

ONTARIO TO PROVIDE FOR TEMPORARY PAID SICK LEAVE

Posted on April 30, 2021

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The Ontario government has passed a bill that will temporarily provide Ontario employees with paid sick leave, labelled as “infectious disease emergency leave pay.”

Ontario passed [Bill 284](#) on April 29, 2021. Bill 284 amends the infectious disease leave provisions (s. 50.1) of the *Employment Standards Act, 2000* (“ESA”) to provide employees with three days of paid, job-protected leave.

When is paid leave available?

Paid leave will be available until September 25, 2021 and is retroactive to April 19, 2021. These include:

- An employee may take a leave of absence with pay for all of the same reasons for which unpaid infectious disease emergency leave was already available.
- An employee is under individual medical investigation, supervision or treatment related to a designated infectious disease (i.e. COVID-19);
- An employee needs to self-isolate or quarantine in accordance with medical advice or public health requirements;
- An employee has been directed to not come to work by his/her employer out of concern that the employee may expose other individuals in the workplace to the designated infectious disease; or
- An employee is providing care or support to a designated close relation or family member because that person has a designated infectious disease or is required to quarantine or self-isolate.

Notably, the legislation makes entitlement to paid leave (for equivalent circumstances) under an employee’s contract *inclusive* of the new paid leave under the ESA. If an employee is already receiving paid sick days from their employer, this new paid leave is not in addition to those sick days, unless the employee is receiving less than three days. In that circumstance, the new leave will make up the difference.

In what appears to be an effort to permit partial paid days off in order to obtain a COVID vaccine, if an employee is entitled to both paid leave and unpaid leave under s. 50.1, the employee may elect to take one or more days or parts of a day of leave as unpaid leave only if the employee advises the employer in writing, before the end of the pay period in which the leave occurs, that the employee has elected to take that time as unpaid leave.

Bill 284 does not add a requirement that employees provide a doctor's note or other medical evidence in order to take infectious disease emergency leave.

How does the paid leave work?

Employers are required to pay employees taking permitted paid leave the lesser of \$200 per day and,

a. either,

- i. the wages the employee would have earned had they not taken the leave, or
- ii. if the employee receives performance-related wages, including commissions or a piece work rate, the greater of the employee's hourly rate, if any, and the minimum wage that would have applied to the employee for the number of hours the employee would have worked had they not taken the leave; or

b. if some other manner of calculation is prescribed, the amount determined using that manner of calculation.

Employees are not entitled to earn overtime or shift premium pay while on paid leave.

Employers can apply to the Workplace Safety and Insurance Board (WSIB) for reimbursement for leave pay of up to \$200 per employee per day, unless the employee on leave had access to paid leave under an employment contract.

To apply for reimbursement, employers will be required to submit an attestation form that the WSIB will release in the coming days. Applications for reimbursement will be accepted until January 25, 2022.

The province has stated that employers not already registered with the WSIB will be able to access the reimbursement.

Takeaways for Employers

Infectious disease emergency leave pay is another tool to help employers combat the prevalence of COVID-19 in Ontario workplaces. The paid leave will also help bridge employees who must be off work until they can access federal benefits such as the \$500 per week Canada Recovery Sickness Benefit.

Employers should continue to diligently adhere to public health restrictions, including monitoring employees to ensure that those with symptoms or who have been exposed to the virus do not come to work.

Finally, employers should consider getting ahead of press coverage by communicating, in writing, to employees about when paid leave is available and how they can submit a leave request.

by [Kyle Lambert](#) and [David Fanjoy](#)

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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