

## **Paid Infectious Disease Emergency Leave Frequently Asked Questions**

May 10, 2021

On April 29, 2021, the Government of Ontario passed Bill 284, the [COVID-19 Putting Workers First Act, 2021](#). This legislation amends the Ontario *Employment Standards Act, 2000* (“ESA”) to provide time off (paid and unpaid) for COVID-19-related matters, including vaccination.

On April 30, 2021, we published a [briefing note](#) to address key components of Bill 284. We now share common questions received from clients (not addressed in the initial briefing note).

### **Is paid IDEL available to a dependent or independent contractor?**

No, only to an employee governed by the ESA.

### **Is paid IDEL available to a temporary or part-time employee?**

Yes, so long as the employee is employed by a provincially-regulated employer and the employment is governed by the ESA, including: full-time, part-time, students, construction employees, unionized and non-unionized, temporary employees, servers, working from home, working in a home (such as a nanny), *etc.*

### **Re: temp agency employees, if the placement client directs the temporary employee not to come back to work because of a concern the employee may expose others to COVID-19, is the employee entitled to paid IDEL?**

An employee is entitled to paid IDEL if their employer (in this case, the temporary help agency) directs them not to attend work because of a concern they may expose others to COVID-19. If a placement client makes this determination but the temporary help agency is satisfied the individual does not pose a risk to others, the agency is not required to provide paid IDEL and may elect to find another placement for the employee.

### **Is the \$200 payment subject to deductions and will the employer be entitled to recover from the WSIB the employer contributions for CPP, EI, etc.?**

The \$200 is considered wages and subject to regular deductions. The employer is not entitled to reimbursement of any related employer contributions for CPP, EI, *etc.*

**If an employer already provides paid sick days (personal days, etc.), is an employee still entitled to paid IDEL?**

This question is addressed in our initial briefing note, but is worth reviewing...

First, remember the key date is April 19, 2021. As at that date, the Province has effectively “reset the clock”. So, the question an employer must ask is *to what is an employee entitled on that date?*

If, **on April 19, 2021**, an employee is entitled to a paid leave under an employment contract **for any of the circumstances in which the employee would be entitled to paid IDEL**, and the pay for each day of leave is equal to or greater than the pay for a paid IDEL day, the employee’s entitlement to paid IDEL is reduced by the entitlement under the contract.

For example:

- If an employee is entitled to five days of paid time off under an employment contract and the pay for each day of leave is equal to or greater than the pay for a paid IDEL day, that paid time off could be used for any IDEL purpose, and as of April 19, 2021 the employee has used none of those days, the employee will not be entitled to any paid IDEL. Any paid days off will be provided in accordance with the terms of the employment contract.
- If that same employee has used two of the paid days provided under the employment contract, such that as of April 19, 2021 the employee has three more days available, the employee will not be entitled to any paid IDEL. Any paid days off will be provided in accordance with the terms of the employment contract.
- If that same employee has used three paid days under the employment contract such that, as of April 19, 2021 the employee has only two paid days available, the employee is entitled to one additional paid IDEL day (should it be needed).
- If that same employee has used five paid days under the employment contract such that, as of April 19, 2021 the employee has no paid days available, the employee is entitled to up to three additional paid IDEL days (should any be needed).

This analysis must be done on an employee-by-employee basis because each employee may have used a different number of the employer-provided paid days off. The only time this becomes a blanket analysis (*i.e.*, not employee-by-employee) is if the employer does not provide *any* paid days off which could be used for an IDEL purpose; in that case, after April 19, 2021, every employee is entitled to up to three paid IDEL days (if needed).

**Note:**

- A paid “floater” or “personal” day over which an employee has control as to scheduling likely counts as a contractual entitlement to a paid day which could be used for an IDEL purpose.

- The employer is only entitled to apply for reimbursement for a paid IDEL day, not for any paid day provided under an employment contract, even if that paid day is taken after April 19.

### **Must the contractual entitlement cover ALL of the possible reasons for paid IDEL?**

No, as noted above, the contractual entitlement need only cover any of the circumstances in which the employee would be entitled to paid IDEL – it need not cover all of the circumstances.

### **If an employee receives the Canada Recovery Sickness Benefit (“CRSB”), can they also receive paid IDEL?**

An employee is entitled to paid IDEL if they meet the eligibility requirements, regardless of any entitlement to CRSB. However, an employee’s eligibility for CRSB may be impacted if the employee has received paid IDEL. An employee is only eligible for CRSB if they did not receive paid leave from the employer for the same period for which they seek CRSB.

### **Does an employer have to be registered with the WSIB in order to qualify for the reimbursement?**

No, the role of the WSIB is simply to facilitate reimbursement.

### **How does an employer apply for reimbursement?**

As of today’s date, this procedure has not yet been published.

### **Will an employer’s request for reimbursement impact the employer’s WSIB rating?**

We do not believe so, as the reimbursement is not issued out of the WSIB Insurance Fund.

### **If an employer is closed down under section 22 of the *Health Protection and Promotion Act*, are employees eligible for paid IDEL?**

Yes, in this case an employee would be eligible as they are required to isolate due to the order of a public health official.

**To learn more and for assistance, contact your Sherrard Kuzz lawyer or any member of our team at [info@sherrardkuzz.com](mailto:info@sherrardkuzz.com). We’ll respond promptly.**

*The information contained in this briefing note is provided for general information purposes only and does not constitute legal or other professional advice, nor does accessing this information create a lawyer-client relationship. This briefing note is current as of May 10, 2021 and applies only to Ontario, Canada, or such other laws of Canada as expressly indicated. Information about the law is checked for legal accuracy as at the date the presentation/article is prepared, but may become outdated as laws or policies change. For clarification or for legal or other professional assistance please contact Sherrard Kuzz LLP.*



Sherrard Kuzz LLP, Employment & Labour Lawyers

**Ontario Government Introduces Paid Infectious Disease Emergency Leave – FAQ May 10 2021**

Main 416.603.0700 / 24 Hour 416.420.0738 / [www.sherrardkuzz.com](http://www.sherrardkuzz.com)