



# How the Mysterious O.Reg 228/20 Impacts Your Workforce

Layoffs, Work Reductions  
and Constructive Dismissal

June 17, 2020

[www.springlaw.ca](http://www.springlaw.ca)

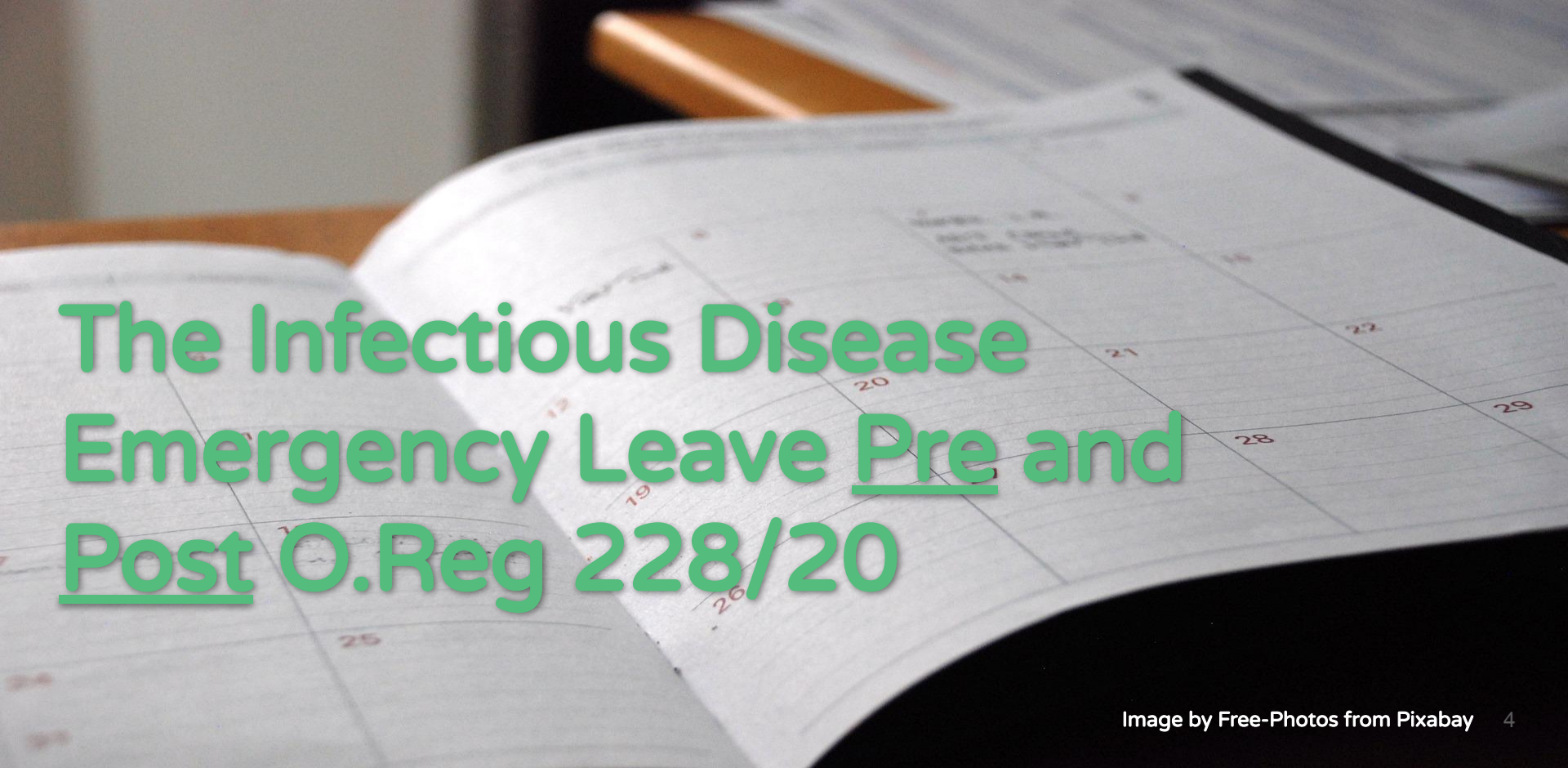


Presented by:  
Jessyca Greenwood  
&  
Hilary Page



# Presentation Roadmap

1. Infectious Disease Emergency Leave (IDEL)
2. The COVID-19 Period and the Current State of Emergency
3. What Does It Mean for Your Business?
4. Layoffs and Terminations - Pre and Post O.Reg 228/20
  - a. Impact of Existing Layoffs
  - b. Impact on Future Layoffs and Terminations
  - c. Distinction Between Deemed IDEL and Voluntary IDEL
  - d. Employees Benefits and the IDEL
5. Constructive Dismissal Claims
6. Takeaways



# The Infectious Disease Emergency Leave Pre and Post O.Reg 228/20

Image by Free-Photos from Pixabay 4

# Infectious Disease Emergency Leave

## Pre O.Reg 228/20

Job protection for employees who need to be off work for COVID-19 related reasons

- Illness
- Caregiver duties
  - For someone ill
  - For children where daycare and school is closed
- Quarantine due to illness, exposure, travel

# Deemed Infectious Disease Emergency Leave Post O.Reg 228/20

- Same as before AND
- Employees whose hours of work are temporarily reduced or eliminated by the employer for reasons related to the designated infectious disease are **DEEMED** to be on an IDEL for the COVID-19 Period

