

Keep An Eye on Covid-19 Related Temporary Layoffs to Avoid Terminations!

If your NSO temporarily laid off employees during this Covid-19 pandemic, keep an eye on the original dates of the temporary layoffs, the duration to date, and the legislation regarding temporary layoffs in the provinces / territories where you operate. Several jurisdictions have made some allowances under the employment legislation regarding temporary layoffs during the pandemic. Some of these allowances are coming to an end so the original rules regarding temporary layoffs will again be effective which could mean terminations if employees are not recalled within the timelines stipulated.

Below are some information links and excerpts from each province / territory. Check the current status of the employment legislation that applies to your NSO and start planning now for the workforce that has been temporarily laid off to avoid any negative surprises.

Note: It is the NSO's responsibility as an employer to understand and adhere to the correct legislative requirements. No legal liability or other responsibility is accepted by or on behalf of the Canadian Olympic Committee (COC) or the author of this document for any errors, omissions, or statements made within this document. The COC and the author accept no responsibility for any loss, damage or inconvenience caused as a result of reliance on such information. If in doubt at any time, you are strongly encouraged to speak with an HR professional and/or employment lawyer.

Temporary layoffs Highlights by Province/Territory as of July 31, 2020

<p style="text-align: center;"><u>Alberta</u></p> <p>Resources:</p> <p>www.alberta.ca/temporary-workplace-rule-changes.aspx</p> <p>www.alberta.ca/temporary-layoffs.aspx</p> <p>www.alberta.ca/assets/documents/covid-19-general-relaunch-guidance.pdf</p>	<p>The maximum time for temporary layoffs related to COVID-19 that occurred on or after June 18, 2020, or were underway as of June 18, 2020, is 180 consecutive days.</p> <p>For temporary layoffs that occurred for reasons other than COVID-19, the following rules apply:</p> <ul style="list-style-type: none">• for layoffs that started before March 17, regular rules apply (maximum 60 days in total in a 120-day period)• for layoffs that started between March 17 and June 17, the maximum layoff duration is 120 consecutive days• for layoffs that occurred on or after June 18, regular rules apply (maximum 60 days in total in a 120-day period)
<p style="text-align: center;"><u>British Columbia</u></p> <p>Resources:</p> <p>www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/hours/variances</p> <p>www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/handling-disruptions</p>	<p>Extend a COVID-19 Temporary Layoff with a Variance</p> <p>The maximum length of a temporary layoff related to COVID-19 was extended to 24 weeks, ending on or before August 30, 2020.</p> <p>Employers and employees can apply together to the Employment Standards Branch for a variance to extend a temporary layoff. Applications submitted by August 25, 2020 will be processed before August 30, 2020.</p> <p>This process is called a variance because it amends part of the Employment Standards Act. Variances allow work situations that don't strictly meet B.C. employment standards but follow their purposes, such as an extension to a temporary layoff.</p>

Manitoba

Resources:

www.gov.mb.ca/labour/standards/doc_COVID-19_factsheet.html

Are layoffs longer than 8 weeks in a 16-week period deemed terminations even during a declared state of emergency? No. The time an employee is on layoff during the period that begins on **March 1, 2020**, and ends on the day on which the declaration of a state of emergency was declared under The Emergency Measures Act concerning COVID-19 is terminated, will not count toward the eight weeks out of the 16-week period used to determine when a temporary layoff is deemed a termination.

If a layoff started before March 1, 2020, does that time count towards the 8 weeks? Yes, any period of time prior to March 1, 2020 will count towards the 8 weeks. If the layoff is longer than 8 weeks, **minus the exemption period between March 1, 2020 and the date the state of emergency ends**, the layoff becomes permanent (i.e. a termination), and wages in lieu of notice must be paid.

