

CONSULTATION DRAFT

AN ACT TO AMEND THE EMPLOYMENT STANDARDS ACT (NO. 3)

BILL NO.

2020

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. Subsection 2(4) of the *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.2, is amended by the addition of the following after clause (a.1):

(a.2) those provisions relating to an emergency leave of absence as contained in section 22.5;

2. The Act is amended by the addition of the following after section 22.4:

EMERGENCY LEAVE

22.5 Definitions

(1) In this section,

(a) “**emergency**” means any one or more of the following that have the effect of preventing an employee from performing the employee’s work duties:

- (i) an emergency declared under the *Emergency Measures Act* R.S.P.E.I. 1988, Cap. E-6.1,
- (ii) a public health emergency declared under the *Public Health Act* R.S.P.E.I. 1988, Cap. P-30.1,
- (iii) a direction or order of a public health official or the Chief Public Health Officer under the *Public Health Act*,
- (iv) an emergency declared under Part 1, Part 2 or Part 3 of the *Emergencies Act* (Canada),
- (v) an order of a quarantine officer under the *Quarantine Act* (Canada);
- (vi) circumstances specified in subsection (2),
- (vii) circumstances specified in the regulations;

(b) “**family member**”, in respect of an employee, means a person who is a member of either the immediate or extended family of the employee.

Emergency affecting family member

(2) For the purposes of this section and the regulations, an emergency includes a circumstance referred to in subclauses 1(a)(i) to (vii) that applies to a family member of an employee where

- (a) the declaration, direction, order or other circumstance directly applies to the family member of the employee;
- (b) the declaration, direction, order or other circumstance results in a situation where the family member of the employee requires care or assistance;

- (c) the employee is the only person reasonably able in the circumstances to provide the family member with the required care or assistance; and
- (d) providing the required care or assistance to the family member has the effect of preventing the employee from performing the employee's work duties.

Unpaid leave of absence

- (3) In an emergency, an employee is entitled to an unpaid emergency leave of absence for the duration of the time when the employee cannot perform the duties of the employee's position because of the emergency.

Effect of direction, etc.

- (4) For greater certainty, subsection (3) applies to an employee
 - (a) who is in isolation or quarantine, or is subject to a control measure, including self-isolation, where the quarantine, isolation or control measure was implemented as a result of information or directions issued to individuals or the public by the Chief Public Health Officer related to a communicable disease prescribed in the Notifiable Diseases and Conditions and Communicable Diseases Regulations (EC560/13) made under the *Public Health Act*;
 - (b) who is under a direction given by the employee's employer in response to a concern of the employer that the employee may expose other persons in the workplace to a prescribed communicable disease referred to in clause (a); or
 - (c) who is out of the province and is directly affected by a travel restriction related to a prescribed communicable disease referred to in clause (a) and in the circumstances cannot reasonably be expected to return to the province.

Notice to employer

- (5) An employee shall
 - (a) give the employer as much notice as is reasonably possible of the employee's intention to take an emergency leave; and
 - (b) where required to leave before notice can be given, advise the employer as soon as possible after the emergency leave begins.

Supporting evidence

- (6) An employee who takes emergency leave pursuant to this section
 - (a) shall provide to the employer, on request and within a reasonable time in the circumstances, evidence that is reasonable in the circumstances and in accordance with the regulations that the employee is entitled to the emergency leave; and
 - (b) is not required to provide a certificate from a medical practitioner or nurse practitioner as evidence for the purpose of clause (a).

Duration of leave

- (7) An emergency leave pursuant to this section
 - (a) continues as long as the emergency continues and prevents the employee from performing the employee's work duties; and
 - (b) ends on the day the emergency is terminated or no longer prevents the employee from performing the employee's work duties.

Same position, pay and benefits

- (8) When an employee returns to work following the end of an emergency leave taken under this section, the employer shall permit the employee to resume work in the position the employee

held immediately before the emergency leave began or, if that position no longer exists, in a comparable position, with not less than the same wages and benefits the employee would have received if the employee had not taken the emergency leave of absence.

3. Subsection 41(1) of the Act is amended by the addition of the following after clause (f.1):

- (f.2) respecting an emergency leave of absence under section 22.5, including
 - (i) additional circumstances that constitute an emergency, and
 - (ii) the information or documentation that an employee is required to provide to an employer as evidence in support of entitlement to the leave, and when it is to be provided;

4. This Act is deemed to have come into force on March 16, 2020.

EXPLANATORY NOTES

SECTION 1 amends subsection 2(4) of the *Employment Standards Act* to add a reference to the provisions of the emergency leave of absence under the new section 22.5, below, as provisions that apply to employees whose terms and conditions of work are established by a collective agreement pursuant to the *Labour Act*.

SECTION 2 amends the Act by adding a new section 22.5 to the Act to provide for an emergency leave of absence for an employee who is prevented by an emergency, as defined, from performing the employee's work duties.

- The leave is also available where a family member of an employee is affected by an emergency as specified.
- The employee is entitled to this unpaid leave for the duration of the emergency.
- The leave covers an employee who is in quarantine, isolation or under control measures such as self-isolation where the quarantine, isolation or control measure was implemented as a result of information or directions issued by the Chief Public Health Officer related to a communicable disease prescribed in the Notifiable Diseases and Conditions and Communicable Diseases Regulations (EC560/13) made under the *Public Health Act*, who is under a direction given by the employee's employer in response to a concern of the employer that the employee may expose other persons in the work place to a prescribed communicable disease referred to in clause (a), or who is out of the province and is directly affected by a travel restriction related to a prescribed communicable disease referred to in clause (a) and in the circumstances cannot be expected to return to the province.
- The employee is required to give the employer as much notice as is reasonably possible and, where the employee must leave before notice can be provided, to advise the employer as soon as possible after the leave begins.
- The employer may request, and the employee must provide within a reasonable time, evidence that is reasonable in the circumstances and in accordance with the regulations that the employee is entitled to the leave, but the employee is not required to provide a certificate from a medical practitioner or nurse practitioner as evidence.
- The leave continues for as long as the emergency continues and prevents the employee from performing the employee's work duties, and ends on the day the emergency is terminated or no longer prevents the employee from performing the employee's work duties.
- When the employee returns to work, the employer must permit the employee to resume work in the position the employee held immediately before the emergency leave began or, if that position no longer exists, in a comparable position with not less than the same wages and benefits the employee would have received if the employee had not taken the emergency leave.

SECTION 3 amends subsection 41(1) of the Act to provide an additional power to make regulations, as specified, for the purposes of the new section 22.5 of the Act.

SECTION 4 provides for the commencement of the Act.