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# Bill 284

*(Chapter 9 of the Statutes of Ontario, 2021)*

## **An Act to amend the Employment Standards Act, 2000**

**The Hon. M. McNaughton**  
Minister of Labour, Training and Skills Development

1st Reading	April 29, 2021
2nd Reading	April 29, 2021
3rd Reading	April 29, 2021
Royal Assent	April 29, 2021



## EXPLANATORY NOTE

*This Explanatory Note was written as a reader's aid to Bill 284 and does not form part of the law.  
Bill 284 has been enacted as Chapter 9 of the Statutes of Ontario, 2021.*

Section 50.1 of the *Employment Standards Act, 2000* is amended to provide employees with an entitlement to three paid days of leave in certain circumstances related to a designated infectious disease. The entitlement is in addition to the entitlement to unpaid leave currently provided for in that section. New section 50.1.1 provides that an employer is entitled to be reimbursed for payments made to an employee for paid leave taken under section 50.1 and may apply to the Workplace Safety and Insurance Board for such reimbursement.

## An Act to amend the Employment Standards Act, 2000

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1 (1) Subsection 1 (1) of the *Employment Standards Act, 2000* is amended by adding the following definition:**

“infectious disease emergency leave pay” means pay for any paid days of leave taken under subsection 50.1 (1.2); (“indemnité de congé spécial en raison d’une maladie infectieuse”)

**(2) The definition of “regular wages” in subsection 1 (1) of the Act is amended by,**

- (a) adding “infectious disease emergency leave pay” after “domestic or sexual violence leave pay”; and**
- (b) adding “subsection 50.1 (1.2)” after “section 49.7”.**

**2 (1) Section 50.1 of the Act is amended by adding the following subsection:**

**Interpretation, treatment**

(1.0.1) For greater certainty, in this section, a reference to treatment related to a designated infectious disease includes receiving a vaccine for the designated infectious disease and recovery from associated side effects.

**(2) Section 50.1 of the Act is amended by adding the following subsections:**

**Leave of absence with pay**

(1.2) In addition to any entitlement under subsection (1.1), an employee is entitled to a paid leave of absence if the employee will not be performing the duties of the employee’s position because of one or more of the following reasons related to a designated infectious disease:

1. The employee is under individual medical investigation, supervision or treatment related to the designated infectious disease.
2. The employee is acting in accordance with an order under section 22 or 35 of the *Health Protection and Promotion Act* that relates to the designated infectious disease.
3. The employee is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.
4. The employee is under a direction given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the designated infectious disease.
5. The employee is providing care or support to an individual referred to in subsection (8) because,
  - i. the individual is under individual medical investigation, supervision or treatment related to the designated infectious disease, or
  - ii. the individual is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.

**Limit, number of days**

(1.3) Subject to subsection (1.4), an employee is entitled to take a total of three paid days of leave under subsection (1.2).

**Paid leave taken under employment contract**

(1.4) If, on April 19, 2021, an employee is entitled to take paid leave under an employment contract in any of the circumstances for which the employee would also be entitled to take a leave under subsection (1.2), the employee’s entitlement under subsection (1.3) is reduced by the employee’s entitlement under the contract.

**Same**

(1.5) Subsection (1.4) applies only if the employer is required under the employment contract to pay the employee for the paid leave an amount that is equal to or greater than what the employee would be entitled to under subsection (1.11).

**Leave deemed to be taken in entire days**

(1.6) If an employee takes any part of a day as paid leave under subsection (1.2), the employer may deem the employee to have taken one paid day of leave on that day for the purposes of subsection (1.3).

**Paid days first**

(1.7) Subject to subsections (1.8) and (1.9), an employee is entitled to take the three paid days of leave before any of the unpaid days of leave.

**Same, election re unpaid days**

(1.8) If an employee is entitled to both paid leave and unpaid leave under this section, the employee may elect to take one or more days or parts of a day of leave as unpaid leave only if the employee advises the employer in writing, before the end of the pay period in which the leave occurs, that the employee has elected to take that time as unpaid leave.

