

# Infectious disease emergency leave

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## Overview

Employees have the right to take unpaid, job-protected infectious disease emergency leave if they are not performing the duties of their position because of specified reasons related to a designated infectious disease. This leave is available to all employees who are covered by the *Employment Standards Act*.

Employers cannot threaten, fire or penalize an employee in any other way because the employee took or plans on taking an infectious disease emergency leave.

**The only disease for which infectious disease emergency leave may be taken at this time is COVID-19.** Although the *Employment Standards Act* was amended to include infectious disease emergency leave on March 19, 2020, **the leave entitlements for COVID-19 are retroactive to January 25, 2020.**

## Reasons an employee may take infectious disease emergency leave

Employees can take infectious disease emergency leave if they will not be performing the duties of their position because of any of the following reasons:

1. The employee is under individual medical investigation, supervision or treatment related to a designated infectious disease. The medical investigation, supervision or treatment can be in Ontario or in another province, territory or country
2. The employee is following a COVID-19 related order issued under section 22 or 35 of the *Health Promotion and Protection Act*.
3. The employee is in quarantine, isolation (voluntary or involuntary), or is subject to a control measure, and the quarantine, isolation or control measure was implemented as a result of information or directions related to a designated infectious disease that was issued by:

- a. a public health official. This means a public health official of the Government of Canada or any of the following people within the meaning of the Ontario *Health Protection and Promotion Act*:
  - the Chief Medical Officer of Health or Associate Chief Medical Officer of Health
  - a medical officer of health or an associate medical officer of health
  - an employee of a board of health
- b. someone who is qualified to practice as a physician or a nurse either in Ontario or in the jurisdiction where the employee is located (for example, another province, territory or another country) **and** who has provided care or treatment to the employee, whether or not the care or treatment was related to the designated infectious disease (such as an employee who has an immune deficiency was told by his physician to self-isolate and not go to work during the infectious disease outbreak)
- c. Telehealth Ontario
- d. the Government of Ontario or Canada
- e. a municipal council in Ontario
- f. a board of health

The information or direction may be issued:

- to the public (in whole or in part)
- to one or more people, and
- through any means, including print, electronic or broadcast (for example, television or radio)

4. The employee is under a direction given by his or her employer in response to the employer's concern that the employee might expose other individuals in the workplace to a designated infectious disease.

For example, this would include the employer directing the employee to stay at home for a period of time if the employee has recently travelled internationally and the employer is concerned the employee may expose others in the workplace to a designated infectious disease.

5. The employee is providing care or support to any of these individuals because of a matter related to a designated infectious disease:
  - the employee's spouse (of the same or opposite sex, whether or not married)
  - a parent, step-parent or foster parent of the employee or the employee's spouse
  - a child, step-child or foster child of the employee or the employee's spouse

- a child who is under legal guardianship of the employee or the employee's spouse
- a brother, step-brother, sister or step-sister of the employee
- a grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
- a brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee
- a son-in-law or daughter-in-law of the employee or the employee's spouse
- an uncle or aunt of the employee or the employee's spouse
- a nephew or niece of the employee or the employee's spouse
- the spouse of the employee's grandchild, uncle, aunt, nephew or niece
- a person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met (currently there are no prescribed conditions)
- any individual prescribed as a family member for the purposes of this section (currently, there are no additional prescribed family members)

This includes an employee taking leave to care for their child whose school or day care was closed because of a designated infectious disease (in this case, COVID-19).

Examples include:

- an employee who is providing care to an aunt who is sick with COVID-19
- a babysitter who is in quarantine or isolation because of a designated infectious disease, or is sick because of it
- a summer camp that the employee's child was scheduled to attend closed down to help prevent the spread of a designated infectious disease
- an employee's 10-year-old brother, who was visiting the employee from another city without his parents, was unable to return home because of travel restrictions imposed to prevent the spread of a designated infectious disease

The employee can be providing the care or support in Ontario or in another province, territory or country.

6. The employee is directly affected by travel restrictions related to a designated infectious disease and, under the circumstances, cannot be reasonably expected to travel back to Ontario.

For example, this would include an employee who is on a cruise ship that is not permitted to dock in any country because of the concern that passengers are infected by a designated infectious disease.

There may be some situations where an employee is affected by travel restrictions (for example where there are no international commercial airline flights available) but the employee has other options available to travel back to Ontario. This condition will be met if it would not be reasonable to expect the employee to use alternative options.

What is reasonable will depend on the circumstances. For example, an employee was vacationing in Mexico City when Canada banned all flights from Mexico for two weeks. The employee could rent a car or take a series of buses and trains to return to Ontario but that would not be a reasonable expectation in the circumstances.

This provision applies only where the employee is **directly** affected by the travel restrictions. In other words, it applies only where the **employees** travel back to Ontario is affected.

This provision applies only when the employee is caught by travel restrictions while **outside** of Ontario.

### **Rights during leave**

Employees who take infectious disease emergency leave are generally entitled to the same rights as employees who take pregnancy or parental leave. For example, employers cannot threaten, fire or penalize in any way an employee who takes or plans on taking an infectious disease emergency leave.

Learn more about [rights for employees taking pregnancy and parental leaves](#).

