

Paid Statutory Leave for COVID-19 Absences: Update on Entitlement and the Reimbursement Process

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On April 29, 2021, the *COVID-19 Putting Workers First Act, 2021* was enacted into law. The practical impact of this legislation was to amend the *Employment Standards Act* (“ESA”) so as to provide eligible employees with a temporary entitlement to paid infectious disease emergency leave (“IDEL”) for specified reasons related to COVID-19. Recently, the Ontario government updated its online resources on the [COVID-19 Worker Income Protection Benefit](#), which is intended to fund the provision of paid IDEL. As a result, employers now have additional guidance on employee entitlement for the benefit, as well as on the reimbursement process.

Entitlement – Paid Leave Under Existing Contract

As noted in our earlier [Focus Alert](#) on the issue, the recent amendments to the ESA specify that an employee’s entitlement to paid IDEL will be reduced by any entitlement that the employee has under their employment contract (or collective agreement) as of April 19, 2021 for paid leave in the same circumstances, provided that the contractual entitlement is equal to or greater than the statutory entitlement. Where this is indeed the case, the employee in question’s entitlement to paid IDEL will be reduced to fewer than three days, or even to none at all.

Initially, many employers had questions about whether different types of entitlements to paid leave under an employment contract would impact their employees’ eligibility for paid IDEL. Helpfully, however, the Ontario government has now published a list of four criteria, all of which must be met in order for the employee’s statutory entitlement to be reduced. The criteria require that, on April 19, 2021:

1. The employee had the right to paid leave under their employment contract for one or more of the same reasons that paid IDEL can now be taken under the ESA,
2. The employee had not already used up those days of paid leave under their employment contract and those days remained available for use,
3. The employee’s paid leave under their employment contract provided for payment that is at least equal to what the employee would have been entitled to receive for paid IDEL, and
4. The employee’s paid leave under their employment contract was not subject to more restrictive conditions for taking the leave than what is set out in the ESA in respect of paid IDEL.

Where all of the above criteria are met, the employee’s statutory entitlement to three days of paid

IDEL is accordingly reduced by the number of days of contractual leave that meet the criteria. In the result, some employees may become ineligible for paid IDEL altogether, depending on their specific circumstances.

The Reimbursement Process

As also noted in our earlier Focus Alert on the issue, it is employers who bear the responsibility under the amended ESA to provide eligible employees with their regular pay, up to \$200 per day and for up to three days, if they take paid IDEL for one of the specified reasons related to COVID-19. However, employers can be reimbursed for this expense upon application to the Workplace Safety and Insurance Board (“WSIB”), as long as they do so within 120 days of the date of payment. Of note, although the WSIB is responsible for administering the COVID-19 Worker Income Protection Benefit reimbursement program, employers do not need to be registered with the WSIB to be eligible for the benefit.

Employers who may wish to claim the COVID-19 Worker Income Protection Benefit will be pleased to learn that additional resources and information related to the reimbursement process are now available. In particular, a [web portal](#) is now available, allowing employers to submit their claims for reimbursement electronically. The online application process is expected to take approximately 30 minutes and must be completed in one sitting. As a result, employers should ensure that they have all of the following at hand prior to beginning the application process:

- Their business registration details, including legal name, trade name, CRA number, and business bank account details,
- For WSIB registered employers only: (1) their Premium Remittance Statement (Schedule 1 employer), or (2) their Monthly Statement (Schedule 2 employer) for details such as their WSIB account number, firm number and last payment details,
- Their six-digit [North American Industry Classification System \(NAICS\) industry classification code](#),
- Work site address details,
- Details of any current paid sick leave coverages already available to the employees in question, including number of days, daily dollar amounts, and relevant policy instruments, and
- Personal details for the employees in question, including contact information, address, social insurance number, date of birth, and proof of payment (i.e., paystub).

Once an employer submits an online application, they will be provided with a claim confirmation number that will allow them to [track the status](#) of their claim. Claim payments are expected to begin by the end of June and should continue to occur on a bi-weekly basis thereafter. It is expected that it will take approximately two weeks to process an approved claim, though the precise timing of

payment of a claim will ultimately depend on the completeness of the application and the complexity of the claim.

Finally, various supports are now available for employers who are either considering or are actively involved in the claim process. More specifically:

- For employers seeking general information on issues such as eligibility criteria, application process and program rules, the COVID-19 Worker Income Protection Benefit Information Centre can be reached by calling 1-888-999-2248, and
- For employers with specific claim-related inquiries or experiencing technical issues in respect of the application process, a separate [web portal](#) is available to provide virtual support and assistance.

In Our View

Given the speed with which the *COVID-19 Putting Workers First Act, 2021* was enacted into law in an effort to address gaps in the public health response to the ongoing pandemic, it is not surprising that some aspects of the new entitlement to paid IDEL and of the COVID-19 Worker Income Protection Benefit program may not have initially been entirely clear. Employers will be pleased to know that helpful guidance on several issues, as well as a number of important resources, have now been made available to them by the provincial government.

And if our readers still have questions on paid IDEL or the related COVID-19 Worker Income Protection Benefit program, Emond Harnden invites you to [register](#) and tune in to tomorrow's webinar on the topic, which will include a lengthy Q&A session for attendees.

For more information on your rights and obligations as an employer dealing with COVID-19 or related issues, please contact [Neil Dzuba](#) at [613-940-2757](tel:613-940-2757) or [Patrick Twagirayezu](#) at [613-563-7660](tel:613-563-7660) ext. 314.