

BILL 195 ENDS THE STATE OF EMERGENCY: WHAT ONTARIO EMPLOYERS SHOULD KNOW

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On July 24, 2020 the *Reopening Ontario (A Flexible Response to COVID-19) Act 2020*, known colloquially as Bill 195 (“**Bill 195**”), came into effect, bringing an end to the COVID-19 declared provincial state of emergency under the *Emergency Management and Civil Protection Act* (“**EMCPA**”).

Though the declared state of emergency has come to an end, Bill 195 provides the Ontario Government with flexibility to address the ongoing risks of the COVID-19 pandemic. Under Bill 195, the Ontario Government may amend, extend, or revoke existing emergency orders made under sections 7.0.2 and 7.1 of the EMCPA. Currently, most orders remain in effect, and are subject to additional thirty-day extensions at a time.

The proclamation of Bill 195 has numerous implications for the *Employment Standards Act, 2000* (“**ESA**”) and employers must be aware of the shifting timelines.

Job-protected Leaves

*Deemed Infectious Disease Emergency Leave (“**IDEL**”)*

The declared state of emergency allowed employers to temporarily reduce wages or hours for pandemic related reasons without triggering a layoff or constructive dismissal under the ESA. Instead, employees were placed on deemed IDEL under Ontario Regulation 228/20.

Deemed IDEL relief is only permitted during the “COVID-19 Period”, which expires six weeks after the declared provincial state of emergency has ended. As a result of Bill 195, the declared emergency has ended, and deemed IDEL as it is currently drafted is scheduled to end on September 4, 2020. As of September 4, 2020, the standard temporary layoff rules under the ESA will apply to employers who fail to restore employees’ wages and/or recall employees.

Additionally, employers should consider the potential overlap between deemed IDEL and IDEL. While Bill 195 brings deemed IDEL to an end, IDEL remains in effect. Employees are entitled to IDEL as long as COVID-19 remains a designated infectious disease under the ESA. An employee is entitled to IDEL if they cannot work for one of the following reasons:

- The employee is under medical investigation, supervision or treatment for COVID-19;
- The employee is following an order under the *Health Protection and Promotion Act*;
- The employee is quarantining or in isolation in accordance with public health guidelines;
- The employee has been directed by the employer to not work due to COVID-19 workplace concerns;
- The employee needs to provide care to a prescribed individual under the ESA for a reason related to COVID-19; or
- The employee cannot return to Ontario because of travel restrictions.

Declared Emergency Leave (“DEL”)

An employee can only qualify for DEL under the ESA if there is a declared state of emergency under the EMCPA. With the proclamation of Bill 195, an employee is no longer entitled to DEL as of July 24, 2020. If an employee has not returned to work because of one of the following reasons, job-protected DEL will no longer apply to the employee:

- An emergency order made under section 7.0.2 of the EMCPA applied to the employee and caused them to not perform their duties;
- An order was made under the *Health Protection and Promotion Act* that applied to the employee and prevented them from performing their duties; or
- The employee needed to provide care or assistance to an individual (e.g. child, spouse, parent, etc.) because of the declared emergency.

Limitation Periods

Lastly, despite Bill 195 ending the provincial state of emergency, limitation periods remain suspended pursuant to Ontario Regulation 73/20. All limitation periods in the ESA, notably the two-year limit for an employee to file a complaint, will remain suspended retroactive to March 16, 2020 until September 11, 2020. It is important for employers to remain up-to-date on potential thirty-day extensions to Ontario Regulation 73/20 and when limitation periods will resume.

Further, Ontario Regulation 73/20 applies to all proceedings in Ontario. This includes courts, Tribunals Ontario, the Ontario Labour Relations Board, or any other Ontario Government decision-making body. Parties to a proceeding must prepare to abide by timelines as September 11, 2020 approaches, and stay up to date with any possible extension to Ontario Regulation 73/20.

IMPORTANT DATES EMPLOYERS SHOULD TAKE NOTE OF AS OF JULY 24, 2020

Job protected leave

Deemed IDEL under *Ontario Regulation 228/20*

IDEL under ESA

DEL

Layoffs

Temporary layoffs

Limitation Period

Limitation periods for employee claims and all proceedings in Ontario

Take-Away

The proclamation of Bill 195 provides the Ontario Government with broad authority to extend, amend, and revoke emergency orders under the EMCPA and employers must be aware of the Government's flexibility to enforce orders at their discretion. This broad authority can have a profound effect on the leaves of absence and layoffs, so it is imperative that employers stay up to date on the evolving effects of COVID-19 on the workplace.

For employers who currently have employees on layoff, reduced hours or reduced pay, planning must now begin on what will happen on September 4, 2020 and whether the employer is in a position to recall or reinstate the previous terms and conditions of employment.

If you have any questions relating to the above, please do not hesitate to contact a member of the Employment & Labour Relations Group.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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Status

Revoked

Ineffective from September 4, 2020

In effect

Revoked

Ineffective from July 24, 2020

Status

ESA standard rules effective from September 4, 2020

Employers may temporarily lay off employees for up to 13 weeks in a 20-week period, which can be extended up to 35 weeks in a 52-week period.

Status

Limitation periods have been suspended retroactive to March 16, 2020 until September 11, 2020

The logo for mcmillan, featuring the word in a lowercase, sans-serif font. The 'm' and 'c' are in a dark red color, while the 'i', 'l', 'l', 'a', 'n' are in a lighter red color. The logo is positioned in the upper left corner of the page.

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