

Coronavirus (COVID-19): Legal update for Canadian employers – Legislation and employer updates

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Meet our presenters

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O. Reg. 228/20: Impact of Ontario's Revised Infectious Disease Emergency Leave on layoffs and wage Cuts

- Meaghen Russell, Partner, Toronto
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Provincial amendments to layoff provisions

Alberta

- Increase in maximum layoff period to up to 120 days

British Columbia

- Increase in maximum layoff period to up to 16 weeks

Provincial amendments to layoff provisions

Manitoba

- Any period of layoff occurring after March 1, 2020 does not count toward a deemed termination

New Brunswick

- COVID-19 is an unforeseen event, relieving employers of their layoff or termination notice obligations

Provincial amendments to layoff provisions

Saskatchewan

- Suspended normal maximum period after which layoff deemed a termination (until 2 weeks after public emergency ends)

Ontario?

Where we left off in Ontario...

Infectious Disease Emergency Leave introduced under the *Employment Standards Amendment Act (Infectious Disease Emergencies)*, 2020

- Job protected leave for employees not able to perform the duties of their position because of prescribed reasons

Expansion of Infectious Disease Emergency Leave

New reason for entitlement to leave:

- The employee's hours of work are temporarily reduced or eliminated by the employer for reasons related to the designated infectious disease.

Layoffs converted to Leaves of Absence

Employees that:

- Do not perform the duties of their position
- During any period from March 1, 2020 until 6 weeks after Ontario's state of emergency ends
- For reasons related to COVID-19

are deemed to be on infectious disease emergency leave

Leave entitlements

Obligations relating to leaves of absence now apply:

- Continued participation in benefit plans
- Continued employer contributions to benefit plans
- Reinstatement

BUT Regulation contains exceptions

Layoffs

- Temporary reduction or elimination of hours is not a layoff
- Temporary reduction of wages is not a layoff
- “Stopped the clock” on deemed terminations under the *ESA*
- Exceptions?

Constructive dismissals

- Temporary reduction or elimination of hours is not a constructive dismissal
- Temporary reduction of wages is not a constructive dismissal
- Exceptions?
- Does the Regulation affect common law claims?

Implications for...

- Termination and severance
- Complaints filed with the Ministry of Labour

Regulation applies to...

- Non-unionized employees
- Assignment employees (with necessary modifications)

When will the Leave end?

- 6 weeks after the Government of Ontario declares there is no longer an emergency
- What happens when the leave ends?

Things to consider

- Impact on the CERB?
- Potential employee claims?

Business travels and foreign workers in the time of COVID-19

- Arianne Bouchard, Senior Associate, Montréal

June 5, 2020

Business travel

General principle

- At this time, while allowed in some cases, business travel is still **strongly discouraged**.
- To maintain and expand national and international business contacts, and to move projects forward with these people/companies, companies should **prioritize the use of technological means rather than in-person meetings**.

Business travel

Canadians travelling outside Canada

- To limit the spread of COVID-19, the Government of Canada **advises** that Canadians should avoid all non-essential travel outside of Canada until further notice, including non-essential business travel.
 - Strongly recommended but not prohibited.
- **Many countries** have put in place **travel or border restrictions**, such as border closures, movement restrictions and quarantines.
- Airlines have **cancelled several flights** and would generally **refuse passengers** with symptoms associated to COVID-19.

Business travel

Canadian employees travelling within Canada, to another province

- Some provinces and all territories have adopted travel restrictions and/or quarantine requirements (generally 14 days) applicable to domestic travellers :
 - Manitoba, Newfoundland, Northwest Territories Nova Scotia, Nunavut New Brunswick, Prince Edward Island, Yukon
- Some categories of people are generally excluded from these orders, including:
 - persons who are transporting goods and materials into or through the province, if they are not displaying any symptoms of COVID-19;
 - persons who are engaged in providing essential services in the province, if they are not displaying any symptoms of COVID-19;
 - aircraft and train crew members, if they are not displaying any symptoms of COVID-19
- Other business travellers are generally not exempted from these orders.
- Fines and 6-month term imprisonment may be imposed to people and business not respecting these orders.

