



Guide to Creating a Workplace Vaccination Policy

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CANADIAN
MANUFACTURERS
& EXPORTERS

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About Canadian Manufacturers & Exporters (CME)

From the first industrial boom in Canada, Canadian Manufacturers & Exporters (CME) has been advocating for and representing member interests. 150 years strong, CME has earned an extensive and effective track record of working for and with 2,500 leading manufacturers from coast to coast to help their businesses grow. CME's success comes from integrating the association with industry, being run by manufacturers for manufacturers.

Led by a national board of directors made up of senior leaders from a diverse group of Canadian manufacturers of all sizes, CME has its finger on the pulse of the sector. Canadian Manufacturers & Exporters supports manufacturers in their workforce, innovation, and export issues, and represents its members to the provincial and federal governments to foster a business environment that enables them to compete locally and internationally. CME also provides training in a variety of operational areas including health and safety, technology adoption, and Lean training.

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About Sherrard Kuzz LLP

Sherrard Kuzz LLP is a long-time supporter of CME and its members, and one of Canada's leading employment and labour law firms exclusively representing the interests of employers. Recognized nationally and internationally, Sherrard Kuzz is consistently named among *Canada's Top 10 Employment and Labour Boutiques (Canadian Lawyer®)*, *Canada's Leading Employment & Labour Law Firms (Chambers Global®, Best Lawyers®, Who's Who Legal® and Legal 500®)* and *Repeatedly Recommended (Lexpert®)*.

Sherrard Kuzz's clients are public and private, domestic and foreign, unionized and non-unionized, subject to provincial or federal regulation, and range in size and complexity of operations from small, single-location, single-business enterprises to large, multi-site, multinational organizations.

Sherrard Kuzz's lawyers are leaders in their field, and publish articles and lead national and international conferences on the full range of employment and labour law.

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Legal

The information contained in this Guide is provided for general information purposes only and does not constitute legal or other professional advice, nor does accessing this information create a lawyer-client relationship. This Guide is current as of September 28, 2021 and applies only to Ontario, Canada, or such other laws of Canada as expressly indicated. Information about the law is checked for legal accuracy as at the date the presentation/article is prepared, but may become outdated as laws or policies change.

Users of this Guide are encouraged to seek independent legal advice.

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1. Executive Summary

Over the past decade, CME and Sherrard Kuzz LLP have partnered to provide legal advice to manufacturers across Ontario and Canada. Our partnership aims to reduce the burden of human resources administrative complexity costs for manufacturers. To accomplish this, we advocate to governments to improve and simplify labour laws and regulations.

Since the onset of the COVID-19 pandemic, this partnership has expanded to include offering legal advice to CME members on how to protect their manufacturing workers and organizations. A significant aspect of this has been providing guidance regarding rapid testing protocols, sick days, and how to handle potential outbreaks or exposures within manufacturing facilities.

During the summer of 2021, CME conducted a survey of its members to get a sense of how manufacturers were approaching vaccination policies and mandates. The survey results revealed that many manufacturers were planning to impose strict vaccine mandates in order to enhance workplace safety and protect workers. These mandates included the consideration of terminating employees who chose not to get vaccinated. Despite this, the survey also revealed that most employers were uncertain about their legal capabilities to implement workplace policies concerning vaccines. Since then, governments across Canada have introduced a range of policies and mandates that set a framework for those in the private sector to follow. However, the direct impact and applicability of these measures on the manufacturing sector remain uncertain.

At a time when vaccination policies are becoming essential for workplaces across the country, manufacturers face new operational and legal uncertainties regarding how these policies will affect them and which policies are most appropriate for their operations. This guide is part of our ongoing effort to provide advice and intelligence, and help provide some certainty to the manufacturing sector.

Please keep in mind that the content of this guide provides general advice relating to the manufacturing sector, and is based on legal realities as of the date of publication. If new challenges arise for your company, users of the guide are encouraged to seek independent legal advice.

To support this, CME is pleased to partner with Sherrard Kuzz LLP to offer CME Ontario members one free phone-consultation, once per year, to a maximum of 15 minutes. CME members can use their 15 minutes to seek information about any employment or labour issue related to the organization (subject to Sherrard Kuzz LLP first successfully completing a conflict check to ensure it may advise the organization). To take advantage of this CME member benefit, please contact Ashley Stevens at ashley.stevens@cme-mec.ca.



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2. Overview

The purpose of this guide is to inform CME members of the latest legal developments in Canada arising from the COVID-19 pandemic. This guide will focus on three issues:

- **Vaccination requirements:** Are employers allowed to implement vaccination policies with respect to its employees? What are the requirements of a valid and enforceable vaccination policy?
- **Paid leave related to COVID-19:** What are paid leave entitlements of employees who contract COVID-19
- **COVID-19 and layoffs:** Are employers liable for reducing an employee's hours of work for reasons related to COVID-19?

3. Vaccination Requirements

Introduction

With COVID-19 vaccination within reach for most Canadians, many employers want to know if they can require employees and, in some cases, customers to be vaccinated once vaccines are readily available. Employers are also uncertain about the information they can collect about vaccination and whether widespread vaccination in the workplace means fewer health and safety protocols such as distancing, masking, disinfecting, etc..

For a sample vaccination policy, see Appendix 1.

In this section, we will address the following questions:

- **Question 1:** Can an employer mandate COVID-19 vaccination as a condition of employment?
- **Question 2:** Is an employer required to accommodate an employee who refuses to be vaccinated?
- **Question 3:** Can an employer collect information about COVID-19 vaccination status from its employees, even if not mandating vaccination?
- **Question 4:** Can a business screen its patrons (customers, clients, etc.) for COVID-19 vaccination prior to entry into the workplace?
- **Question 5:** Are we permitted to relax masking, physical distancing and other public health and safety measures if it can be confirmed all employees have been vaccinated?

Question 1: Can an employer mandate COVID-19 vaccination as a condition of employment?

Generally speaking, depending on the nature of the workplace and the employee's role, the employer may be able to require COVID-19 vaccination as a condition of employment, subject to the considerations and risks addressed below. In addition, since labour relation is, by default, within provincial jurisdiction, each province may have its own unique rules about the requirement or permissibility of a vaccination policy. Similarly, different rules may apply for federally regulated employers.

Non-Unionized Workplace

Subject to the human rights and privacy considerations set out in Questions 2 and 3 below, an employer can implement a mandatory vaccination policy for its non-unionized employees.

For a newly hired employee, a vaccination requirement should be clearly set out in the offer of employment. The offer of employment should clearly state it is conditional upon the employee meeting the vaccination requirement described therein, and the offer is void if the candidate fails to meet the requirements.

