

FTR Now

Ontario Launches Personal Emergency Leave Pilot Project

Date: December 20, 2016

Ontario has introduced limited amendments to personal emergency leave for certain employers in the automobile sector. In comments to the Ontario Legislature, the Minister of Labour identified the changes as a pilot project suggesting that similar changes may be considered in the future for a wider range of employers.

On November 21, 2016, the Ontario government filed Ontario Regulation 370/16, which will amend an existing regulation, “Terms and Conditions of Employment in Defined Industries – Automobile Manufacturing, Automobile Parts Manufacturing, Automobile Parts Warehousing and Automobile Marshalling,” with respect to the provision of personal emergency leave under the *Employment Standards Act, 2000* (ESA). Under the revised regulations, the 10-day annual personal emergency leave entitlement will be replaced with a two-fold system providing for a set number of personal emergency leave days and an additional separate bereavement leave entitlement.

Existing Personal Emergency Leave under the ESA

Currently, the ESA provides most employees in Ontario an annual 10-day entitlement to “personal emergency leave” – job-protected leave for employees related to:

- their own personal illness, injury or medical emergency; or
- the death, illness, injury or medical emergency of a wide range of certain listed family members; or
- an urgent matter related to that same group of listed family members (though not for their own urgent matters).

Since the introduction of personal emergency leave in 2001, employers have sought to find ways to balance their employees’ statutory right to personal emergency leave with the legitimate needs of their operations, and the need to have employees attend at work regularly. Employers have also sought ways to integrate personal emergency leave into contractual entitlements that address similar, often overlapping, reasons for absence – for example, bereavement leave or paid sick days.

Changes to Personal Emergency Leave in the Automobile Sector

Beginning January 1, 2017, Ontario Regulation 370/16 will amend the terms and conditions

applicable to employers engaged in the following defined industries:[\[1\]](#)

- automobile manufacturing industry
- automobile parts manufacturing industry (Tier 1 and Tier 2)[\[2\]](#)
- automobile parts warehousing industry, and
- automobile marshalling industry.

Under the new rules, the ESA's 10-day personal emergency leave entitlement will be replaced with the following two-fold entitlement:

- seven personal emergency days each calendar year, and
- three bereavement days per death of a listed family member, with no yearly limit imposed.

The seven personal emergency leave days will be available in the same manner as the ESA's existing 10-day entitlement, allowing leaves to be taken for the same reasons and applying the same listed family members, with one exception.

The exception is that personal emergency leaves will not be permitted to be taken in respect of the death of a listed family member. Rather, the regulation creates a specific entitlement of up to three days' leave without pay for the death of any listed family member. There are no annual limits on the number of bereavement leaves an employee may take, and a new leave may be taken for each death regardless of whether a bereavement leave has already been taken that year.

Changing Workplaces Review

The genesis for this change can likely be found in prior government commitments to address personal emergency leave and the ongoing review of the ESA and *Labour Relations Act, 1995* in the Changing Workplaces Review. As discussed in greater detail in our July 28, 2016 *FTR Now*, "[Changing Workplaces Review – Personal Emergency Leave](#)", the government asked the Special Advisors to give special consideration to personal emergency leave, rooted in its 2016 Budget commitment:

In the 2015 Ontario Economic Outlook and Fiscal Review, the government committed to enacting the following regulatory measures on an expedited basis:

- *Seeking advice, through the Ministry of Labour, from the Special Advisers on the Changing Workplaces Review to resolve concerns raised by business regarding the application of the emergency leave provisions of the Employment Standards Act. The advice is to be received in spring 2016, and the resolution is to be implemented later this year.*

In their interim report, the Special Advisors identified at least four options that they were considering with respect to personal emergency leave:

1. Maintain the status quo (i.e. no changes).
2. Remove the 50 employee threshold.
3. Break down the 10-day entitlement into separate leave categories with separate entitlements for each category.
4. Some form of a combination of options 2 and 3.

Pilot Project

Although the deadline for making submissions to the Special Advisors on personal emergency leave occurred at the end of August, the government has not yet released its final recommendations on this topic. Nevertheless, the government has proceeded with the changes to personal emergency leave in the automobile sector, described above.

On December 7, 2016, the Minister of Labour was questioned about these changes during Question Period in the Ontario Legislature. In responding to the questions, the Minister made the following statement:

***Hon. Kevin Daniel Flynn:** The Changing Workplaces Review now has been under way for some time. We've had engagement from labour, we've had engagement from advocates and we've had engagement now from the business community. Everybody is bringing their best to the table. They're bringing their best ideas. When you look at personal emergency leave in the province of Ontario, it's been around for some time. It's used by employees the way that it should be used.*

What was suggested was that we might want to do a pilot project; we might want to see if we can bring in personal emergency leave that works in a different way but provides the same services to those people that are employed in that industry. We made this decision based on good advice. We asked the advisers to bring forward their recommendations. We asked if they'd bring it forward first. And I would outline, and I want to be very, very clear that this is a pilot project to see if it works in this particular industry. [Underlining added.]

In this response, the Minister identifies the new regulation as a “pilot project” and connects it with the work being undertaken by the Special Advisors on the Changing Workplaces Review. While not explicitly stated, the Minister’s comments suggest that the revised approach to personal emergency leave may be introduced more broadly to a wider range of employers and industries if the pilot project is successful. Alternatively, if not successful, the government may presumably consider other options.

Should you have any questions or require further information, please contact [Paul Broad](#) at 519.931.5604 or your regular [Hicks Morley lawyer](#).

[1] The terms and conditions for the defined industries are themselves contained in a regulation – Ontario Regulation 502/06 – and the new regulations will amend this existing regulation to provide for alternative personal emergency leave entitlements.

[2] Under Ontario Regulation 502/06, “automobile parts manufacturing” is defined to include (a) producing automobile parts supplied directly to automobile manufacturers or parts warehouse, or (b) producing elements of automobile parts supplied directly to the parts producers described in (a).

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