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COVID-19: Ontario's declared emergency and ESA leave provisions

This *FYI* discusses Ontario government's March 17, 2020 declaration of an emergency as part of its response to the novel coronavirus (COVID-19) outbreak, the effect of the declaration on available leave provisions, and the resulting obligations for employers. It also discusses what may be next for the province's response to this evolving crisis.

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Declared emergency announcement

Ontario declared an emergency under section 7.0.1 of the *Emergency Management and Civil Protection Act* (Act) on March 17, 2020. The declaration will last until March 31, 2020, but may be renewed at that time. The government also issued orders under section 7.0.2 of the Act:

- prohibiting all organized public events of over 50 people, including parades and communal services within places of worship; and
- requiring immediate closure of:
 - facilities providing indoor recreational programs,
 - public libraries,
 - private schools (as defined under the *Education Act*),
 - licensed child care centres,
 - bars and restaurants (eat-in only; take-out and delivery may remain open), and
 - movie, concert and other theatres/venues.

Declared emergency leave

The declaration triggers the declared emergency leave provisions under the *Employment Standards Act, 2000* (ESA), which imposes obligations on employers.

Employees are entitled to unpaid declared emergency leave under the ESA, if they are unable to perform their jobs because of a declared emergency under the Act and if they:

- are subject to an order under s. 7.0.2 of the Act;
- are subject to an order under the *Health Protection and Promotion Act*; or
- need to provide care or assistance to their spouse, parent, child, grandparent, grandchild, sibling, spouse of a child, and/or another relative dependent on the employee for care or assistance.

The leave of absence lasts for as long as the employee cannot work because of the declared emergency and at least one of the reasons listed above.

Examples of Ontario employees eligible for declared emergency leave as a result of the March 20th declaration include:

- employees of a business required to close because of the government's order (e.g. a daycare centre worker),
- employees of any business in the province who are subject to a quarantine order from Ontario's medical officer of health,
- an employee who must stay home from work (regardless of employment) to care for a child who is home from school because of the closure of their day care facility.

Employer obligations

As with other leaves of absence under the ESA, employers must do the following for employees on declared emergency leave:

- reinstate them to the same or to a comparable position as the one held before leave began, with wages of the greater of (a) what they were earning before the leave, and (b) what they would have earned had they worked throughout the leave;
- include the leave period when calculating length of employment, service and/or seniority (except for probationary periods);
- have them continue participation in pension, life insurance, accidental death, extended health, dental, and any prescribed benefit plans unless they elect in writing not to participate; an employer is not required to continue contributions if the employee elects not to make employee-required contributions (if any);

- allow them to defer vacation until after the leave expires or until a later date (subject to certain conditions); and
- for employees on vacation when leave began, allow them to either complete the vacation after the leave or forgo remaining vacation time in lieu of receiving vacation pay.

Upcoming response legislation

In addition to declared emergency leave, the Ontario government announced on March 16, 2020 that it will introduce legislation to immediately provide job-protected leave to employees in isolation, in quarantine, or who are otherwise unable to work as a result of the COVID-19 pandemic and employer and/or governmental responses to it.

While this legislation appears similar to the declared emergency leave, it will impact more employees. This is because the government intends to make the leave retroactive to January 25, 2020 (the date of Ontario's first presumptive COVID-19 case), which is broader than the leave availability because of the declaration.

For more information on Ontario's announcement and its impact on your organization, talk to your Buck consultant or contact the Knowledge Resource Centre at talktocanada@buck.com or +1 866 355 6647. For the latest from Buck about the COVID-19 crisis, please refer to: <https://buck.com/ca/expertise/hot-topics/covid-19-key-considerations-for-employers/>

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