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# Coronavirus (COVID-19): Legal update for Canadian employers – Legislation and employer updates

- Adrian Miedema, Partner, Toronto
- Meaghen Russell, Partner, Toronto
- Arianne Bouchard, Senior Associate, Montréal
- Larysa Workewych, Associate, Toronto

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#### **Meet our presenters**





Adrian Miedema Partner, Toronto +1 416 863 4678 adrian.miedema@dentons.com



Meaghen Russell Partner, Toronto +1 416 863 4397 meaghen.russell@dentons.com



Arianne Bouchard Senior Associate, Montréal +1 514 878 5892 arianne.bouchard@dentons.com



Larysa Workewych Associate, Toronto +1 416 863 4613 Larysa.workewych@dentons.com



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## O. Reg. 228/20: Impact of Ontario's Revised Infectious Disease Emergency Leave on layoffs and wage Cuts

Meaghen Russell, Partner, Toronto

Larysa Workewych, Associate, Toronto

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## **Provincial amendments to layoff provisions**

### Alberta

• Increase in maximum layoff period to up to 120 days

**British Columbia** 

• Increase in maximum layoff period to up to 16 weeks



## **Provincial amendments to layoff provisions**

## Manitoba

• Any period of layoff occurring after March 1, 2020 does not count toward a deemed termination

New Brunswick

• COVID-19 is an unforeseen event, relieving employers of their layoff or termination notice obligations



## **Provincial amendments to layoff provisions**

## Saskatchewan

 Suspended normal maximum period after which layoff deemed a termination (until 2 weeks after public emergency ends)

## **Ontario**?



## Where we left off in Ontario...

Infectious Disease Emergency Leave introduced under the Employment Standards Amendment Act (Infectious Disease Emergencies), 2020

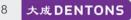
• Job protected leave for employees not able to perform the duties of their position because of prescribed reasons



## **Expansion of Infectious Disease Emergency Leave**

New reason for entitlement to leave:

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



## Layoffs converted to Leaves of Absence

Employees that:

- Do not perform the duties of their position
- During any period from March 1, 2020 until 6 weeks after Ontario's state of emergency ends
- For reasons related to COVID-19

are <u>deemed</u> to be on infectious disease emergency leave



## **Leave entitlements**

Obligations relating to leaves of absence now apply:

- Continued participation in benefit plans
- Continued employer contributions to benefit plans
- Reinstatement

**BUT** Regulation contains exceptions



## Layoffs

- Temporary reduction or elimination of hours is not a layoff
- Temporary reduction of wages is not a layoff
- "Stopped the clock" on deemed terminations under the ESA
- Exceptions?

## **Constructive dismissals**

- Temporary reduction or elimination of hours is <u>not</u> a constructive dismissal
- Temporary reduction of wages is <u>not</u> a constructive dismissal
- Exceptions?
- Does the Regulation affect common law claims?



## Implications for...

- Termination and severance
- Complaints filed with the Ministry of Labour



## **Regulation applies to...**

- Non-unionized employees
- Assignment employees (with necessary modifications)



## When will the Leave end?

- 6 weeks after the Government of Ontario declares there is no longer an emergency
- What happens when the leave ends?



## Things to consider

- Impact on the CERB?
- Potential employee claims?



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# Business travels and foreign workers in the time of COVID-19

Arianne Bouchard, Senior Associate, Montréal

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## **General principle**

- At this time, while allowed in some cases, business travel is still **strongly discouraged.**
- To maintain and expand national and international business contacts, and to move projects forward with these people/companies, companies should **prioritize the use of technological means rather than in-person meetings**.

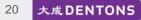


## Canadians travelling outside Canada

- To limit the spread of COVID-19, the Government of Canada advises that Canadians should avoid all non-essential travel outside of Canada until further notice, including non-essential business travel.
  - Strongly recommended but not prohibited.
- Many countries have put in place travel or border restrictions, such as border closures, movement restrictions and quarantines.
- Airlines have **cancelled several flights** and would generally **refuse passengers** with symptoms associated to COVID-19.

