




Ontario extends leaves to prevent 'catastrophic impacts'

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'It's just common sense legislation'





Ontario employers can extend emergency leaves until July 3, which will prevent some “unintended” negative consequences, according to a lawyer.

“Just from a straight cost perspective, if these layoffs were deemed to be terminations, you could have seen catastrophic impacts, especially with national retailers, which is really unintended, and I don’t think the [original ESA] legislation was drafted in a way to consider global pandemics like this,” says Sundeep Gokhale, management-side labour and employment lawyer at Sherrard Kuzz in Toronto. “The government Ontario got it right with this regulation.”

The temporary layoff exemption was first announced on May 29, allowing employers suffering from COVID-19 loss of business to deem employees to be on an infectious disease emergency leave, without triggering a deemed termination.


The law originally was set to end in September but was extended until January and now into the summer.

“The intention is to have all these people come back and if you can’t support [employees], you can lay them off until the dust is settled,” says Gokhale. “Our client base has been very grateful for these: it’s just common-sense legislation.”

New rules for unionized workplaces

The province also instituted new rules for industries that are both highly unionized and suffered more than most from the effects of the pandemic lockdown, such as tourism and hospitality.

Previously, a unionized employee with recall rights under a collective agreement, who has been laid off for 35 weeks, can retain that right or abandon it and potentially be entitled to severance entitlements held in trust, which could have greatly impacted certain industries.





Sundeep Gokhale

“If that 35 weeks comes up, I’m an employee and I elect that I’m not going to trigger the termination and I’m going to stay on layoff, an employer has to put a lot of money away in trust and that was going to be a significant cost to many of these hoteliers who, quite frankly, didn’t have any money coming in,” says Gokhale.

Under the new rules that extend until Dec. 17, affected parties (union and management) may negotiate a separate agreement.

“What the new regulation allows is for the union to come to an agreement with the employer to now say there’s no obligation to hold termination pay in trust to allow for an employer not to have to pay out termination severance pay if we come up to those timelines under the ESA,” he says. “You saw a good tripartite agreement here between unions, the government and employers to say this doesn’t seem right given how hard-hit the industry has been.”

Without this new law, the effects might have been devastating, according to Gokhale.

“That has helped because most unionized employers in that industry said if you’re going to require us to do this – and we’ve got 200, 300,

400 employees – you’re going to put us out and I don’t think that’s the intention here when we’re hoping for recovery in 2021.”

Looking ahead

For HR departments, the July 3 timeline is fast approaching so they should be looking ahead, says Gokhale.

“They have to start thinking about what the landscape is going to look like for their specific workforces because you have to start thinking, ‘Do I need everyone back? If I don’t need everyone back, what’s my strategy in terms of who I recall?’ And then who automatically will kick over to being on layoff as of for now, at least, July 3, 2021.”

A lot of employees don’t understand that they’re on a deemed leave so opening up those lines of communications with them is important because they may think their employment is coming to an end, either within the 13- or the 35-week period,” he says.

“It’s important for them to know that no one’s employments being terminated, they’re simply on a leave right now and ‘When we’re able to recall you, we will.’”

Meanwhile, the [fight continues in Ontario to mandate paid sick leave](#), while the province also [boosted the number of workplace inspectors](#) in light of COVID.

