



Novel Coronavirus (COVID-19)

Employment & Labour

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Job-Protected Leave and Financial Support for Employees Unable to Work due to COVID-19 School and Daycare Closures

By Lisa Corrente

On March 12, 2020, amid the growing COVID-19 pandemic, Ontario confirmed that it was closing schools for three weeks through to April 5, 2020. Days later, a declaration of a state of emergency shut down all licensed daycares in the province for a three week period. In recent days, statements from government officials have advised that the school and daycare closures will be extended until at least April 20, 2020 as the province continues to grapple with COVID-19.

While the school and daycare closures are ongoing, a long list of essential businesses continue to operate. Many employers and workers are now wondering what protections are being offered to individuals who cannot work due to childcare obligations.

The government's response has been twofold. Firstly, on March 19, 2020, the provincial Legislature enacted Bill 186, which amends the *Employment Standards Act, 2000* to create a new leave for Declared Emergencies and Infectious Disease Emergencies. Secondly, the federal government has announced economic measures to support families through the COVID-19 Economic Response Plan.

Declared Emergencies and Infectious Disease Emergencies Leave

In Ontario, the new Declared Emergencies and Infectious Disease Emergencies Leave entitles an employee to an unpaid leave of absence from work in two separate emergency situations - declared emergencies and infectious disease emergencies.

In a declared emergency situation, an emergency is declared under the *Emergency Management and Civil Protection Act* and an employee is entitled to an unpaid leave if they need to provide care or assistance to a specified individual. The list of specific individuals includes a child, step-child, foster child, a child who is

under the legal guardianship of the employee, grandchild, step-grandchild or any person who considers the employee to be like a family member provided that prescribed conditions, if any, are met.

In an infectious disease emergency situation, the government designates an infectious disease by regulation (COVID-19 has been so designated) and an employee is entitled to an unpaid leave if they will not be performing work because they must provide care to a specified individual (as listed above), including because of the closures of schools and daycares.

An employee's entitlement to the new emergency leave continues until termination of the emergency, or as long as schools or daycares remain closed and the disease continued to be designated as an infectious disease.

Employers are prohibited from requiring an employee to provide a medical note as evidence of entitlement to the emergency leave. However, employers are entitled to verify the leave by requiring "evidence reasonable in the circumstances" "at a time reasonable in the circumstances".

COVID-19 Economic Response Plan

As part of the country's action to help Canadians facing economic hardship, the new Canadian Emergency Response Benefit ("CERB") will provide a taxable benefit of \$2,000 per month for up to 16 weeks to working parents who must stay home without pay to care for children that are sick or need additional care because of school and daycare closures.

The CERB will be available from March 15, 2020 to October 3, 2020. It will be accessible through a secure web portal, automated telephone line or a toll-free number starting in early April. The CERB replaces the previously announced Emergency Care Benefit and Emergency Support Benefit.

Canadians who are already receiving Employment Insurance regular or sickness benefits will continue to receive these benefits. If their EI benefits end before October 3, 2020, they may apply for the CERB once their EI benefits cease if they are unable to return to work due to COVID-19.

If you have any questions about COVID-19 and your workplace, or any other human resource law issue, please contact a member of our team. For more information about dealing with COVID-19, please visit our COVID-19 Resource Center.

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