
June 26, 2020

BULLETIN

COVID-19 RELATED TEMPORARY LAYOFFS EXTENDED

On June 25, 2020, the provincial government announced that temporary layoffs related to COVID-19 can now extend to a maximum of 24 weeks, expiring on August 30, 2020. This change follows the adoption in May, 2020 of Order in Council No. 219, which added a new section to the Employment Standards Regulation, B.C. Reg. 369/95 permitting layoffs related to COVID-19 to extend to 16 weeks.

As a result of the most recent change, an employer will be able to lay off an employee who does not have a right of recall under a collective agreement for up to 24 weeks, if the COVID-19 emergency is a cause of all or part of the layoff, and the employee agrees to the layoff. The normal definition of “temporary layoff” under the *Employment Standards Act* (the “ESA”), which permits a layoff of up to 13 weeks in any 20-week period, does not apply in those circumstances. Without the extension of time, employers who were not ready to resume their operations after a 16-week layoff would have had to pay their laid off employees severance pay under the *ESA* notice provision or their employment contract’s termination clause, whichever was applicable.

The provincial government’s stated goal with this change is to support economic recovery by giving employers more time to return to full operations, while maintaining a connection between employers and employees. The expectation is that employers will recall the employees that they have laid off, when they resume operations. The new time period for COVID-19 layoffs also aligns with the extended Canada Emergency Response Benefit, which the federal government announced on June 16, 2020 would be extended from 16 weeks to 24 weeks.

As we discussed in our prior blog related to the May, 2020 creation of COVID-19 temporary layoffs, the extension of the permissible length of a temporary layoff does not grant employers the right to temporarily lay off non-bargaining unit employees. Instead, the *ESA* only permits a temporary layoff if the right already exists expressly or impliedly in the employment contract, or if the employee agrees to the temporary layoff. We, therefore, strongly recommend that local governments seek legal advice before laying off any exempt staff.

The provincial government’s news release regarding the 24-week COVID-19 temporary layoff also reminds employers about their ability to seek exemptions from the application of various employment standards, including the maximum length of a temporary layoff, pursuant to Section 72 of the *ESA*. To apply for a variance, an employer must deliver a letter to the Director of Employment Standards which is signed by the employer and a majority of employees who will be affected by the variance. The announcement also indicates that the provincial government will ensure that Section 72 applications are processed in a timely and effective manner to support economic recovery and protect workers’ rights. We recommend that local governments seek legal advice before applying for a variance.

At the time of writing, the provincial government had not yet adopted an Order in Council extending the permissible length of a COVID-19 temporary layoff. We will provide a further update once an Order is passed.

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