

DEEMED IDEL EXTENDED TO JANUARY 2, 2021

By Andrea M. Marsland

What is IDEL?

The acronym "IDEL" refers to the Ontario government's Infectious Disease Emergency Leave, which was added to the *Employment Standards Act* (the "ESA") in March, 2020 in response to the COVID-19 pandemic. The IDEL is a job-protected leave under the ESA, which means that employees cannot be terminated, penalized or reprimed against for requesting or taking an IDEL. The IDEL is an unpaid leave of absence.

The IDEL continues to be available to employees for prescribed reasons relating to COVID-19 including, but not limited to, the following: (i) employees who need to stay home to care for children and/or other prescribed family members, (ii) employees who are under medical care and/or investigation for COVID-19, and (iii) employees who are under an obligation to quarantine or self-isolate.

What is the deemed IDEL and why does it matter?

On May 29, 2020, the Ontario government passed a regulation to help employers deal with the economic hardship occasioned by the pandemic. Ontario legislated that if an employer had to change a non-unionized employee's hours of work and/or wages in response to the pandemic, this would not constitute a constructive dismissal under the ESA¹. It also legislated that employees whose hours of work and/or wages were eliminated or reduced, or who were temporarily laid off for reasons related to COVID-19, would be deemed to be on IDEL. The deemed IDEL was originally set to expire 6 weeks after Ontario's state of emergency was lifted. The state of emergency was lifted on July 24, 2020, which meant the deemed IDEL was set to expire on September 4, 2020.

However, on September 3, 2020, the Ontario government announced that it was extending the deemed IDEL to January 2, 2021. Ontario announced that it was *"helping protect jobs and businesses by extending protection to prevent temporary layoffs from automatically becoming permanent job losses. Although Ontario is now in Phase 3 of reopening, this extension will give businesses more time to reopen and return to full operations."*

What does this mean for employers/employees?

Employees who were laid off and deemed to be on IDEL or whose hours of work and/or wages continue to be affected because of the COVID-19 pandemic will continue to be on a deemed IDEL until January 2, 2021. On January 3, 2021, the regular ESA rules and time limits will resume with respect to the issues of constructive dismissal and temporary lay-off (that is, unless the province further extends the deemed IDEL).

As a refresher on the "regular rules", a temporary layoff may not exceed 13 weeks in any period of 20 consecutive weeks, or 35 weeks in any period of 52 consecutive weeks, where certain conditions are met. Once the applicable periods expire, the temporary layoffs become terminations of employment under the ESA, which give rise to an employer's obligation to provide the affected employee(s) with their termination entitlements. Under the ESA, a constructive dismissal may occur when an employer makes a significant change to a fundamental term or condition of an employee's employment without the employee's actual or implied consent.

If you have any questions or need help navigating this issue, please contact me at amarsland@foglers.com.



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¹ Notably, constructive dismissal claims could, and can, still be brought under the common law in appropriate circumstances