



Novel Coronavirus (COVID-19)

Employment & Labour

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Ontario Government Mandates Paid Sick Leave

By Daniel Pugen

The Ontario Government has passed Bill 284, “COVID-19 Putting Workers First Act, 2021”. This bill amends the *Employment Standards Act, 2000* (“ESA”) and requires employers to provide employees with three paid sick days. Prior to Bill 284, employers were not obliged under the ESA to provide paid sick leave. Rather, job-protected unpaid time off was required.

These changes were passed swiftly in the legislature and permit paid sick days retroactively to April 19, 2021. A copy of Bill 284 can be found [here](#).

The following is a summary:

- **Number of Paid Sick Days** - Employers must provide 3 paid sick days, which need not be taken consecutively and which can only be taken in day increments.
- **Amount** - The paid sick days do not represent 100% of an employee’s lost wages. Rather, Employers would only be required to pay an employee’s regular wages up to a maximum of \$200 dollars per day.
- **Eligibility** - For an employee to be eligible to receive paid sick days, an employee must “not be performing the duties of the employee’s position” for certain reasons as a result of COVID-19. These are spelled out in detail in Bill 284 and are meant to capture most circumstances why an employee could not perform their duties as a result of COVID-19. This includes:
 - The employee is under medical investigation, supervision or treatment. This includes receiving a vaccine and recovery from any side effects of the vaccine.
 - The employee is following a health protection order.
 - The employee is in quarantine, self-isolation or other “control measure” as a result of information/directions issued by public health authorities or a medical practitioner.

- The employee is under a direction from his/her employer “in response to a concern of the employer that the employee may expose other individuals in the workplace...”
- The employee is providing care or support to a certain family member who is either: (i) under medical investigation, supervision or treatment; or (ii) is in quarantine, self isolation or other “control measure” as a result of information/directions issued by public health authorities or a medical practitioner.
- **Contractual Sick Days Prevail** - An employee is not entitled to the ESA paid sick days if (i) the employer already provides paid sick days to their employees; (ii) employees qualify for those sick days on the same basis as the ESA qualifying criteria; and (iii) the contractual sick days are paid at the same or greater rate than the ESA. In short, if contractual sick days are better, they prevail over the ESA paid sick days. This would include sick days provided under a Collective Agreement.
- **Proof** - Employers are unable to request a doctor’s note to validate the paid sick leave.
- **Temporary** - The paid sick days are temporary in nature. An employee’s entitlement to these days under the ESA ends on September 25, 2021 or such later date as may be prescribed by regulation.
- **Employer Reimbursement** - The Government has been sensitive to the costs on employers. Accordingly, the ESA has been amended to permit an employer to seek reimbursement (up to \$200 per day) from the Workplace Safety and Insurance Board (“WSIB”). Employers would have to apply to the WSIB for this reimbursement within 120 days of the paid sick day (though not after January 25, 2022). Contractual sick days, as opposed to ESA sick days, cannot be reimbursed by WSIB. If an employer removes contractual sick days after April 19, 2021 (in an attempt to benefit from the statutory reimbursement program), the ESA sick days will not be reimbursed. If an employee received WSIB benefits for the day off, those benefits would not be reimbursed to the employer. A specific form will have to be filed with WSIB, attesting to various information.

Employers in Ontario who are federally regulated (e.g. banks, interprovincial transportation, telecommunications) are subject to the federal sick pay regime, not the ESA.

Please get in contact with anyone from our Labour & Employment Group for more specific advice. We will continue to monitor the Government’s response to COVID-19 and how it impacts the workplace.

Author

Daniel Pugen
Partner

Daniel is a partner of the firm and a member of our Employment & Labour Group.

Tel: 416 777 5194
dpugen@torkinmanes.com

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