



## COVID-19 Comprehensive Update – What We Know So Far

The 2019 Novel Coronavirus or COVID-19 pandemic has had an unprecedented impact on the Canadian workforce. There is a lot of new information coming out every day. Our intent with this publication is to provide Ontario employers up to date relevant information regarding their existing and new obligations to employees. We will continue to monitor developments closely and will update this page as the situation evolves. This version was published at 12pm on June 8, 2020.

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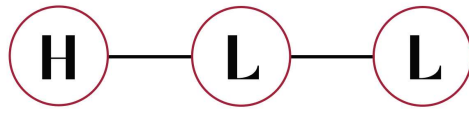
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## **1. What is New from the Provincial Government?**

- **State of Emergency in Ontario (March 17, 2020)**

On Tuesday March 17, 2020, Ontario Premier Doug Ford declared a state of emergency in Ontario due to the Covid-19 pandemic. The Order grants the government extensive powers to make orders that the Lieutenant Governor in Council believes are necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage to property” Such orders must only be in place for as long as necessary. Orders under subsection 7.0.2 (4) of the Act are deemed to be revoked after 14 days unless they are renewed. On the recommendation of the Premier, the Legislature may, by resolution, extend the period of the emergency for additional periods of no more than 28 days. The orders may be made respecting the following:

1. Implementing any emergency plans
2. Regulating or prohibiting travel or movement to, from or within any specified area.



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3. Evacuating individuals and animals and removing personal property from any specified area and making arrangements for the adequate care and protection of individuals and property.
4. Establishing facilities for the care, welfare, safety and shelter of individuals, including emergency shelters and hospitals.
5. Closing any place, whether public or private, including any business, office, school, hospital or other establishment or institution.
6. To prevent, respond to or alleviate the effects of the emergency, constructing works, restoring necessary facilities and appropriating, using, destroying, removing or disposing of property.
7. Collecting, transporting, storing, processing and disposing of any type of waste.
8. Authorizing facilities, including electrical generating facilities, to operate as is necessary to respond to or alleviate the effects of the emergency.
9. Using any necessary goods, services and resources within any part of Ontario, distributing, and making available necessary goods, services and resources and establishing centres for their distribution.
10. Procuring necessary goods, services and resources.
11. Fixing prices for necessary goods, services and resources and prohibiting charging unconscionable prices in respect of necessary goods, services and resources.
12. Authorizing, but not requiring, any person, or any person of a class of persons, to render services of a type that that person, or a person of that class, is reasonably qualified to provide.
13. Subject to subsection (7), requiring that any person collect, use or disclose information that in the opinion of the Lieutenant Governor in Council may be necessary in order to prevent, respond to or alleviate the effects of the emergency.
14. Consistent with the powers authorized in this subsection, taking such other actions or implementing such other measures as the Lieutenant Governor in Council considers necessary in order to prevent, respond to or alleviate the effects of the emergency.

Under subsection 7.1(1) of the Act, the government may make appropriate orders when “victims of an emergency or other persons affected by the emergency need greater services, benefits or compensation”. Subsection 7.1(2) allows the government to suspend the operation of a provision of statute, regulation, rule or by-law – which includes the suspension of limitation periods and periods of time within which a step must be taken in a proceeding. Orders under subsection 7.1(2) shall not exceed 90 days, but may be extended.



Upon declaring a state of emergency, the government issued two orders immediately. The first ordered the immediate closure of:

- all facilities providing indoor recreational programs;
- all public libraries;
- all private schools as defined in the Education Act;
- all licensed childcare centres;
- all bars and restaurants, except to the extent that such facilities provide takeout food and delivery;
- all theatres including those offering live performances of music, dance, and other art forms, as well as cinemas that show movies; and
- concert venues.

The second order prohibited all organized public events of over 50 people.

This declaration of a state of emergency followed the provincial government's announcement on March 12th, 2020 that all public schools would be closed for a two-week period following march break (from March 14th to April 5th).

- [Ontario Government Creates Declared Emergency and Infectious Disease Emergency Leaves \(March 19, 2020\)](#)

On March 19, 2020 the Ontario Government passed Bill 186, the *Employment Standards Amendment Act (Infectious Disease Emergencies)*. The Bill eliminates the existing Declared Emergency leave and replaces it with new Emergency Leave: Declared Emergencies and Infectious Disease Emergencies.

The legislation will apply retroactively to January 25, 2020 (when the first presumptive case of COVID-19 was confirmed in Ontario) and will provide job-protected leave "because of an emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act*, and":

- because of an order that applies to him or her made under section 7.0.2 of the *Emergency Management and Civil Protection Act*,
- because of an order that applies to him or her made under the *Health Protection and Promotion Act*,
- because he or she is needed to provide care or assistance to an individual referred to in the list below, or
- because of such other reasons as may be prescribed.

The legislation also provides a job protected leave for employees for the following reasons related to infectious disease:



- The employee is under individual medical investigation, supervision or treatment related to the designated infectious disease.
- The employee is acting in accordance with an order under the *Health Protection and Promotion Act* that relates to the designated infectious disease.
- The employee is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.
- The employee is under a direction given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the designated infectious disease.
- The employee is providing care or support to an individual from the list below because of a matter related to the designated infectious disease that concerns that individual, including, but not limited to, school or day care closures.
- The employee is directly affected by travel restrictions related to the designated infectious disease and, under the circumstances, cannot reasonably be expected to travel back to Ontario.
- Such other reasons as may be prescribed.

Employers are not permitted to ask for a medical note if employees choose to take infectious disease emergency leave. However, the employer may require employees who take the leave to provide other evidence that is reasonable in the circumstances, at a time that is reasonable in the circumstances. This could include requests for a note from the daycare or for evidence that the airline cancelled a flight but cannot include a medical note.

An employee will be able to take declared or infectious disease emergency leave to care for the following individuals:

- The employee's spouse.
- A parent, stepparent or foster parent of the employee or the employee's spouse.
- A child, stepchild or foster child of the employee or the employee's spouse.
- A child who is under legal guardianship of the employee or the employee's spouse.
- A brother, stepbrother, sister or stepsister of the employee.
- A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.

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- A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
- A son-in-law or daughter-in-law of the employee or the employee's spouse.
- An uncle or aunt of the employee or the employee's spouse.
- A nephew or niece of the employee or the employee's spouse.
- The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
- A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
- Any individual prescribed as a family member for the purposes of this section.

The amendment allows the government to among other things, make regulations designating an infectious disease, setting the date entitlement to emergency leave begins, exempting a class of employees from entitlement to emergency leave or even extending entitlement to infectious disease emergency leave when it would otherwise end. As of March 20, 2020, the government issued Ontario Regulation 66/20 listing "diseases caused by a novel coronavirus" including COVID-19 as designated infectious diseases. It also deemed the regulation to come into effect on January 25, 2020. No exemption regulation has been issued.

On April 14, 2020, the Ontario Ministry of Labour posted a [guide](#) to the new Infectious Disease Emergency Leave.

In addition to providing a summary of this new leave of absence, the guide notes that if an employee was dismissed on or after January 25, 2020 due to an absence that meets the criteria for infectious disease emergency leave, the employer is required to reinstate the employee to their most-recently held (or comparable) position as of March 19, 2020.

#### Who is Eligible for the Infectious Disease Emergency Leave?

Most full-time and part-time provincial employees in Ontario are covered by the provisions in this legislation, including students, temporary help agency assignment employees, and casual workers. As noted, the government may publish regulations exempting some employees from all or parts of the leave entitlement. As of the time of publication, no regulations had been published.

Like all other protected leaves, employees who exercise their right to Infectious Disease Leave are entitled to the following protections:

- Employees cannot be subject to employer reprisal for accessing the leave;
- Employees are entitled to benefit continuation during the leave if the employee continues to pay their portion of the premiums;





- Employees are entitled to reinstatement to their position at the end of the leave, if it still exists, or to a comparable position, if it does not.
- [Ontario Government Suspends Limitation Periods and Filing Deadlines \(March 20, 2020\)](#)

On March 20, 2020, the Ontario Government filed [Ontario regulation 73/20](#) under the Emergency Management and Civil Protection Act. The Regulation retroactively suspends limitation periods effective March 16, 2020. It also extends and “period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, be suspended for the duration of the emergency”. As noted above, this Order cannot exceed 90 days unless it is extended by further regulation. Once the Order is lifted, the limitation period or period of time resumes running on the date on which the temporary suspension ends and the temporary suspension period shall not be counted.

- [Ontario Ministry of Health & Long-Term Care Issues Temporary Order Lifting Collective Agreement Restrictions on Redeploying Hospital Employees \(March 21, 2020\)](#)

On March 21, 2020, the Ontario government issued [an order](#) giving health service providers (which includes hospitals) the ability to cancel and postpone services to free-up space and staff, identify staffing priorities, and develop, modify and implement redeployment plans. The Order also allows the health service providers to collect information from staff and contractors regarding their likely or actual exposure to the virus.

Under this temporary order hospitals will be able to respond to, prevent and alleviate an outbreak of COVID-19 by carrying out measures such as:

- Redeploying staff within different locations in (or between) facilities of the hospital;
- Redeploying staff to work in COVID-19 assessment centres;
- Changing the assignment of work, including assigning non-bargaining unit employees or contractors to perform bargaining unit work;
- Changing the scheduling of work or shift assignments;
- Deferring or cancelling vacations, absences or other leaves, regardless of whether such vacations, absences or leaves are established by statute, regulation, agreement or otherwise;
- Employing extra part-time or temporary staff or contractors, including for the purpose of performing bargaining unit work;



- Using volunteers to perform work, including to perform bargaining work; and
- Providing appropriate training or education as needed to staff and volunteers to achieve the purposes of a redeployment plan.

When utilized by hospitals, these redeployment plans temporarily supersede the provisions of a collective agreement, including lay-off, seniority/service or bumping provisions. The Order also suspends the grievance procedure for any grievances *related to the issues covered by the Order*.

- [Ontario Government Addresses Redeployment in Long Term Care and Ontario Clean Water Agency \(March 23, 2020\)](#)

On March 23, 2020, the Ontario issued Orders to provide long-term care homes and the Ontario Clean Water Agency with greater flexibility with respect to staffing.

Similar to the order with respect to hospital staffing, Regulation 77/20 and Regulation 75/20 provide long-term care homes and the Ontario Clean Water Agency with authority to temporarily override collective agreement provisions when identifying staffing priorities and instituting redeployment plans.

- [Ontario Government Issues Temporary Order Declaring Closure of all Non-Essential Business \(March 23, 2020\)](#)

Effective 11:59 pm on March 24, 2020, the Ontario government ordered the closure of non-essential businesses. The order was enacted under the *Emergency Management and Civil Protection Act* as Ontario Regulation 82/20.

Under the Regulation, temporary access to closed businesses is permitted for some purposes including:

- a) Performing work at the place of business in order to comply with any applicable law;
- b) allowing for inspections, maintenance and repairs to be carried out at the place of business;
- c) allowing for security services to be provided at the place of business; and
- d) attending at the place of business temporarily,
  - i) to deal with other critical matters relating to the closure of the place of business, if the critical matters cannot be attended to remotely; or
  - ii) to access materials, goods or supplies that may be necessary for the business to be operated remotely.



