

## FTR Now

# Ontario Introduces Bill to Continue Emergency Orders After the Declared Emergency Ends

**Date:** July 15, 2020

*[This FTR Now has been updated from its earlier version.]*

On July 7, 2020, the government introduced [Bill 195, Reopening Ontario \(A Flexible Response to COVID-19\) Act, 2020](#) (Bill 195) which, if passed, will enable it to continue Orders made under sections 7.0.2 or 7.1 of the *Emergency Management and Civil Protection Act* (EMCPA) even after the declared emergency comes to an end. The declared emergency is currently set to end on July 24, 2020.

On the date that Bill 195 is proclaimed, the [Order made under the EMCPA](#) declaring the emergency will be revoked, bringing the declared emergency to an end in Ontario. However, virtually all existing Orders made under sections 7.0.2 or 7.1 of the EMCPA will continue as valid and effective Orders, enforceable under the new Act. This includes, for example, all current EMCPA orders related to work redeployment measures throughout the broader health care sector, all orders related to the phased reopening of Ontario businesses, and all orders regulating public gatherings. (Please keep in mind that if the current orders are amended before the proclamation of Bill 195, it would be those amended orders that would continue in effect under the new Act.)

## When an Order can be Amended, Extended or Revoked

The new Act will give the Lieutenant Governor in Council (LGC) the power to extend, amend and revoke the Orders that have been continued to be in effect. These powers can be delegated to a Minister. Subject to exceptions, this power will allow the LGC or a Minister to amend an Order as if the declared emergency were still in effect, as well as to address transitional matters relating to the termination of the declared emergency.

In order for the LGC or a Minister to amend an Order, the following two conditions must be met:

- (a) the amendment must require persons to act in compliance with the advice, recommendations or instructions of a public health official, and
- (b) the amendment must relate to one or more of the following subject matters:
  - (i) closing or regulating any place (whether private or public), including any business, office, school,

hospital or other establishment or institution

(ii) providing for rules or practices that relate to workplaces or the management of workplaces, or authorizing the person responsible for a workplace to identify staffing priorities or to develop, modify and implement redeployment plans or rules or practices that relate to the workplace or the management of the workplace, including credentialing processes in a health care facility

(iii) prohibiting or regulating gatherings or organized public events.

Bill 195 is clear that the power to amend an Order includes the power to impose different, including more onerous, requirements, and includes the power to extend the application of the Order.

Note that the Bill specifically sets out a number of Orders made under the EMCPA which **cannot** be amended by the LGC or a Minister. However, none of the Orders related to work redeployment measures or the phased reopening of Ontario businesses is exempted and thus, these Orders will be subject to the new Act's amending powers.

## Time Limitations and Reporting Requirements

Under the Bill, Orders cannot be extended for more than 30 days at a time.

The power to extend or amend the Orders ceases after one year, unless the Legislature, on the recommendation of the Premier, extends these powers for additional periods of up to one year.

The Bill contains requirements for the Premier or a Minister to regularly report to the public, to a committee designated by the Legislature and to the Legislature regarding the rationale for the extensions and amendments of the Orders.

## Impact of Bill 195 on DEL / IDEL

The proclamation of the Bill will end employees' entitlements to the declared emergency leave (DEL) under the *Employment Standards Act, 2000* (ESA). Employees are entitled to a DEL only during an emergency declared under the EMCPA. Since the Bill will end the declared emergency, employees will not be eligible for a DEL after the Bill is proclaimed.

The Bill, however, will not affect employees' entitlements to infectious disease emergency leave (IDEL) where one or more of the reasons related to a designated infectious disease as set out s. 50.1(1.1)(b) of the ESA is met. Accordingly, for as long as COVID-19 remains a disease designated by regulation under the ESA, employees who are unable to work because, among other things, they must self-isolate or must provide care and support to prescribed family members because of a matter related to COVID-19 continue to be entitled to an IDEL.

However, there will be a more significant impact on employees who are on a deemed IDEL due to a temporary elimination or reduction of their hours due to COVID-19. The period during which non-union employees were deemed to be on IDEL runs from March 1, 2020 to the date that is 6 weeks after the declared emergency is terminated. Thus, when Bill 195 is proclaimed in force and the declared emergency comes to an end, the deemed IDEL period will only continue for a further 6 weeks after that date. Please refer to our May 31 *FTR Now* – [Ontario Government Provides Temporary Relief from ESA Termination and Severance Provisions in Response to COVID-19](#) – for details.

## Concluding Comments

The passage of Bill 195 suggests that, notwithstanding the end of the declared state of emergency in Ontario, the government expects that it may need to continue to exercise emergency powers for some time into the future, and the Bill is designed to facilitate those powers while maintaining some level of accountability to the public.

Employers who are currently subject to EMCPA orders that directly impact their workplace, such as employers across the broader health care sector, will continue to operate under the existing orders and may do so for some time to come. In that regard, and subject to the impact on declared emergency leave, as discussed above, Bill 195 will not have an immediate impact on their ongoing operations.

The Bill has passed First Reading and is anticipated to be passed shortly. We will continue to monitor its passage through the Legislature.

Should you have any questions about this Bill, please contact [Rebecca Liu](#), [Paul Broad](#) or [your regular Hicks Morley lawyer](#).