

Ontario Introduces 3 Days of Paid Leave for COVID Related Reasons

On April 29, 2021, the Ontario Government passed [Bill 284](#), which amends the *Employment Standards Act, 2000* (“ESA”) to provide eligible employees with up to three days of paid leave for reasons relating to an infectious disease, including COVID-19 (“IDEL Pay”). IDEL Pay is in addition to an employee’s right to take an unpaid infectious disease emergency leave (IDEL) under the *ESA*. Entitlement to IDEL Pay is deemed to have started on April 19, 2021 and ends on September 25, 2021.

Eligibility for the Paid Leave

Employees are eligible for IDEL Pay if they are unable to attend work for one of the following reasons:

- They are under medical investigation, supervision or treatment related to the infectious disease, including receiving a vaccine or recovering from side effects of a vaccine;
- They are acting in accordance with an order under section 22 or 35 of the Health Protection and Promotion Act which relates to the infectious disease;
- They are in quarantine, isolation, or subject to another control measure due to an infectious disease, at the direction of their employer, a medical practitioner, the government or other authority;
- They are providing care or support to a dependent who is:
 - under medical investigation, supervision or treatment related to an infectious disease; or
 - in quarantine, isolation, or subject to another control measure due to an infectious disease, at the direction of their employer, a medical practitioner, the government or other authority.

The legislation does not require employees to provide medical documentation to establish their eligibility for IDEL pay.

Interaction with Contractual Entitlements to Paid Leave (i.e. Paid Sick Leave Policies)

If an employee is entitled to take paid leave under their employment contract for any of the reasons listed above as of April 19, 2021, the employee is not entitled to IDEL Pay on top of their contractual entitlements. In other words, the employment contract effectively includes the entitlement to IDEL Pay.

If, on April 19, 2021, an employee is entitled to take paid leave pursuant to the terms of their employment for any of the reasons listed above (i.e. paid sick leave or paid personal days) at a rate which is greater than or equal to the IDEL Pay, the number of days for which they are entitled to IDEL Pay will be reduced accordingly. Notably, while not expressly stated, the legislation reads such that whether an employee who is contractually entitled to paid leave will be eligible for some or all of the three days of IDEL Pay will depend on how many days of contractual paid leave they have remaining as of April 19, 2021.

For example, it appears that if an employee is contractually entitled to five days of paid sick leave each year, and the employee has used all five days prior to April 19, 2021, then as of April 19, 2021 they would not be entitled to take paid sick leave pursuant to the terms of their employment. In this circumstance, the employee would arguably be entitled to all three days of IDEL Pay. If this same employee had not used any of their paid sick leave as of April 19, 2021, they would not arguably be entitled to IDEL Pay because as of April 19, 2021 they would in fact be entitled to take at least 3 days of paid leave pursuant to the terms of their employment.

Rate of the IDEL Pay

Employees are entitled to a maximum of \$200 per day, calculated as either:

- a. The lesser of \$200 or the regular wages the employee would have earned on a given day had they not taken the leave (this does not include shift premiums, overtime, or other premium pay the employee would have otherwise earned, including premium pay for public holidays); or
- b. If the employee receives performance related wages, the lesser of \$200 and (i) the employee's hourly rate or (ii) the minimum wage that would have applied for the hours the employee would have worked a given day had they not taken the leave.

This amount must be paid by the employer, who can then apply for reimbursement from the Workplace Safety and Insurance Board.

Reimbursement to Employers

Employers can apply to the WSIB for reimbursement of IDEL Pay paid to employees, up to a maximum of \$200 per employee per day. The application must be made to the WSIB within 120 days of the date the IDEL Pay payment was made and include the following:

1. An application form to be approved by the WSIB;
2. An attestation in a form to be approved by the WSIB;
3. A record of the payment made to the employee in a form to be approved by the WSIB;
4. Information about claims filed with the WSIB in respect of the employee; and
5. Any other information required by the WSIB.

An employer does not need to be registered with the WSIB to apply for reimbursement. The WSIB is simply being used as a means to administer the reimbursement.

An employer will not be reimbursed for amounts paid to employees pursuant to their contractual entitlements to paid leave. Further, if an employer amends an employee's contractual entitlements to paid leave on or after April 19, 2021 to reduce or remove this entitlement, the employer will not be reimbursed from the WSIB for the corresponding IDEL Pay.

Guidance for Employers on Implementing the Paid Leave

- The entitlement to IDEL Pay applies retroactively to April 19, 2021. If an employee took unpaid between April 19, 2021 and April 29, 2021 where they would have been entitled to IDEL Pay, they must advise their employer in writing of their election to receive IDEL Pay for this leave prior to May 13, 2021. Employers should clearly communicate the ability and deadline to make this election to employees.
- In determining how many days of IDEL Pay an employee is entitled to, and how many days of IDEL Pay the employer may be reimbursed for, employers must consider employees' contractual entitlements to paid leave. Specifically, employers should consider each employees' remaining entitlement to this contractual paid leave as of April 19, 2021.
- Employees are not required to provide medical documentation to establish their eligibility to IDEL Pay. Employers should be cautious about imposing a requirement for medical documentation.
- Employers can provide employees with a higher rate of IDEL Pay than the maximum of \$200. However, employers will only be reimbursed for up to \$200 per employee per day.

For further information, please contact a member of our team: [Leslie Dizgun](#), [Allyson Fischer](#), [Mitchell Smith](#), [Paul Schwartzman](#), [Justin Anisman](#), [William McLennan](#), [Alyssa Jagt](#), and [Oscar Moody](#).

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