New Brunswick

Resources:

www2.gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/es/FactSheets/LayoffTermination.pdf

www2.gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/es/FactSheets/emergency_leave_covid19-e.pdf

COVID-19 - When an employee does not qualify for the Emergency leave and his or her employment is or has been affected as a result of COVID-19, this notifiable disease is considered an unforeseen event, as such falls within the exemption of the requirement of notice. Therefore, employers are not required to provide notice to their employees or pay in lieu thereof. Please see Emergency leave COVID-19 information sheet for more information.

An employer is not required to provide notice to an employee who he lays off for reasons related to COVID19 because this notifiable disease is as a result of an unforeseen reason, as such falls within the exemption of the requirement of notice. However, the onus is on the employer to prove that a reduction of work exists and that it is related to the COVID-19 outbreak. Further, questions should be directed to the Employment Standards Branch.

Newfoundland and Labrador

Resources:

www.gov.nl.ca/releases/2020/aesl/0612n04/

www.gov.nl.ca/aesl/files/labour_relations_work.pdf

Whereas before a person could not be laid off for more than 13 weeks within a 20-week period without being permanently terminated, now they can remain temporarily laid off for 26 weeks in a period of 33 consecutive weeks.

In an effort to maintain the employer-employee relationship and provide employers with additional time to recall their employees during the COVID-19 pandemic, the Provincial Government has extended the time period that converts a temporary layoff into a permanent termination.

Previously, under the Labour Standards Act, an employee temporarily laid off for longer than 13 weeks in a period of 20 consecutive weeks would be considered as permanently terminated. As a result of today's announcement, the Provincial Government has extended the period that an employee can remain temporarily laid off to 26 weeks in a period of 33 consecutive weeks, thereby helping employees stay connected to their jobs.

...extensions are retroactive to March 18, 2020 and will **end on September 18, 2020**.

Northwest Territories

Resources:

www.justice.gov.nt.ca/en/files/legislation/employment-standards/employment-standards.a.pdf

www.ece.gov.nt.ca/en/services/employment-standard

www.gov.nt.ca/covid-19/en/business-work-0

42. (1) An employer who wishes to temporarily lay off an employee shall give the employee a written notice of temporary layoff.

(2) Subject to section 43, a temporary layoff must not exceed 45 days during a period of 60 consecutive days.

(3) A notice of temporary layoff must indicate the expected date on which the employer will request the employee to return to work.

(4) An employer who temporarily lays off an employee, without giving the employee a notice of temporary layoff in accordance with subsection (1), shall be deemed to have terminated the employment of the employee.

43. (1) The Employment Standards Officer may, by order, extend a temporary layoff to a period exceeding 45 days if he or she is satisfied that (a) special circumstances justify the extension; and (b) the employee will be recalled.

(2) If an employer lays off an employee for longer than the period referred to in subsection 42(2) or provided by any extension ordered under subsection (1), (a) the employee shall be deemed to have his or her employment terminated on the last day of the temporary layoff; and (b) the employer shall pay the employee termination pay.

Nova Scotia

Resources:

novascotia.ca/lae/employmentrights/employernowork.asp

<https://novascotia.ca/lae/employmentrights/docs/LabourStandardsCodeGuide.pdf>

<https://novascotia.ca/coronavirus/working-during-covid-19/>

<https://novascotia.ca/coronavirus/working-during-covid-19/#health-protection-act-order>

Under the Labour Standards Code, employers must tell an employee in writing that they will fire or suspend or lay off that employee. This is called giving notice. How much notice an employer must give an employee depends upon how long the employee was employed. The rules are different for employees of ten years or more. If the employer does not want to give the employee notice, the employer must give the employee pay in lieu of (in place of) notice. The Labour Standards Code says that there are times when an employer does not have to give notice or pay in lieu of notice that the employee will be fired or laid off. Some examples are listed below...when there is a sudden and unexpected lack of work that the employer could not avoid.

Leaves, layoffs and other labour questions. If you have questions about the Labour Code, like taking leave or being laid off, contact the Labour Standards Division at [1-888-315-0110](tel:1-888-315-0110).