For an existing employee, depending on the nature of the workplace and the employer's justification to require mandatory vaccination, refusal to be vaccinated may or may not amount to just cause to terminate the employee. The court will ask whether, in light of the details of this particular employment relationship, the continuation of the employment relationship is tenable in light of the employee's decision not to follow the vaccination policy.

If the employer decides to terminate an employee for their failure to follow the vaccination policy, and a court finds the employer did not have just cause to do so, the employee may be entitled to pay in lieu of notice and in some cases severance pay (under employment standards legislation). Common law notice may also be owed, depending on the terms and conditions of employment. It is also important to be mindful that an employer may be limited in its ability to terminate without cause in certain parts of the country. Specifically, in Nova Scotia, Quebec, and federally, an employer may only be able to terminate an employee with a prescribed length of service for just cause/good and sufficient reason.

An employer should also be aware that there may be a risk that the implementation of a mandatory vaccination policy may lead an employee to claim constructive dismissal. Constructive dismissal happens if an employer makes a unilateral and substantial change to an essential term of the employment contract. If a court determines implementation of a mandatory vaccination policy constitutes constructive dismissal, the employee will be entitled to the same amount of notice, or pay in lieu, as if their employment was terminated without cause.

Accordingly, before implementing a mandatory vaccination policy, an employer should consider a number of factors, including:

- Whether its objectives can be met in ways other than implementing a mandatory vaccination policy

- How it will respond if an employee refuses to be vaccinated on the basis of personal choice.
- The costs associated with legal proceedings and potential for an unfavourable outcome.

In some circumstances, an employer may try to reduce potential liability by implementing a vaccination policy that provides non-disciplinary alternatives if an employee elects not to be vaccinated. This could include: placing an employee on an unpaid leave of absence, requiring the continued use of PPE even after it is no longer required by law, or another measure to reduce potential COVID-19 transmission in the workplace. This type of policy will generally have less legal risk than a policy that mandates vaccination as a requirement of employment. The sample policy at Appendix 1 is an example of a vaccination policy that provides non-disciplinary options to an employee who is not vaccinated.

There are a variety of factors that may need to be explored to determine the vaccination policy appropriate for your workplace. For this reason, we recommend you consult with experienced employment counsel prior to implementing a vaccination policy in your workplace.

Unionized Workplace

Just as in the non-unionized context, in the unionized context an employer may require a candidate to be vaccinated prior to commencing employment (subject to human rights considerations). This condition must be clearly identified in the letter of offer.

In a unionized workplace, a mandatory vaccination policy must be reasonable, and an arbitrator has jurisdiction to determine whether this is the case. A defensible mandatory vaccination policy is one which strikes an appropriate balance between the management's right to manage the workplace, and the interests of the employees. One way this can be done is by proving a mandatory vaccination policy is necessary for health and safety purposes, or other legitimate workplace objectives.

At present, there is no reported case law on the reasonableness of a COVID-19 vaccination policy. However, there are a number of arbitration decisions in which an employer's influenza vaccination policy was found to be reasonable. While the respective vaccination policies differed slightly in each decision, they shared the following common features:

- they were implemented in the healthcare sector and, in most cases, applied to healthcare workers who provided direct care to vulnerable populations
- in the event of an outbreak of influenza, an employee was not permitted to work unless vaccinated or the employee had begun an anti-viral prophylaxis regimen (and remained out of the workplace for a specified period of time after beginning the regimen)
- an employee not permitted to work was kept out of the workplace only for as long as the outbreak

- the policy was non-disciplinary and provided options to an employee who refused to be vaccinated, including take the prophylaxis treatment, take an unpaid leave of absence or, in some cases, access vacation credits or banked time to offset the financial impact.

The circumstances surrounding COVID-19 are not identical to that of general influenza. For example, there does not yet appear to be a discrete COVID-19 “season”. Nevertheless, the influenza decisions offer some helpful insight into the factors an arbitrator might consider when assessing the whether a vaccination policy is reasonable. In general, arbitrators will consider the following:

- **The nature of the risk:** What risk does COVID-19 pose in this workplace in general, and with respect to this employee in particular? Are the employees and/or clients particularly vulnerable, such that an unvaccinated employee would contribute to negative health outcomes in the workplace?
- **Government recommendations:** Have public health authorities recommended or required vaccination?
- **Consequences:** What sort of consequences does the policy impose? Generally, policies which impose non-disciplinary consequences are more likely to be upheld.
- **Less intrusive measures were considered:** Can the employer meet its legitimate objectives through less intrusive means, such as educational campaigns and incentives?
- **Human rights:** Does the policy acknowledge the application of the human rights legislation, and provide for the accommodation of employees entitled to one?

If an arbitrator finds a policy to be unreasonable under the collective agreement, he/she would have broad remedial powers, including:

- issuing a declaration the policy is invalid
- awarding monetary damages for lost wages
- awarding monetary damages for any non-monetary loss the employee may have suffered
- reinstatement.

Practical Tips

A clear and concise COVID-19 vaccination policy and rollout strategy can assist to reduce legal risk and encourage vaccination within the workplace. At a minimum, a COVID-19 vaccination policy should:

In general, a vaccination policy must contain the following elements:

- **Purpose:** Generally the purpose of the policy is to protect the health and safety of the employer's employees and clients. State why COVID-19 vaccination is a reasonable requirement in the workplace (e.g., in light of the nature of the work performed, risk to other employees and members of the public, etc.)
- **Requirements:** What does the employer expect the employee to do? Generally, the policy would require or encourage an employee to be fully vaccinated by an approved vaccine and by a certain date, and provide proof therefore to the employer.
- **Consequences:** Clarify if vaccination is required as a condition of employment. If it is, state failure to comply with the policy will result in the employee not being permitted to attend work, and/or will result in termination of employment.
 - If vaccination is not mandatory, identify non-disciplinary alternatives to vaccination if an employee elects not to be vaccinated. Options could include an unpaid leave of absence, continued use of PPE, or other measures to reduce potential COVID-19 transmission in the workplace.
- **Human rights:** It is important the policy acknowledge the employer's obligation to accommodate an employee under the applicable human rights legislation.
- **Privacy:** Identify what vaccination information will be collected and how it will be used, stored and destroyed. State what steps the employer will take to safeguard vaccination information collected from employees.

An effective COVID-19 vaccination policy rollout will:

- encourage optional vaccination through education and incentives (if applicable) prior to mandatory vaccination
- provide advance notice of the effective date of the vaccination policy.

Note: a longer period of advance notice may assist to reduce potential liability if an employee claims the policy requirements constitute a constructive dismissal.

In a unionized workplace, an employer should also consider seeking the union's input prior to rolling out a policy to minimize the potential for a policy grievance later.

Below we provide a cross-Canada review of any specific vaccination requirements by jurisdiction, current as of September 28, 2021.

