

COVID-19 UPDATE – MARCH 26, 2020

By Ryan Copeland, Brandon Hillis and Andrew Nicholl

On the morning of March 25, 2020, the first wave of federal COVID-19 legislation, [*An Act respecting certain measures in response to COVID-19*](#) was [passed by the Senate and received Royal Assent](#). This omnibus legislation provides for a number of legislative changes that will impact employers and employees, some of which were outlined in our bulletin from yesterday.

This bulletin addresses the new COVID-19 leave of absence of up to 16 weeks' duration that is now included in the *Canada Labour Code*. The leave is available to employees of federally regulated employers who are unable or unavailable to work for reasons related to COVID-19. There may be additional changes of interest to you in the amendments but a high-level summary of the new leave is set out below. As a preliminary point, we note that by regulation, terms may be defined for the purposes of the new leave and the 16 week duration of the leave is subject to amendment.

Limited scope to federally regulated employers

This new COVID-19 leave under the *Canada Labour Code* does not apply to provincially regulated employers or their employees.

Notice to Employer & Evidence

An employee must, as soon as possible, give written notice to the employer of the reasons for the leave and the length of the leave that they intend to take. An employee must, as soon as possible, give written notice to the employer of any change in the length of the leave of absence taken.

The employer may require an employee to provide a written declaration in support of the reasons for the leave of absence and of any change in the length of that leave.

Job Protection and Rights of Employee

An employee is entitled, on written request, to be informed in writing of every employment, promotion or training opportunity that arises during the period when the employee is on the leave of absence and for which the employee is qualified, and on receiving that request, the employer must provide the information to the employee.

An employer is prohibited from dismissing, suspending, laying off, demoting or disciplining an employee because the employee intends to take or has taken the leave of absence. Employers also cannot take such an intention or absence into account in any decision regarding promoting or training the employee. On an employee's return from the leave of absence, if the employee is unable to perform the work they performed prior to the absence,



an employer may assign them to a different position, with different terms and conditions of employment.

Benefits

The pension, health and disability benefits and the seniority of an employee who is absent from work due to the leave of absence accumulate during the entire period of the leave.

If contributions are required from an employee in order for the employee to be entitled to a benefit, the employee is responsible for and must, within a reasonable time, pay those contributions for the period of the leave of absence unless, at the commencement of the absence or within a reasonable time after, the employee notifies the employer of the employee's intention to discontinue contributions during that period.

An employer who pays contributions in respect of a benefit must continue to pay those contributions during the employee's leave of absence in at least the same proportion as if the employee were not absent, unless the employee does not pay the employee's contributions, if any, within a reasonable time.

For the purposes of calculating the pension, health and disability benefits of an employee in respect of whom contributions have not been paid as required above, the benefits do not accumulate during the leave of absence and employment on the employee's return to work is deemed to be continuous with employment before the employee's absence.

For the purposes of calculating benefits, other than benefits referred to above, of an employee who is absent from work due to the leave of absence, employment on the employee's return to work is to be deemed to be continuous with employment before the employee's absence.

Additional Information

On October 1, 2020, the COVID-19 leave provisions will be repealed and replaced with a new provision that provides for up to 16 weeks of leave due to quarantine.

In addition to the introduction of the COVID-19 leave, other important amendments were made, including exempting employees from the normal requirement to provide medical certificates for leaves under sections 206.3 (Compassionate Care Leave), 206.4 (Leave Related to Critical Illness) and 239 (Medical Leave). Note that those exemptions are set to expire on September 30, 2020. Changes were also made that will allow employees to disrupt, extend, and resume other leaves and their vacation after taking a COVID-19 leave.

Navigating COVID-19 in the Workplace

As with all of our previous COVID-19 updates, we caution that the pandemic and the responses of federal and provincial governments continue to evolve by the day and by the hour. We recognize that the guidance being provided by government authorities (and law firms) can be overwhelming. If you have any questions about any of these programs, or any questions at all about how your workplace should be addressing the COVID-19 pandemic, please do not hesitate to [contact us](#).



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[Ryan Copeland](#), [Brandon Hillis](#), and [Andrew Nicholl](#), are labour and employment lawyers at Roper Greyell LLP and practice in all areas of labour, employment and human rights law. To obtain contact information of any other lawyer at our firm, please visit: <https://ropergreyell.com/our-people/>

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