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Ontario Announces Support for Workers, Municipalities and Retailers in Response to COVID-19

Context

On March 19, 2020, the provincial government introduced and passed Bill 186 the [Employment Standards Amendment Act \(Infectious Disease Emergencies\), 2020](#), and Bill 187, the [Municipal Emergency Act, 2020](#). The bills were passed with the unanimous consent of 26 MPPs in an emergency sitting of the legislature.

The provincial government has stated that both pieces of legislation are aimed at protecting the jobs of employees who self-isolate or quarantine, helping keep store shelves stocked, and giving municipal councils the flexibility to continue operations while maintaining social distance.

Given its specific relevance for Ontario hospitals, the Ontario Hospital Association (OHA) has focused its non-exhaustive review on Bill 186. For further information on both pieces of legislation, please refer to the provincial government's news release and accompanying documents ([link](#)).

Key Highlights of Legislation

Bill 186 amends the *Employment Standards Act, 2000* (ESA) to address when emergency leave is available to employees in the case of infectious disease emergencies. Specifically, the changes to section 50.1 of the ESA create a leave of absence without pay for employees unable to work for the following reasons:

1. Because of an emergency declaration under section 7.01. of the *Emergency Management and Civil Protection Act* (EMCPA) has been made, and:
 - an order applies to the employee under section 7.0.2 of the EMCPA;
 - an order applies to the employee under the *Health Protection and Promotion Act* (HPPA);
 - the employee is needed to provide care or assistance to an individual listed below;
 - because of such other reasons as may be prescribed; **OR**
2. Because of one or more of the following reasons related to COVID-19 (the "designated infectious disease"):
 - the employee is under individual medical investigation, supervision or treatment related to the designated infectious disease;
 - the employee is acting in accordance with an order under section 22 or 35 of HPPA that relates to the designated infectious disease;

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- 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;
- 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;
- the employee is providing care or support to an individual listed below because of a matter related to the designated infectious disease that concerns that individual, including, but not limited to, school or day care closures;
- 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;
- such other reasons as may be prescribed.

An employee will be able to take the leave to care for the following individuals pursuant to section 50.1(8) of the ESA:

- the employee's spouse; a parent, step-parent or foster parent of the employee or the employee's spouse;
- a child, step-child or foster child of the employee or the employee's spouse;
- a child who is under legal guardianship of the employee or the employee's spouse;
- a brother, step-brother, sister or step-sister of the employee;
- a grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse;
- a brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee;
- a son-in-law or daughter-in-law of the employee or the employee's spouse;
- an uncle or aunt of the employee or the employee's spouse;
- a nephew or niece of the employee or the employee's spouse;
- the spouse of the employee's grandchild, uncle, aunt, nephew or niece;
- a person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met; or
- any individual prescribed as a family member for the purposes of this leave.

Pursuant to section 50.1(4.1) of the ESA, employers will not be permitted to require an employee to provide a certificate from a qualified health practitioner (e.g. a doctor's note) as evidence of entitlement to this leave. However, Bill 186 makes it clear that employers may require the employee

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to provide other evidence that is reasonable in the circumstances, at a time that is reasonable in the circumstances, including requests for evidence such as a note from the daycare or for evidence that the airline cancelled a flight.

The provincial government has stated that these measures are retroactive to January 25, 2020, the date the first presumptive COVID-19 case was confirmed in Ontario.

Employees will be entitled to the job protected leave for as long as they are not performing the duties of their position because of an emergency declared under section 7.0.1 of the EMCPA and a reason referred to in the lists above. The entitlement ends on the day the emergency is terminated or disallowed. For further details on Bill 186, including restrictions on the leave entitlement, when the entitlement ends, and other regulation-making power, please refer to the legislation here ([link](#)).

Timeline and Next Steps

Both Bill 186 and Bill 187 received Royal Assent on March 19, 2020 and have come into force. The OHA will continue to monitor developments related to this emergency legislation and members are welcome to provide feedback at any time.

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