
Ontario Legislature Passes Bill 186 - Employment Standards Amendment Act (Infectious Disease Emergencies), 2020 – Job Protection for Workers due to COVID-19

By: Amanda Boyce

The Ontario Legislature has passed the **Employment Standards Amendment Act (Infectious Disease Emergencies), 2020** in an emergency sitting on March 19, 2020. This legislation will provide job-protected leave to employees in isolation or quarantine due to COVID-19, or those who need to be away from work to care for children because of school or day care closures or to care for other relatives.

Bill 186 amends s. 50.1 of the ESA which formerly dealt only with “declared emergencies”. That section is now entitled “Emergency leave: declared emergencies and infectious disease emergencies”.

Note that employers cannot require employees to provide a medical note to access the new leave. However, employers may require employees to provide other evidence that is reasonable in the circumstances, at a time that is reasonable in the circumstances. This could include evidence such as a note from the daycare or from an airline that a flight has been cancelled.

Infectious Disease Emergency Leave attracts the same protections as other ESA leaves of absence. Employers must continue any benefits during the leave, cannot dismiss or otherwise reprise against employees for taking the leave, and must reinstate employees to their most recently held position at the end of the leave, if the position still exists, or to a comparable position, if it does not.

This is a time of extreme economic insecurity for many businesses, and it is possible that many organizations will need to reduce staffing levels if the situation persists. Employers should seek legal advice from a competent employment lawyer if they have questions or concerns about how to deal with employee leaves of absence during this period.

Infectious Disease Emergencies: Job-Protected Leave

Bill 186 provides job protection for employees unable to work because of one or more of the following reasons related to a “designated infectious disease”:

- The employee is under individual medical investigation, supervision or treatment related to the designated infectious disease.
- The employee is acting in accordance with an order under section 22 or 35 of the **Health Protection and Promotion Act** that relates to the designated infectious disease.

- The employee is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.
- The employee is under a direction (such as to stay home from work) given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the designated infectious disease.
- The employee is directly affected by travel restrictions related to the designated infectious disease and, under the circumstances, cannot reasonably be expected to travel back to Ontario.
- The employee is providing care or support for a designated individual because of a matter related to the designated infectious disease that concerns that individual, including, but not limited to, school or day care closures.

The following individuals are prescribed for the purpose of providing “care and support” in relation to Infectious Disease Emergency Leave:

- The employee's spouse.
- A parent, step-parent or foster parent of the employee or the employee's spouse.
- A child, step-child or foster child of the employee or the employee's spouse.
- A child who is under legal guardianship of the employee or the employee's spouse.
- A brother, step-brother, sister or step-sister of the employee.
- A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
- A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
- A son-in-law or daughter-in-law of the employee or the employee's spouse.
- An uncle or aunt of the employee or the employee's spouse.

- A nephew or niece of the employee or the employee's spouse.
- The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
- A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
- Any individual prescribed as a family member for the purposes of this section.

Duration of the Leave of Absence

There is no pre-determined limit on how long an employee may take Infectious Disease Emergency Leave. Employees will be able to take the leave for as long as COVID-19 is designated as an infectious disease by the regulations for the purposes of this section of the ESA (in other words, until the Ontario government decides that the disease no longer qualifies, or has been as “defeated”), and as long as they are not performing the duties of their positions because of a reason referred to above.

These measures are retroactive to January 25, 2020, the date that the first presumptive COVID-19 case was confirmed in Ontario, and will remain in place until the Ontario government declares that COVID-19 is no longer designated as an infectious disease for the purpose of the legislation. Employers who may have dismissed employees since January 25 and are concerned that such termination may be impacted by these amendments should seek legal advice from a competent employment lawyer.

Commentary on “Self-Isolation”

The wording of the statute is quite broad in regard to “self-isolation”, which is the scenario many employers have expressed concern over. Based on this wording, it seems that employees need not be “directed” to self-isolate, but could make the decision to do so based on “information” they hear on the news from certain sources, and thus qualify for a job-protected leave of absence.

The legislation provides job protection for employees who have decided to self-isolate as a result of “information or directions” from a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, issued to the public through various means including on the news.

Although these provisions have not been interpreted, it seems arguable that an employee’s decision to self-isolate should need to meet some standard of reasonableness, based on the information received from one of those designated sources, in order to qualify for the leave. Employers who

have questions or concerns about how the terms of the new Infectious Disease Emergency Leave apply to their workforce should contact a competent employment lawyer.

For more information, **please contact:**

Amanda D. Boyce at aboyce@stringerllp.com or 416-862-1616

UPDATE is an electronic publication of Stringer LLP
390 Bay Street, Suite 800, Toronto, Ontario M5H 2Y2
T: 416-862-1616 Toll Free: 1-866-821-7306
E: info@stringerllp.com I: www.stringerllp.com

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