Ontario

In Ontario, an employer is entitled, and in some circumstances required, to implement a COVID-19 workplace vaccination policy.

In Ontario, O. Reg 364/20, *Rules for Areas at Step 3 and at the Roadmap Exit Step* requires any business or organization open for business to operate “in compliance with the advice, **recommendations** and instructions of public health officials...”. (emphasis added).

Medical officers of Toronto, Halton, Hamilton, and Peel have issued directions recommending (or strongly recommending) any local business to implement and enforce COVID-19 vaccination policies. Therefore, in these jurisdictions it is a legal requirement for an employer to have a policy encouraging vaccination.

In addition, directives have been issued for organizations in certain high-risk settings (long-term care, hospitals, certain home care providers, education and others) that require them to implement a policy that requires employees be vaccinated or, if not vaccinated, to undergo education and routine rapid COVID-19 testing to reduce the potential for workplace transmission.

None of the other jurisdictions in Canada have a requirement like O Reg 364/20. However, these jurisdictions may have sector-specific vaccination requirement. In addition, some jurisdiction have “vaccine passport” or “vaccine certification” requirements which apply to persons patronizing businesses.

Effective September 22, 2021, Ontario will require proof of vaccination in certain setting, including indoor dining. A QR code will be available in Ontario by October 22, 2021.

British Columbia

In British Columbia, there are no vaccination requirements in the manufacturing sector. However, employees in certain sectors are required to be vaccinated. The provincial health official have announced everyone working in long-term care and assisted living facilities will be required to be vaccinated against COVID-19 by October 12, 2021.

Proof of vaccination is required in some setting, including licensed restaurants with indoor dining.

Alberta

There are no vaccination requirements in Alberta. However, certain business would be exempted from public health measures if they require proof of vaccination, or a negative COVID-19 test from a private vendor. The Government of Alberta issues a vaccination card for use by those vaccinated.

Saskatchewan

There are no vaccination requirements in Saskatchewan. However, the government has indicated it is supportive of employer “vax or alternate measures” policies.

Quebec

The *Public Health Act* provides that the Government can order compulsory vaccination of the entire population or any part of it against a contagious disease. However, there is no government decree, law or any other legal basis for an employer to mandate COVID-19 vaccination as a condition of employment in Quebec. Indeed, in order for this to apply, it must be a “bona fide occupational requirement” to be vaccinated. In most workplaces, this will be difficult to prove. However, the situation continued to evolve.

As of September 1, 2021, the Premier of Quebec and the Minister of Health have announced the implementation of a vaccination passport in the province. The need for such a passport is limited to, among others, theaters, cinemas or sporting events, bars and restaurants, casinos and gambling houses, arcades, and certain other places of leisure.

A new ministerial order should be adopted and published soon, as the Premier and the Minister of Health have made a statement on September 7, regarding all health care workers and stating that they have to be adequately vaccinated by October 15, 2021. This Order applies to all workers in the health care network (public and private), regardless of their position. It is therefore broader in scope than the one of April, which excluded administrative staff from this obligation.

Ministerial Order 2021-024, dated April 9, 2021, requires employees in the Quebec health network provide their employer with proof of vaccination against COVID-19. The Premier and the Minister of Health have stated all health care workers, including administrative staff, must be adequately vaccinated by October 15, 2021. This Order applies to all workers in the health care network (public and private), regardless of their position.

In Quebec, an employee credited with two years of uninterrupted service in the same enterprise who believes that he has not been dismissed for a good and sufficient cause may file an unjust dismissal complaint. Reinstatement is available as a remedy in these circumstances.

Nova Scotia

No vaccination requirement. In Nova Scotia, an employee with 10 years or more of service cannot be terminated or suspended without good reason or just cause. What is good reason will depend on the employee’s and employer’s circumstances.

New Brunswick

There are currently no vaccination requirements in New Brunswick. However, a proof of vaccination program is expected to be announced.

Federal

The Federal Government has announced its intention to require vaccination of all federal employees.¹ In addition, the federal government has indicated its intention to require employees in the federally regulated air, rail, and marine transportation sectors be vaccinated no later than October.

Under the *Canada Labour Code*, a person who has completed 12 consecutive months of continuous employment by an employer, and who is not subject to a collective agreement, may file an unjust dismissal complaint. Reinstatement is an available remedy in these circumstances.

Question 2: Is an employer required to accommodate an employee who refuses to be vaccinated?

Yes, human rights legislation applies to vaccination policies in both unionized and non-unionized contexts.

An employee who is unable to receive the COVID-19 vaccine due to a disability or another grounds protected by the human rights legislation may claim the requirement to be vaccinated is discriminatory. In that case, an employer must accommodate the employee to the point of undue hardship. Each request for accommodation must be assessed on an individual basis, and possible accommodation might include:

- exempt the employee from the requirement to be vaccinated
- move the employee to a remote work arrangement or a position or location in the workplace that does not require direct and/or regular contact with co-workers, customers, clients, vulnerable individuals, or the public
- require the continued use of personal protective equipment (PPE) to mitigate the risk of transmission, even if no longer required by law.

If the employer can prove it cannot accommodate the employee without undue hardship, it will have demonstrated vaccination is a *bona fide* occupational requirement, and not discriminatory.

¹ <https://www.canada.ca/en/treasury-board-secretariat/news/2021/08/government-of-canada-to-require-vaccination-of-federal-workforce-and-federally-regulated-transportation-sector.html>

Question 3: Can an employer collect information about COVID-19 vaccination status from its employees?

Even if an employer does not mandate vaccination, it may still want to collect information about its employees' vaccination status for health and safety or commercial purposes. For example, a business may wish to advertise that its staff are vaccinated.

A policy requiring an employee to disclose his vaccination status must meet the same general requirements discussed above under Question 1. In addition, an employer that operates in a province or industry with privacy legislation applicable to employee personal information must ensure collection of vaccination information is reasonable. A vaccination policy should clearly outline why collection of vaccination information is reasonably necessary, the scope of its use and disclosure, and how it will be stored and destroyed.

If the reason the information is collected is to advertise or promote the business as “fully vaccinated” (for example) an employer must obtain consent from each employee prior to disclosing this information to the public.

An employer who is considering implementing a disclosure requirement should consult with legal counsel.

Question 4: Can a business screen its patrons (customers, clients, etc.) for COVID-19 vaccination prior to entry into the workplace?

In some jurisdictions, screening may be required in certain industries by provincial legislation (through the use of “vaccine passports”). Otherwise, a business may elect to screen for vaccination prior to entry, subject to the considerations outlined below.

Human Rights

An individual unable to receive the COVID-19 vaccine due to a health condition or religious belief may claim the requirement to be vaccinated constitutes discrimination in the provision of services contrary to human rights law. In that case, a business must be able to demonstrate vaccination is a bona fide requirement in light of the nature of the business, and accommodate the individual to the point of undue hardship.

