



mason | bennett | johncox  
lawyers • be well advised®

## COVID-19: Changes to Employment Laws

*RE: Ontario Regulation 228/20 made under the Employment Standards Act, 2000*

Prepared on June 1, 2020

On Friday, May 29, 2020, the Ontario Government enacted [Regulation 228/20](#) under the [Employment Standards Act, 2000](#) (“ESA”). This Regulation made several significant changes to employment laws in Ontario, particularly relating to layoffs. We have been expecting such changes given COVID-19 and the difficult position many employers have experienced. This will be a welcome relief for employers.

Below, we have summarized some key provisions in the Regulation.

1. **APPLICATION:** The changes in the Regulation are temporary and apply throughout the COVID-19 period, which is defined as March 1, 2020 until six weeks after Ontario’s emergency order is lifted (“COVID Period”).
  - a. There are unique situations where specific entitlements under the Regulation are deemed to have started on January 25, 2020.
  - b. The Regulation applies primarily to non-unionized employees.
2. **LAYOFF/EMERGENCY LEAVE:** A temporary layoff is now deemed to be an Infectious Disease Emergency Leave (“Emergency Leave”), which is an unpaid, job-protected leave. This means that employees who have had their hours or wages reduced or eliminated due to COVID-19 will be deemed to be on Emergency Leave.
  - a. This is both retroactive to March 1, 2020 and prospective to the end of the COVID-19 Period.
  - b. Employees deemed to be on Emergency Leave are entitled to be reinstated to their job when the Emergency Leave ends.
  - c. The time limits applying to temporary layoff, which could previously result in a deemed termination, no longer apply.

MASON BENNETT JOHNCOX PROFESSIONAL CORPORATION

79 Baldwin Street North  
Brooklin, ON L1M 1A4

Tel (905) 620-4499  
Fax (905) 620-7738

[www.mbjlawyers.com](http://www.mbjlawyers.com)

229 Mary Street  
Port Perry, ON L1L 1B7

Tel (905) 985-4141  
Fax (905) 620-7738

- d. These changes do not apply to employees who are terminated under the ESA during the COVID-19 Period.
3. **LEAVE BENEFITS:** The normal rules relating to statutory leaves under the ESA will apply to Emergency Leaves, except for the following:
  - a. If the employee stopped participating in certain benefit plans as of May 29, 2020, the employee does not have to make a further election to not participate during the COVID-19 Period; and
  - b. If the employer stopped making employer-contributions to certain benefit plans as of May 29, 2020, the employer does not have to reinstate those contributions during the COVID-19 Period.
4. **CONSTRUCTIVE DISMISSAL:** The following does not constitute constructive dismissal if it occurs during the COVID-19 Period:
  - a. a temporary reduction or elimination of the employee's hours of work by the employer for reasons related to COVID-19; and/or
  - b. a temporary reduction in the employee's wages by the employer for reasons related to COVID-19.
5. **MINISTRY OF LABOUR CLAIMS:** Any complaint that has already been filed with the Ministry alleging that a temporary reduction or elimination of hours or wages constituted a termination shall be deemed not to have been filed if the temporary reduction or elimination of hours or the temporary reduction in wages occurred during the COVID-19 Period for reasons related to COVID-19.
6. **REDUCED HOURS & WAGES:** Hours of work are considered to be reduced if the employee works fewer hours in a work week than in the last regular work week before March 1, 2020. Wages are considered to be reduced if the employee earns less regular wages in a work week than in the last regular work week before March 1, 2020.
  - a. There are certain exceptions and additional rules for assessing reduced hours and wages for employees who do not have a regular work week, or were on vacation, suspended, or not working prior to March 1, 2020.

Overall, we are navigating uncertain and rapidly changing times, particularly when it comes to employment laws. While the introduction of this Regulation is good news for employers, the landscape will continue to evolve. It is prudent to be proactive and informed. We are here to assist you.



mason | bennett | johncox  
lawyers • be well advised®

## COVID-19: Changes to Employment Laws

*RE: Ontario Regulation 228/20 made under the Employment Standards Act, 2000*

Prepared on June 1, 2020



**Ian A. Johncox**  
Lawyer

[ijohncox@mbjlawyers.com](mailto:ijohncox@mbjlawyers.com)

905-620-4499 ext:229



**Stephanie A. Miner**  
Lawyer

[sminer@mbjlawyers.com](mailto:sminer@mbjlawyers.com)

905-620-4499 ext:230

MASON BENNETT JOHNCOX PROFESSIONAL CORPORATION

79 Baldwin Street North  
Brooklin, ON L1M 1A4

Tel (905) **620-4499**  
Fax (905) **620-7738**

[www.mbjlawyers.com](http://www.mbjlawyers.com)

229 Mary Street  
Port Perry, ON L1L 1B7

Tel (905) **985-4141**  
Fax (905) **620-7738**