

## 2nd Wave Workplace Law Issues

*Legal considerations and compliance issues for employers to consider as we enter the second wave of Covid-19*

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**Presented by:  
Marnie Baizley  
&  
Danielle Murray**



# Roadmap

1. Work and Kids/Family
2. The Infectious Disease Emergency Leave (IDEL)
3. New Government Benefits
4. Human Rights Protections for Employees Who Are Parents or Caregivers to Parents
5. Accommodations
6. Takeaways



# Work and Family

# Work and Family

- Impacts on employee schedules
- Availability to work full hours
- Distractions!
- Employees unable to come into the office

EXIT



# The Infectious Disease Emergency Leave (IDEL)

6

# Unpaid Time Off - IDEL

## The Infectious Disease Emergency Leave

- Ontario - Unpaid job protection under the *Employment Standards Act, 2000*
- Similar leaves in every province - Covid-19 leave, public health emergencies leave, communicable disease emergency leave

# Reasons an Employee Can Take the IDEL

- Employee is in quarantine or isolation by a direction issued by doctor, nurse, Telehealth Ontario
- Employee is caring for a child/family member because of a matter related to COVID-19
- School or childcare is closed because of COVID-19 or because the employee did not send their child to school or childcare because of fear of exposure
- **Handy link:**  
<https://www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave>



# Reasons an Employee Can Take the IDEL

- Caring for a child who is sick with COVID-19 or who stayed home because of COVID-19 protocols at the school or child care (e.g. symptoms)
- Child had a symptom that did not automatically require the child to stay away from school or child care, but the employee was concerned the symptom may relate to COVID-19 and chose to keep their child home as a precautionary measure
- Same concepts apply broadly to family members

# Length of the IDEL

- No limit
- As long as the triggering event continues
- As long as COVID-19 remains a designated infectious disease under O. Reg. 66/20 under the *Employment Standards Act, 2000*

# How The Leave Can Be Taken

- Partial days
- Days here and there - no need for the leave to be taken in consecutive days
- If taken as a partial day the employer must let the employee work (and pay them) for the part of the day the employee is not on the leave

# Employee's Proof of Entitlement to the IDEL

- **NOT a certificate from a physician or nurse**
- **Reasonable in the circumstances eg. email from the daycare that the employee's child must stay home**

# Employer Obligations to Employees on IDEL

- Continue benefits
- Right to reinstatement
- Freedom from reprisal or negative consequences because of leave
- Time on the leave counts as active employment for the purpose of determining the length of service

# New Government Benefits



# Employee Income Support - Canada Recovery Caregiving Benefit

- IDEL is an unpaid leave
- Employees on the IDEL for reasons related to caregiving may be able to access the Canada Recovery Caregiving Benefit
- \$500 per week for up to 26 weeks

# Canada Recovery Caregiving Benefit

Available to eligible Canadians unable to work because they must care for a child under age 12 or family member:

- due to the closures of schools or daycares or care facility because of COVID-19
- where school and daycare is open but the child cannot attend in person due to being high risk
- whose usual caregiver is not available due to reasons related to the pandemic



# The Canada Recovery Sickness Benefit

**\$500 per week (\$450 after tax) for workers who are unable to work for at least 50% of the week because:**

- **they contracted COVID-19**
- **self-isolated for reasons related to COVID-19, or have underlying conditions**
- **are undergoing treatments or have contracted other sicknesses that, in the opinion of a medical practitioner, nurse practitioner, person in authority, government or public health authority, would make them more susceptible to COVID-19**

# The Canada Recovery Benefit

The Canada Recovery Benefit is now open for applications through the CRA.

\$500 per week for up to 26 weeks for workers who:

- stopped working and are not eligible for EI
- OR
- had their employment/self-employment income reduced by at least 50% due to COVID-19