Each request for accommodation must be assessed on an individual basis, and possible accommodation might include:

- exempt the individual from the requirement to be vaccinated
- provide service through an alternate means (delivery, curbside pickup, etc.)
- require the continued use of PPE to mitigate the risk of transmission, even if no longer required by law.

Privacy

The Personal Information Protection and Electronic Documents Act (Canada) applies to the collection of personal information from an individual for commercial purposes. As such, the collection of vaccination information must be done in a manner consistent with the requirements of this legislation. This means the business must:

- obtain informed consent
- only collect information needed to fulfill a legitimate business objective
- only use information for the purpose it is collected
- securely store information to avoid inadvertent disclosure or a data breach
- safely destroy information after it is no longer required.

Practical Tips

If a business does elect to collect information about patron vaccination even if not required to do so, it should:

- implement a COVID-19 vaccination screening policy to clearly outline the reasons for collection and how it will use, store and destroy any personal information collected
- collect as little personal information as possible. For example, ask a patron to confirm vaccination (either verbally or through a visual scan of documentation) without collection of any identifying information or a physical copy of any proof of vaccination status.
- train employees on how to provide service to a customer who states they are unable to comply with the requirement for a human-rights related reason.

Question 5: Are we permitted to relax masking, physical distancing and other public health and safety measures if it can be confirmed all employees have been vaccinated?

The vaccination status of employees within a workplace does not (currently) impact the health and safety requirements mandated by law. They apply regardless. Employees should follow the PPE and distancing requirements imposed by the provincial and local public health authorities.

4. Cross-Canada COVID-19 Related Leave

In response to the pandemic, governments across Canada have implemented various leaves. In what follows we discuss the applicable leaves across Canadian jurisdictions.

For a table summarizing leave entitlements in Canada, please see Appendix 2.

In Ontario, on April 29, 2021, the Government of Ontario passed Bill 284, the *COVID-19 Putting Workers First Act, 2021*. The legislation amended the Ontario Employment Standards Act, 2000 (“ESA”) to provide time off (paid and unpaid) for COVID-19 related matters including vaccination. Bill 284 has important implications for Ontario employers. The key amendments, now in force, are set out below.

Time Off for Vaccination

Bill 284 amends the ESA to expressly provide that vaccination is considered “treatment related to a designated infectious disease”. This means an employee is entitled to Infectious Disease Emergency Leave (“IDEL”) (paid or unpaid) if they need time away from work to be vaccinated or because of an adverse side-effect related to vaccination.

Paid Leave

An employee is entitled to up to a total of three paid days of IDEL between April 19, 2021 and December 31, 2021. Leave need not be taken in consecutive days. As with the former Personal Emergency Leave under the ESA, an employee who takes part of a day as paid leave is deemed to have taken a full day of paid leave.

An employee is entitled to paid IDEL in the following circumstances:

- The employee is under individual medical investigation, supervision or treatment related to COVID-19. This includes being vaccinated and also dealing with any after-effect of the vaccine.
- The employee is acting in accordance with an order under Section 22 or 35 of the *Health Protection and Promotion Act* that relates to COVID-19.
- The employee is in quarantine or isolation or subject to a control measure (including self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to COVID-19 issued to the public, in whole or in part, or to one or more individuals by a public health official, qualified health practitioner, Telehealth Ontario, the Government of Ontario or Canada, a municipal council or board of health, whether through print, electronic, broadcast or other means.
- The employee is under the employer’s direction to not attend at work in relation to a concern the employee may expose others to COVID-19.

- The employee is providing care and support to a prescribed family member because the family member is under individual medical investigation, supervision or treatment related to COVID-19, or is in quarantine, isolation or subject to a control measure (including self-isolation) for the same reasons as would entitle the employee to IDEL.

If paid IDEL is exhausted, the employee may take unpaid IDEL for the same purposes as set out above.

Under Bill 284, the default is that the three paid days are used before unpaid leave is taken. However, if an employee is entitled to both paid and unpaid IDEL, the employee can elect to take the day as an unpaid leave if the employee advises the employer in writing before the end of the pay period in which the leave occurs. In effect, this allows an employee to 'save' the paid IDEL days for later use.

If an employee took an unpaid day of IDEL between April 19 and 29, 2021 for a reason that would also entitle the employee to paid IDEL, the employee may elect to take the day as one of the three paid IDEL days if the employee advises the employer in writing by no later May 13, 2021. This amount is to be paid out on the pay day for the pay period in which the election was made.

Evidence of Entitlement

An employer is entitled to request evidence reasonable in the circumstances, at a time that is reasonable in the circumstances, to verify leave entitlement, but an employer cannot require an employee to provide a certificate from a qualified health practitioner as evidence. This does not prohibit an employer from requesting public health documentation to confirm a COVID-19 test result, a direction to isolate, or proof of vaccination.

Amount of Paid Leave

Pay for a leave day is the lesser of:

- \$200; or
- The wages the employee would have earned if they had not taken the leave. If an employee receives performance-related wages (including commission or a piece work rate) the entitlement is the greater of the employee's hourly rate, if any, and the minimum wage applicable to the employee for the number or hours they would have worked if they had not taken the leave.

This means that if an employee's daily rate of pay is more than \$200, the employee receives only the \$200 and not a regular full day's pay.

If an employee would have been entitled to a shift premium and/or overtime pay if they had worked, they are not entitled to these amounts; the calculation is based on the employee's regular rate only. Similarly, if the day of leave falls on a public holiday on which the employee would have otherwise worked, the employee is not entitled to premium pay in the calculation of the paid leave entitlement.

Impact on Bill 124

Paid IDEL is not to be considered an increase to existing compensation or a new compensation entitlement for the purpose of the Protecting a Sustainable Sector for Future Generations Act, 2019.

Exemptions Related to Existing Employment Policy or Contract

If, as of April 19, 2021, an employee was entitled to take paid leave under an employment policy or contract, in a circumstance in which the employee is also entitled to paid IDEL, the employee's entitlement to paid IDEL is reduced by the employee's entitlement under the policy or contract. This includes entitlement to paid time off under a sick leave policy, COVID-19 policy or collective agreement.

For example, if an employee is entitled to two days of paid time off under an employment policy or contract, the employee is entitled to one day of paid IDEL. If an employee is entitled to five days paid leave under a policy or contract, but as of April 19, 2021 all of those days have been exhausted, the employee is entitled to up to three days of paid IDEL.

This exemption only applies if the amount to which the employee is entitled under the policy or contract is equal to or greater than the amount of paid IDEL. For example, if the employment policy or contract caps entitlement at 66% of regular wages and that amount is less than the paid IDEL entitlement, the three days of IDEL entitlement will not be reduced by those leave days.

