



Ontario Ends as of July 30th the Pandemic Layoffs, Pandemic Leaves and Pandemic Sick Pay

July 2022 Employer Alert

Further to bringing to an end various pandemic measures, on July 30th the pandemic provisions in regards to layoffs, leaves, and sick pay under the *Employment Standard Act* will be expiring. Employers should take a moment to understand the potential impact, including what to do, if you are not ready to recall laid off employees.

Pandemic Temporary Layoffs (IDELs)

As a recap, 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 in regards to 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, which was pushed out several times and now will official end on July 30, 2022.

After July 30, 2022, the employee can be placed on a traditional statutory layoff. Under a traditional statutory layoff, the temporary layoff must not last more than 13 weeks in a 20 consecutive weeks period. There are though, exceptions that allow for the temporary layoff to be not more than 34 weeks. For example, employees can be laid off for 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 25, 2023.

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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 or while on the new non-pandemic layoff, 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. For example, an employee with 20 years of service may be entitled to only 8 weeks' statutory termination pay, but entitled to 22 months' compensation at common law. By using an enforceable written employment agreement, employers may restrict an employee's termination entitlements. Further, 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.

Pandemic Leaves and Pandemic Sick Day (IDEL pay)

As a recap, in March 2020, the Ontario Government amended the *Employment Standards Act* to establish pandemic related leave entitlements. In particular, under section 50.1 of the amended *Employment Standards Act*, an employee is entitled to a pandemic related leave for a variety reasons. The reasons for a permitted pandemic related leave include when the employee is self-isolating due to COVID-19, is caring for their child because of a daycare closure due to COVID-19, or is negatively impacted by COVID-19 related travel restrictions.

On April 29, 2021, the Ontario Government amended the *Employment Standards Act* to introduce paid sick days in regards certain pandemic related leaves. This pandemic sick pay 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. 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),
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 per day, as IDEL pay. An employee is only entitled to maximum of three days of IDEL pay, even if they take multiple qualifying pandemic related leaves. Originally, the IDEL pay entitlement was to end on September 25, 2021. The entitlement to IDEL pay will now end on July 30, 2022.

Employers may be eligible to be reimbursed in regards to 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 (being November 27, 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](#).

In review of the above, employers must be informed and strategic when handling leaves, layoffs, and terminations during the pandemic. For more information or for assistance, including in regards to drafting employment documents, handling layoffs, and dealing with terminations, please contact our firm.

As the options, obligations, and impact of COVID-19 on the workplace continue to change, we are ready to strategically support you and your business. Further to this, we have multiple

COVID-19 and Your Workplace webinars available on demand. [For more details and to view our webinars please click here.](#)

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