The Regulation also includes the list of essential workplaces that are permitted to remain open. The list can be located at the following link:

<https://www.ontario.ca/page/list-essential-workplaces>

All businesses defined as non-essential are permitted to continue to operate remotely (without attending the place of business) either (a) providing goods by mail or other forms of delivery or making goods available for pick up, or (b) providing services online, by telephone or other remote means.

- [Ontario Announces Action Plan: Responding to COVID-19 \(WSIB Premium Deferral\) \(March 25, 2020\)](#)

On March 25, 2020, the Ontario government announced its action plan for responding to COVID-19. Several measures were announced including a WSIB financial relief package. Details of the package are as follows:

The financial relief package allows businesses to defer premium reporting and payments until August 31, 2020. Businesses who report and pay monthly, quarterly or annually based on their insurable earnings are eligible for this deferral.

Each customer reports and pays on the previous full month or quarter, for example March 31 reporting and payment obligation covers the period of February 1-29. The following payments are eligible for deferral:

- Monthly: March 31, April 30, May 31, June 30, July 31, Aug 31
- Quarterly: April 30, July 31
- Annual: April 30

The relief package also applies to Schedule 2 organizations – publicly funded organizations (municipalities, hospitals, school boards), and other businesses who are involved in federally regulated industries. All payment obligations (weekly and monthly) for Schedule 2 businesses will be deferred until August 31, 2020.

No interest will accrue on outstanding premium payments for Schedule 1 businesses and no penalties will be charged during this six-month deferral period. Schedule 2 account balances will not accrue debit interest as part of the financial relief package.

- [Ontario Publishes Health and Safety Guidelines for Construction Sites \(March 29, 2020\)](#)

Ontario has published health and safety guidance for construction sites in light of COVID-19.



The guidance includes the following:

- reminder that workers should raise any concerns regarding health and safety with their supervisor and/or (as applicable) joint health and safety committee or health and safety representative;
- on-site best practices;
- reporting employee illnesses;
- posting employer policies, which should include topics such as: sanitization of sites, reporting illnesses, physical distancing and scheduling work;
- recommendations regarding:
  - how to ensure physical distancing and on-site sanitation;
  - adjusting on-site and production schedules;
  - tracking and monitoring the workforce.

The guide also notes that employers can contact local public health units for questions on workplace infection prevention and control related to COVID-19 infections. And, additional resources, policies and procedures are being developed to provide additional support in this area.

- [Ontario and the City of Toronto extend Emergency Declaration and Closures of Non-Essential Workplaces, Services and Cancellation of Events \(March 30, 31, 2020\)](#)

On March 30, 2020, the Ontario Government extended the Declaration of Emergency and associated emergency measures, including the closure of non-essential workplaces and restrictions on social gatherings. In addition, the Ontario Government is in the course of issuing a new emergency order under the Emergency Management and Civil Protection Act to close all outdoor recreational amenities, such as sports fields and playgrounds, effective immediately. These actions are based on the advice of the Chief Medical Officer of Health.

On March 31, 2020, the Ontario Government, on the advice of the Chief Medical Officer of Health, has extended the closure of all public schools and child care centres until Monday, May 4, 2020, to protect the health and safety of students and staff. The government will be launching the “second phase” of the Learn at Home program to establish clarity for parents, enhance education supports, and create opportunities for teachers to connect with students.

On March 31, 2020, the City of Toronto announced the cancellation of all city-led events through to June 30, 2020.



- [Ontario Issues a Directive on Health and Safety Standards for Nurses in Hospitals \(March 30, 2020\)](#)

Per the [press release](#), this directive outlines:

- Precautions for interactions with suspected, presumed or confirmed COVID-19 patients, including relying on the clinical education and training that nurses receive to use their professional and clinical judgement;
- Point-of-care risk assessments for every patient interaction to assess appropriate health and safety measures; and
- Training on safe use of all personal protective equipment (PPE).

The Chief Medical Officer of Health (CMOH), Ministry of Health (MOH), Ministry of Labour, Training and Skills Development (MLTSD), and Ontario Nurses Association published a [joint statement](#) to clarify the approach in Ontario's hospital system.

- [Ontario Issues Order re Board of Health Redeployment \(April 2, 2020\)](#)

The Ontario government has issued an Order ([Regulation 116/20](#)) to provide Boards of Health with greater flexibility with respect to staffing.

This is similar to earlier orders issued with respect to [hospitals](#), [long term care](#) and the [Ontario Clean Water Agency](#).

- [Ontario Issues Order to Provide Retirement Homes with Greater Flexibility with Respect to Staffing \(April 2, 2020\)](#)

The Ontario government has issued an Order ([Regulation 118/20](#)) to provide Retirement Homes with greater flexibility with respect to staffing.

This is similar to earlier orders issued with respect to Boards of Health, hospitals and the long term care homes.

- [Ontario Ministry of Labour Publishes Posters for Construction Sites \(April 2, 2020\)](#)

The Ontario Ministry of Labour published [posters](#) regarding physical distancing for constructions sites that are continuing to operate.

- [Ontario Narrows the List of Essential Businesses Permitted to Continue Operating \(April 3, 2020\)](#)



Ontario amended the Order (Regulation 82/20) regarding the closure of non-essential services. This includes a revised list of essential businesses that are permitted to continue operating during the COVID-19 pandemic, and additional compliance requirements for those businesses.

Construction projects permitted to continue include:

1. Construction projects and services associated with the healthcare sector, including new facilities, expansions, renovations and conversion of spaces that could be repurposed for health care space.
  15. Construction projects and services required to ensure safe and reliable operations of, or to provide new capacity in, critical provincial infrastructure, including transit, transportation, energy and justice sectors beyond the day-to-day maintenance.
  16. Critical industrial construction activities required for,
    - o the maintenance and operations of petrochemical plants and refineries,
    - o significant industrial petrochemical projects where preliminary work has already commenced,
    - o industrial construction and modifications to existing industrial structures limited solely to work necessary for the production, maintenance, and/or enhancement of Personal Protective Equipment, medical devices (such as ventilators), and other identified products directly related to combatting the COVID-19 pandemic.
  17. Residential construction projects where,
    - o a footing permit has been granted for single family, semi-detached and townhomes
    - o an above grade structural permit has been granted for condominiums, mixed use and other buildings, or
    - o the project involves renovations to residential properties and construction work was started before April 4, 2020.
  18. Construction and maintenance activities necessary to temporarily close construction sites that have paused or are not active and to ensure ongoing public safety.

Businesses continuing to operate must operate in accordance with all applicable laws, including the *Occupational Health and Safety Act*, and advice, recommendations and instructions of public health officials. Retail businesses (except for pharmacies and businesses primarily selling food and beverages at retail)



must, to the fullest extent possible, restrict public access and provide alternative methods of sale such as curbside pick-up or delivery.

- [Access to COVID-19 Status Information of Individuals for First Responders \(April 6, 2020\)](#)

Ontario issued an Order ([Regulation 120/20](#)) to enable first responders to request COVID-19 status information on individuals. First responders include police, firefighters and paramedics.

- [Increased Staffing Flexibility for Service Agencies that Support Persons with Developmental Disabilities \(April 6, 2020\)](#)

In Order ([Regulation 121/20](#)) Ontario provided service agencies that support persons with developmental disabilities with greater flexibility with respect to staffing. This is similar to earlier orders issued with respect to retirement homes, Boards of Health, hospitals and the long term care homes. The Order also limits certain requirements related to documentation, staffing and care.

- [Additional Enforcement Measures & Extended Construction Hours \(April 8, 2020\)](#)

The Ontario government published a [press release](#), which covers issues ranging from additional measures to make essential workplaces safer to extended hours for construction work on healthcare facilities.

To make workplaces that have been designated as essential safer, the Ontario government announced the following initiatives:

- Redeploying more than 30 employment standards officers to help businesses understand and comply with health and safety requirements;
- Working with health and safety associations to deploy up to 30 specialists to support employers and workers in the field;
- Issuing health and safety guidance notes to support specific sectors;
- Doubling the capacity of Ontario's Health and Safety Call Centre from 25 to 50 phone lines;
- Providing job-protected leave under the *Employment Standards Act, 2000* for workers who need to self-isolate or care for a loved one because of COVID-19;
- Issuing a call to recently-retired inspectors who may be able and willing to return to their positions;
- Providing compliance assistance and enforcing the emergency orders issued under the *Emergency Measures and Civil Protection Act*.





Temporary new rules apply for construction of key facilities, such as new hospital builds, expansions, temporary COVID-19 response units or structures, and COVID-19 assessment centres, including:

- extending construction hours to 24 hours per day;
- temporarily limiting local noise bylaws from applying to these types of essential construction activities beginning April 7, 2020.

- [List of Essential Businesses Amended \(April 11, 2020\)](#)

Ontario published Regulation 136/20 amending the Order ([Regulation 82/20](#)) regarding the closure of non-essential services. The amendment adds another construction project to the list of essential businesses.

Construction projects that are due to be completed before October 4, 2020 and that would provide additional capacity in the production, processing, manufacturing or distribution of food, beverages or agricultural products.

- [Emergency Orders Extended \(April 11, 2020\)](#)

Ontario [announced](#) that its emergency orders have been extended to April 23, 2020. In addition, new measures have been introduced to:

- address surge capacity in retirement homes (i.e., temporarily enabling hospitals to increase their capacity by using the beds and services of retirement homes without certain labour relations implications); and
  - allow the repurposing of existing buildings and temporary structures (i.e., for health care purposes).
- [Ontario Reconvenes Legislature and Extends Emergency Order Until May 12, 2020 \(April 14, 2020\)](#)

As noted [above](#), the [declaration of a state of emergency](#) may be extended for up to 28 days by the legislature. On April 14, 2020 a special sitting of the Ontario legislature was convened to approve the extension until May 12, 2020.

The extension of the Emergency Declaration means that the following orders continue in effect:

- [Closure of public places and establishments with exemption for emergency child care for health care and frontline essential service workers](#)
- [Prohibiting events and gatherings of more than five people](#)
- [Limitation Periods](#)



- [Work deployment for health service providers](#)
- [Drinking water and sewage](#)
- [Electronic service of documents](#)
- [Work deployment for long-term care homes](#)
- [Electricity pricing](#)
- [Closure of non-essential workplaces](#)
- [Traffic management](#)
- [Streamlining requirements for long-term care homes](#)
- [Prohibiting unfair pricing for necessary goods](#)
- [Closure of outdoor recreational amenities](#)
- [Enforcement of orders](#)
- [Work deployment for boards of health](#)
- [Work deployment measures in retirement homes](#)
- [Access to COVID-19 status information by specified persons](#)
- [Service agencies providing services and supports to adults with developmental disabilities](#)
- [Pick up and delivery of cannabis](#)
- [Signatures in wills and powers of attorney](#)
- [Use of force and firearms in policing services](#)
- [Child care fees](#)
- [Agreements between health service providers and retirement homes](#)
- [Temporary health or residential facilities](#)
- [Closure of public lands for recreational camping](#)
- [Work Deployment Measures for Service Agencies Providing Violence Against Women Residential Services and Crisis Line Services \(May 14, 2020\)](#)

Regulation 145/20 permits services agencies funded by the Ministry of Children, Community and Social Services that deliver:

- (a) residential or emergency residential services under the Violence Against Women Support Services program or the Anti-Human Trafficking Community Supports program, or
- (b) provincial crisis line services under the Violence Against Women Support Services program,

to implement redeployment and staffing measures necessary for staff, contractors and volunteers to deliver services. The measures may include collecting information from staff or contractors regarding their likely or actual exposure to COVID-19. The measures apply regardless of any collective agreement provisions.