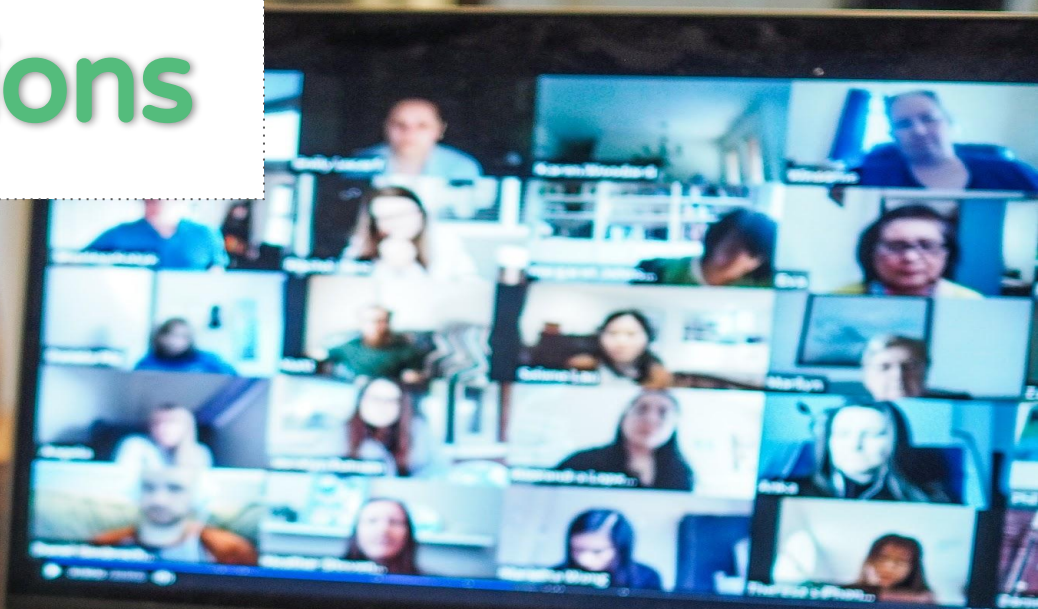
The benefit will be paid in two-week periods.

If more than \$38,00/year, reimburse \$0.50 of for every \$ earned above \$38,000 up to the benefit amount received.

# Human Rights Protections for Employees Who are Parents

- If the IDEL does not apply (it will in most situations regarding employees needing unpaid time off)
- Human rights laws offer access to a broader range of accommodations

# Accommodations



# Common Accommodation Requests

- Work from home
- Work reduced hours
- Work flexible hours
- Not do aspects of the job

# Ask Why!

- An employee may say they want to work from home and not necessarily also tell the employer why
- The *why* is important - will help determine whether or not there is a duty to accommodate the request

# Reasons Why

- Kids!
- I don't want to
- I'm scared
- I don't want to affect my CERB/EI/CRB

# What Do Employers Have to Accommodate?

Family status = Protected ground under the *Human Rights Code*

## Employment

- 5 (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, **family status** or disability\*

\*Ontario *Human Rights Code*



# What is family status?

**“Family status” means the status of being in a parent and child relationship**

# The Employer's Duty to Accommodate

Employer has a positive duty to accommodate up to the point of undue hardship

The Ontario *Human Rights Code* sets out only three items that may be considered in assessing whether an accommodation would cause undue hardship:

- cost
- outside sources of funding, if any
- health and safety requirements, if any

# Employee Accommodation Process

- Employee asserts the need for accommodation - need to work from home, need time off, need to work part-time etc.
- Employer asks WHY and asks the employee to substantiate the need in order to gather more information
- Employees are not entitled to the accommodation of their choice
- Employer and employee need to work together to see what accommodation can work for both parties
- Employer must accommodate up to the point of undue hardship

# Failure to Accommodate - Consequences

- Human rights complaint (i.e. HRTO Application)
- Wrongful dismissal claim
- Protect yourself by ensuring that efforts to accommodate are well documented in writing eg. requests for evidence/substantiation, communications with the employee, consideration of outside sources of funding etc.



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# Takeaways

- The IDEL or similar legislative leaves will provide employees with protection for most family-related needs for absences
- Other accommodation requests will likely be protected under the family status ground human rights legislation
- Ask questions!
- Be flexible!
- Write everything down!

# 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)
- Laurence Camille - [lcamille@springlaw.ca](mailto:lcamille@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)
- Gaya Murti - [gmurti@springlaw.ca](mailto:gmurti@springlaw.ca)
- Hilary Page - [hpage@springlaw.ca](mailto:hpage@springlaw.ca)
- Lisa Stam - [lstam@springlaw.ca](mailto:lstam@springlaw.ca)

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Thank You!