
May 6, 2020

BULLETIN

NEW EXTENSIONS TO COVID-19 RELATED TEMPORARY LAYOFFS

On May 4, 2020, the provincial government passed Order in Council No. 219, which adds an “Exclusions during COVID-19 emergency” section to the Employment Standards Regulation, B.C. Reg. 369/95.

This new provision means that temporary layoffs related to COVID-19 can last up to 16 weeks in a 20 consecutive week period without triggering a termination of employment under the *Employment Standards Act* (“*ESA*”), creating an extension from the usual 13-week threshold. It is applicable only where a laid off employee does not have a right of recall under their collective agreement, and the exclusion will only relate to a layoff that was caused in whole or in part by COVID-19. The provision is intended to be temporary during the pandemic and will be repealed when it is no longer needed.

While this extension is helpful for employers, it does not change the current law regarding temporary layoffs of exempt employees and whether they are permitted under the *ESA* or at common law. BC Courts and the Employment Standards Branch have held that the *ESA* does not grant employers the right to temporarily lay off employees. Rather, they have interpreted the *ESA* as simply permitting the temporary layoff of exempt employees if the right already exists expressly or impliedly in the employment contract, or if the employee agrees to the temporary layoff. Therefore, we still highly recommend that local governments seek legal advice before proceeding with layoffs of exempt staff.

Carolyn MacEachern and Amy O’Connor