
July 2, 2020

BULLETIN

COVID-19 RELATED TEMPORARY LAYOFFS EXTENDED - UPDATE

In our recent blog post entitled “COVID-19 Related Temporary Layoffs Extended”, we discussed the provincial government’s June 25, 2020 announcement that temporary layoffs related to COVID-19 could extend to a maximum of 24 weeks. At the time of writing that post, Order in Council No. 352 which makes that change was not available for review.

The Order in Council is now available. It indicates that Section 45.01(2) of the *Employment Standards Regulation*, BC Reg. 396/95 (the “Regulation”) is amended by repealing the definition of “temporary layoff” within that Section, and replacing it with the following:

“temporary layoff” means a layoff of up to 24 weeks in any period, ending on or before August 30, 2020, of 28 consecutive weeks.

The Order in Council also provides that Section 45.01(2) of the Regulation does not apply to layoffs which begin on or after June 1, 2020. The provincial government did not reference that amendment in its news release regarding the extension of COVID-19 temporary layoffs.

Before May 4, 2020, pursuant to Section 1 of the *Employment Standards Act*, RSBC 1996, c. 113 (the “ESA”), the temporary layoff of employees who did not have recall rights under a collective agreement was subject to a maximum of 13 weeks in a 20-week period, regardless of the reason for the layoff. Effective May 4, 2020, the provincial government extended the permissible length of a temporary layoff to 16 weeks in a 20-week period, for layoffs caused by the COVID-19 emergency.

The most recent changes to the Regulation mean that employers who had laid off non-bargaining unit employees because of the COVID-19 emergency before June 1, 2020, will continue to be excused from the normal definition of “temporary layoff” in Section 1 of the *ESA*. Instead, a layoff can now, with the employee’s agreement, extend to up to 24 weeks, within a 28-week period that ends on or before August 30, 2020. Employers who lay off non-bargaining unit employees due to the COVID-19 emergency on or after June 1, 2020, will be subject to the normal definition of temporary layoff with a 13-week maximum. An employer that does not recall a laid off employee to work by the expiry of the relevant temporary layoff threshold must pay the employee severance pay under the *ESA* notice provision or their employment contract’s termination clause, whichever is applicable.

As we discussed in our prior blogs regarding COVID-19 temporary layoffs, the extension of the permissible length of a temporary layoff does not grant employers the right to temporarily layoff non-bargaining unit employees. The *ESA* only allows a temporary lay off if the right already exists expressly or impliedly in the employment contract, or if the employee agrees to the layoff. We

continue to strongly recommend that local governments seek legal advice before laying off any non-bargaining unit staff.

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