Reimbursement of Paid Leave Amount

An employer may apply to the Workplace Safety and Insurance Board ("WSIB") for repayment of paid IDEL. However, an employer cannot claim reimbursement for any payment made to an employee under an employment contract or policy. As such, if the employer has a sick leave or COVID-19 leave policy that already compensates the employee for this time off, these amounts will not be reimbursed by the WSIB.

Note: An employer cannot amend any employment policy or contract to eliminate an existing paid leave entitlement in order to claim reimbursement. If, as of April 19, 2021, an employee was entitled to such paid leave under an employment policy or contract, that is the critical date.

Finally, an employer is not entitled to be reimbursed if the employee also received benefits under the Workplace Safety and Insurance Act ("WSIA") for the days of leave.

Process to Claim Reimbursement

To claim reimbursement, an employer must file:

- A completed application form
- An attestation to:

- confirm the employer made a payment for leave taken by the employee
 - specify the date and amount of payment
 - confirm that, on or after April 19, 2021 the employer was not otherwise required under an employment policy or contract to make the payment to the employee.
- A record of the payment made to the employee in a form approved by the WSIB
 - Information about any claims filed with the WSIB in respect of the employee

A claim must be made within 120 days of the payment for which reimbursement is sought. However, no application shall be made or accepted after January 25, 2022 (unless a later date is prescribed).

The WSIB will advise an employer in writing whether reimbursement is approved. There is no hearing or right of appeal of this decision.

For frequently asked questions regarding Ontario's IDEL, see Appendix 3.

5. COVID and Layoffs

Many employers have reduced hours of work and/or pay of employees in light of the pandemic. Most employment standards legislation in Canada permit employers to do so on a temporary basis without incurring notice of termination and/or severance liabilities.

For a table summarising laws governing temporary layoffs across Canada, see Appendix 4.

In Ontario, on May 29, 2020, the Government of Ontario introduced a regulation under the Employment Standards Act, 2000 (“ESA”) that provided relief to any employer that had temporarily laid off or reduced the wages and/or hours of a non-union employee due to COVID-19. The regulation largely exempts any such layoff or reduction from being deemed a termination of employment, such that there is no obligation to provide ESA notice or severance pay. The employee is deemed to be on an Infectious Disease Emergency Leave (“IDEL”).

The regulation applies to a temporary layoff or reduction in wages and/or hours between March 1, 2020 and January 1, 2022 (the “COVID-19 Period”) The net result is that an employee who has been laid off or had their wages and/or hours reduced for COVID-19 related reasons can continue to be on an IDEL until January 1, 2022, without triggering termination and severance pay obligations under the ESA.

Practically, this means as of January 2, 2022, the exemption does not apply, and an employer who does not restore an employee to his/her regular terms and conditions of employment, in particular hours of work and pay, may be faced with claims under the ESA.

However, this regulation may not affect an employee’s right to pursue a common law claim for constructive dismissal based on a temporary layoff or reduction of hours related to COVID-19. There are conflicting trial court decisions on this in Ontario. To-date, appellate courts have not ruled on this issue.

Appendix 1: Sample Vaccination Policy

COVID-19 VACCINATION POLICY

[NOTE: THIS IS A POLICY THAT PROVIDES NON-DISCIPLINARY ALTERNATIVES IF AN EMPLOYEE ELECTS NOT TO BE VACCINATED. IT IS NOT A MANDATORY VACCINATION POLICY]

DATE

Purpose

COVID-19 is a serious condition and has had a devastating impact on Canadians and others across the globe. **COMPANY NAME** adopts this Policy to protect the health and well-being of our employees and customers.

Application

This Policy applies to the following individuals (“employee” or “employees”): [OUTLINE EMPLOYEE GROUPS TO WHOM THIS POLICY WILL APPLY].

Effective Date

This Policy is in effect as of DATE [WILL WANT TO PROVIDE ADVANCE NOTICE AND ALSO ENSURE POLICY IS NOT EFFECTIVE UNTIL EMPLOYEES HAVE THE OPPORTUNITY TO OBTAIN A VACCINATION].

Vaccination Requirement

COMPANY NAME asks that each employee be fully vaccinated against COVID-19. For the purpose of this Policy, “fully vaccinated” means having received the full series of a COVID-19 vaccine or combination of COVID-19 vaccines approved by WHO (e.g., two doses of a two-dose vaccine series, or one dose of a single-dose vaccine series) and having received the final does of the COVID-19 vaccine at least 14 days ago. It also means having received any subsequent dose, booster or boosters that may be required or recommended by the provincial government and/or public health authorities.

Each employee is asked to show proof of vaccination to **NAME OR POSITION** prior to the Effective Date.

If an employee cannot be vaccinated for a reason protected by the provincial human rights legislation (such as a medical condition), they should speak with **NAME OR POSITION** and will be provided with accommodation to the point of undue hardship. An employee may need to provide medical documentation or other proof to support the accommodation request.

If an employee refuses to be vaccinated due to personal choice, or if an employee elects not to provide proof of vaccination as requested above, they will be required to comply with alternate measures as required by [COMPANY NAME](#) to reduce the potential for COVID-19 transmission in the workplace. OPTIONAL: This may include the continued use of personal protective equipment (when no longer required by law), restriction on use of common areas in the workplace, rapid testing or other measures deemed necessary by [COMPANY NAME](#). Failure to adhere to any such alternate measures may result in discipline, up to and including termination of employment for cause.

Proof of Vaccination

Any vaccination records maintained will only be accessible by [NAME OR POSITION](#) and will be securely stored with appropriate physical and technical safeguards. This information will not be disclosed to any third party without employee consent, unless required by law.

Questions

For any questions about this Policy, please speak to [NAME OR POSITION](#).

Appendix 2: Cross-Canada COVID-Related Leave Entitlements

Jurisdiction	Leave Type	Description
BC	Paid Vaccination Leave	Employees can take up to 3 hours of paid leave to be vaccinated against COVID-19. If necessary, they can take additional paid leave for a second dose.
	COVID-19 Paid sick leave	An employee is entitled to three paid days between May 20, 2021 and December 31, 2021 for reasons related to COVID-19, including requirement to quarantine.
	COVID-19 Unpaid sick leave	An employee is entitled to job-protected, unpaid sick leave for reasons related to COVID-19. An employee can be on leave as long as the conditions triggering the leave persist.
	Personal Illness or Injury Leave	An employee who is employed for at least 90 days is entitled to up to 3 unpaid days off in each year of employment for personal illness or injury.
	Family Responsibility Leave	an employee is entitled to up to 5 unpaid days off in each year of employment to meet responsibilities related to the care, health or education of a child in the employee's care, or the care or health of any other member of the employee's immediate family.
	Compassionate Leave	An employee is entitled up to 27 weeks of unpaid leave to provide care or support to a family member if a medical practitioner or nurse practitioner issues a certificate stating the family member has a serious medical condition with a significant risk of death within 26 weeks.