- [Order Preventing Staff Movement Among Long-Term Care Homes and Retirement Homes \(April 15, 2020\)](#)

Ontario has published Orders ([Regulation 146/20](#) and [Regulation 147/20](#) and [Regulation 158/20](#)) to prevent staff movement among long-term care homes and retirement homes.

Regulation 146/20, which applies to long-term care homes, provides:

- the order applies regardless whether or not it complies with the provisions of a collective agreement;
- employees who work for multiple homes must so inform their employers by 5:00 p.m. on Friday, April 17, 2020;
- as of 12:01 a.m. on April 22, 2020, employers must ensure that employees do not provides services at more than one long-term care home or retirement home;
- employers must post a copy of the order in a conspicuous and easily accessible location.

[Regulation 147/20](#) amends the [prior Order](#) regarding Long Term Care homes related to staffing flexibility to substitute the following regarding redeployment “Redeploying employees so that any particular employee is not providing services at more than one long-term care home operated or maintained by the health service provider”. Previously, the Order read “Redeploying staff within different locations in (or between) facilities of the health service provider.”

Regulation 158/20, which applies to retirement homes, provides:

- the order applies regardless whether or not it complies with the provisions of a collective agreement;
- employees who work for multiple homes must so inform their employers by 9:00 a.m. on Monday, April 20, 2020;
- as of 12:01 a.m. on April 22, 2020, employers must ensure that employees do not provides services at more than one long-term care home or retirement home;
- employers must post a copy of the order in a conspicuous and easily accessible location.

Also see government [press release](#).



- [Local Health Integration Networks Directing of Home Care Order \(April 16, 2020\)](#)

[Regulation 156/20](#) provides Local Health Integration Networks with the ability to direct home care service provider organizations to safely reassign frontline staff to areas where they are most needed, including home and community care settings, long-term care homes, supportive housing, retirement homes and hospitals. Unlike other orders regarding the redeployment of staff, this order is permissive and provides that employees of contracted services providers are “not required to provide the requested services”.

- [District Social Services Administration Boards Staffing Order \(April 16 2020\)](#)

On April 16, 2020, the government issued an order by [Regulation 154/20](#) to give District Social Services Administrations Boards (DSSAB) flexibility in redeploying staff in three critical services:

- (a) the operation of homeless shelters and the provision of services to homeless persons;
- (b) the provision of assistance under the Ontario Works Act, 1997; and
- (c) the administration, operation and funding of child care programs and services under the *Child Care and Early Years Act, 2014*.

The order gives DSSABs the ability to redeploy staff similar to the orders applicable to long term care, wastewater and boards of health regardless of restrictions in collective agreements. The DDSAB may take measures including collecting information from staff or contractors regarding their likely or actual exposure to COVID-19. DDSABs must give at least 24 hours notice to unions representing affected bargaining unit members before implementing a redeployment plan.

- [Municipal Staffing Order \(April 16, 2020\)](#)

On April 16, 2020, the government issued an Order by [Regulation 157/20](#) to give municipalities flexibility to redeploy staff as necessary to prevent, reduce or mitigate the effect of COVID-19 on critical municipal services that are delivered by employee. The critical municipal services are:

- (a) the maintenance of municipal long-term care homes;
- (b) the delivery of public health services;
- (c) the operation of homeless shelters and the provision of services to homeless persons;



- (d) the provision of drinking water;
- (e) waste management and sanitation;
- (f) wastewater management;
- (g) public transportation services operated by the municipality;
- (h) the provision of assistance under the Ontario Works Act, 1997, if the municipality is designated as a delivery agent under that Act;
- (i) the administration, operation and funding of child care programs and services under the Child Care and Early Years Act, 2014;
- (j) the enforcement of by-laws; and
- (k) services related to the implementation of the municipality's emergency plan.

The above order covers a group of employees not previously identified in orders issued for [Long Term Care, Drinking Water Systems and Sewage Works](#), and [Boards of Health](#). It does not apply to firefighters or paramedics employed by municipalities. The order gives municipalities the ability to redeploy staff similar to the orders applicable to long term care, wastewater and boards of health regardless of restrictions in collective agreements. Municipalities must give at least 24 hours notice to unions representing affected bargaining unit members before implementing a redeployment plan.

- [The Canadian Centre for Occupational Health & Safety publishes Safety Tip Sheets for Essential Industries \(April 16 2020\)](#)

CCOHS has published a series of [tip sheets](#) for higher-risk and essential occupations and industries:

- daycares
- transportation
- construction
- emergency and patient intake
- work camps
- first responders
- retail
- mining
- airline and ground crews
- home delivery and couriers

- [Mental Health and Addictions Agency Staffing \(April 22, 2020\)](#)

Ontario issued an Order ([Regulation 163/20](#)) to provide mental health and addictions agencies with greater flexibility with respect to work deployment and staffing. The  
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agencies covered by regulation are not-for-profit entities that provide community mental health and addictions services and receive funding from the Ministry of Health or Local Health Integration Network. The order grants the agencies flexibility to redeploy staff as required and to collect information from staff, contractors or volunteers about their likely or actual exposure to the virus.

- [Extension of Emergency Orders \(April 23, 2020\)](#)

On April 23, 2020, [Regulation 165/20](#) was published amending [Regulation 106/20](#) which lists the 30 Orders made under the Emergency Management and Civil Protection Act to date and extends those Orders to May 6, 2020.

- [Redeployment of Health Care Workers to Long Term Care Homes to Alleviate Staffing Shortages \(April 24, 2020\)](#)

On April 24, the government issued Regulation 174/20 which amends Regulation 74/20. As noted [above](#), Regulation 74/20 was one of the first emergency Orders that addressed redeployment of essential workers. Regulation 74/20 permits health services providers to redeploy staff as needed, cancel leaves of absence and temporarily suspended any collective agreement restrictions that would prevent such staffing measures.

Regulation 174/20 addresses the staffing shortage in long-term care homes by permitting hospitals by “providing assessments in relation to a long-term care home’s infection prevention and control program, by providing clinical supervision within a long-term care home and providing nursing and personal support services, including assistance with feeding, to residents of a long-term care home.”

The Regulation provides that where staff of a hospital are redeployed to a long-term care home:

- The staff remain employees of the health services provider.
- The provision of assistance does not impact whether the health service provider and the long-term care home are treated as one employer for the purposes of the Related Employer provisions of the *Labour Relations Act, 1995 (LRA)*.
- The health services provider shall not by virtue of providing assistance be considered to have “sold” part of its business for the purposes of the Sale of a Business provisions of the *LRA*.



#### ▪ [Restrictions on Staff Working at More than One Congregate Care Setting \(April 24, 2020\)](#)

On April 24, 2020, the government issued [Regulation 177/20](#) regarding staff of congregate care setting agencies restricting them from working at more than one location. The regulation applies to:

- Service agencies as defined under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* that provide,
  - residential services and supports to adults with developmental disabilities who reside in supported group living residences or intensive support residences, as defined in that Act, or
  - specialized residential accommodation pursuant to an agreement with the Ministry of Children, Community and Social Services, other than specialized accommodation services that support residential living outside of group living arrangements operated by the service agency.
- Transfer payment recipients funded by the Ministry of Children, Community and Social Services that provide residential or emergency residential services under the Violence Against Women Support Services program or the Anti-Human Trafficking Community Supports program.
- Transfer payment recipients funded by the Ministry of Children, Community and Social Services that provide intervenor services for persons who are deafblind in a residential setting.

#### ▪ [Pandemic Pay \(April 25, 2020\)](#)

On April 25, 2020, the government [announced](#) temporary pandemic pay of \$4.00 per hour for front line workers. In addition, the government will be providing monthly lump sum payments of \$250 for four months to workers who work over 100 hours per month. The pandemic pay will be effective for 16 weeks from April 24, 2020 to April 13, 2020. As of date of publication, no details are provided regarding how the payment will be implemented.

The pandemic pay is designed to support employees on the frontlines of COVID-19 and does not apply to management. Eligible workplaces and workers include:

#### **Health care and long-term care**

<b>Eligible workplaces</b>	<b>Eligible workers</b>
Acute hospitals	Personal support workers Registered nurses





Long-term care homes (including private, municipal and not-for-profit homes) Licensed retirement homes Home and community care	Registered practical nurses Nurse practitioners Attendant care workers Auxiliary staff, including: Porters, cook, custodian, housekeeping, laundry facilities and other key workers. Developmental services workers Mental health and addictions workers
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### Social services

Eligible workplaces	Eligible workers
Homes supporting people with developmental disabilities Intervenor residential sites Indigenous healing and wellness facilities/shelters Shelters for survivors of gender-based violence and human trafficking Youth justice residential facilities Licensed children's residential sites Directly operated residential facility — Child and Parent Resource Institute Emergency shelters Supportive housing facilities Respite/drop-in centres Temporary shelter facilities, such as re-purposed community centres or arenas Hotels/motels used for self-isolation and/or shelter overflow	Direct support workers (e.g. developmental service workers, staff in licensed children's residential sites, intake/outreach workers) Clinical staff Housekeeping staff Security staff Administration personnel Maintenance staff Food service workers Nursing staff

### Corrections

Eligible Workplaces	Eligible Employees
Adult correctional facilities and youth justice facilities in Ontario	Correctional officers Youth services officers Nurses Healthcare staff Social workers Food service Maintenance staff Programming personnel Administration personnel



	Institutional liaison officers TRILCOR personnel Native inmate liaison officers Chaplains
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On April 28, 2020, the government further expanded the list of eligible workers to include the following [Ontario Public Sector Employees Union](#) staff:

- Respiratory therapists
- Paramedics
- Public Health Nurses
- All addictions and mental health workers who, in a congregate setting, serve the same functions as workers in acute-care hospital settings previously noted as receiving pandemic pay.

On May 6, 2020, the Ontario posted a new site providing further information.

In addition to providing information on: the amount of pay, how to get paid, and who is eligible, the site clarifies that the temporary hourly pandemic pay and lump sum payments:

- are non-pensionable earnings;
- are not part of an employee's base salary;
- have no impact on benefits paid by employers; and
- only apply to the hours actually worked (i.e., it does not apply to vacation, leaves of absence or time and benefits awarded under the Workplace Safety and Insurance Act, 1997).

Also see the post [below](#) regarding amendments to the public sector compensation cap in Bill 124. The government also announced that it will be contacting eligible employers with more details on May 15, 2020.

