



e2r Alert

Ontario Government Provides Employers Further Relief

Over the weekend the provincial government passed legislation amending the Ontario Employment Standards Act, 2000 (the “ESA”) in several fundamental ways.

In particular, the changes set out below will apply throughout the “Covid-19 Period”, which is defined as the period from March 1, 2020 to six (6) weeks after Ontario’s emergency order is lifted.

Employees who have had their hours or pay reduced or eliminated due to Covid-19 will be retroactively deemed to be on Emergency Leave under the ESA. This includes employees who are on temporary layoff or who have had changes to their employment as a result of Covid-19. Accordingly, from an ESA perspective, employees are entitled to the continuation of benefits for the duration of the leave (assuming they were already on benefits as of May 29, 2020, in which case they must remain on benefits) AND entitled to be reinstated to their position at the end of their leave. Employees who were not on benefits as of May 29, 2020 do not need to be placed on benefits to take advantage of the amendments. Practically speaking, once the Covid-19 period elapses, employers who are not in a position to recall their employees may be forced to place those employees on temporary layoff. Likewise, changes that would otherwise constitute a constructive dismissal under the ESA that are not rolled back once the Covid-19 period elapses would presumably start to constitute a constructive dismissal at that point.

The leave does not apply to any employee who has already been dismissed, permanently laid off or provided notice of termination under the ESA before May 29, 2020.

Looking forward, a temporary reduction or elimination in hours or wages due to Covid-19 is not a layoff, termination or constructive dismissal under the ESA, even where the layoff extends longer than the period permitted under the ESA (i.e. 13 weeks).

From a practical perspective, any employee currently on layoff due to Covid-19 will not be deemed to be terminated at the 13-week mark. Also, any weeks spent on layoff during the Covid-19 period are no longer considered weeks of layoff, meaning those weeks will not count towards any future period of temporary layoff. Moreover, complaints currently before the Ministry of Labour alleging constructive dismissal related to the reduction or elimination of hours or wages (including temporary layoffs) shall be deemed not to have been filed.

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Lastly, it is very important to note that while these changes wholly eliminate the risk of constructive dismissal and deemed terminations under the ESA during the Covid-19 period, they do not necessarily eliminate the risk of constructive dismissal claims under the common law. Although we certainly believe this legislation and the leave it creates strengthens some arguments against constructive dismissal claims at common law, there will be no certainty until our courts rule on the matter sometime down the road.

If you have any questions relating to these Ontario changes please do not hesitate to schedule a call to speak with an Advisor.