### **Interaction with other leaves**

There are different types of leaves under the ESA including:

- sick leave
- family responsibility leave
- family caregiver leave
- family medical leave
- critical illness leave
- bereavement leave
- declared emergency leave

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s).

The purposes of the leaves, their length and eligibility criteria are different. Learn more about the different types of leave in their respective chapters in the ESA.

### **Absences before March 19, 2020**

Although the ESA was amended to provide an entitlement to infectious disease emergency leave for COVID-19 on March 19, 2020, the leave entitlements are retroactive to January 25, 2020.

This means that an employee can retroactively designate absences from work between January 25, 2020 and March 18, 2020 as infectious disease emergency leave **if the reason for the absence meets the criteria that are now in the ESA.**

All of the rights that are associated with infectious disease emergency leave (for example, the right to be reinstated at the end of a leave and protection against being penalized for having taken the leave) apply to absences from January 25, 2020 onward.

#### **Employees who were fired on or after January 25, 2020**

If an employee was fired on or after January 25, 2020 because the employee was absent from work for a reason that meets the criteria for infectious disease emergency leave that are now in the ESA, **the employer is required to reinstate the employee** to the position the employee most recently held with the employer if it still exists (or to a comparable position if it does not) as of March 19, 2020.

If the employer does not reinstate the employee as of March 19, the employer could be ordered by an employment standards officer to reinstate the employee and to pay compensation to the employee.

The requirement to reinstate **does not apply** if the employment of the employee is ended solely for reasons unrelated to the leave.

#### **Other leave entitlements used before March 19, 2020**

An employee may have used other leave entitlements for absences before March 19, 2020. The employee does not get those leave credits reinstated. For example, in accordance with information related to COVID-19 from Telehealth Ontario, an employee self-isolated on March 16, 17 and 18, 2020. The employee used three days of sick leave for that time. Those three days are not credited back to the employee.

#### **Length of infectious disease emergency leave**

**There is no specified limit to the number of days an employee can be on infectious disease emergency leave.**

Employees have the right to be away from work on infectious disease emergency leave only for as long as the event that triggered the entitlement to the leave lasts. After the triggering event is over, the employee's normal obligations to be at work resume.

When the disease for which the employee was on leave stops being a designated infectious disease, the employee's right to the leave also ends. The list of designated infectious diseases is set out in O. Reg. 66/20 under the Employment Standards Act, 2000 (ESA).

Infectious disease emergency leave absences do not have to be taken consecutively. Employees can take the leave in part days, full days or periods of more than one day.

When an employee takes a part day of infectious disease emergency leave (for example, to deliver urgently needed medication to a brother who is in isolation because of COVID-19), the employer must allow the employee to return to work for the remainder of the employee's shift. The employee is entitled to be paid the earnings for the portion of the shift that the employee works.

#### **Notice of leave**

An employee must generally advise the employer that he or she will be taking an infectious disease emergency leave before starting the leave.

If advance notice cannot be provided, the employee must inform the employer as soon as possible after starting the leave.

Notice can be given in writing or orally.

While an employee is required to tell the employer in advance before starting a leave (or, if this is not feasible, as soon as possible after starting the leave), the employee will not lose the right to take the leave if the employee fails to do so.

### **Proof of entitlement**

An employer may require an employee to provide evidence reasonable in the circumstances at a time that is reasonable in the circumstances that the employee is eligible for infectious disease emergency leave but **employers cannot require an employee to provide a certificate from a physician or nurse as evidence**. Employers are not prohibited under the ESA from requiring medical notes in the context of issues such as return-to-work situations or for accommodation purposes.

What is considered reasonable in the circumstances will depend on all the facts of the situation, such as:

- the duration of the leave
- whether there is a pattern of absences
- whether any evidence is available and the cost of the evidence

If it is reasonable in the circumstances, evidence may take many forms, such as a:

- travel documentation showing that the employee had travelled to a country for which quarantine or isolation is being advised
- a copy of the information issued to the public by a public health official advising of quarantine or isolation (for example, a print out, screen shot or recording of the information)
- a copy of an order to isolate that was issued to the employee under s. 22 or s. 35 of the Health Protection and Promotion Act
- a note from an employee's day care provider indicating that the childcare centre was closed because of a designated infectious disease

Employers can only require the evidence at a time that is reasonable in the circumstances. What is considered reasonable in the circumstances will depend on all of the facts of the situation.

For example, if an employee is in isolation or in quarantine, it will not be reasonable to require an employee to provide the evidence during the quarantine or isolation period, if the employee would have to leave home to obtain the evidence.

However, if the employee has electronic evidence that can be sent from home, it may be reasonable to require the employee to send it during the isolation or quarantine period.

### **Employment insurance benefits and other federal supports**

Employees who take infectious disease emergency leave may be entitled to employment insurance benefits or to other federal government financial supports. For information, visit the federal government's [COVID-19 Economic Response Plan](#) website or contact Service Canada's Employment Insurance Automated Telephone Information Service at [1-800-206-7218](tel:1-800-206-7218).

The right to take time off work under the infectious disease emergency leave provisions of the ESA is not the same as the right to the payment of employment insurance benefits or federal government supports. An employee may be entitled to infectious disease emergency leave whether or not they have applied for or qualified for federal benefits or supports.