#)

[World Health Organization](#)

[Employment Standards Act, 2000](#)

## New Leave of Absence and Benefits

On March 19, 2020, the government passed Bill 186, the Employment Standards Amendment Act (Infectious Disease Emergencies), 2020 which amends the leaves of absence provisions of the Employment Standards Act, 2000 (ESA) to provide more leave entitlements to employees impacted by the pandemic. The government has previously stated that the amendments are retroactive to January 25, 2020.

### Emergency Leave: Declared Emergencies and Infectious Disease Emergencies

- This is an unpaid leave for people who are unable to work for various reasons related to a designated infectious disease including being treated and quarantined, self-isolating, providing care for someone, under travel restrictions, directed by your Employer because of exposure or direct by the government.
- The leave would end on the day the emergency is terminated.
- Benefits should continue as long as the employee continues to pay their portion of premiums.
- Employees who qualify for sickness benefits can apply through Service Canada.

Income support for individuals who would not qualify for EI sickness benefits (includes self-employed) may be able to take advantage of the following:

1. Emergency Care Benefit: \$900 biweekly for 15 weeks; replaces EI sickness benefits; apply through the CRA; expected to be available in April; waiting on details of the application process.
2. Emergency Support Benefit: available to those who may be facing unemployment; waiting on more details.
3. Temporary Business Wage Subsidy: 10% of remuneration paid between March 18, 2020, and June 20, up to a maximum subsidy of \$1,375 per employee, and \$25,000 per employer; available immediately by reducing remittances of income tax withheld on employees' remuneration; Employers benefiting from this will include small businesses, non-profit organizations and charities.

We hope this information assists and provides you some clarity. We are here to answer your questions and support your business through these challenging times so please feel free to connect with us.

Be Safe,

OpX Project + People Management

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