Business travel

Risks associated with business travels made by Canadian employees

- If an employee becomes ill with COVID-19 while on a business trip made on the behalf his employer, in most jurisdiction, it would be considered as a **workplace accident**.
- Employer could also **be liable for the additional costs** incurred by the employee due to the fact they became ill with COVID-19 while on a business trip;
 - Medical cost when not covered by the workers' compensation board;
 - Additional accommodation and subsistence costs due to the fact that the worker is not able to come back home because they have COVID-19 / symptoms associated with COVID-19

Business travel

Foreigners travelling to Canada

- The situation is currently governed by the following Orders in Council from the Government of Canada :
 - [OIC 7 - Minimizing the Risk of Exposure to COVID-19 in Canada Order \(Prohibition of Entry into Canada from any Country other than the United States\)](#)
 - Applicable until June 30, 2020.
 - [OIC 10 - Minimizing the Risk of Exposure to COVID-19 in Canada Order \(Mandatory Isolation\) No. 2](#)
 - Applicable until June 30, 2020.
 - [OIC 12 - Minimizing the Risk of Exposure to COVID-19 in Canada Order \(Prohibition of Entry into Canada from the United States\)](#)
 - Applicable until June 21, 2020.

Business traveler

Travel restrictions from foreign business travellers

- To be allowed to enter in Canada, foreigners from **any other country than the United States** must :
 - Be covered by one the exceptions set out in OIC 7 (includes: temporary workers, permanent resident visa holder, accredited officials, protected persons, transit passengers, family reunification or purpose related to national interest) AND
 - Be travelling for another reason than **an optional or discretionary purpose**
- To be allowed to enter in Canada, foreigners from the United States must :
 - Demonstrate that they are travelling for another reason than **an optional or discretionary purpose**
- What is an « optional or discretionary purposes »? Is business travel excluded from that category?

Business Travellers

Optional or discretionary purposes

- What is an « optional or discretionary purposes »?
- No clear definition, but the Government has advised that it must be interpreted broadly. Example of travels that are not considered as optional or discretionary includes :
 - economic services and supply chains
 - critical infrastructure support
 - health (immediate medical care), safety and security
 - transiting through Canada for non-optional or non-discretionary purposes
 - any other activities that are deemed non-optional or non-discretionary by the Government of Canada or based on an officer's assessment
- Is business travel considered as non-optional or discretionary?
 - It depends. Must be assessed on a case by case basis.

Temporary workers

Applicable requirements

- Workers allowed to work in Canada pursuant to the **Temporary Foreign Worker Program**, and who travel to Canada for this reason, are generally allowed to enter Canada.
- However, most temporary foreign workers must quarantine for 14 days upon arrival. In this regard, workers and employers are encouraged to prepare a **quarantine plan** that can be presented to the border officers upon arrival.
- Temporary workers are not eligible to receive the Canadian Emergency Support Benefits (CERB). Employers are responsible for **paying them for a minimum 30 hours per week during quarantine**, and at the hourly rate of pay specified on the Labour Market Impact Assessment and/or offer of employment.
- Employers who do not comply with these requirements could be subject to **penalties of up to \$1 million** and a **ban from hiring foreign workers**.

Business travellers and temporary workers

Mandatory isolation / Quarantine

- Subject to the exemptions, all people entering Canada have to quarantine or isolate for **14 days**.
- People **exempted*** from the mandatory quarantine order includes :
 - Truck drivers, crew members and other people working in the trade and transportation sector who cross the border while performing their duties for the purpose of performing their duties;
 - Those who cross the border regularly to go to their normal place of employment in Canada, including the healthcare sector, or critical infrastructure workers;
 - Emergency responders and personnel providing essential services to Canadians related to the COVID-19 outbreak;
 - Those who make necessary medical deliveries.
- The exemptions do not apply to people who have symptoms associated to COVID-19.
- Fines up to \$750,000 and 6-month term imprisonment may be imposed to people and business not respecting these orders.

Thank you

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