

Ontario ends COVID-19 state of emergency

Effective July 24, 2020 the [Reopening Ontario \(A Flexible Response to COVID-19\) Act 2020](#), also referred to as Bill 195, ended the provincial state of emergency declared under the [Emergency Management and Civil Protection Act](#) (EMCPA), and provided the provincial government the authority to amend, extend, or revoke existing emergency orders introduced the EMCPA during the COVID-19 pandemic.

Despite the end of the state of emergency, virtually all [emergency orders](#) introduced under sections 7.0.2 and 7.1 of the EMCPA remain in force for 30 days from July 24, 2020 and may be subject to an extension by the government.

Affected employers and employees

The provisions of Bill 195 and the end of the state of emergency affect all employers (and their employees), including those who have continued their operations at reduced capacity during the state of emergency, and those not yet in a position to resume business operations, as the provisions of Bill 195 ends two temporary employment protected leaves.

Employment protected leaves

Infectious Disease Emergency Leave

COVID-19 was designated an infectious disease under the provisions of the Employment Standards Amendment Act (Infectious Disease Emergencies) 2020. As a result, the end of the state of emergency does not on its own affect employees eligible for Infectious Disease Emergency Leave (IDEL). Employees unable to work due to one of the COVID-19 related reasons provided under the Employment Standards Amendment Act (Infectious Disease Emergencies) 2020 continue to be entitled to IDEL.

As a reminder, the Employment Standards Amendment Act (Infectious Disease Emergencies) 2020 provides that an employee is eligible for unpaid leave if they are:

- Under medical investigation, supervision or treatment related to COVID-19;
- Under quarantine or isolation because of COVID-19 recommendations or directions issued by public health authorities or a physician;
- Under quarantine or isolation under the employer's direction out of concern the employee might expose coworkers to the disease;
- Providing care or support to a designated family member for COVID-19 related reasons (including school or day-care closures);
- Directly affected by COVID-19 related travel restrictions and cannot reasonably be expected to return to Ontario.

Deemed Infectious Disease Emergency Leave (IDEL)

The COVID-19 outbreak and the resulting state of emergency declared on March 17, 2020 had a significant impact on many employers who had to consider placing employees on temporary layoff or reducing their pay or their working hours. In March 2020, the Employment Standards Amendment Act (Infectious Disease Emergencies) 2020 provided for a temporary layoff of 13 weeks at the end of which the concerned employees would be deemed terminated, regardless of the employer's needs, possibilities, and intentions.

In response to this situation, on May 29, 2020 the government introduced the [Regulation 228/20 – Infectious Disease Emergency Leave](#), which amended the Employment Standards Amendment Act (Infectious Disease Emergencies) 2020 by providing that any employee who is not represented by a trade union, who had their working hours temporarily reduced or eliminated by their employer as a result of COVID-19 is deemed to be on IDEL during the "COVID-19 Period", which retroactively started on March 1, 2020, and ends 6 weeks following the end of provincial declaration of emergency. This means that the "COVID-19 Period" referred to by Regulation 228/20 ends on September 4, 2020. Consequently, employers unable to reinstate all their employees may again have to decide on placing employees on temporary layoff or to reduce employee working hours or their pay.

Declared Emergency Leave (DEL)

Eligibility for Declared Emergency Leave (DEL) depends on the existence of a declared state of emergency. Therefore, as of July 24, 2020 employees on DEL provided for by the [Employment Standards Act, 2000](#) became ineligible for this leave. Such employees may however be eligible for IDEL or another leave of absence provided for by the ESA.

Employees are eligible for DEL if they are not performing the duties of their position because of the declared emergency and because:

- An emergency order under section 7.0.2 EMPCA applies to the employee and causes them to not perform the duties of their position;
- An order under the [Health Protection and Promotion Act](#) (HPPA) is directed at the employee that prevents them from performing the duties of their position, for a quarantine or a self-isolation order;
- They are needed to provide care or assistance to at least one of the following individuals because of the declared emergency:
 - the employee's spouse (of the same or opposite sex, whether married or not)
 - a parent, step-parent or foster parent of the employee or the employee's spouse

- a child, step-child or foster child of the employee or the employee's spouse
- a grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse
- the spouse (which includes a same-sex spouse) of a child of the employee
- the employee's brother or sister
- a relative of the employee who is dependent on the employee for care or assistance
- a child who is under legal guardianship of the employee or the employee's spouse
- step-brother or step-sister of the employee
- a brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee
- a son-in-law or daughter-in-law of the employee or the employee's spouse
- an uncle or aunt of the employee or the employee's spouse
- a nephew or niece of the employee or the employee's spouse
- the spouse of the employee's grandchild, uncle, aunt, nephew or niece
- a person who considers the employee to be like a family member

Employer actions

The end of the province's state of emergency affects employers (and their employees), and above all those employers having continued their operations at reduced capacity during the state of emergency, and those not yet in a position to resume business operations, as the provisions of Bill 195 ends two temporary employment protected leaves provided for under the Employment Standards Amendment Act (Infectious Disease Emergencies) 2020 and its amendment by the Regulation 228/20, namely the Declared Emergency Leave (DEL), and the Infectious Disease Emergency Leave (IDEL).

In particular, employees not represented by a trade union, who had their working hours temporarily reduced or eliminated by their employer as a result of COVID-19 are deemed to be on IDEL during the "COVID-19 Period", which retroactively started on 1 March 2020, and which will now end on September 4, 2020.

Planning and budgeting must start before September 4, 2020. Many businesses are experiencing significant disruptions to their operations during the COVID-19 pandemic and may not be in a position to consider reinstating all their employees starting September 4, 2020. Affected employers will therefore have to determine whether they are in a position to reinstate employees currently deemed to be on IDEL under their previous terms of employment, or decide to place some employees on temporary layoff or reduce their working hours or their pay.

Separately, employees on DEL became ineligible for this leave as of 24 July 2020. Such employees may however be eligible for IDEL or another leave of absence provided for by the ESA. Employers must, on a case by case basis, consider their employees' individual situations in order to identify alternative leave of absences that they may be entitled to.

Finally, Bill 195 provided the provincial government the authority to amend, extend, or revoke existing emergency orders introduced the EMCPA during the COVID-19 pandemic. The authority transferred to the government can affect leaves of absence and layoffs. Employers must continue to stay abreast of government decisions and evolving measures affecting employment.

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