Nunavut

Resources:

www.gov.nu.ca/executive-and-intergovernmental-affairs/news/nunavut-extends-public-health-emergency

nu-lsco.ca/faq-s

No information regarding temporary layoffs during Covid-19 found.

Ontario

Resources:

www.ontario.ca/document/your-guide-employment-standards-act-0/infectious-disease-emergency-leave

www.ontario.ca/laws/regulation/r20228

www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-195#BK9

www.ontario.ca/laws/statute/00e41#BK117

May 2020: The government made a new regulation under the *Employment Standards Act, 2000* (ESA). Under this new regulation, a non-unionized employee whose employer has temporarily reduced or eliminated their hours of work because of COVID-19 is deemed to be on a job-protected Infectious Disease Emergency Leave. The regulation affects how the termination, severance and constructive dismissal rules under the ESA apply during the COVID-19 period. These temporary rules apply retroactively to March 1, 2020 and will **expire six weeks after the declared emergency ends**.

July 24, 2020: Bill 195, *Re-opening Ontario (A Flexible Response to COVID-19) Act, 2020* brings an end to the declared State of Emergency in Ontario:

“Termination of COVID-19 declared emergency
17 Unless it has been terminated before this section comes into force, the COVID-19 declared emergency is terminated and Ontario Regulation 50/20 (Declaration of Emergency) is revoked.”

This means that the temporary amendments to the ESA under O. Reg. 228/20: Infectious Disease Emergency Leave will expire on September 4, 2020 (six weeks after July 24, 2020) and the clock will start ticking again towards temporary layoffs potentially becoming terminations of employment. Under the normal (non-Covid) rules of the ESA, employees can be temporarily laid off for up to 13 weeks in a 20-week period, and under certain circumstances, for up to 35 weeks in a 52-week period.

Prince Edward Island

Resources:

www.princeedwardisland.ca/en/information/workforce-and-advanced-learning/notice-termination

www.princeedwardisland.ca/en/information/health-and-wellness/employers-covid-19-frequently-asked-questions

Under the *Employment Standards Act*, an employer must tell an employee in writing that he/she will fire or suspend or lay off that employee. This is called giving notice. “Notice” is the letter telling the employee that he/she will no longer work for the employer after a given date. It is also the time between when the employee receives the letter and the date the letter says is the employee’s last day of work. How much notice an employer must give an employee depends on how long the employee was employed.

Quebec

Resources:

www.cnesst.gouv.qc.ca/salle-de-presse/covid-19-info-en/Pages/covid-19.aspx

www.cnesst.gouv.qc.ca/salle-de-presse/covid-19/Pages/coronavirus.aspx

www.cnt.gouv.qc.ca/en/end-of-employment/layoff-permanent-layoff-dismissal-and-resignation/index.html

www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/answers-questions-coronavirus-covid19/employers-workers-covid-19/

The written notice an employer must give to an employee before a layoff of over 6 months (or payment of the compensatory indemnity in the notice) does not apply to an employee whose layoff results from a case of force majeure. The current health emergency in Québec could be considered a case of force majeure, particularly if businesses had to suspend their operations due to the order of March 13 and proceed with layoffs without notice. Moreover, in the case of an employee who was already laid off before March 13 and whose layoff is extended beyond 6 months due to measures ordered by the Government that prevent him from returning to work, the employer would not be bound to pay the compensatory indemnity. The notion of force majeure would apply.

Reminder of the usual principle

- An employer must give a written notice to an employee before a layoff for six months or longer.
- The deadlines for giving this notice vary according to the person's length of uninterrupted service.
- If the notice is not given within the prescribed deadline, the employee then must receive compensation (a compensatory indemnity) equivalent to his or her usual wages, without accounting for overtime, for a period equal to the term or the residual term of the notice to which the employee was entitled. This indemnity must be paid either:
 - at the time of the moment layoff scheduled for more than six months;
 - at the expiry of a six-month period after a layoff for an indeterminate term;
 - if a layoff scheduled for a term of less than six months is extended beyond that period.