**Same**

(1.9) If, between April 19, 2021 and the day the *COVID-19 Putting Workers First Act, 2021* receives Royal Assent, an employee takes unpaid leave under subsection (1.1) in circumstances for which the employee would also be entitled to take a leave under subsection (1.2), the employee may elect to be paid for that leave only if the employee advises the employer in writing before the day that is 14 days after the *COVID-19 Putting Workers First Act, 2021* receives Royal Assent, that the employee has elected to take the leave as paid leave, and the employee is deemed to have taken the leave under subsection (1.2).

**Same**

(1.10) Despite subsection 11 (1), if an employee elects to take paid leave under subsection (1.9), the employer shall pay the employee the amount to which the employee is entitled no later than the pay day for the pay period in which the employee made the election.

**Paid leave**

(1.11) Subject to subsections (1.12) and (1.13), if an employee takes paid leave under subsection (1.2), the employer shall pay the employee the lesser of \$200 per day and,

- (a) either,
  - (i) the wages the employee would have earned had they not taken the leave, or
  - (ii) if the employee receives performance-related wages, including commissions or a piece work rate, the greater of the employee's hourly rate, if any, and the minimum wage that would have applied to the employee for the number of hours the employee would have worked had they not taken the leave; or
- (b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation.

**Paid leave where higher rate of wages**

(1.12) If a paid day of leave under subsection (1.2) falls on a day or at a time of day when overtime pay, a shift premium or both would be payable by the employer,

- (a) the employee is not entitled to more than the employee's regular rate for any leave taken under subsection (1.2); and
- (b) the employee is not entitled to the shift premium for any leave taken under subsection (1.2).

**Paid leave on public holiday**

(1.13) If a paid day of leave under subsection (1.2) falls on a public holiday, the employee is not entitled to premium pay for any leave taken under subsection (1.2).

**(3) Subsection 50.1 (4.1) of the Act is amended by adding "or subsection (1.2)" after "clause (1.1) (b)".**

**(4) Section 50.1 of the Act is amended by adding the following subsections:**

**Same, paid leave**

(5.2) An employee's entitlement to paid leave under subsection (1.2) is deemed to have started on April 19, 2021 and ends on September 25, 2021 or such later date as may be prescribed.

**Same**

(5.3) If the regulations so provide, an employee is entitled to paid leave under subsection (1.2) for such additional periods as may be prescribed.

**(5) Section 50.1 of the Act is amended by adding the following subsection:**

***Protecting a Sustainable Public Sector for Future Generations Act, 2019***

(7) This section applies despite the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, and payments made in accordance with subsection (1.11) are not an increase to existing compensation entitlements or new compensation entitlements for the purposes of that Act.

**3 The Act is amended by adding the following section:**

**Reimbursement of certain payments made under s. 50.1**

**Definition**

**50.1.1** (1) In this section,

“Board” means the Workplace Safety and Insurance Board, continued under subsection 159 (1) of the *Workplace Safety and Insurance Act, 1997*, despite the definition of “Board” in subsection 1 (1) of this Act.

**Reimbursement for paid leave**

(2) An employer may apply to the Board, in accordance with this section, to be reimbursed for payments made to an employee for paid leave taken under subsection 50.1 (1.2).

**Same, maximum**

(3) An employer is entitled to be reimbursed for payments made to an employee for paid leave taken under subsection 50.1 (1.2) up to a maximum of \$200 per day, per employee.

**Same, exclusion**

(4) Despite subsection 50.1 (1.9), an employer is not entitled to be reimbursed for payments made to an employee on or after the day the *COVID-19 Putting Workers First Act, 2021* receives Royal Assent for a paid leave of absence under an employment contract in circumstances for which the employee would also be entitled to take a leave under subsection 50.1 (1.2).

**Same, exclusion re change to employment contract**

(5) If, under an employment contract that was in effect on April 19, 2021, an employee was entitled to a paid leave of absence in circumstances for which the employee would also be entitled to take a leave under subsection 50.1 (1.2), but due to a change to the employment contract on or after April 19, 2021, the employee is no longer entitled to some or all of the paid leave of absence that the employee was entitled to before the change, the employer is not entitled to be reimbursed for payments made to that employee for a paid leave of absence, whether the leave is taken under subsection 50.1 (1.2) or under the employment contract, to the extent that the employee was entitled to the leave of absence under the employment contract before the change.

