



e2r Alert!

Further Information on Ontario's Paid Sick Days

As a follow-up to our April 30th [Alert](#) where we outlined the new *COVID-19 Putting Workers First Act*, which required employers to provide three paid sick days to most of their employees, we now have further clarity from the Ministry of Labour regarding when an employer will be exempt from providing some or all of the three paid days.

Initially, the Ministry of Labour advised that employers who already offered three or more paid sick days did not need to offer any additional days. Likewise, employers who already offered one or two paid sick days, were only required to offer the difference between what they offered and three paid sick days. However, the Ministry of Labour has now clarified that position, advising that in order to be exempt from offering additional days, the following four criteria must be met:

1. The employee had the right to a paid leave under their employment contract for one or more of the same reasons that paid infectious disease emergency leave can now be taken under the ESA.
2. The employee had not already used up those days of paid leave under their employment contract before April 19, 2021 and those days were still remaining.
3. The employee's employment contract provided pay for the leave that is at least as much pay as the employee would be entitled to receive for paid infectious disease emergency leave under the ESA.
4. The employee's employment contract did not contain conditions for taking the leave that are more restrictive than what is set out in the ESA for taking paid infectious disease emergency leave.

In our view, the main clarification relates to point 2. In particular, regardless of what the employee's contract provided for, if they did not have at least three paid days available to use as of April 19, 2021, the employer is required to ensure that at least three paid sick days are available for the following reasons:

- going for a COVID-19 test
- staying home awaiting the results of a COVID-19 test
- being sick with COVID-19
- going to get vaccinated

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- experiencing a side effect from a COVID-19 vaccination
- having been advised to self-isolate due to COVID-19 by an employer, medical practitioner or other authority
- taking care of a dependent who is:
 - sick with COVID-19 or has symptoms of COVID-19
 - self-isolating due to COVID-19

By way of practical example, if an employee was entitled to 5 paid sick days under their employment agreement but only had 2 remaining days as of April 19, 2021, the employer would be required to provide an extra day to use. Likewise, if an employee's contract provided for 5 paid days and the employee had 3 or more days remaining as of April 19, 2021, there would be no obligation to provide additional paid sick days.

Again, this program is a temporary measure only and applies retroactive to April 19, 2021 and ends September 25, 2021. We also note that the Ministry of Labour has still not provided any real detail regarding how an employer is to obtain reimbursement from the WSIB.

Lastly, it is important to emphasize again that an employer is only entitled to seek reimbursement for sick days provided under the program (i.e. if an employee's contract already provided for paid sick days, an employer is not permitted to seek reimbursement for those days).

If you have any questions regarding the above, please do not hesitate to reach out to speak with an e2r™ Advisor.