
Ontario ESA Flash Update - Extension to Deeming Provisions Concerning Layoffs

By: Jeremy D. Schwartz

As we explained in our [recent Update](#), at the end of May 2020 the Ontario government introduced a new regulation under the **Employment Standards Act, 2000** (the “ESA” or the “Act”) that changes how the layoff and constructive dismissal provisions of the ESA will apply to employees who have been laid off or had their hours or wages reduced as a result of the COVID-19 pandemic.

Pursuant to [Ontario Regulation 228/20](#) (the “Regulation”), employees who were placed (or continued) on temporary layoff at any time retroactive to March 1, 2020, were deemed instead to be on Infectious Disease Emergency Leave under the ESA. Moreover, employees who had reduced hours or compensation over that period, were deemed not to have been constructively dismissed - for purposes of the ESA.

Notably, there are conditions and limitations on the application of the Regulation in certain circumstances. Moreover, as we discussed in our [Update](#), the Regulation does not expressly give employers the right to impose such workplace changes and/or temporary layoffs under the common law.

The deeming effects of the Regulation were set to expire today, September 4, 2020. At the 11th hour, the Ontario Government announced yesterday that the deeming effects of the Regulation are extended to January 2, 2021; such that leaves of absence under the Regulation will be deemed extended to January 2, 2021, and (at least until the next amendment, if any) employees on these statutory protected leaves of absence may be considered to have the temporary layoff clocks unfrozen as of January 3.

Looking Ahead

Unfortunately, many employers took steps to notify employees of recall or termination plan prior to the last-minute about face, and some of these decisions may not be retractable. Employers should seek immediate legal advice and reconsider whether to further extend employees on these statutory protected leaves, or what impact this regulatory change may have on transition plans.

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