▪ [Ontario Announces Framework for Reopening Province \(April 27, 2020\)](#)

The Ontario government published its Framework for Reopening Our Province, which sets out a gradual, staged reopening of businesses, services and public spaces. The Ontario Jobs and Recovery Committee consisting of a number of Ministers will be consulting Ontarians throughout. See the [Press Release](#) and [Backgrounder](#).

The reopening will occur in three stages:



- **Stage 1:** For businesses that were ordered to close or restrict operations, opening select workplaces that can immediately modify operations to meet public health guidance. Opening some outdoor spaces like parks and allowing for a greater number of individuals to attend some events. Hospitals would also begin to offer some non-urgent and scheduled surgeries, and other health care services.
- **Stage 2:** Opening more workplaces, based on risk assessments, which may include some service industries and additional office and retail workplaces. Some larger public gatherings would be allowed, and more outdoor spaces would open.
- **Stage 3:** Opening of all workplaces responsibly and further relaxing of restrictions on public gatherings.

## Public Health Measures

The Chief Medical Officer of Health will consider a range of risk factors and criteria when assessing whether to move to the next stage, including:

- Consistent two-to-four week decreases in the number of new daily COVID-19 cases;
- Sufficient acute and critical care capacity, including access to ventilators and ongoing availability of personal protective equipment;
- Approximately 90% of new COVID-19 contacts are being reached by local public health officials within one day, with guidance and direction to contain community spread; and
- Ongoing testing of suspected COVID-19 cases, especially of vulnerable populations, to detect new outbreaks quickly.

## Workplaces

Safe workplaces must have a plan that promotes strict hygiene and sanitation standards, and physical distancing to the extent possible. The government will be providing guidelines on how employers can open safely and protect their employees and customers.

Ontario has also added more workplace inspectors and specialists to ensure workers continue to be protected on the job during the pandemic.



- [Requesting Temporary Regulatory Relief \(April 28, 2020\)](#)

The Ontario government [announced](#) the launch of the [COVID-19: Tackling the Barriers](#) website where businesses may request a temporary change to a regulation or government policy, process or fee where it would facilitate their ability to respond to the COVID-19 impact on business. The announcement cites examples of regulatory change implemented to date including allowing construction and deliveries to be undertaken 24 hours per day and allowing restaurants to sell alcohol with food take out and deliveries.

- [More Essential Workers Eligible for Childcare \(April 29, 2020\)](#)

On April 29, 2020, the government [announced](#) that it is further expanding the list of essential workers eligible to receive free emergency child care during the COVID-19 outbreak. Those who will benefit include people who work in the food supply chain, retirement homes, grocery stores and pharmacies, and certain federal employees, including the military.

The additional frontline workers who can now access emergency childcare services include:

- Workers in grocery stores and pharmacies
- Truck drivers (driver's licence Class A and Class D)
- Workers in the food supply chain, including food processing
- Workers in retirement homes
- Auxiliary workers in health care settings, including cooks and cleaning staff in hospitals and long-term care homes
- Interpreters and intervenors who support people who are deaf, deafened, hard of hearing and deafblind
- Ministry of Natural Resources and Forestry (MNR) emergency personnel
- Provincial officers and onsite staff in Ontario courts
- Canadian Armed Forces and Department of National Defence staff working in Ontario
- Additional workers supporting public safety and correctional services

The above changes were implemented by [Regulation 183/20](#) which amends [Regulation 51/20](#) which sets out the exemptions to the order closing child care centres.

- [Workplace Safety Guidelines for Businesses Operating During the COVID-19 Pandemic \(April 30, 2020\)](#)

As Ontario business begin planning to reopen, the government [announced](#) new  
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workplace safety [guidelines](#) in to protect workers, customers and the general public from COVID-19. The guidelines are sector-specific, covering: construction, transportation, utilities, health care, office, transit, police and fire services, mining forestry, retail, restaurants and food service, hospitality, maintenance, manufacturing, film/TV and agriculture.

In particular, the government highlighted new guidelines for: [construction](#); [food manufacturing and processing](#); [restaurants](#); [agriculture](#); and [manufacturing](#). It has also developed a series of poster for both employers and workers that offer advice on preventative actions, including physical distancing and workplace sanitation. The posters can be downloaded and posted in the workplace.

The guidelines set out steps that employers can begin to plan for as they prepare to adapt to the new COVID-19 reality, such as changes to:

- ways to ensure physical distancing
- staff schedules (e.g., staggered shifts);
- tracking the workforce and reporting illness;
- workplace layout (e.g., plexiglass barriers, improved ventilation);
- workplace sanitation; and
- personal protective equipment.

The government also announced that they have hired 58 new workplace inspectors.

#### ▪ [Certain Businesses to Open May 4 \(May 1, 2020\)](#)

On May 1, 2020, the Ontario government [announced](#) that certain businesses may open on May 4, 2020 with a requirement that they comply with the health and safety guidelines for their sector.

The following businesses may open:

- Garden centres and nurseries with curbside pick-up and delivery only;
- Lawn care and landscaping;
- Additional essential construction projects that include:
  - shipping and logistics;
  - broadband, telecommunications, and digital infrastructure;
  - any other project that supports the improved delivery of goods and services;
  - municipal projects;
  - colleges and universities;
  - child care centres;
  - schools; and



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- site preparation, excavation, and servicing for institutional, commercial, industrial and residential development;
  - Automatic and self-serve car washes;
  - Auto dealerships, by appointment only;
  - Golf courses – to prepare their courses for the upcoming season, but not open to the public; and
  - Marinas – to prepare for the recreational boating season by servicing boats and other watercraft and placing boats in the water, but not open to the public.
- [Appointments of Health Care Professionals and Registered Nurse Appointed to Coroner Investigations \(May 1, 2020\)](#)

On May 1, 2020, the government issued new temporary emergency orders to

- [Regulation 193/20](#) gives hospitals the authority and flexibility to more quickly appoint, re-appoint and grant privileges to medical and other professional staff, in order to address potential surge volumes due to COVID-19. This emergency order will allow for the reduction of administrative processes and better enable hospitals to focus operational resources on providing frontline services. (see also [Regulation 194/20](#) which amends Regulation 73/20 to make it clear that limitation periods are suspended for the credentialing process).
  - Authorize coroners, registered nurses appointed as coroner investigators, and public health units to access the provincial electronic health record to help reduce demands on clinicians' time related to death investigations, reduce exposure to COVID-19 related death investigations, and improve the ability to monitor the spread of the virus. See [Regulation 190/20](#).
  - Allow registered nurses appointed as coroner investigators to complete medical certificates of death instead of a physician or nurse practitioner, giving these medical professionals more time to focus on patient care. See [Regulation 192/20](#).
- [Bill 124 \(Public Sector Compensation Restraint\) not Applicable to Pandemic Pay \(May 1, 2020\)](#)

Last year, the Ontario government passed Bill 124, *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, which placed a cap – of 1% per year – on public sector compensation increases for a “moderation period” of three years. It applies to specified unionized and non-unionized employees in the Ontario public sector. Ontario Regulation 195/20 temporarily suspends certain provisions of Bill 124 to exclude any temporary pandemic pay and other pandemic related payments



received by employees from this cap. The Regulation also lists the workplaces and types of work covered by the order.

- [Extension of Emergency Orders \(May 5, 2020\)](#)

On May 5, 2020, [Regulation 199/20](#) was published amending [Regulation 106/20](#) listing the now 36 Orders made under the Emergency Management and Civil Protection Act. All of these orders have been extended to May 19, 2020.

- [More Businesses may Expand Operations or Re-open \(May 7, 2020\)](#)

On May 7, 2020, Regulation 200/20 amends Regulation 82/20 that closes non-essential businesses to ease restrictions for some businesses. Effective May 8, 2020, garden centres and nurseries will be able to open for in-store payment and purchase, operating under the same guidelines as grocery stores. On May 9, 2020, this will also apply to hardware and safety supplies stores. On May 11, the Ontario government is allowing all retail stores with a street entrance to provide curbside pickup and delivery.

Regulation 200/20 also allows professional sports teams to re-open practice facilities provided their leagues have established health and safety protocols.

- [Redeployment of School Board Employees to Congregate Care \(May 9, 2020\)](#)

The Ontario government issued an Order ([Regulation 205/20](#)) that enables available school board employees to be redeployed to congregate care settings during the COVID-19 pandemic, including hospitals, long-term care homes, retirement homes, and women's shelters. Under the Order, school boards are authorized to develop and implement staff redeployment plans similar to prior Orders issued with respect to hospitals, long term care and retirement homes permitting redeployment regardless of collective agreement provisions. However, in this case, the redeployment is conditional upon the school board and union representing the employees entering into an agreement regarding the redeployment.

Redeployed staff maintain their employment relationship with the school board and continue to receive their compensation and other employment benefits. They are also eligible for the provincial government's pandemic pay and emergency child care.

- [Management of Long Term Care Homes \(May 12, 2020\)](#)

Ontario issued an order ([Regulation 210/20](#)) authorizing a Director appointed under

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the *Long-Term Care Homes Act, 2007* to issue a mandatory management order for long-term care homes with at least one positive COVID-19 test among its residents or staff.

The Director's order may specify the name of the person who will temporarily manage or assist in managing the long-term care home. Per the government [press release](#), the interim manager could be any person, including a corporation or a hospital.

- [More businesses to Re-Open \(May 14, 2020\)](#)

On May 14, 2020, Ontario [announced](#) additional workplaces that can reopen beginning on May 16, 2020. Also, a new [resource page](#) includes sector-specific guidelines and posters to prevent COVID-19 in the workplace. See [Regulation 219/20](#).

Effective May 16, 2020, golf courses, marinas/boat clubs, private parks and campgrounds and businesses that board animals may reopen subject to certain provisos.

Effective May 19, 2020, retail services that are not in shopping malls and have separate street-front entrances, seasonal businesses and recreational activities for individual or single competitors, pet care services (e.g., grooming, training and veterinary), indoor and outdoor household services (e.g., housekeepers, cooks, cleaning and maintenance), all construction and certain health and medical services (e.g., in-person counselling, scheduled surgeries) may reopen/restart.

As noted [above](#), Ontario has published a single resource page where employers can access [guidance](#) from the Ministry of Labour and health and safety associations for a wide range of sector and occupations.

- [Emergency Orders Extended to May 29, 2020 \(May 15, 2020\)](#)

Under [regulation 220/20](#) amending [regulation 106/20](#), the Ontario government extended all emergency orders in force until May 29, 2020. That includes the closure of bars and restaurants except for takeout and delivery only, restrictions on social gatherings of more than five people.

- [Schools to Remain Closed \(May 19, 2020\)](#)

On May 19, 2020, the government [announced](#) that schools will not reopen for the rest of the school year.



