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Bill 186

(Chapter 3 of the Statutes of Ontario, 2020)

An Act to amend the Employment Standards Act, 2000

The Hon. M. McNaughton
Minister of Labour, Training and Skills Development

1st Reading	March 19, 2020
2nd Reading	March 19, 2020
3rd Reading	March 19, 2020
Royal Assent	March 19, 2020



EXPLANATORY NOTE

This Explanatory Note was written as a reader's aid to Bill 186 and does not form part of the law. Bill 186 has been enacted as Chapter 3 of the Statutes of Ontario, 2020.

The Bill amends the *Employment Standards Act, 2000* to address when emergency leave is available to employees in case of infectious disease emergencies.

The amendments entitle an employee to a leave of absence without pay, starting on the prescribed date, if the employee will not be performing the duties of his or her position because of various reasons related to a designated infectious disease, including that the employee is under medical investigation, supervision or treatment; that the employee is in quarantine or isolation; that the employee is providing care or support to another individual; or that the employee is affected by travel restrictions. Restrictions on the entitlement are specified, and related amendments are made addressing the evidence of entitlement required, when the entitlement ends and the regulation-making powers.

An Act to amend the Employment Standards Act, 2000

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 Paragraph 10 of subsection 3 (5) of the *Employment Standards Act, 2000* is repealed and the following substituted:

10. A police officer, except as provided in Part XVI (Lie Detectors) or in a regulation made under clause 141 (2.1) (c).

2 Subsection 15 (7) of the Act is amended by adding the following “or an infectious disease emergency” after “declared emergency”.

3 The heading before section 50.1 of the Act is struck out and the following substituted:

EMERGENCY LEAVE: DECLARED EMERGENCIES AND INFECTIOUS DISEASE EMERGENCIES

4 (1) Subsection 50.1 (1) of the Act is repealed and the following substituted:

Emergency leave: declared emergencies and infectious disease emergencies

(1) In this section,

“board of health” has the same meaning as in the *Health Protection and Promotion Act*; (“conseil de santé”)

“designated infectious disease” means an infectious disease designated by the regulations for the purposes of this section; (“maladie infectieuse désignée”)

“public health official” means,

(a) within the meaning of the *Health Protection and Promotion Act*,

- (i) the Chief Medical Officer of Health or Associate Chief Medical Officer of Health,
- (ii) a medical officer of health or an associate medical officer of health, or
- (iii) an employee of a board of health, or

(b) a public health official of the Government of Canada; (“fonctionnaire de la santé publique”)

“qualified health practitioner” means,

(a) a person who is qualified to practise as a physician or nurse under the laws of the jurisdiction in which care or treatment is provided to the employee or an individual described in subsection (8), or

(b) in the prescribed circumstances, a member of a prescribed class of health practitioners. (“praticien de la santé qualifié”)

Leave of absence without pay

(1.1) An employee is entitled to a leave of absence without pay if the employee will not be performing the duties of his or her position,

(a) because of an emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act* and,

- (i) because of an order that applies to him or her made under section 7.0.2 of the *Emergency Management and Civil Protection Act*,
- (ii) because of an order that applies to him or her made under the *Health Protection and Promotion Act*,
- (iii) because he or she is needed to provide care or assistance to an individual referred to in subsection (8), or
- (iv) because of such other reasons as may be prescribed; or

(b) because of one or more of the following reasons related to a designated infectious disease:

- (i) The employee is under individual medical investigation, supervision or treatment related to the designated infectious disease.
- (ii) The employee is acting in accordance with an order under section 22 or 35 of the *Health Protection and Promotion Act* that relates to the designated infectious disease.

- (iii) The employee is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.
- (iv) The employee is under a direction given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the designated infectious disease.
- (v) The employee is providing care or support to an individual referred to in subsection (8) because of a matter related to the designated infectious disease that concerns that individual, including, but not limited to, school or day care closures.
- (vi) The employee is directly affected by travel restrictions related to the designated infectious disease and, under the circumstances, cannot reasonably be expected to travel back to Ontario.
- (vii) Such other reasons as may be prescribed.

(2) Subsections 50.1 (4) and (5) of the Act are repealed and the following substituted:

Evidence of entitlement, declared emergency

(4) An employer may require an employee who takes leave under clause (1.1) (a) to provide evidence reasonable in the circumstances, at a time that is reasonable in the circumstances, that the employee is entitled to the leave.

Evidence of entitlement, infectious disease emergency

(4.1) An employer may require an employee who takes leave under clause (1.1) (b) to provide evidence reasonable in the circumstances, at a time that is reasonable in the circumstances, that the employee is entitled to the leave, but shall not require an employee to provide a certificate from a qualified health practitioner as evidence.

Limit, declared emergency

(5) An employee is entitled to take a leave under clause (1.1) (a) for as long as he or she is not performing the duties of his or her position because of an emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act* and a reason referred to in subclauses (1.1) (a) (i) to (iv), but, subject to subsection (6), the entitlement ends on the day the emergency is terminated or disallowed.