# The Covid-19 Period and the Current State of Emergency

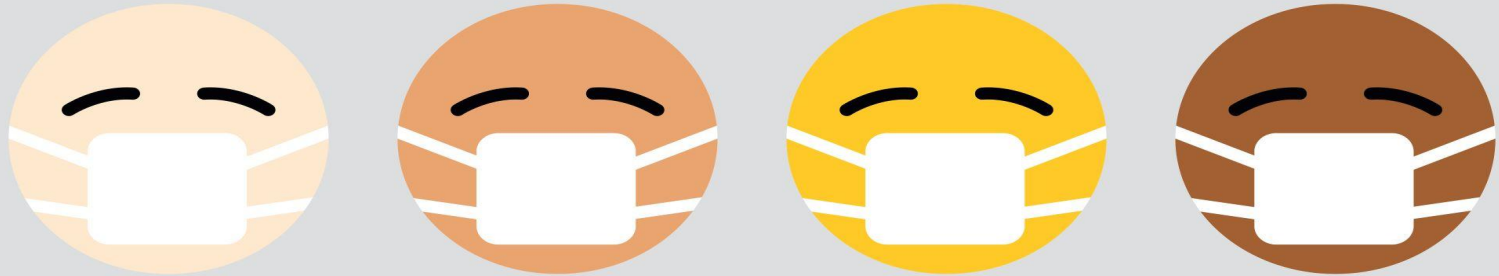


Photo by visuals on Unsplash 7

# The Covid-19 Period

- “COVID-19 Period” means the period beginning on March 1, 2020 and ending on the date that is six weeks after the day that the emergency declared by Order in Council 518/2020 (Ontario Regulation 50/20) on March 17, 2020 pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act* is terminated or disallowed.

## Current State of Emergency

- Until June 30



# What does it mean for your business?

- Layoff timelines no longer apply
- Risks to the employer lessened



Photo by Evan Dennis on Unsplash

# Layoffs, Terminations and O.Reg 228/20



Photo by Roman Bozhko on Unsplash

# Layoff Timelines Pre O.Reg 228/20

- Layoffs could last 13 weeks or 35 weeks if benefits or other payments were continued
- At the end of this timeline, the employee is deemed to be terminated

# Layoffs/Hours Reductions Post O.Reg 228/20

- Layoffs replaced by the deemed IDEL - last as long as the Covid-19 Period
- Following the Covid-19 Period, employers could then institute normal layoffs and keep employees off work for longer

# Impact on Existing Layoffs

- These layoffs are no longer layoffs
- Deemed IDEL
- Last for as long as the COVID-19 Period

# Impact on Future Layoffs and Terminations

- **New temporary reductions in hours = deemed IDEL and not layoffs**
- **Can still terminate employees for legal reasons, but watch for the distinction between a DEEMED IDEL and a VOLUNTARY IDEL**

# Distinction Between Deemed IDEL and Voluntary IDEL

- Deemed = can terminate, will end at the end of the Covid-19 Period
- Voluntary = job protections will end when the circumstances that put the employee on the leave end (eg. the kids go back to school)

# Benefits for Employees on the IDEL

- For employees whose hours were reduced prior to May 29 (laid off employees) and whose benefits were not continued = do not have to reinstate benefits
- For employees going on the IDEL after May 29 continue benefits
- For employees who were voluntarily on the IDEL prior to May 29 continue benefits



# Constructive Dismissal Claims

- **O.Reg 288/20 Eliminates constructive dismissal under the ESA for**
  - Hours reductions
  - Pay reductions
- **Change must be temporary**
- **Employees still have common law rights**

# Takeaways

- Important to pay attention to the *type* of IDEL
- Important to keep track of timelines





Spring LAW

# PIVOT DIY

Rightsizing Your Workforce  
During COVID-19

# Pivot DIY

- A Do It Yourself toolkit crafted by experienced, licensed Canadian employment lawyers
- Accessible online right now, at an affordable one-time price
- Pivot DIY gives you the plan, the tools and the help you need to navigate this moment of business uncertainty



**PIVOT DIY**

Rightsizing Your Workforce  
During COVID-19

DANKE!  
THANK YOU!  
MERCI!  
GRAZIE!  
GRACIAS!  
DANK JE WEL!

Photo by Wilhelm Gunkel on Unsplash 21

# Questions?

To learn more about our team: <https://springlaw.ca/team/>

To connect with our team:

- Marnie Baizley - [mbaizley@springlaw.ca](mailto:mbaizley@springlaw.ca)
- Jessyca Greenwood - [jgreenwood@springlaw.ca](mailto:jgreenwood@springlaw.ca)
- Deidre Khayamian - [dkhayamian@springlaw.ca](mailto:dkhayamian@springlaw.ca)
- Danielle Murray - [dmurray@springlaw.ca](mailto:dmurray@springlaw.ca)
- Hilary Page - [hpage@springlaw.ca](mailto:hpage@springlaw.ca)
- Lisa Stam - [lstam@springlaw.ca](mailto:lstam@springlaw.ca)

Sign up for future **SpringForward Legal Updates**:

<https://springlaw.ca/employers/springforward-legal-updates/>

Sign up for our monthly **Newsletter**: [www.springlaw.ca](http://www.springlaw.ca)

**spring** LAW

[www.springlaw.ca](http://www.springlaw.ca)



Thank You!