- [Additional Businesses Permitted to Open with Precautions \(May 19, 2020\)](#)

Under [regulation 223/20](#) amending [regulation 82/20](#), the following businesses were permitted to open on Tuesday May 19, 2020 with various precautions and restrictions in place:

- Businesses that sell:
  - motor vehicles, including cars, trucks and motorcycles,
  - recreational vehicles, including motor homes,
  - trailers and travel trailers,
  - boats and other watercraft, or
  - other motorized vehicles, including power-assisted bicycles, golf carts,
- Businesses that engage in the retail sale, or rental, of items to the public, that have a public entrance that opens onto a street or exterior sidewalk.
- Domestic services that support the operation of households, including housekeeping, cooking, indoor and outdoor cleaning and maintenance services.
- Businesses that provide pet services, including pet grooming services, pet sitting services, pet walking services and pet training services, including services for the training and provision of service animals.
- Maintenance, repair and property management services that manage and maintain the safety, security, sanitation and operation of institutional, commercial, industrial and residential properties and buildings.
- Construction activities or projects and related services that support construction activities or projects, including demolition services.
- Land surveyors.
- The following facilities for outdoor sports and activities including:
  - Baseball diamonds.
  - Soccer fields.
  - Tennis, platform tennis, table tennis and pickleball courts.
  - Basketball courts.
  - BMX parks
  - Skate parks.
  - Motorsport tracks
  - Frisbee golf locations.
  - Cycling tracks and bike trails.
  - Horse riding facilities.
  - Shooting ranges, including those operated by rod and gun clubs.
- The following facilities for indoor sports and activities:



- Indoor golf driving ranges.
- Indoor horse riding facilities.
- Indoor shooting ranges, including those operated by rod and gun clubs.
- Facilities, other than pools, that are in compliance with section 8 of Schedule 3 and that are being used by one or more of the following organizations, leagues or clubs to train amateur or professional athletes or to run amateur or professional athletic competitions:
  - A national sport organization funded by Sport Canada or a member club of such an organization.
  - A provincial sport or multi-sport organization recognized by the Ministry of Heritage, Sport, Tourism and Culture Industries or a member club of such an organization.
  - A professional sport league or a member club of such a league.
- Horse racing tracks .
- Regulated health professionals.
- Professionals or organizations that provide in-person counselling services.
  
- Sound recording, production, publishing and distribution businesses.
- Film and television post-production, visual effects and animation studios.
- Book and periodical production, publishing and distribution businesses.
- Interactive digital media businesses, including,
- computer system software or application developers and publishers, and
- video game developers and publishers.

▪ [Some Outdoor Recreational Facilities Permitted to Open \(May 19, 2020\)](#)

Under [regulation 224/20](#), amending [regulation 104/20](#), the government permitted the reopening of some outdoor recreational amenities, including outdoor sports facilities and multi-use fields, off-leash dog areas, and outdoor picnic sites, benches and shelters in parks and recreational areas.

Outdoor playgrounds, play structures and equipment, fitness equipment, public swimming pools, splash pads and similar outdoor water facilities will remain closed until later stages of the province's reopening plan.

▪ [Private Members Bill to Declare COVID-19 Presumptive Occupational Disease in Essential Businesses \(May 19, 2020\)](#)

A private member (Wayne Gates, NDP Member for Niagara Falls) introduced [Bill 191, Workplace Safety and Insurance Amendment Act \(Presumption Respecting COVID-19\), 2020](#), for first reading on May 19, 2020. If passed, the Bill would amend the



Workplace Safety and Insurance Act, 1997 to add a new provision presuming COVID-19 to be an occupational disease for workers who:

- test positive for COVID-19; and
- work for a business that has been listed as an essential business in an order under the *Emergency Management and Civil Protection Act*.

The presumption would apply to a positive test received on or after January 25, 2020.

The Bill has not progressed beyond first reading.

- [Emergency Orders Extended to June 9, 2020 \(May 26, 2020\)](#)

Under [regulation 226/20](#) amending [regulation 106/20](#), the government extended and renewed emergency orders to June 9, 2020.

- [Ontario Deems Reduction in Hours and Layoffs due to COVID-19 to be Statutory Leaves \(May 29, 2020\)](#)

On May 29, 2020, Ontario filed [Regulation 228/20](#), which repeals and replaces an earlier regulation related to infectious disease emergency leave. The updated regulation expands the entitlement to infectious disease emergency. Employees whose hours of work are temporarily reduced or eliminated by the employer, or whose wages are temporarily reduced by the employer due to COVID-19 during the COVID-19 Period (from March 1, 2020 to 6 weeks after the state of emergency is lifted) are:

- are exempt from the temporary layoff provisions in the ESA, except where the lay off is due to a permanent discontinuance of all of the employer's business at an establishment; and
- are not considered to be constructively dismissed.

For more details regarding this regulation, see our publication [Infectious Disease Emergency Leave Regulation - Deemed Leaves and Layoffs](#).

- [Batting Cages and Drive-Ins Cinemas Permitted to Open \(May 29, 2020\)](#)

On May 29, 2020, [regulation 238/20](#) amending [regulation 82/20](#) was filed permitting batting cages and drive-in cinemas to operate with certain restrictions.



- [Drive-in Religious Events Permitted \(May 29, 2020\)](#)

[Regulation 239/20](#) amending [regulation 52/20](#) loosened the restriction on religious ceremonies to permit drive-in events of more than 50 people, with certain restrictions.

- [Management of Retirement Homes \(May 29, 2020\)](#)

Under [regulation 240/20](#), the Registrar under the *Retirement Homes Act*, 2010 is permitted to appoint a manager to a home where there has been an outbreak of COVID-19 and at least one resident or staff member has tested positive.

- [Clarification Regarding Pandemic Pay](#)

On May 29, 2020, [regulation 241/20](#) was issued regarding pandemic pay. The regulation references a [government website](#) that lists eligible workers in health care, long-term care, retirement homes, social services and corrections.

The new regulation clarifies that:

- an agreement between the employer and union is not required for the employer to make the payments to eligible employees;
- an employer, tribunal, arbitrator, arbitration board, officer or court cannot expand eligibility for pandemic pay; and
- no one can file a complaint alleging a contravention of the Labour Relations Act, 1995 or the Crown Employees Collective Bargaining Act, 1993 with respect to pandemic pay.

- [Emergency Declaration Extended to June 30, 2020 \(June 2, 2020\)](#)

On June, 2020, the government announced that it is extending the Declaration of Emergency to June 30, 2020. The extension, under s.7.0.7 of the *Emergency Management and Civil Protection Act*, was approved by the Ontario legislature on June 2, 2020.

- [Emergency Orders Extended to June 19, 2020 and Limitation Periods extended to September 11, 2020 \(June 5, 2020\)](#)

On June 6, 2020, the Ontario government [announced](#) that after consultation with the Chief Medical Officer of Health, it has extended all emergency orders currently in force under s.7.0.2 (4) of the *Emergency Management and Civil Protection Act* until June 19, 2020. A copy of regulation 259/20 is [here](#).

Additionally, due to COVID-19's unprecedented impact on the justice system, the province is extending the suspension of limitation periods and time periods in proceedings until September 11, 2020 under s.7.1 of the *Emergency Management and Civil Protection Act*.  
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*and Civil Protection Act.* Note that the original order provided that the courts and tribunals retained the discretion to extend or not extend the time period in proceedings. A copy of regulation 258/20 is [here](#).

#### ▪ Status of Ontario Courts and Tribunal Proceedings

**Supreme Court of Canada:** The Supreme Court of Canada's announcement was on March 16, 2020 advising that it has rescheduled hearings scheduled for March 24, 25 and 26. Hearings in June will take place by video-conference. The Court will continue to issue judgments on applications for leave and on appeal for the time being.

**Ontario Court of Appeal:** On April 6, 2020, the Court of Appeal [issued a practice direction](#) that during the COVID-19 emergency, all appeals would be conducted by remote appearance or in writing.

**Ontario Superior Court:** On May 13, 2020, the Ontario Superior Court announced the expansion of matters to be heard during the emergency period. While there will be no in-court hearings until July 6, 2020 at the earliest, and no jury trials until September 2020, the Superior Court of Justice remains open. Lawyers and litigants are encouraged to seek hearings for matters that are being heard in each region.

The Court also issued a new [Consolidated Notice to the Profession](#) applicable to all regions as well as updated [Regional Notices](#). The new consolidated notice advises litigants to “comply with existing orders and rules of procedure, as well as procedures in this and other Regional Notices, to bring cases closer to resolution, to the extent they can safely do so through virtual means”.

#### **Small Claims Court: May 4 – Update**

Since March 16, 2020, sittings of the Ontario Small Claims Court were suspended until further notice. The Small Claims Court has now announced that it will hear urgent motions and urgent garnishment hearings by telephone or videoconference.

Urgent matters include:

- Cases in which a judgment debtor has an outstanding warrant for arrest that was issued in relation to a Small Claims Court proceeding; or
- Time-sensitive cases that would result in immediate and serious financial hardship if a hearing were not scheduled.

For more information, see [here](#).

**Human Rights Tribunal of Ontario:** In-person hearings are postponed and rescheduled to a later date. Where feasible, alternative hearing options such as

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written and telephone hearings will be considered to minimize disruption to hearings across the organization. In addition, all front-line counter services will be closed until further notice. The Tribunal is [extending timelines](#) where parties are unable to meet them.

**Ontario Labour Relations Board:** In person hearings are cancelled up to and including May 29, 2020. The Ontario Labour Relations Board will not be suspending the time periods in which steps must be taken in its proceedings and will be processing applications in the usual course. All filings must be electronic. The Board will process the highest priority matters first. Where possible, matters will be referred to mediation by teleconference or email. Parties may continue to make submissions requesting hearings by teleconference or videoconference or any other alternative means. For all certification/termination/displacement applications, the applicant will now be required to confirm to the Board that the employer is continuing to operate and carry on business. Changes have been made to the following forms: A-1, A-6, A71 and A-77. The Board continues to hold representation votes electronically, but votes will not be held for workplaces closed as a result of COVID19.

On April 27, 2020 the Ontario Labour Relations Board posted its [Notice to the Community](#) regarding applications filed under the *Employment Standards Act, 2000*. The Notice sets out revised processes in light of COVID-19, including with respect to:

- filing applications;
- Board processing of applications;
- mediation;
- hearings.

On May 18, 2020, the OLRB published [Bulletin #37](#) providing guidelines regarding video hearings, including electronic filings, books of authorities, witnesses and recording proceedings.

**The Workplace Safety and Insurance Appeals Tribunal:** The WSIAT is postponing all in-person hearings. The WSIAT's scheduling department is contacting parties to determine whether the hearing can be converted to a hearing in writing, teleconference or video conference. More details regarding hearings during this time can be found [here](#). The WSIAT is also suspending all on-site services. Until further notice, the WSIAT's offices are closed, including the Ontario Workplace Tribunals Library and the WSIAT mail room. Mail, courier or faxes to the Tribunal will not be received. After normal operations resume, the WSIAT will accept Notice of





Appeal (NOA) forms that are filed outside of the six-month time period in section 125(2) of the WSIA.

## 2. What Is Not New - But We Need to Know Under Provincial Law?

- *Occupational Health & Safety Act (OHSA) and Work Refusals*

Employers have legislative obligations requiring them to ensure that they take reasonable measures to protect the health and safety of workers. What is reasonable will depend on each individual organization and workplace.