L'avis écrit qu'un employeur doit donner à une personne salariée avant de la mettre à pied pour plus de 6 mois (ou le versement de l'indemnité compensatoire à l'avis) ne s'applique pas à l'égard d'une personne salariée dont la mise à pied résulte d'un cas de force majeure. L'état d'urgence sanitaire que vit le Québec actuellement pourrait être considéré comme un cas de force majeure, notamment dans le cas où des entreprises ont dû suspendre leurs activités en raison du décret du 13 mars et procéder à des mises à pied sans préavis. Par ailleurs, dans le cas où une personne salariée était déjà en mise à pied avant le 13 mars et que sa mise à pied est prolongée au-delà de 6 mois en raison de mesures décrétées par le gouvernement l'empêchant de retourner au travail, l'employeur ne serait pas tenu de verser l'indemnité compensatoire. La notion de force majeure s'appliquerait.

Rappel du principe habituel:

- Un employeur doit donner un avis écrit à une personne salariée avant de la mettre à pied pour six mois ou plus.
- Les délais pour remettre cet avis écrit varient selon la durée du service continu de la personne.
- Si l'avis n'est pas remis dans les délais prévus, la personne salariée doit alors recevoir une compensation (indemnité compensatoire) équivalente à son salaire habituel, sans tenir compte des heures supplémentaires, pour une période égale à celle de la durée ou de la durée résiduaire de l'avis auquel elle avait droit. Cette indemnité doit être versée soit :
 - au moment de la mise à pied prévue pour plus de six mois;
 - à l'expiration d'un délai de six mois d'une mise à pied pour une durée indéterminée;
 - si une mise à pied prévue pour une durée de moins de six mois se prolonge au-delà de ce délai.

Saskatchewan

Resources:

www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/covid-19-information-for-businesses-and-workers/support-for-businesses
(see 3. Other Resources: [COVID-19: Questions and Answers on Leaves, Layoffs and Occupational Health and Safety in the Workplace](#))

www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/covid-19-information-for-businesses-and-workers/managing-staffing-and-leave

www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/covid-19-information-for-businesses-and-workers

An employer has the option to implement a temporary layoff as part of their response to the public emergency during an order of the medical health officer or an emergency declaration by the Government of Saskatchewan. With the amended regulation, if the employment relationship provides for layoffs, an employer may temporarily lay off an employee for up to two weeks following the public emergency period without having to provide notice or pay instead of notice to the employee.

An employer can lay off an employee for maximum of two weeks following the public emergency period. The employee would be entitled to pay instead of notice if they have not been scheduled to work after the two weeks.

The additional time is a “grace period” to allow employers and employees time to prepare to return to work. Employers are required to inform employees of their work schedule before the end of the two weeks. Employment of employees who have not been scheduled is considered terminated and pay instead of notice is due within 14 days. Pay instead of notice is calculated from date the employee was first laid off.

Yukon

Resources:

www.gov.yk.ca/legislation/acts/emst_c.pdf

www.gov.yk.ca/legislation/acts/ciemme_c.pdf

“temporary layoff” means an interruption of an employee’s employment by an employer for a period (a) not exceeding 13 weeks of layoff in a period of 20 consecutive weeks; or (b) exceeding 13 weeks of layoff, if the employer recalls the employee to employment within a time set by the director;

53(1) If an employer temporarily lays off an employee and the layoff exceeds a temporary layoff, the employee shall be deemed to have been terminated at the start of the temporary layoff and the employer shall pay the employee the amount required by section 51.

2) If subsection (1) applies to the temporary layoff of an employee by an employer, the employer may, with leave of the board, extend the period of the temporary layoff of the employee for any period of time the board may order. S.Y. 2002, c.72, s.53 (2)