

July 22, 2020

BULLETIN

**VARIANCE APPLICATION PROCESS UNDER THE EMPLOYMENT STANDARDS
ACT STREAMLINED FOR EXTENSIONS TO COVID-19 TEMPORARY LAYOFFS**

In our previous bulletins dated June 26, 2020 and July 2, 2020, we addressed the provincial government's extension to the permissible length of a COVID-19 temporary layoff for non-bargaining unit employees to 24 weeks within a 28-week period that must end on or before August 30, 2020. The provincial government's announcement of that extension reminded employers that they have the ability to seek an exemption from the maximum length of a temporary layoff, pursuant to Section 72 of the *Employment Standards Act*, RSBC 1996, c. 113 (the "Act"), if they have the support of the affected employees. On July 20, 2020, the provincial government announced that it has made an online application tool available to streamline the process to seek a variance in relation to a COVID-19 temporary layoff.

Under the normal variance application process, an employer must deliver a letter which is signed by the employer and a majority of the employees who will be affected by the variance to an office of the Employment Standards Branch (the "ESB"). The letter must set out the provisions of the Act for which a variance is sought, the variance requested, the reason for the request, the employer's name and contact information, and the name and home phone number of each employee that signs the letter. The employer must also provide a list of all employees who will be affected by the variance application.

Under the new process, hard copies of documents and signatures are not required. An employer that wants to apply for a variance in respect of a COVID-19 temporary layoff must still survey their laid off employees and secure the support of more than 50 percent of them. The ESB has created a customizable template email that an employer can use to advise employees that it would like to apply for a variance, as well as a Support for a COVID-19 Temporary Layoff Variance Form (the "Support Form") for completion by employees who support the application. Employees who have been requested to support a variance application can also access the provincial government website for information about their rights and a copy of the Support Form. The website suggests that employees submit the Support Form to their employer via email.

Once an employer has gathered sufficient support for its application, it can apply for the variance online. The online tool includes a template for the list of employees affected by the variance sought. As part of the application process, employee Support Forms and the list of affected employees can be uploaded electronically.

If the ESB approves the variance application, the employer must post a copy of the variance in the workplace. The employer should also send affected employees a copy of the variance by email.

If an employer's COVID-19 temporary layoff will extend beyond 24 weeks or the August 30, 2020 maximum end date, and it does not apply for a variance or its application is not submitted in time, the layoff will become permanent and the employer must pay the laid off employees severance pay under the Act's notice provisions or their employment contract's termination clause, whichever is applicable. The online tool indicates that it can take up to a week to process online variance applications. An employer can also apply for a variance by email using a fillable .pdf application form, but applications submitted in that manner will take longer to process. Online applications must be received by August 25, 2020 for the ESB to issue a decision by August 30, 2020. However, the provincial government recommends that employers submit their variance applications early to avoid the potential that their COVID-19 layoffs will become permanent, with the resulting requirement to provide severance pay.

As we indicated in our July 2, 2020 bulletin, 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. We continue to strongly recommend that local governments seek legal advice before laying off any non-bargaining unit staff. We also highly recommend that a local government whose COVID-19 temporary layoff will extend beyond the maximum period apply to the ESB for a variance.

Information about COVID-19 temporary layoff variance applications, and the online application tool can be found at: www.gov.bc.ca/covidlayoffs

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