Under the OHSA workers can refuse to perform work they feel is unsafe. An employer has a duty to investigate and determine whether the safety risk has been resolved. If the employee disagrees with the employer's decision, they can escalate the matter to the Ministry of Labour.

There are two limitations on the right to refuse unsafe work. First, if the dangers or hazards are inherent to the worker's work or are normal conditions of the workers employment. The second limitation is where it would directly endanger the life, health or safety of another person. Employees to whom these limitations may apply are entitled to the same procedural protections as other employees which means that if they refuse work on the basis that it is unsafe, the employer must follow the work refusal process under the legislation including involving the Ministry of Labour if the issue cannot be resolved.

An employee may refuse to perform work as a result of COVID-19. An employee may have safety concerns if a colleague has been diagnosed with COVID-19 or if their personal health circumstances put them at risk. Whether their refusal is justified will be contingent upon various factors including, the workers personal characteristics, the state of COVID-19 in the worker's city or region, the type of workplace, and the measures adopted by the employer to combat the pandemic.

- *Employment Standards Act, 2000 (ESA)*

### Lay-Offs

Under the ESA, employers may lay-off employees temporarily without triggering notice obligations or severance.

For non-union employees there is a risk that an employee may claim that a temporary lay-off constitutes constructive dismissal or breach of contract under the common law. It is a matter of debate whether this applies in the context of a



pandemic or if a lay-off due to a pandemic can be considered a “frustration of contract”.

### **Duration of Temporary Lay-Offs**

In Ontario, a temporary lay-off is a lay-off of less than:

- 13 weeks in any consecutive 20 weeks; or
- 35 weeks in any period of 52 weeks where:
  - The employee receives substantial payments from the employer;
  - The employer continues to make payments for benefits or a legitimate retirement or pension plan;
  - The employee receives supplementary unemployment benefits (SUBP – see below); or
  - The employee is employed elsewhere during the lay-off and would be entitled to receive a SUBP if they were not so.
  - The employer recalls the employee within the time approved by the director, or
  - In the case of an employee who is not represented by a trade union, the employer recalls the employee within the time set out in an agreement between the employer and the employee.

For unionized employees, there is an additional category of “temporary lay-offs” that may exceed 35 weeks in a period of 52 weeks where the employer “recalls the employee within the time set out in an agreement between the employer and the trade union”. This provision of the Act has been interpreted by labour arbitrators as extending the period of a temporary lay-off for as long as the recall rights available to the employee under the collective agreement. However, after 35 weeks of lay-off (in a period of 52 weeks), the employer must give the employee the option to elect to receive their termination entitlements (notice and severance), or to keep their recall rights. Where employees elect to keep their recall rights, the union can require the employer to place the termination entitlements into trust.

### **Other Leaves of Absence**

In addition to the new Infectious Disease Leave, the ESA also includes a number of other leaves that may be applicable. Employees are not limited to only one type of leave. All leaves are available. If employees meet the eligibility criteria for more than one leave, they may take all that they qualify for. The following chart summarizes the leaves that may be applicable to Covid-19 absences.

As already noted above, employees who take statutory leaves are entitled to the following protections

- Employees cannot be subject to employer reprisal for accessing the leave;

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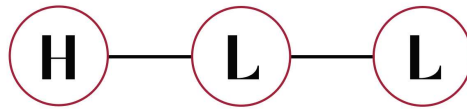


- Employees are entitled to benefit continuation during the leave if the employee continues to pay their portion of the premiums;
- Employees are entitled to reinstatement to their position at the end of the leave, if it still exists, or to a comparable position, if it does not.

▪ [ESA Leaves Chart](#)

The following chart summarizes the different leaves that may be applicable to COVID-19 related absences from work.

Type of Leave	Required Service	Duration	Medical or other Evidence Employer can Request	Purpose of Leave	Persons Ineligible for Leave
<b>New Declared Emergency Leave (retroactive effect to January 25, 2020)</b>	None	As long as Declared Emergency is in effect	No medical documentation required	Because of an emergency declared under section 7.0.1 of the Emergency Management and Civil Protection Act and, (a) an order that applies to the employee under section 7.0.2 of the Emergency Management and Civil Protection Act, (b) an order that applies to the employee made under the <i>Health Protection and Promotion Act</i> , (c) the employee is needed to provide care or assistance to family member	The Lieutenant Governor in Council may exempt a class of employees from this leave or any provision of it. No exemptions regulations published to date.
<b>New Infectious Disease Emergencies Leave (retroactive effect to January 25, 2020)</b>	None	As long as Infectious Disease Emergency is in effect	No medical documentation required	absence due to: a) medical investigation or treatment for COVID-19, b) order under HPPA or from Public Health, c) isolation or quarantine, d) employer direction not to work, e) provision of care or assistance to a family member for a reason related to Declared Emergency, Infectious Disease, or school or daycare closure, or f) travel restrictions that prevent travel back to Ontario	The Lieutenant Governor in Council may exempt a class of employees from this leave or any provision of it. No exemptions regulations published to date.



## HUNTER-LIBERATORE-LAW

Type of Leave	Required Service	Duration	Medical or other Evidence Employer can Request	Purpose of Leave	Persons Ineligible for Leave
<b>Sick Leave</b>	2 weeks	3 days per year	Evidence reasonable in the circumstances may be requested	absence due to personal illness, injury or medical emergency	Employees with professional obligations* may be exempt if the entitlement would constitute an act of professional misconduct or a dereliction of a professional duty
<b>Family Responsibility</b>	2 weeks	3 days per year	Evidence reasonable in the circumstances may be requested	to provide care to a family member who is ill, injured or has a medical emergency or any other urgent matter	Employees with professional obligations* may be exempt if the entitlement would constitute an act of professional misconduct or a dereliction of a professional duty
<b>Family Caregiver</b>	None	8 weeks per family member per year	A certificate from a qualified health professional stating that the family member has a serious medical condition may be requested.	to provide care or support to a family member that has a serious medical condition including chronic or episodic conditions	
<b>Critical Illness (for care of a child who is a family member under 18)</b>	6 months	up to 37 weeks**	A certificate from a qualified health professional stating that the child is critically ill and requires the care and support of a family member	to provide care or support to a minor child who is a family member that is critically ill	



HUNTER-LIBERATORE-LAW

Type of Leave	Required Service	Duration	Medical or other Evidence Employer can Request	Purpose of Leave	Persons Ineligible for Leave
<b>Critical Illness (for care of adult family member )</b>	6 months	up to 17 weeks**	A certificate from a qualified health professional stating that the adult is critically ill and requires the care and support of a family member	to provide care or support to a family member that is critically ill	
<b>Family Medical</b>	None	28 weeks	A certificate from a qualified health professional stating that the family member has a serious medical condition with a significant risk of death within 26 weeks may be requested.	to provide care or support to a family member who has a serious medical condition with a significant risk of death within 26 weeks or less	
<i>* Employees with Professional Obligations are defined as: architects, lawyers, professional engineers, accountants, surveyors, veterinarians, naturopaths, teachers, students in training for the aforementioned professions, and registered practitioners of a health profession covered by the Regulated Health Professions Act</i>					
**leaves may be extended or new leaves granted in certain circumstances					

#### ■ *Ontario Human Rights Code (Code)*

The Ontario Human Rights Commission has published the following policy position regarding Covid-19:

“The OHRC’s policy position is that negative treatment of employees who have, or are perceived to have, COVID-19, for reasons unrelated to public health and safety, is discriminatory and prohibited under the Code. Employers have a duty to accommodate employees in relation to COVID-19, unless it would amount to undue hardship based on cost, or health and safety.

An employer should not send an individual employee home or ask them not to work because of concerns over COVID-19 unless the concerns are reasonable and consistent with the most recent advice from medical and Public Health officials. In unique circumstances, an employer might have other health and safety concerns that could amount to undue hardship. They would need to be able to show objective evidence to support such a claim.



Employer absenteeism policies must not negatively affect employees who cannot work in connection with COVID-19. An employer may not discipline or terminate an employee who is unable to come to work because medical or health officials have quarantined them or have advised them to self-isolate and stay home in connection with COVID-19.

An employee who has care-giving responsibilities should be accommodated to the point of undue hardship, which might include staying home. These care-giving responsibilities which relate to the Code ground of family status could include situations where another family member is ill or in self-isolation, or where their child's school is closed due to COVID-19."

It is important to note that the Ontario Human Rights Commission policy positions are not law and any human rights issues related to Covid-19 need to be considered based on the provisions of the Code. We note that many of the Commission's statements about accommodating child and elder care and not disciplining or terminating employees who cannot work due to quarantine, are codified with the new Infectious Disease Leave under the ESA.

- *Workplace Safety and Insurance Act*

The WSIB has published the following regarding entitlement to WSIB benefits arising from Covid-19:

"Multiple potential sources of COVID-19 may now exist at work and at home creating challenges in establishing work-relatedness when adjudicating claims.

For a COVID-19 claim to be allowed, evidence must show that the person's risk of contracting the disease through their employment is greater than the risk to which the public at large is exposed and that work significantly contributed to the person's illness.

To determine the work-relatedness of COVID-19 claims, the WSIB will look at details such as the person's employment activities, their symptoms and whether they have a diagnosis of COVID-19.

While the nature of some people's work may put them at greater risk of contracting the virus, for example those treating someone with COVID-19, this is a constantly evolving situation and any claims received by the WSIB will need to be adjudicated on a case-by-case basis, taking into consideration the facts and circumstances."



Please note: The WSIB does not provide coverage for people who are symptom-free even when quarantined or sent home on a precautionary basis. However, should someone who is symptom-free develop symptoms or illness while on quarantine, they may be eligible for WSIB coverage.”

On April 3, 2020, the WSIB issued the following filing instructions:

If your client has a COVID-19 related workers compensation claim, the WSIB has provided filing instructions:

- If **your client contracted COVID-19 while at work** (has a diagnosis or symptoms of COVID-19), you may [file a claim](#) to determine if eligible for WSIB coverage.
- If **your client believes they were exposed to COVID-19 while at work**, but is **not ill** at this time (does not have a diagnosis or symptoms of COVID-19), please **do not** file a claim. Instead, you can file an exposure incident form through our Program for Exposure Incident Reporting (PEIR) or Construction Exposure Incident Reporting (CEIR) programs. These are voluntary reporting programs and your client will be assigned an incident number. If they become ill in the future, we'll be able to process their claim faster.

To report an exposure, please complete and fax the appropriate form below to 1-888-313-7373 or call the WSIB at 1-800-387-0750, Monday to Friday, from 7:30 a.m. to 5 p.m. All industries (except construction): [Worker's Exposure Incident Form \(PDF\)](#) or [Employer's Exposure Incident Form \(PDF\)](#). Construction sector: [Worker's Construction Exposure Incident Form \(PDF\)](#) or [Employer's Construction Exposure Incident Form \(PDF\)](#). For additional information, please visit the [WSIB website](#).