**Same, exclusion re payments made under the *Workplace Safety and Insurance Act, 1997***

(6) An employer is not entitled to be reimbursed for payments made to an employee for paid leave taken under subsection 50.1 (1.2) if the employee received benefits under the *Workplace Safety and Insurance Act, 1997* for the days of leave.

**Application for reimbursement**

(7) An application under this section shall be made by filing the following with the Board:

1. A completed application in the form approved by the Board.
2. An attestation, to be completed by the employer in the form approved by the Board that,
  - i. confirms that the employer made a payment to the employee for paid leave taken under subsection 50.1 (1.2),
  - ii. specifies the dates on which the leave was taken by the employee,
  - iii. specifies the date on which the payment was made and the amount of the payment made, and
  - iv. confirms that, on or after April 19, 2021, the employer was not otherwise required under an employment contract to make the payment to the employee.
3. A record of the payment made to the employee in the form approved by the Board.
4. Information about claims filed with the Board under the *Workplace Safety and Insurance Act, 1997* in respect of the employee.
5. Any other information required by the Board.

**Time limit**

(8) An application under this section shall be made within 120 days of the payment in respect of which the application is made.

**Same, final date for application**

(9) Despite subsection (8), no application under this section shall be made by an employer or accepted by the Board,

- (a) after January 25, 2022;
- (b) if a later date is prescribed for the purposes of subsection 50.1 (5.2), 120 days after that later date; or
- (c) if an additional period is prescribed for the purposes of subsection 50.1 (5.3), 120 days after the last day of that period.

**No determination if application incomplete**

(10) The Board shall not make a determination regarding an employer's entitlement to reimbursement under this section if the employer's application does not meet the requirements of subsection (7) or is not filed within the time limits set out in subsections (8) and (9).

**Determination of entitlement**

(11) The Board shall make a determination regarding an employer's entitlement to reimbursement under this section after receiving the employer's application and shall advise the employer of its determination in writing after making its determination.

**Same, payment**

(12) If the Board determines that an employer is entitled to be reimbursed under this section, the Board shall pay the employer the amount to which the employer is entitled.

**No right of reconsideration or appeal**

(13) A determination made by the Board regarding an employer's entitlement to reimbursement under this section is not a final decision of the Board for the purposes of the *Workplace Safety and Insurance Act, 1997* and an employer has no right of reconsideration by, or appeal to, the Board or the Workplace Safety and Insurance Appeals Tribunal in respect of a determination made by the Board under this section.

**Hearing not required**

(14) The Board is not required to hold a hearing when making a determination or exercising a power under this section.

**No complaint**

(15) Section 96 does not apply to a determination made by the Board under this section.

**Overpayments**

(16) If the Board pays an employer an amount in excess of the amount to which the employer is entitled under this section, the amount of the excess is an overpayment and is an amount owing under this Act.

**Same**

(17) If the Board pays an employer an amount under this section and the employee in respect of whom the employer was paid subsequently receives benefits under the *Workplace Safety and Insurance Act, 1997* for the days of leave for which the employer was paid, the amount of the payment to the employer is an overpayment and is an amount owing under this Act.

**Same**

(18) An overpayment made by the Board under this section may be recovered from the employer by the Board or the Ministry in accordance with the prescribed process.

**Ministry to make payments to Board**

(19) The Ministry shall make payments to the Board to defray the costs of administering this section, including the cost of payments made to employers and the administration costs of the Board.

**Same, appropriation**

(20) Money required to defray the costs of administering this section shall be paid out of the money appropriated by the Ministry from the Consolidated Revenue Fund for that purpose by the Legislature.

**Repayment by Board**

(21) On or before the prescribed date, the Board shall pay the Ministry any amounts paid to the Board under subsection (19) that are no longer required for the purpose of administering this section.

**Same, payments not part of insurance fund**

(22) Payments made to the Board under subsection (19) shall not form a part of the insurance fund that is administered by the Board under the *Workplace Safety and Insurance Act, 1997* and the Board shall not make any payments from the insurance fund for any purpose under this section.

