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ONTARIO REGULATION 228/20

made under the

EMPLOYMENT STANDARDS ACT, 2000

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INFECTIOUS DISEASE EMERGENCY LEAVE

Interpretation and application

1. (1) In this Regulation,

“COVID-19 period” means the period beginning on March 1, 2020 and ending on the date that is six weeks after the day that the emergency declared by Order in Council 518/2020 (Ontario Regulation 50/20) on March 17, 2020 pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act* is terminated or disallowed.

(2) Subsections 2 (2) and 3 (2) and sections 4 to 10 do not apply to an employee who is represented by a trade union.

Designated diseases

2. (1) For the purposes of section 50.1 of the Act, the following diseases are designated as infectious diseases:

1. Diseases caused by a novel coronavirus, including Severe Acute Respiratory Syndrome (SARS), Middle East Respiratory Syndrome (MERS) and coronavirus (COVID-19).

(2) Despite subsection (1), the designation of coronavirus (COVID-19) as an infectious disease applies with respect to the reason prescribed in paragraph 1 of subsection 4 (1) only during the COVID-19 period.

Entitlement start date

3. (1) Entitlement to emergency leave under clause 50.1 (1.1) (b) of the Act because of a reason set out in subclauses 50.1 (1.1) (b) (i) to (vi) of the Act related to coronavirus (COVID-19) is deemed to have started on January 25, 2020.

(2) Entitlement to emergency leave under clause 50.1 (1.1) (b) of the Act because of the reason prescribed in paragraph 1 of subsection 4 (1) related to coronavirus (COVID-19) is deemed to have started on March 1, 2020 and applies during the COVID-19 period.

Prescribed leave, deemed leave

4. (1) For the purposes of subclause 50.1 (1.1) (b) (vii) of the Act, the following reason is prescribed:

1. The employee's hours of work are temporarily reduced or eliminated by the employer for reasons related to the designated infectious disease.

(2) An employee who does not perform the duties of his or her position because of the reason set out in paragraph 1 of subsection (1) is deemed to be on infectious disease emergency leave under section 50.1 of the Act in respect of any time during the COVID-19 period that the employee does not perform such duties because of that reason.

(3) Subject to subsections (4), (5) and (6), all requirements and prohibitions under the Act that apply in respect of a leave apply in respect of a leave that is deemed to be taken under subsection (2).

(4) An employee who is deemed to be on leave under subsection (2) is exempt from subsections 50.1 (2) and (3) of the Act.

(5) If an employee who is deemed to be on leave under subsection (2) stopped participating in any benefit plan described in subsection 51 (2) of the Act as of May 29, 2020, the employee is exempt from subsection 51 (1) during the COVID-19 period with respect to that benefit plan.

(6) If an employer of an employee who is deemed to be on leave under subsection (2) was not, as of May 29, 2020, making the employer's contributions for any benefit plan described in subsection 51 (2) of the Act that is related to the employee's employment, the employer is exempt from subsection 51 (3) during the COVID-19 period with respect to that benefit plan.

(7) Nothing in this section or subsection 5 (2) affects any payments or benefits the employee received from the employer during the period starting on March 1, 2020 and ending on May 29, 2020.

When employee not on leave

5. (1) For greater certainty, an employee whose employment is,

(a) terminated under clause 56 (1) (a) of the Act or severed under clause 63 (1) (a), (d) or (e) of the Act on or after March 1, 2020; or

(b) terminated under clause 56 (1) (b) or (c) of the Act or severed under clause 63 (1) (b) or (c) of the Act before May 29, 2020,

shall not be considered to be on infectious disease emergency leave for the reason set out in paragraph 1 of subsection 4 (1).

(2) An employee who has been given written notice of termination in accordance with section 57 or 58 of the Act shall not be considered to be on infectious disease emergency leave for the reason set out in paragraph 1 of subsection 4 (1) unless the employer and employee agree to withdraw the notice of termination.

Reduction in hours, wages not a layoff

6. (1) An employee whose hours of work are temporarily reduced or eliminated by the employer, or whose wages are temporarily reduced by the employer, for reasons related to the designated infectious disease during the COVID-19 period is exempt from the application of sections 56 and 63 of the Act for the purposes of determining whether the employee has been laid off, and the employee shall not be considered to be laid off under those sections, other than under clause 63 (1) (d) of the Act.

