

RECENT CHANGES MADE TO EMERGENCY LEAVE AND FAMILY MEDICAL LEAVE ENTITLEMENTS

By R. Lance Ceaser

In the past six months, the Ontario government has introduced noteworthy changes to both emergency leave and family medical leave entitlements under the *Employment Standards Act, 2000* (the “*ESA*”). The changes address how emergency leave is to be administered in the event of a government-declared emergency. The new legislation also expands the list of individuals to whom an employee may provide “care and support”, thereby triggering family medical leave protection under section 49.1 of the *ESA*.

The Emergency Management Statute Law Amendment Act, 2006 (Bill 56) (the “EMSLAA”)

Bill 56 was introduced on December 15, 2005, but did not pass third reading until June 13, 2006. The Bill received Royal Assent on June 20, 2006. The focus of the legislation is to amend the former *Emergency Management Act*, which has been renamed the *Emergency Management and Civil Protection Act*. The Act provides emergency powers to the Lieutenant Governor in Council and the Premier to deal with emergencies, including the making of orders “to promote the public good by protecting the health, safety and welfare of the people of Ontario”. In addition to these amendments, the Act also makes changes to the *ESA* and the *Workplace Safety and Insurance Act* (“*WSIA*”).

1) The *ESA*

The *ESA* provides for 10 days’ unpaid leave per year for employees to attend to urgent personal matters, such as the employee’s illness or injury or the illness or injury of certain specified family members. The *EMSLAA* creates additional unpaid leave entitlements under the *ESA* with the introduction of a new section 50.1 of the *ESA*. Section 50.1 provides that in the event of a declared emergency, an employee is entitled to unpaid leave “if the employee will not be performing the duties of his or her position” as a result of such an emergency and where certain other criteria apply, including:

- Where an order made under the *Emergency Management and Civil Protection Act* applies to the employee;
- Where an order made under the *Health Protection and Promotion Act* applies to the employee;
- Where the employee is required to provide care or assistance to one of the family members referred to in subsection 50.1(8) (i.e., the same individuals recognized under the emergency leave provisions in section 50 of the *ESA*); or
- In other circumstances as set down in regulations under the *ESA*.

As with emergency leave under section 50 of the *ESA*, an employee taking leave under section 50.1 is obligated to advise the employer that he or she will be doing so either before taking the leave, or as soon as possible after commencing the leave. The *EMSLAA* also expressly provides that leave under section 50.1 is in addition to emergency leave under section 50 of the Act. Although the total period of leave is not stipulated, leave entitlement ends on the day the emergency is terminated or disallowed by an order of the government.

2) The *WSIA*

The *EMSLAA* also makes some changes to the *WSIA*. In particular, the definition of “worker” under the *WSIA* is amended to include “[a] person who assists in connection with an emergency that has been declared by the Lieutenant Governor in Council or the Premier” under the *Emergency Management and Civil Protection Act*. Section 71(3) of the *WSIA* is also replaced with a provision deeming the Crown to be the employer of someone who assists during a declared emergency.

Family Medical Leave – Prescribed Individuals (Reg. 476/06)

On October 6, 2006, Regulation 476/06 (*Family Medical Leave – Prescribed Individuals*) came into effect. The Regulation expands the categories of individuals to whom an employee may “provide care or support” under section 49.1 of the *ESA*. Although an employee could formerly only take family medical leave to care for the employee’s spouse, a parent, step-parent or foster parent of the employee, or a child, step-child or foster child of the employee, or the employee’s spouse (s. 49.1(3)), the list now includes:

- A (step-) brother or sister of the employee.
- A (step-) grandparent of the employee or of the employee’s spouse.
- A (step-) grandchild of the employee or of the employee’s spouse.
- The (step-) father-in-law or mother-in-law of the employee.
- A (step-) brother-in-law or sister-in-law of the employee.
- A son-in-law or daughter-in-law of the employee or of the employee’s spouse.
- An uncle or aunt of the employee or of the employee’s spouse.
- The nephew or niece of the employee or of the employee’s spouse.
- The spouse of the employee’s grandchild, uncle, aunt, nephew or niece.
- A foster parent of the employee’s spouse.
- A person who considers the employee to be like a family member.

With respect to the last category, the Regulation stipulates that an employer may request that the employee provide a copy of the same documents required to apply for Employment Insurance benefits (generally a “Compassionate Care Benefits Attestation” form) in order to establish that “the employee is considered to be like a family member” (Reg. 476/06, s. 2).

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