	Bereavement	An employee is entitled to up to 3 unpaid days of leave to grieve, attend a funeral and take care of issues related to the death of member of their immediately family.
AB	COVID-19 Quarantine Leave	An employee is entitled to 14 consecutive days if he is in quarantine.
	Personal and Family Responsibility Leave	An employee is entitled to a job-protected leave to care for ill or self-isolated family members, or children affected by school and daycare closures. The length of this leave is flexible and depends on guidance from the Chief Medical Officer. An employee is also entitled to up to 5 unpaid days off in each year for the employee's health or for the employee to meet his/her family responsibilities in relation to a family member.
	Long-term Illness and Injury Leave	An employee who has worked for 90 days can take up to 16 weeks of unpaid leave in the event of long-term illness and injury leave each calendar year.
	Critical Illness of Child Leave	An employee who has worked for 90 days can take up to 36 weeks for the purpose of providing care or support to a child.
	Compassionate Care Leave	An employee who has worked for 90 days can take up to 27 weeks for the purpose of providing care or support to a seriously ill family member.
	Bereavement Leave	An employee is entitled to up to 3 unpaid days in the event of a death of a family member
ON	Leave for a Declared Emergency	An employee is entitled to a leave of absence without pay if the employee is not performing the duties of the employee's position because of an emergency declared. Currently, there is no declaration of emergency in effect.

	Infectious Disease Emergency Leave (paid and unpaid)	An employee is entitled to paid and/or unpaid leave if the employee is not performing the duties of the employee's position because of a designated infectious disease. Currently only COVID-19 is designated. For more details, see Appendix xxx.
	Family Responsibility Leave	An employee is entitled to a maximum unpaid leave of three days in a calendar year because of the illness, injury or medical emergency of a family member, or an urgent matter that concerns a family member.
	Family Medical Leave	An employee is entitled to a leave of absence without pay of up to 28 weeks to provide care or support to an ill family member.
	Family Caregiver Leave	An employee may take up to eight weeks of unpaid leave to provide care or support to a family member with a serious medical condition.
	Critical Illness Leave	Critical illness leave may be taken to provide care or support to a critically ill minor child or adult who is a family member of the employee. A critical illness leave taken to care for a minor child can last up to 37 weeks within a 52 week period. A critical illness leave taken to care for an adult can last up to 17 weeks.
	Sick leave	An employee is entitled to a leave of absence without pay because of a personal illness, injury or medical emergency for a total of three (3) days in each calendar year.
	Bereavement Leave	An employee is entitled to a leave of absence without pay for a period of two days because of the death of a family member.
MB	COVID-19 Related Leave	An employee is entitled to a leave of absence if, in relation to the COVID-19 pandemic, they cannot perform their work because of a COVID-19 related reasons. An employee can take this leave as many times as necessary, as long as one of the eligible circumstances apply to them. An employee is entitled to leave

	<p>whenever a circumstance set out above applies to the employee. The leave ends when none of those circumstances apply to the employee.</p>
Leave related to Critical Illness	<p>An employee is entitled to unpaid critical illness leave for up to 37 weeks to provide care or support to a critically ill child who is a family member of the employee.</p> <p>An employee is entitled to unpaid critical illness leave for up to 17 weeks to provide care or support to a critically ill adult who is a family member of the employee.</p> <p>A leave must end no later than 52 weeks after the day the first period of leave began.</p> <p>If a child or adult remains critically ill after the 52-week period expires, the employee is entitled to take another leave and the requirements of this section apply to the new leave.</p>
Family Leave	<p>An employee employed for 30 days may take up to three (3) days of unpaid leave each year, but only to the extent that the leave is necessary for the health of the employee; or for the employee to meet his or her family responsibilities in relation to a family member.</p>
Compassionate Care Leave	<p>An employee is entitled to unpaid compassionate care leave of up to 28 weeks to provide care or support to a seriously ill family member. The 28-week leave does not have to be consecutive and can be broken into two periods.</p> <p>A leave must end no later than 52 weeks after the day the first period of leave began.</p>
Bereavement Leave	<p>An employee who has been employed for 30 days may take up to three days of unpaid leave on the death of a family member</p>

SK	Public Health Emergency Leave	An employee is entitled to a leave of absence for the period of time in which the chief medical officer's public health emergency declaration is in place related to COVID 19.
	Compassionate Care Leave	An employee can take up to 28 weeks for the purpose of providing care or support to a family member with a serious medical condition with a significant risk of death within 26 weeks from the date the leave commences.
	Critically Ill Family Care Leave	An employee is entitled to: <ul style="list-style-type: none"> • critically ill child care leave of up to 37 weeks to provide care and support to the employee's critically ill child family member • critically ill adult care leave of up to 17 weeks to provide care and support to the employee's critically ill adult family member
	Bereavement Leave	An employee is entitled up to 5 unpaid days in the case of a death of a member of the employee's immediate family.
QC	Sick Leave	An employee with three months of service is entitled to up to two paid days of sick leave a year. Total absences must not exceed 26 weeks over a 12-month period. This 12-month period starts on the date of the first absence. An employee's regular position and related benefits are protected by law for the duration of their leave.
	Family Obligation Leave	<u>Paid Absence</u> After three (3) months of uninterrupted service, an employee is entitled to a total of two (2) days of paid absence per year: <ul style="list-style-type: none"> • to take care of a relative or person with whom he or she acts as an informal caregiver, • in case of sickness,

		<ul style="list-style-type: none">• for organ or tissue donation,• following an accident, domestic violence, sexual violence or a crime <p><u>Short-Term Absence</u></p> <p>An employee may be absent from work for 10 days per year, without pay:</p> <ul style="list-style-type: none">• to fulfill obligations related to the care, health or education of his child or the child of his spouse• due to the state of health of a relative or a person for whom the person acts as a natural caregiver, as must be certified by a professional working in the health and social services sector. <p>The leave may be divided into days, and may also be divided into parts of days with the employer's authorization.</p> <p><u>Extended Absence</u></p> <p>An employee may be absent from work, without pay, regardless of his or her uninterrupted service for:</p> <ul style="list-style-type: none">• 16 to weeks over a period of 12 months when his presence is required owing to an accident or serious illness involving a relative of the employee or a person for whom he acts as a natural caregiver, as must be certified by a professional working in the health and social services community.• up to 27 weeks over 12 months if the seriously ill person suffers from a potentially fatal illness, certified by a medical certificate, and up to 104 weeks if this person is the employee's minor child• up to 36 weeks over 12 months if the seriously ill person or accident victim is a minor child For other information related to absences for family reasons, see the Death, disappearance or suicide section or the Victim of a crime and his family circle section.
	Death or Suicide Leave	<p>An employee may be absent from work for 5 days, including 2 day with pay, in the case of the death or funeral:</p> <ul style="list-style-type: none">○ of his spouse