Limit, infectious disease emergency

(5.1) An employee is entitled to take a leave under clause (1.1) (b) starting on the prescribed date and for as long as,

- (a) he or she is not performing the duties of his or her position because of a reason referred to in subclauses (1.1) (b) (i) to (vii); and
- (b) the infectious disease is designated by the regulations for the purposes of this section.

(3) Subsection 50.1 (8) of the Act is repealed and the following substituted:

Care, assistance, support — specified individuals

(8) Subclauses (1.1) (a) (iii) and (1.1) (b) (v) apply with respect to the following individuals:

1. The employee's spouse.
2. A parent, step-parent or foster parent of the employee or the employee's spouse.
3. A child, step-child or foster child of the employee or the employee's spouse.
4. A child who is under legal guardianship of the employee or the employee's spouse.
5. A brother, step-brother, sister or step-sister of the employee.
6. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
7. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
8. A son-in-law or daughter-in-law of the employee or the employee's spouse.
9. An uncle or aunt of the employee or the employee's spouse.
10. A nephew or niece of the employee or the employee's spouse.
11. The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
12. A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
13. Any individual prescribed as a family member for the purposes of this section.

(4) Subsection 50.1 (9) of the Act is repealed.

(5) Clause 50.1 (10) (b) of the Act is amended by striking out “clause 74 (1) (a) applies” at the beginning and substituting “clauses 74 (1) (a) and 74.12 (1) (a) apply”.

5 (1) Section 141 of the Act is amended by adding the following subsection:

Transitional regulations

(2.0.3.3) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020*.

(2) Subsection 141 (2.0.4) of the Act is amended by striking out “or (2.0.3.2)” wherever it appears and substituting in each case “(2.0.3.2) or (2.0.3.3)”.

(3) Subsections 141 (2.1), (2.2) and (2.3) of the Act are repealed and the following substituted:

Regulations re infectious disease emergencies

(2.1) The Lieutenant Governor in Council may make regulations,

- (a) designating an infectious disease for the purposes of section 50.1;
- (b) prescribing, for the purposes of subsection 50.1 (5.1), the date on which the entitlement to emergency leave under clause 50.1 (1.1) (b) starts or is deemed to have started;
- (c) providing that section 50.1 or any provision of it applies to police officers and prescribing one or more terms or conditions of employment or one or more requirements or prohibitions respecting emergency leave for infectious disease emergencies that shall apply to police officers and their employers;
- (d) exempting a class of employees from the application of section 50.1 or any provision of it, and prescribing one or more terms or conditions of employment or one or more requirements or prohibitions respecting emergency leave for infectious disease emergencies that shall apply to employees in the class and their employers;
- (e) providing that a term, condition, requirement or prohibition prescribed under clause (c) or (d) applies in place of, or in addition to, a provision of section 50.1.

Same, police officers

(2.1.1) A regulation made under clause (2.1) (c) may also provide that subsection 15 (7), sections 51, 51.1, 52 and 53, Part XVIII (Reprisal), section 74.12, Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions) and Part XXVII (Regulations) apply to police officers and their employers for the purposes of section 50.1.

Regulations re emergency leaves, declared emergencies, infectious disease emergencies

(2.2) A regulation made under subsection (2.0.3.3) or (2.1), or a regulation prescribing a reason for the purposes of subclause 50.1 (1.1) (a) (iv) or (b) (vii) may,

- (a) provide that it has effect as of the date specified in the regulation;
- (b) provide that an employee who does not perform the duties of his or her position because of the declared emergency and the prescribed reason, or because of the prescribed reason related to a designated infectious disease, as defined in section 50.1, is deemed to have taken leave beginning on the first day the employee does not perform the duties of his or her position on or after the date specified in the regulation; or
- (c) provide that clauses 74 (1) (a) and 74.12 (1) (a) apply, with necessary modifications, in relation to the deemed leave described in clause (b).

Retroactive regulation

(2.2.1) A regulation referred to in subsection (2.2) that specifies a date may specify a date that is earlier than the day on which the regulation is made.

Regulation extending leave

(2.3) The Lieutenant Governor in Council may make a regulation providing that the entitlement of an employee to take leave under clause 50.1 (1.1) (a) is extended beyond the day on which the entitlement would otherwise end under subsection 50.1 (5) or (6), if the employee is still not performing the duties of his or her position because of the effects of the declared emergency and because of a reason referred to in subclause 50.1 (1.1) (a) (i), (ii), (iii) or (iv).

Repeal

6 The SARS Assistance and Recovery Strategy Act, 2003 is repealed.

Commencement

7 This Act comes into force on the day it receives Royal Assent.

Short title

8 The short title of this Act is the *Employment Standards Amendment Act (Infectious Disease Emergencies), 2020*.