

Ontario employers must provide new paid COVID-19 leave

MAY 3, 2021 6 MIN READ

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On April 29, 2021, the Ontario government introduced and passed new legislation, Bill 284, *COVID-19 Putting Workers First Act, 2021* (the Bill) requiring employers to provide employees with three days of paid leave if they are absent from work for reasons related to COVID-19. This leave is being referred to as the Worker Income Protection Benefit (the WIPB). Some (but not all) employers in Ontario may apply for reimbursement of the cost of this paid leave from the Workplace Safety and Insurance Board (the WSIB).

The purpose of the WIPB, according to the [Ontario Government’s press release](#) regarding the Bill, is to further incentivize employees to get tested for COVID-19 upon suspected exposure or symptom onset, self-isolate while waiting for their test results, and get vaccinated as soon as possible.

The WIPB is being provided via an amendment to the *Employment Standards Act, 2000* (the ESA) adding a new leave of absence with pay to the recently-added provisions of the ESA which already provide for unpaid infectious disease emergency leave ([discussed here](#) with more detail in our earlier post on the topic). Accordingly, the WIPB is only available to employees of provincially-regulated employers who are covered by the ESA.

The key features of the new leave are as follows:

Eligibility for the WIPB

To be entitled to the WIPB (i.e., the three days of paid leave), the employee must fit into one of the following categories:

- The employee is under medical investigation, supervision or treatment for COVID-19 or acting in accordance with an order in relation to COVID-19 – this would include an employee who is:
 - receiving a COVID-19 vaccine and/or recovering from any associated side effects; and,
 - going for COVID-19 testing and/or waiting for test results.
- The employee is in quarantine, isolation, self-isolation or subject to another control measure as a result of information or direction related to COVID-19, issued to the public or to an individual, by a public health official, a qualified health practitioner, Telehealth Ontario, the Ontario or Canadian Government, a municipal council or a board of health. It is unclear what other “control measures” would be.
- The employee is under a direction from their employer in response to a concern that the employee may expose other individuals in the workplace to COVID-19.

- The employee is providing care or support to a family member^[1] to whom #1 or #2, above, would apply.

Amount of the WIPB

The WIPB provides for employees to receive up to \$200 a day for a maximum of three days of leave for any of the reasons discussed above. The \$200 per day will be reduced if:

- the employee was, as of April 19, 2021, entitled to paid leave under an employment contract in any of the circumstances for which the employee would also be entitled to the WIPB under the ESA, and such contractual entitlement is equal to or exceeds the employee's WIPB entitlements under the ESA; and/or
- the wages that the employee would have received if they had not taken a leave is less than \$200 (there is a special formula in the Bill which explains how this would be calculated if the employee receives commission, is paid for piece work or receives other performance-related wages).

Eligibility period

The WIPB would apply to leaves taken between April 19, 2021 and September 25, 2021 – in other words, if an employee took a leave between April 19 and April 29, 2021 (when the Bill was receiving Royal Assent), they can retroactively elect to be paid for that leave if they otherwise would have been eligible for the WIPB.

Employer reimbursement

Employers may be eligible to apply for a reimbursement of up to \$200 per employee per day from the Ontario government. The reimbursement will be administered through the WSIB. Note that the reimbursement would not be available to an employer in the following situations:

- The employee received workers' compensation benefits under the *Workplace Safety and Insurance Act, 1997* for the days of leave.
- The employer provided paid leave to employees as of April 19, 2021 that equalled or exceeded the WIPB leave. For example, if an employer provided paid sick days to employees as of April 19, 2021, the employer would not be eligible for the reimbursement (this is true even if the employer subsequently eliminates its paid sick days). It appears that the government's intent, whatever the merits, is not to reward employers who already as of April 19, 2021 had sick or short-term leave policies in place for the benefit of their employees.

To apply for the reimbursement from the WSIB, the employer must file an application for reimbursement within 120 days of making the payment in respect of which the application is made. Details on what must be included in the application to the WSIB are contained in the ESA.

The WIPB in context

Ontario is not the first province requiring employers to provide paid leaves related to COVID-19 vaccination (see our colleague's earlier [post outlining Western Canada's response to COVID-19 vaccination](#)). However, it is the first province to include broader directives providing for paid leave beyond the act of vaccination, to employees who are getting tested for COVID-19 upon suspected exposure or symptom onset; isolating while waiting for their test results, or having vaccine-related side effects. In this way, with the exception of Quebec (which already requires provincially regulated employers to provide two paid sick days annually) Ontario is the first province to take steps to address the outstanding gaps in the federal Canada Recovery Sickness Benefit (CRSB) program, in recognition of how these gaps lead to an increased prevalence of COVID-19 cases.

As employees are now entitled to the WIPB, employers should contact Osler's Employment and Labour Group for any specific questions of how the new WIPB affects them or intersects with existing workplace policies, programs and employment contracts.

^[1] Family members for this purpose include: (1) the employee's spouse; (2) a parent, step-parent or foster parent of the employee or the employee's spouse; (3) a child, step-child or foster child of the employee or the employee's spouse; (4) a child who is under legal guardianship of the employee or the employee's spouse; (5) a brother, step-brother, sister or step-sister of the employee; (6) a grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse; (7) a brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee; (8) a son-in-law or daughter-in-law of the employee or the employee's spouse; (9) an uncle or aunt of the employee or the employee's spouse; (10) a nephew or niece of the employee or the employee's spouse; (11) the spouse of the employee's grandchild, uncle, aunt, nephew or niece; (12) a person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met; and (13) any individual prescribed as a family member.

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