		<ul style="list-style-type: none"> o of his child o of the child of his spouse o of his father or mother o of his brother or sister. <p>And 1 day without pay in other cases.</p>
NB	COVID-19 Emergency Leave	An employee is entitled to an unpaid leave of absence for COVID-related reasons.
	Sick Leave	An employee with 90 days is entitled to up to 5 unpaid days of leave during a twelve calendar month period for sick leave.
	Family Responsibility Leave	Up to 3 unpaid days of leave during a twelve calendar month period to meet responsibilities related to the health, care or education of a person in a close family relationship with the employee
	Compassionate Care Leave	An employee is entitled up to 28 weeks of unpaid leave to provide care or support to a person with whom the employee has a close family relationship who is critically ill or at significant risk of dying.
	Bereavement Leave	An employee is entitled to up to 5 unpaid consecutive calendar days on the death of a person in a close family relationship with the employee.
	Critically-Ill Child Leave	An unpaid leave of up to 37 weeks to allow parents or other family members to provide care and support for a critically ill child who is under 18 years old.
	Critically-Ill Adult Leave	An unpaid leave of up to 16 weeks to allow parents or other family members to provide care and support for a critically ill adult who is 18 years of age or older.

NS	Emergency Leave	An employee is entitled to an unpaid leave where an emergency prevents the employee from performing their job duties.
	Sick Leave	An employee is entitled to a maximum of three days of unpaid leave per year where leave is required a) due to sickness of a child, parent or family member b) for medical, dental or other similar appointments during working hours
	Compassionate Leave	An employee with three months is entitled up to 28 weeks of unpaid leave to provide care or support to a family member of the employee who has a serious medical condition with a significant risk of death within 26 weeks
	Critically-Ill Child Care Leave	An employee with three months is entitled to an unpaid leave of up to 37 weeks to allow parents or other family members to provide care and support for a critically ill child.
	Critically-Ill Adult Care Leave	An employee with three months is entitled to up to 16 weeks to allow parents or other family members to provide care and support for a critically ill adult.
	Bereavement Leave	An employee is entitled to unpaid leave of absence of up to 5 consecutive working days upon the death of the employee's spouse, parent, guardian, child, ward, grandparent, grandchild, sister, brother, mother-in-law, father-in-law, son-in-law, daughter-in-law, sister-in-law or brother-in-law.
NL	Communicable Disease Emergency Leave	An employee can access this leave if he/she is unable to work because of reasons related to a designated communicable disease.
	Leave Related to Critical Illness	An employee with 30 days is entitled to a leave of absence without pay of up to 37 weeks to provide care or support to a critically ill child who is a family member
	Sick and Family Responsibility Leave	An employee with 30 days is entitled to up to 7 days unpaid leave in a year.

	Compassionate Leave	An employee with 30 days is entitled to a leave of absence without pay of up to 28 weeks to provide care or support to a family member of the employee
	Bereavement and Sick Leave	For an employee who has been employed under a contract of service with the same employer for a continuous period of at least 30 days is entitled one day paid leave and 2 days unpaid leave in the event of the death of a family member.
PEI	Sick Leave	An employee who has been with an employer for at least 3 consecutive months is entitled to unpaid leaves of absence of up to three days for sick leave during a twelve-month period. Employees who have more than five years of continuous service with the same employer are entitled to an additional paid sick day in each calendar year.
	Family Leave	An employee with at least six months of continuous service can take unpaid leaves of absence of up to three days during a twelve-month period to meet responsibilities related to the health or care of a family member.
	Compassionate Care Leave	An employee can take up to 8 weeks of unpaid leave to provide care and support to a member of the employee's family who has been diagnosed with a serious medical condition carrying with it a significant risk of death within 26 weeks.
	Bereavement Leave	In the event of the death of an immediate family member, an employee is entitled to one day paid bereavement leave and up to two days unpaid bereavement leave.

Appendix 3: IDEL Frequently Asked Questions

Question: Is an employee entitled to time off if he/she suffers from COVID-19 symptoms?

Yes, under the Ontario Employment Standards Act, an employee may be entitled to Infectious Disease Emergency Leave (IDEL).

Question: Is paid IDEL available to a dependent or independent contractor?

No, only to an employee governed by the ESA is entitled to IDEL.

Question: Is paid IDEL available to a temporary or part-time employee?

Yes, so long as the employee is governed by the ESA. This includes any employee of a provincially-regulated employer whose employment is governed by ESA: full-time, part-time, students, construction employees, unionized and non-unionized, temporary employees, servers, working from home, working in a home (such as a nanny), etc.

Question: With respect to temporary help agency employees, if the placement client directs the temporary employee not to come back to work because of a concern the employee may expose others to COVID-19, is the employee entitled to paid IDEL?

If the employee is placed on a leave by the temporary help agency due to the placement client's concern (i.e., is not placed at another workplace) the employee is entitled to paid IDEL from the temporary help agency.

Question: Is an employer entitled to reimbursement for paid IDEL?

In some circumstances, an employer may be entitled up to \$200 for reimbursement of paid IDEL. Please see the discussion above for details.

Question: Is the \$200 payment subject to deductions and will the employer be entitled to recover from the WSIB the employer contributions for CPP, EI, etc.?

The \$200 is considered wages and subject to regular deductions. The employer is not entitled to reimbursement of any related employer contributions for CPP, EI, etc.

Question: If an employer already provides paid sick days (personal days, etc.), are employees still entitled to paid IDEL?

First, remember the key date is April 19, 2021. As at that date, the Province has effectively "reset the clock". So, the question an employer must ask is *to what is an employee entitled on that date?*

If, on April 19, 2021, an employee is entitled to take paid leave under an employment contract, **in any of the circumstances in which the employee would be entitled to paid IDEL**, the employee's entitlement to paid IDEL is reduced by the employee's entitlement under the contract.

For example:

- If an employee is entitled to five days of paid time off under an employment contract, and that paid time off could be used for an IDEL purpose, and as of April 19, 2021, the employee has used none of those days, and needs to use a day for an IDEL purpose, the employee is not entitled to additional paid IDEL.
- If that same employee has used two of the paid days provided under the employment contract, such that as of April 19, 2021 the employee has three more days available, the employee is not entitled to additional paid IDEL.
- If that same employee has used three paid days under the employment contract such that, as of April 19, 2021 the employee has only two paid days available, in that case the employee is entitled to one additional paid IDEL day (should it be needed).
- If that same employee has used five paid days under the employment contract such that, as of April 19, 2021 the employee has no paid days available, in that case the employee is entitled to up to three additional paid IDEL days (should any be needed).