### 3. What is New from the Federal Government?

The federal government has made some changes to existing employment insurance benefits and introduced new benefits including:

- Extending EI sick benefits to employees required to self-isolate due to Covid-19
- Eliminating the 1 week waiting period for EI sick benefits (including for quarantine/self-isolation)
- Waiving the requirement for a medical certificate for Covid-19 related sick benefits
- Extending the EI Work Sharing Program to Covid-19 related work reductions and extending the period the program can be in place to 78 weeks
- Introducing the Canada Emergency Response Benefit

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- Extending the EI Work Sharing Program to include Government owned establishments engaged in activities that are not purely governmental in nature such as Lottery and Gaming Corporations (OLG), Public Universities and Colleges and Public Transit Groups.
- Introducing Canada Emergency Wage Subsidy of up to 75%

Below we will provide more detail regarding each of these programs and the existing EI programs that employers and employees may access due to Covid-19 absences from work or reductions in work.

- **EI – Sick Benefits**

*Effective April 6, 2020, all individuals who have stopped working due to COVID-19 illness or quarantine/self-isolation will be directed to apply for the CERB benefits and not EI Sick Benefits.*

#### Minimum insurable hours requirement

Employees must have 600 insurable hours in the qualifying period. The qualifying period is one of:

- the 52-week period immediately before the start date of the claim; or
- the period since the start of a previous EI benefit period, if that benefit period started during the last 52 weeks.

#### Eligible Workers

- Employees who are sick and don't have sick benefits with their employer
- Employees who are quarantined/self-isolating:
  - Under federal or provincial legislation
  - Under order of a public safety officer
  - By recommendation of a public safety officer and the employee has been instructed to do so by an employer, nurse, physician or any other similar person or authority
- Voluntarily because a family member or close relative with whom the employee has had contact has been quarantined

#### Medical certificates

The requirement of a medical certificate does not apply for the Covid-19 related benefits.

#### Waiting period





Effective March 15, 2020, the one week waiting period is waived for claimants who are impacted by Covid-19

### Benefit

Up to 15 weeks at 55% of the employee's average insurable weekly earnings up to a maximum of \$573.00

### Where do employees apply?

<https://www.canada.ca/en/services/benefits/ei.html>

### Eligible for Supplementary Unemployment Benefit Plan (SUBP) Top-up (see more details below)?

Yes

#### ▪ [Canada Emergency Response Benefit \(CERB\)](#)

On March 25, 2020, the federal government passed new legislation creating a new federal benefit available to most Canadians. The CERB provides benefits to workers who do not meet the EI insurable hour requirements or otherwise do not qualify for EI benefits.

### Eligible Workers

The new benefit, as initially announced, was \$2,000.00 for a four week period and covered employees, contract workers, and self-employed workers who cease working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment. Reasons could include that workers:

- have lost their job (not quit voluntarily),
- are sick or quarantined,
- are parents who must stay home without pay to care for children,
- have no income due to the COVID-19 slowdown, but who haven't yet been officially laid off.

### Expanded Eligibility

On April 15, 2020, the government [announced](#) that it will be expanding the pool of people eligible for the Canada Emergency Response Benefit (CERB). The regulations implementing this announcement were invoked on April 29, 2020 (see the published



amendments ([SOR/2020-88](#) and [SOR/2020-89](#)) to the Employment Insurance Regulations).

Retroactive to March 15, 2020, the federal government has expanded the eligibility rules for the CERB to include:

- people earning up to \$1,000 per month while collecting the CERB;
- seasonal workers who have exhausted their EI regular benefits and are unable to undertake their regular seasonal work as a result of the COVID-19 outbreak;
- workers who have recently exhausted their EI regular benefits and are unable to find a job or return to work because of COVID-19;
- artists who receive royalty payments for copyrighted works produced before March 1<sup>st</sup>.
- **Benefit Amount:** \$2,000 every four weeks. Where circumstances continue, individuals can re-apply for additional 4-week periods, up to a maximum of 16 weeks (or 4 periods).
- **Timeline:** March 15, 2020, to October 3, 2020. Applications must be made by December 2, 2020.
- **Eligibility:** To be eligible, workers must be in category A or B:
  - **Category A:** Stopped working due to COVID-19:
    - for initial period of March 15, 2020 to April 12, 2020, for at least 14 days in a row during the 4-week payment period, do not expect to receive more than \$1,000 (before taxes) from employment and self-employment income.
    - for periods subsequent to the initial period do not expect the situation to change during this 4-week period and do not expect to receive more than \$1,000 (before taxes) from employment and self-employment income.
  - **Category B:** Didn't start seasonal work due to COVID-19 and received regular EI benefits for at least 1 week since December 29, 2019 and no longer eligible for EI benefits.
  - **Additional Eligibility Criteria for Both Category A and B:**
    - be at least 15 years of age and resident in Canada; and
    - have a total income of at least \$5000 in 2019 or the preceding 12-month period from employment, self-employment, maternity and parental benefits under the Employment Insurance program and/or similar benefits paid in Quebec under the Quebec Parental Insurance Plan.
- The CERB is also available to workers who, after March 15, are eligible for Employment Insurance regular or sickness benefits.
- **Application Process:** Applications opened on April 6, 2020 at [www.Canada.ca/coronavirus](http://www.Canada.ca/coronavirus)



Applicants are asked simple questions that help direct them to one of two service options:

- Canadians who would generally be eligible for EI benefits will be directed to apply for the CERB through Service Canada through Appliweb; or
- Canadians who would generally not be eligible for EI benefits will be directed to apply for the CERB through the CRA's MyAccount or CRA's automated toll-free line at 1-800-959-2019.

Applicants will need to affirm that they meet the eligibility criteria and information that individuals provide during the application process may be verified at a later time.

Applicants are encouraged to apply based on their birth month as follows:

<b>Month of Birth</b>	<b>Day to Apply</b>
January, February or March	Mondays
April, May, or June	Tuesdays
July, August, or September	Wednesdays
October, November, or December	Thursdays
Any month	Fridays, Saturdays and Sundays

#### What if an employee is already receiving EI benefits?

Individuals who applied for EI prior to April 6th can continue with their EI application and, if already approved for EI, will continue to receive EI as long as they qualify. If the employee's EI benefits end before October 3, 2020, and the employee is still unable to return to work, the employee can apply to the CERB once the employee's EI benefits end. Note that most EI application that were outstanding on April 6, 2020 were converted to CERB.

#### Can employees still apply for EI after April 6, 2020?

It appears that anyone who stopped working because of COVID-19 is being directed to apply for CERB, not EI. For other EI benefits, including maternity, parental, caregiving, fishing and worksharing, individuals are directed to apply for EI.

#### Do Employers Need to Issue Records of Employment (ROE) so Employees can Apply for CERB?

If employees are directly affected by the coronavirus (COVID-19) and they are no longer working, employers must issue an ROE.



- When the employee is sick or quarantined, use code D (Illness or injury) as the reason for separation (block 16).
- When the employee is no longer working due to a shortage of work because the business has closed or decreased operations due to coronavirus (COVID-19), use code A (Shortage of work).
- When the employee refuses to come to work but is not sick or quarantined, use code E (Quit) or code N (Leave of absence), as appropriate.

Service Canada is requesting that comments not be added to the ROE unless absolutely necessary.

What if an employee received the CERB and continues to be sick or unemployed after October 3, 2020?

If the employee has enough EI insurable hours, the employee can access normal EI benefits after the 16-week period covered by the CERB.

Is the CERB eligible for a SUBP top up?

At time of publication it is unclear how the CERB interacts with EI SUBP top ups.

- **Regular EI Benefits**

*As noted above, effective April 6, 2020, all individuals who have stopped working due to COVID-19 will be directed to apply for the CERB benefits and not Regular EI Benefits.*

Minimum insurable hours requirement

The employee must have between 420 and 700 insurable hours in the qualifying period (depending on the economic region). The qualifying period is one of:

- the 52-week period immediately before the start date of the claim; or
- the period since the start of a previous EI benefit period, if that benefit period started during the last 52 weeks.

Eligible Workers

Employees who are:

- laid off or terminated through no fault of their own
- ready, willing and capable of working each day
- actively looking for work



#### Waiting period

1 week.

#### Benefit

Up to 45 weeks (depending on the economic region) at 55% of the employee's average insurable weekly earnings up to a maximum of \$573.00

#### Where do employees apply?

<https://www.canada.ca/en/services/benefits/ei.html>

#### Eligible for Supplementary Unemployment Benefit Plan (SUBP) Top-up?

Yes

- **Supplemental Unemployment Benefits Plan (SUB Plan)**

Employers can establish a Supplementary Unemployment Benefit (SUB) Plan to top up employees' EI benefits during a period of unemployment due to a temporary layoff.

#### EI Benefits eligible for a SUB Plan

- A SUB Plan is available for EI benefits or EI Sickness benefits, but it is unclear whether it is available for CERB benefits at this time.

#### SUB Plan Requirements

A SUB Plan (SUBP) must be registered with Service Canada and must meet the requirements set out by Service Canada, otherwise it will be treated as income and any EI benefits received may be reduced. Some SUBPs may also qualify for registration under the Income Tax Act. This publication only discusses the process to register a SUBP with Service Canada.

#### A SUBP must:

- identify the group or groups of employees covered by the plan
- may cover any period of unemployment by reason of a temporary stoppage of work, training, illness, injury, quarantine or any combination of such reasons;
- require employees to apply for and be in receipt of EI benefits in order to receive payments under the plan;
- require that the combined weekly payments received from the plan and the portion of the weekly benefit rate from that employment do not exceed 95 per cent of the employee's normal weekly earnings from that employment;

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- require that payments under the plan be financed by the employer and that the employer keep separate accounts for those payments;
- require that, on termination of the plan, all remaining assets revert to the employer or be used for payments under the plan or for administrative costs of the plan;
- require that the plan be approved prior to its effective date and that written notice of any change to the plan be given within 30 days after the effective date of the change;
- provide that the employees have no vested right to payments under the plan, except to payments during a period of unemployment specified in the plan; and
- provide that payments in respect of guaranteed annual remuneration or in respect of deferred remuneration or severance pay benefits are not reduced or increased by payments received under the plan
- Have a duration of at least one year, but the number of weeks of top-up under the plan can be as few as one week

The registration date of the SUB Plan is the date on which it is submitted to Service Canada's SUB Program. Until a plan is registered and approved, any amounts paid will be treated as earnings and may be deducted from the employee's EI benefits.

On May 11, 2020, the federal government updated its [Questions and Answers](#) regarding the Canada Emergency Response Benefit (CERB) to specify that employers cannot use a supplemental unemployment benefit (SUB) plan to top up CERB payments to its employees.

Employers can continue to submit a SUB plans for registration – to top up payments to employees who are currently or will be receiving employment insurance regular or sickness benefits.

#### ▪ [Work Share](#)

Employees may agree to work reduced hours rather than have the employer lay-off employees due to a reduction in work. Eligible employees will be paid EI benefits for the missed worked time calculated based on the regular EI benefits. The Work Share (WS) program has been expanded in response to COVID-19 and is available to a wider group of employers with reduced administrative requirements to apply.

Work share applies to a reduction in work activity of the employees' regular work schedule between a minimum of 10% (one half day) and a maximum of 60% (three days). The amount can vary week to week.