#### Canadian employees travelling within Canada, to another province

- Some provinces and all territories have adopted travel restrictions and/or quarantine requirements (generally 14 days) applicable to domestic travellers :
  - Manitoba, Newfoundland, Northwest Territories Nova Scotia, Nunavut New Brunswick, Prince Edward Island, Yukon
- Some categories of people are generally excluded from these orders, including:
  - persons who are transporting goods and materials into or through the province, if they are not displaying any symptoms of COVID-19;
  - persons who are engaged in providing essential services in the province, if they are not displaying any symptoms of COVID-19;
  - aircraft and train crew members, if they are not displaying any symptoms of COVID-19
- Other business travellers are generally not exempted from these orders.
- Fines and 6-month term imprisonment may be imposed to people and business not respecting these orders.



Risks associated with business travels made by Canadian employees

- If an employee becomes ill with COVID-19 while on a business trip made on the behalf his employer, in most jurisdiction, it would be considered as a workplace accident.
- Employer could also be liable for the additional costs incurred by the employee due to the fact they became ill with COVID-19 while on a business trip;
  - Medical cost when not covered by the workers' compensation board;
  - Additional accommodation and subsistance costs due to the fact that the worker is not able to come back home because they have COVID-19 / symptoms associated with COVID-19

## Foreigners travelling to Canada

- The situation is currently governed by the following Orders in Council form the Governement of Canada :
  - OIC 7 Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from any Country other than the United States)
    - Applicable until June 30, 2020.
  - OIC 10 Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation) No. 2
    - Applicable until June 30, 2020.
  - OIC 12 Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States)
    - Applicable until June 21, 2020.



#### Travel restrictions from foreign business travellers

- To be allowed to enter in Canada, foreigners from any other country than the United States must :
  - Be covered by one the exceptions set out in OIC 7 (includes: temporary workers, permanent resident visa holder, accredited officials, protected persons, transit passengers, family reunification or purpose related to national interest) AND
  - Be travelling for another reason than an optional or discretionary purpose
  - To be allowed to enter in Canada, foreigners from the United States must :
    - Demonstrate that they are travelling for another reason than **an optional or discretionary purpose**
- What is an « optional or discretionary purposes »? Is business travel excluded from that category?



#### **Business Travellers**

#### Optional or discretionary purposes

- What is an « optional or discretionary purposes »?
- No clear definition, but the Government has advised that it must be interpreted broadly. Example of travels that are not considered as optional or discretionary includes :
  - economic services and supply chains
  - critical infrastructure support
  - health (immediate medical care), safety and security
  - transiting through Canada for non-optional or non-discretionary purposes
  - any other activities that are deemed non-optional or non-discretionary by the Government of Canada or based on an officer's assessment
- Is business travel considered as non-optional or discretionary?
  - It depends. Must be assessed on a case by case basis.

#### **Temporary workers**

Applicable requirements

- Workers allowed to work in Canada pursuant to the Temporary Foreign Worker Program, and who travel to Canada for this reason, are generally allowed to enter Canada.
- However, most temporary foreign workers must quarantine for 14 days upon arrival. In this regard, workers and employers are encouraged to prepare a quarantine plan that can be presented to the border officers upon arrival.
- Temporary workers are not eligible to receive the Canadian Emergency Support Benefits (CERB). Employers are responsible for **paying them for a minimum 30 hours per week during quarantine**, and at the hourly rate of pay specified on the Labour Market Impact Assessment and/or offer of employment.
- Employers who do not comply with these requirements could be subject to **penalties of up to \$1 million** and a **ban from hiring foreign workers**.

#### **Business travellers and temporary workers**

#### Mandatory isolation / Quarantine

- Subject to the exemptions, all people entering Canada have to quarantine or isolate for **14 days**.
- People exempted\* from the mandatory quarantine order includes :
  - Truck drivers, crew members and other people working in the trade and transportation sector who cross the border while performing their duties for the purpose of performing their duties;
  - Those who cross the border regularly to go to their normal place of employment in Canada, including the healthcare sector, or critical infrastructure workers;
  - Emergency responders and personnel providing essential services to Canadians related to the COVID-19 outbreak;
  - Those who make necessary medical deliveries.
- The exemptions do not apply to people who have symptoms associated to COVID-19.
- Fines up to \$750,000 and 6-month term imprisonment may be imposed to people and business not respecting these orders.

#### Thank you





Adrian Miedema Partner, Toronto +1 416 863 4678 adrian.miedema@dentons.com



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Arianne Bouchard Senior Associate, Montréal +1 514 878 5892 arianne.bouchard@dentons.com



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