The analysis must be done on an employee-by-employee basis because each employee may have used up a different number of the paid days off provided by the employer. The only time the analysis is not employee-by-employee, and can be a blanket approach, is if the workplace does not provide any paid days off which could be used for an IDEL purpose; in that case, post April 19, 2021 every employee is entitled to up to three paid IDEL days (should they be required).

Note:

- A paid "floater" or "personal" day over which an employee has control as to scheduling likely counts as a contractual entitlement to a paid day that could be used for an IDEL purpose.
- The employer is only entitled to apply for reimbursement for a paid IDEL day, not for any paid day provided to an employee under an employment contract even if that paid day is taken after April 19. The program is designed so that an employee must first exhaust their paid days under the employment contract before accessing any paid IDEL day.

Question: What if the contractual entitlement does not cover ALL of the possible reasons for paid IDEL?

As noted above, the contractual entitlement need only cover any of the circumstances in which the employee would be entitled to paid IDEL. The contractual entitlement need not cover all of the circumstances.

Question: If an employee receives the Canada Recovery Sickness Benefit (“CRSB”), can they also receive paid IDEL?

An employee is entitled to paid IDEL if they meet the eligibility requirements, regardless of any entitlement to CRSB. However, an employee’s eligibility for CRSB may be impacted if an employee has received paid IDEL. An employee is only eligible for CRSB if the employee did not receive paid leave from the employer for the same period for which they have applied for CRSB.

Question: Does an employer have to be registered with the WSIB in order to qualify for the reimbursement?

No, the role of the WSIB is simply to facilitate reimbursement.

Question: How does an employer apply for reimbursement?

This procedure has not yet been published.

Question: Will an employer’s request for reimbursement impact the employer’s WSIB rating?

We do not believe so, as the reimbursement is not issued out of the WSIB Insurance Fund.

Question: If an employer is closed down under section 22 of the Health Protection and Promotion Act, are employees eligible for paid IDEL?

Yes, in this case an employee would be eligible as they are required to isolate due to the order of a public health official.

Appendix 4: Cross-Canada Temporary Layoff Rules

Jurisdiction	Temporary layoff rules												
BC	<p>In British Columbia, an employee cannot be temporarily laid off for more than 13 weeks in any given 20-week period. If the employer is not ready to recall the employee after 13 weeks of layoff, there are two options:</p> <ul style="list-style-type: none"> • Variance: the employer and employees apply together to the Employment Standards Branch to extend the temporary layoff beyond 13 weeks. The employer must show at least 51% of affected employees support the application for variance. • Termination: if the parties are not able to secure a variance, the temporary layoff cannot be extended beyond 13 weeks. This results in the termination of the employment. The employer may be liable to compensate the employee based on length of service. 												
AB	<p>In Alberta, an employer may temporarily lay off an employee. For a layoff unrelated to COVID-19, the rules are as follows:</p> <table border="1" data-bbox="382 878 1824 1219"> <thead> <tr> <th data-bbox="382 878 802 951">Initial layoff date</th> <th data-bbox="802 878 1346 951">Maximum length of temporary layoff</th> <th data-bbox="1346 878 1824 951">Termination occurs</th> </tr> </thead> <tbody> <tr> <td data-bbox="382 951 802 1024">Prior to March 17, 2020</td> <td data-bbox="802 951 1346 1024">60 days total in a 120-day period</td> <td data-bbox="1346 951 1824 1024">61st day</td> </tr> <tr> <td data-bbox="382 1024 802 1143">March 17, 2020 – June 17, 2020</td> <td data-bbox="802 1024 1346 1143">120 consecutive days from the initial layoff date</td> <td data-bbox="1346 1024 1824 1143">121st consecutive day</td> </tr> <tr> <td data-bbox="382 1143 802 1219">On or after June 18, 2020</td> <td data-bbox="802 1143 1346 1219">90 days total in a 120-day period</td> <td data-bbox="1346 1143 1824 1219">91st day</td> </tr> </tbody> </table> <p>If the temporary layoff is COVID related, the employer may temporarily layoff the employee for 180 consecutive days. Termination occurs on the 181st consecutive day.</p>	Initial layoff date	Maximum length of temporary layoff	Termination occurs	Prior to March 17, 2020	60 days total in a 120-day period	61st day	March 17, 2020 – June 17, 2020	120 consecutive days from the initial layoff date	121st consecutive day	On or after June 18, 2020	90 days total in a 120-day period	91st day
Initial layoff date	Maximum length of temporary layoff	Termination occurs											
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ON	<p>In Ontario, ordinarily a layoff of more than 13 weeks in a 20 week period (and in limited circumstances 35 weeks in any period of 52 consecutive weeks) constitutes termination, and the employer would be liable to notice of termination or pay in lieu thereof, and/or severance.</p> <p>Under O Reg, enacted on May 29, 2020, an employer is exempted from these default rules until January 1, 2022. During this period a non-unionized employee affected by layoff would be deemed to be on a job protected IDEL. This protection is set to end on January 1, 2021.</p>
MB	<p>In Manitoba, a layoff of less than 8 weeks in a 16 week period is temporary. If the layoff becomes longer it becomes termination and wages in lieu of notice must be paid.</p> <p>This period does not include any period during which a declaration of emergency is in effect.</p>
SK	<p>In Saskatchewan, in the event of a public health emergency, an employer is not required to provide statutory notice when they layoff employees for a period or periods of 12 weeks or less in a 16-week period.</p>
QC	<p>In Quebec, employers do not have to provide advance notice before laying off non-unionized employees for a duration of less than six months</p>
NB	<p>In New Brunswick, an employer who, on or after March 12, 2020, suspends, lays off, dismisses or otherwise terminates an employee eligible or deemed to be eligible to be granted an emergency leave shall be deemed to have granted the employee an emergency leave.</p>
NS	<p>In Nova Scotia, an employer is not required to pay notice or severance as a result of a layoff if the person is discharged or laid off for any reason beyond the control of the employer, including complete or partial destruction of plant, destruction or breakdown of machinery or equipment, unavailability of supplies and materials, cancellation, suspension or inability to obtain orders for the products of the employer, fire, explosion, accident, labour disputes, weather conditions and actions of any governmental authority, if the employer has exercised due diligence to foresee and avoid the cause of discharge or lay-off</p>

NL	In Newfoundland, under the <i>Labour Standards Act</i> an employee who is temporarily laid off for longer than 13 weeks in a period of 20 consecutive weeks is considered to be permanently terminated. Under section 53(1)(g) the employer is not required to provide notice or severance if it is required to terminate the contract of service on account of climatic or economic conditions that are beyond the foreseeable control of the employer and that necessitate declaration of redundancy.
PEI	n/a



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