**Contract for services**

(23) The Board may enter into a contract or agreement with any person for the purpose of administering this section.

**Recordkeeping**

(24) The Board shall maintain such records relating to the administration of this section as are required by the Ministry, including records that are necessary to verify applications and payments made under this section, and shall provide those records to the Ministry.

**Collection and use of information**

(25) The Board may collect and use personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* for the purpose of administering this section.

**Same**

(26) The Board may use information collected under the authority of this section for the purpose of administering and enforcing the *Workplace Safety and Insurance Act, 1997*.

**Same**

(27) The Board may use information collected under the authority of the *Workplace Safety and Insurance Act, 1997* for the purpose of administering this section.

**Disclosure of information**

(28) Except as otherwise provided for in this section, the Board shall not disclose any information collected under the authority of this section unless authorized or required by law to do so.

**False or misleading information**

(29) No person shall provide false or misleading information under this section.

**Same, disclosure to Director**

(30) If the Board is of the opinion that false or misleading information has been provided by an employer in an application under this section, the Board shall disclose that information to the Director.

**Investigation**

(31) An employment standards officer or other prescribed person may investigate a possible contravention of this section.

**Immunity**

(32) No action or other proceeding for damages may be commenced against a member of the board of directors, or an officer or employee of the Board, for an act or omission done or omitted by the person in good faith in the execution or intended execution of any power or duty under this section.

**4 Section 140 of the Act is amended by adding the following subsection:****Same**

(2.1) In a prosecution or other proceeding under this Act, a copy of a record or other document or an extract from a record or other document that appears to be certified as a true copy or accurate extract by the Workplace Safety and Insurance Board is evidence of the record or document or the extracted part of the record or document and of the facts appearing in the record, document or extract without proof of the signature or office of the person appearing to have certified the copy or extract or any other proof.

**5 (1) Section 141 of the Act is amended by adding the following subsection:****Transitional regulations**

(2.0.3.4) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *COVID-19 Putting Workers First Act, 2021*.

**(2) Subsection 141 (2.0.4) of the Act is amended by striking out “or (2.0.3.3)” wherever it appears and substituting in each case “(2.0.3.3) or (2.0.3.4)”.**

**(3) Subsection 141 (2.1) of the Act is amended by adding the following clauses:**

(b.1) prescribing, for the purposes of subsection 50.1 (5.2), a later date on which the entitlement to paid leave under subsection 50.1 (1.2) ends;

(b.2) prescribing, for the purposes of subsection 50.1 (5.3), additional periods during which employees are entitled to paid leave under subsection 50.1 (1.2);

(d.1) exempting the Crown, a Crown agency, or an authority, board, commission or corporation, all of whose members are appointed by the Crown, from the application of section 50.1 or any provision of it;

**(4) Subsection 141 (2.2) of the Act is amended by striking out “or (2.1)” in the portion before clause (a) and substituting “(2.0.3.4) or (2.1)”.**

**(5) Section 141 of the Act is amended by adding the following subsection:**

**Regulations re s. 50.1.1**

(2.5) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the process for overpayment recovery under subsection 50.1.1 (18);
- (b) prescribing the date by which the Board is required to repay the Ministry under subsection 50.1.1 (21);
- (c) prescribing, for the purposes of subsection 50.1.1 (31), persons who may investigate possible contraventions of section 50.1.1;
- (d) prescribing the powers under this Act that a person prescribed under clause (c) may exercise;
- (e) specifying the parts of this Act that apply, with necessary modifications, if a person prescribed under clause (c) investigates a possible contravention of section 50.1.1;
- (f) exempting the Crown, a Crown agency, or an authority, board, commission or corporation, all of whose members are appointed by the Crown, from the application of section 50.1.1 or any provision of it.

**6 Section 143 of the Act is amended by adding the following subsection:**

**Same**

(2.1) For greater certainty, subsection 50.1 (7) of this Act prevails over the provisions incorporated into this Act under subsection (1).

**Commencement**

**7 This Act comes into force on the day it receives Royal Assent.**

**Short title**

**8 The short title of this Act is the *COVID-19 Putting Workers First Act, 2021*.**