(2) Subsection (1) does not apply to an employee whose employment was terminated under clause 56 (1) (c) of the Act or severed under clause 63 (1) (c) of the Act before May 29, 2020.

Reduction in hours, wages not a constructive dismissal

7. (1) The following does not constitute constructive dismissal if it occurred during the COVID-19 period:

1. A temporary reduction or elimination of an employee's hours of work by the employer for reasons related to the designated infectious disease.

2. A temporary reduction in an employee's wages by the employer for reasons related to the designated infectious disease.

(2) Subsection (1) does not apply to an employee whose employment was terminated under clause 56 (1) (b) of the Act or severed under clause 63 (1) (b) of the Act before May 29, 2020.

Complaint deemed not to have been filed

8. (1) A complaint filed with the Ministry that a temporary reduction or elimination of an employee's hours of work by the employer or a temporary reduction in an employee's wages by the employer constitutes the termination or severance of the employee's employment shall be deemed not to have been filed if the temporary reduction or elimination of hours or the temporary reduction in wages occurred during the COVID-19 period for reasons related to the designated infectious disease.

(2) Subsection (1) does not apply if the employee's complaint relates to,

- (a) a termination under clause 56 (1) (a) of the Act or a severance under clause 63 (1) (a), (d) or (e) of the Act; or
- (b) a termination under clause 56 (1) (b) or (c) of the Act or a severance under clause 63 (1) (b) or (c) of the Act before May 29, 2020.

Reduction in hours of work, wages

9. (1) For the purposes of this Regulation, an employee's hours of work are considered to be reduced as follows:

1. If the employee has a regular work week, the employee's hours of work are considered to be reduced if the employee works fewer hours in the work week than they worked in the last regular work week before March 1, 2020.
2. If the employee does not have a regular work week, the employee's hours of work are considered to be reduced if the employee works fewer hours in the work week than the average number of hours they worked per work week in the period of 12 consecutive work weeks that preceded March 1, 2020.
3. If the employee was not employed by the employer during the entire work week that immediately preceded March 1, 2020, the employee's hours of work are considered to be reduced if the employee works fewer hours in the work week than they worked in the work week in which they worked the greatest number of hours.

(2) For the purposes of this Regulation, an employee's wages are considered to be reduced as follows:

1. If the employee has a regular work week, the employee's wages are considered to be reduced if the employee earns less regular wages in the work week than they did in the last regular work week before March 1, 2020.
2. If the employee does not have a regular work week, the employee's wages are considered to be reduced if the employee earns less regular wages than the average amount of regular wages they earned per work week in the period of 12 consecutive work weeks that preceded March 1, 2020.
3. If the employee was not employed by the employer during the entire work week that immediately preceded March 1, 2020, the employee's wages are considered to be reduced if the employee earns less regular wages than they did in the work week in which they earned the most regular wages.

(3) For the purposes of paragraph 1 of subsection (1) and paragraph 1 of subsection (2), if the employee was on vacation, not able to work, not available for work, subject to a disciplinary suspension or was not provided with work because of a strike or lock-out occurring at his or her place of employment or elsewhere for any part of the last work week before March 1, 2020, then the work week to be applied is, instead, the last regular work week before March 1, 2020 in which such conditions did not apply for any part of the work week.

(4) For the purposes of paragraph 2 of subsection (1) and paragraph 2 of subsection (2), if the employee was not employed, on vacation, not able to work, not available for work, subject to a disciplinary suspension or was not provided with work because of a strike or lock-out occurring at his or her place of employment or elsewhere for any part of a work week in the 12-week period referred to in those paragraphs, then that work week is excluded for the purposes of the calculation.

Assignment employees

10. For greater certainty, this Regulation applies to assignment employees, and sections 6 and 9 apply to such employees with necessary modifications.

O. Reg. 66/20

11. Ontario Regulation 66/20 is revoked.

Commencement

12. (1) Subject to subsection (2), this Regulation comes into force on the day it is filed.

(2) Subsection 2 (1) is deemed to have come into force on January 25, 2020.

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