

FTR Now

Bill 195 Passes: Declared Emergency Will End But Emergency Orders Will Continue

Date: July 23, 2020

On July 21, 2020, [Bill 195, *Reopening Ontario \(A Flexible Response to COVID-19\) Act, 2020*](#) received Royal Assent. The Ontario government has announced that the new Act will be proclaimed in force on July 24, 2020. As set out in greater detail in [our FTR Now](#) of July 15, 2020, this means that the COVID-19 declared emergency will come to an end on July 24, 2020.

We remind readers that virtually all orders made under the *Emergency Management and Civil Protection Act* (“EMCPA”), as they exist on July 24, 2020, will continue as orders under the new Act. These orders will continue in effect for an initial period of 30 days beyond July 24, but can be renewed by the Lieutenant Governor in Council or a Minister (if this authority is delegated to a Minister).

We also remind readers that the termination of the declared emergency on July 24 will impact a number of leaves of absence under the *Employment Standards Act, 2000* (ESA):

- **Declared Emergency Leave (DEL):** Entitlement to DEL is generally available only during an emergency declared under the EMCPA. Since the proclamation of the Act ends the declared emergency, the general entitlement to DEL will end on July 24, 2020. Note, however, that there is some limited ability to extend DEL beyond this date, and if any employees remain on DEL at this time, their individual circumstances should be considered.
- **Infectious Disease Emergency Leave (IDEL):** At the outset of the pandemic, the government amended the ESA to include a new infectious disease emergency leave (IDEL), which does not require there to be a declared emergency, but requires COVID-19 being designated as an infectious disease under the ESA. As long as COVID-19 remains a designated infectious disease under the ESA, employees who cannot work due to one of the reasons listed in the statute related to COVID-19 will continue to be entitled to IDEL.

A more complete discussion of IDEL, including the grounds for which employees can claim IDEL, can be found in our March 19 *FTR Now*, [Ontario Amends the ESA to Extend Employee Protections in Response to the COVID-19 Pandemic](#).

- **Deemed IDEL:** On May 29, 2020, the government amended the ESA to, among other things, deem employees whose hours were temporarily eliminated or reduced due to COVID-19 to be on IDEL retroactively from March 1, 2020. Details for the deemed IDEL and other changes are discussed in detail in our May 31 *FTR Now*, [Ontario Government Provides Temporary Relief from ESA Termination and Severance Provisions in Response to COVID-19](#).

The deemed IDEL rules are set out in [O Reg 228/20, *Infectious Disease Emergency Leave*](#). As this regulation is currently drafted, the deemed IDEL period will come to an end 6 weeks after the termination of the declared emergency on July 24, 2020 – that is, September 4, 2020. As we previously advised, if employers are not able to resume full pre-pandemic operations or pay full pre-pandemic wages by that date, the usual ESA rules will be re-engaged.

The changes brought about by the termination of the declared emergency in Ontario are significant for those employers who continue to operate at reduced capacity or who have not been able to resume operations. We will continue to monitor all developments in this area, including any future changes that the government might make to the ESA and its regulations in response to the ongoing pandemic.

If you have any questions related to any matter discussed in this *FTR Now*, please contact [your regular Hicks Morley lawyer](#).