#### Eligible employers

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To be eligible for a WS agreement, a business must:

- be a year-round business in Canada for at least 1 year
- be a private business or a publicly held company

Eligibility was also extended to:

- Government Business Enterprises (GBEs), also referred to as public corporations which officials with Service Canada have advised include entities such as Lottery and Gaming Corporations (OLG), Public Universities and Colleges and Public Transit Groups; and
- not-for-profit employers experiencing a shortage of work due to a reduction of business activity and/or a reduction in revenue levels due to COVID-19

#### Ineligible employers

Businesses that are experiencing a reduction in business activity due to:

- a labour dispute
- a seasonal shortage of work, or
- the decrease in business activity is due to a recent increase in the size of the workforce

And if you are a:

- shareholder who is responsible for the direction of the company and who holds 40% and more of the voting shares
- employer who operates solely for the purpose of carrying out the administration of a government program/activity that is purely government in nature (such as municipalities, Government Agencies, etc.), or
- self-employed

#### Eligible employees

To be eligible for WS, an employer's employees must:

- be year-round, permanent, full-time or part-time employees needed to carry out the day-to-day functions of the business ("core staff")
- be eligible to receive EI benefits, and
- agree to reduce their normal working hours by the same percentage and to share the available work

Eligibility was also extended to:



- employees considered essential to the recovery and viability of the business can now be eligible to participate in WS (such as technical employees engaged in product development, outside sales agents, marketing agents, etc.)

### Ineligible employees

Employees that are not eligible for WS include:

- seasonal employees and students hired for the summer or a co-op term
- employees hired on a casual or on-call basis, or through a temporary help agency
- employees responsible for the direction of the company and who hold more than 40% of the voting shares in the business, or
- self-employed

### How to apply

Note: Timeline for employers submitting Work-Sharing documentation

Employers are now requested to submit their applications 10 calendar days prior to the requested start date. The streamlined measures undertaken by Service Canada will aim to reduce the processing time to 10 calendar days.

Prior to COVID-19, employers were requested to send their Work-Sharing application (and supporting documentation) 30 calendar days prior to their requested start date.

To apply for the Work-Sharing program, employers must submit:

- Applications for a Work-Sharing Agreement form (EMP5100)
- Attachment A: Work-Sharing Unit form (EMP5101)

Note: If the employer does not have enough room on one EMP5101 they can start another EMP5101 and use as many as they need

Please send your application to one of the following email addresses, based on the area your business is located or where the maximum of participants are located:

### Ontario

Email: ESDC.ON.WS-TP.ON.EDSC@servicecanada.gc.ca

### What is a “work-sharing unit”?

- A minimum of 2 employees





- The “work-sharing unit” generally includes all employees in a single job description or all employees who perform similar work. Employees who do different work but whose jobs impact one another (i.e. slowdown in business affects one job resulting in less work for another job or jobs) may form one work-sharing unit provided that all employees can reduce their hours equally.
- There can be more than one work-sharing unit.

Is there a minimum and maximum period of time the Work Share must be in place?

Plan must be for at least 6 weeks and can be upwards of 78 weeks under the current government announcements.

Do all employees who participate have to agree?

- The program is voluntary, and employees must sign an agreement to participate. The members of each Work-Sharing unit must authorize an employee who will represent them in the agreement.
- If the workplace is unionized, the union must agree, and hours must be reduced equally regardless of seniority provisions in a collective agreement

Do benefits have to continue?

All benefits must continue although disability benefits can be pro-rated to reflect the reduced work week.

- [Federal government amends certain leaves in Canada Labour Code \(CLC\) and creates a new time-limited COVID-19 Leave](#)

COVID-19 Leave

On March 25, 2020, the Federal Government passed [Bill C-13](#), the COVID-19 Emergency Response Act. The Bill creates a new Leave Related to COVID-19 (“COVID-19 Leave”) for federal regulated employees who are governed by the *Canada Labour Code*.

COVID-19 Leave is a temporary leave which will apply from March 25, 2020 until September 30, 2020 and will provide job-protected leave to employees for up to 16 weeks or such number of weeks that may be set by regulation, who are “unable or unavailable to work for reasons related to the coronavirus disease 2019 (COVID-19)”

Employees must give written notice in support of the reasons for the leave, the length of the leave or any changes to the length of the leave. Employers are permitted to ask for written declaration from employees in support of the reason for the leave and of any change in the length of the leave.



Like all other protected leaves, employees who exercise their right to COVID-19 Leave are entitled to the following protections:

- Employees are entitled, on written request, to written notification of every employment promotion or training opportunity that arises during their leave;
- Employees cannot be subject to employer reprisal for accessing the leave;
- Employees are entitled to benefit continuation during the leave if the employee continues to pay their portion of the premiums;
- Vacation entitlement may be interrupted or postponed to take the COVID-19 Leave;
- Parental leave may be extended to take COVID-19 Leave; and
- Employees are entitled to reinstatement to their position at the end of the leave, if it still exists, or to a comparable position, if it does not.

#### Medical Leave due to Quarantine

When the temporary COVID-19 Leave is repealed on October 1, 2020, a new provision will come into force amending Medical Leave to include up to 16 weeks of unpaid leave for employees who are absent due to quarantine. If an employee's leave due to quarantine is more than 3 days, the employer may request a medical note.

Like all other protected leaves, employees who exercise their right to Medical Leave due to Quarantine are entitled to the same job protections as set out above.

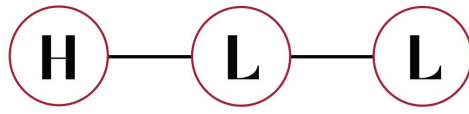
#### Temporary Suspension of Requirement of Medical Note and Any Other Documentation

From March 25, 2020 until October 1, 2020, employees who exercise their right to Medical Leave, Compassionate Care Leave or Leave related to Critical Illness are not required to provide a medical note or any other documentation to support their request for the leave. This exemption will be repealed on October 1, 2020 and the usual requirement for a medical note and documentation will apply.

- [CLC Leaves Chart](#)

The following chart summarizes the different leaves that may be applicable to COVID-19 related absences from work.

Type of Leave	Duration	Medical or other Evidence Employer can Request	Purpose of Leave	Additional Protections
<b>Leave related to COVID19 ** Effective Mar 25, 2020 – October 1, 2020</b>	Up to 16 weeks or such number of weeks that may be set by regulation	An employee must give written notice, in support of the reason for the leave, length of the leave, or any change to the length of the leave. Employers may require written declaration by the employee in support of the same.	Unable or unavailable for work due to COVID-19 reasons	Similar to other Leaves (Vacation, Maternity, Parental, Bereavement, Reservist) vacation may be interrupted or postponed to take a COVID-19 Leave. Other protections apply as well: offer of employment opportunities, no reprisal, benefit continuation (if employee contributions are maintained), and extension to Parental Leave.
<b>Medical Leave</b>	Up to 17 weeks	<u>Until Sept 30:</u> Medical Certificate not required <u>After Sept 30:</u> If leave is more than 3 days, the employer may request a certificate from a qualified health professional confirming the employee is incapable of working for the period of time they were absent from work	Absence due to personal illness or injury, organ or tissue donation or medical appointments during working hours	
<b>**After October 1, 2020: to replace COVID-19 Leave, Medical Leave is amended to include:</b>	Up to 16 weeks	If leave is more than 3 days, the employer may request a certificate from a qualified health professional confirming the employee is incapable of working for the period of time they were absent from work	Absence due to quarantine	Similar to other absences (Medical or Work-Related Illness or Injury) vacation may be interrupted or postponed due to absence due to Quarantine. Other protections apply as well: offer of employment opportunities, no reprisal, benefit continuation (if employee contributions are maintained), and extension to Parental Leave.
<b>Critical Illness (for care of child family member under 18)</b>	Up to 37 weeks	<u>Until Sept 30:</u> Medical Certificate or any other documentation <u>not</u> required <u>After Sept 30:</u> A certificate from a qualified health professional stating that the child is critically ill and requires the care and support of a family member	To provide care or support to a minor child who is a family member that is critically ill	



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Type of Leave	Duration	Medical or other Evidence Employer can Request	Purpose of Leave	Additional Protections
<b>Personal Leave</b>	Up to 5 days, first 3 days are paid if the employee has at least 3 consecutive months of service	Up to 15 days after leave, the employer may ask for documentation to support the reasons for the leave, if reasonably practicable	Absence due to personal illness or injury, responsibilities related to the health or care of any family members, responsibilities related to the education of any family members under the age of 18, address any urgent matters concerning themselves or family members, attend their citizenship ceremony or any other reason prescribed by legislation	
<b>Critical Illness (for care of adult family member)</b>	Up to 17 weeks	<u>Until Sept 30:</u> Medical Certificate or any other documentation <u>not</u> required <u>After Sept 30:</u> A certificate from a qualified health professional stating that the family member is critically ill and requires care and support	To provide care or support to a family member that is critically ill	
<b>Compassionate Care</b>	Up to 28 weeks	<u>Until Sept 30:</u> Medical certificate <u>not</u> required <u>After Sept 30:</u> A certificate from a qualified health professional stating that the family member has a serious medical condition with a significant risk of death within 26 weeks may be requested	To provide care or support to a family member who has a serious medical condition with a significant risk of death within 26 weeks or less	



- [Canada Emergency Wage Subsidy](#)

On March 18, 2020, the Federal Government announced the Temporary Wage Subsidy Program, a new support for small businesses impacted by the COVID-19 pandemic. The original Program allowed employers to recover 10% of employees salary up to a maximum of \$25,000 per employer and a maximum of \$1,375 per employee during the 3 -month period covered under the Program.

On March 27, 2020, the Government announced an increase in the wage subsidy to 75%.

On April 11, 2020, the Government enacted Bill C-14 implementing the new wage subsidy. For details, please see our [separate publication](#) and the Government of Canada [CEWS website](#).

On May 15, 2020, the federal government announced that the wage subsidy will continue to August 29, 2020, that it will be consulting with business and labour regarding the eligibility criteria. That consultation took place between May 25, 2020 and June 5, 2020. The government is proposing amendments to the legislation. Details of the initial version of CEWS are in our [separate publication](#).

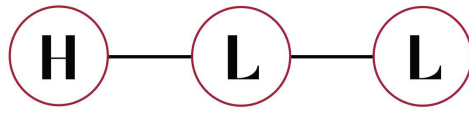
- [Salary Top Up for Low-Income Workers in Certain Sectors](#)

On April 15, 2020, the government [announced](#) it will be topping up the salaries of low-income workers in certain sectors, including hospitals and nursing homes, food supply, or essential retail. These top ups will be through a transfer payment to the provinces. Through this new transfer, provinces and territories will be able to provide their low-income essential workers (those who earn less than \$2,500 per month), with a top up.

- [Changes for Temporary Foreign Workers \(May 12, 2020\)](#)

The federal government [announced](#) a new, temporary policy that will reduce the time it takes for a temporary foreign worker to apply for a work permit.

Workers who are already in Canada and have secured new job offers, typically backed by labour market tests, will be able to obtain approval to start working in their new job, while their work permit application is being fully processed.



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