



Ontario Government Increases Minimum Wage and Extends Pandemic Temporary Layoffs (IDELs)

December 2021 Employer Alert

The Ontario Government continues to make changes to employment laws. Last week, a bill received royal assent that will increase minimum wage to \$15.00 per hour as of January 1, 2022. In addition, last week, the Ontario Government published regulations extending the provisions related to pandemic temporary layoffs, leaves, and sick days to July 2022.

Bill 43 – *Build Ontario Act* – New Minimum Wage

On December 9, 2021, Bill 43, *Build Ontario Act (Budget Measures), 2021*, received royal assent. As a result, commencing January 1, 2022, the new minimum wage for most employees in Ontario will increase from \$14.35 to \$15.00 an hour. Thereafter, it will continue to increase every October 1, to an amount determined and announced before April 1 of each year.

In addition, further to Bill 43, the separate minimum wage rates for liquor servers under the *Employment Standards Act* have been eliminated. As such, minimum wage for liquor servers will jump by 19% on January 1, 2022, from \$12.55 to \$15.00 an hour.

Pandemic Temporary Layoffs (IDELs) and Pandemic Leaves and Sick Days (IDEL pay)

Previously, as a result of the global pandemic, the Ontario Government established pandemic provisions in regards to layoffs, leaves, and sick pay under the *Employment Standards Act*. These provisions were supposed to end this year. However, considering

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the ongoing pandemic, the Ontario Government has pushed back the end dates to July 2022.

I. **Pandemic Temporary Layoffs (IDELs)**

In Ontario, the *Infectious Disease Emergency Leave Regulation* (O. Reg. 228/20), provides that all non-unionized employees who were placed on a temporary layoff because of the pandemic are automatically and retroactively on an unpaid Infectious Disease Emergency Leave (an "IDEL"). Employees can remain on an IDEL until the end of the COVID-19 period. By way of a **recently published regulation**, the COVID-19 period will now end on July 30, 2022.

After July 30, 2022, the employee can be placed on a traditional statutory layoff for not more than 13 weeks in a 20 consecutive week period. There are though, exceptions that allow the employee to be placed on a layoff for not more than 34 weeks. For example, you may place the employee on a temporary layoff for up to 34 weeks if you continue to pay for the employees' benefits. As such, at most, employees may now be placed on a layoff until March 27, 2023.

As was outlined in our **September emailer**, if an employee is not recalled at the end of the IDEL, is not placed on a new non-pandemic layoff after the IDEL, and does not resign, then the employee will be considered dismissed. However, an employee may commence litigation before the end of the IDEL, claiming that they have been constructively dismissed (i.e. effectively fired). If an employee is dismissed, they are normally entitled to statutory termination entitlements and common law termination entitlements. Common law entitlements are normally more substantial than statutory termination entitlements. However, employers may restrict an employee's termination entitlements by using an enforceable written employment agreement. In addition, the employee's termination entitlements may be reduced or eliminated on other grounds, for example, based on the IDEL Regulation, frustration, mitigation, etc.

Given the above, employers must be informed and strategic when handling pandemic layoffs and terminations.

II. Pandemic Leaves and Pandemic Sick Day (IDEL Pay)

As was mentioned in our [September emailer](#), further to the ongoing pandemic, the Ontario Government amended the *Employment Standards Act* to establish pandemic related leave entitlements and paid sick days. In particular, the *Employment Standards Act* was amended to introduce paid sick days in regards to certain pandemic related leaves. This pandemic sick day is known as infectious disease emergency leave pay (or "IDEL pay"). Under the amendments, retroactively effective April 19, 2021, employers have an obligation to provide IDEL pay when the employee is on a qualifying pandemic related leave. Until recently, the entitlement to IDEL pay was supposed to end on December 31, 2021. By way of a [recently published regulation](#), the entitlement to IDEL pay will now end on July 31, 2022.

As a recap, an employee is on a qualifying pandemic related leave when:

1. the employee is receiving a vaccine or recovering from a vaccine in regards to COVID-19,
2. the employee is under medical investigation, supervision or treatment in regards to COVID-19,
3. the employee is required to quarantine or isolate in regards to COVID-19,
4. the employee is providing care to a defined person (e.g. child or family member) in regards to 1, 2, or 3 (e.g. their family member is being treated), or
5. the employee is placed on a leave by their employer as a result of a concern of exposing others to COVID-19.

When an employee is on a qualifying pandemic related leave, the employee is entitled to a maximum of \$200.00 per day, for up to three days, as IDEL pay. Employers may be eligible to be reimbursed for IDEL pay. To be reimbursed, the business must submit an application to the Workplace Safety and Insurance Board by the earlier of: i) 120 days after payment; and ii) 120

days after the entitlement to IDEL pay ends (now being November 28, 2022). In order to apply for reimbursement, employers are to use a portal established by the Workplace Safety and Insurance Board, which is [available here](#).

Given the above, employers must be informed and strategic when handling leaves, layoffs and terminations during the pandemic. For strategic advice to address any of the above, including addressing employee wage costs concerns, drafting employment documents, handling layoffs, and dealing with terminations, please [contact our firm](#).

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