



Employment Standards

Recent updates to the Act due to COVID-19

Amendments to the *Employment Standards Act* (the Act) and Regulations provide additional protection to NWT workers and flexibility to employers during the COVID-19 pandemic and future emergencies. These changes came into effect on July 1, 2021.

Emergency Leave

Employees can take unpaid emergency leave when they are unable to work because of an emergency.

An “emergency” includes the following situations:

- a state of emergency declared under section 14 of the *Emergency Management Act* or a state of local emergency declared under section 18 of that Act;
- a state of public health emergency declared under section 32 of the *Public Health Act*;
- a direction or order of a public health officer, the Chief Public Health Officer or a Deputy Chief Public Health Officer provided or made under the *Public Health Act*;
- an emergency declared under the *Emergencies Act* (Canada);
- an order of a quarantine officer made under the *Quarantine Act* (Canada),
- a circumstance prescribed in the Regulations.

Emergency Affecting a Family Member

If the emergency affects a family member of an employee, the employee is entitled to emergency leave when:

- the circumstance results in a situation where the family member of the employee

requires care, child care or assistance;

- the employee is the person most reasonably able under the circumstances to provide the family member with the required care, child care or assistance; and
- providing the required care, child care or assistance to the family member has the effect of preventing the employee from performing the duties of their employment.

Pandemic

If an emergency exists due to a pandemic of a reportable disease, an employee is able to access the leave when the employee is unable to work because:

- they are under medical investigation/supervision/treatment related to the reportable disease;
- they are required to self-isolate or quarantine related to the reportable disease as a result of the direction of a health officer, health care professional or government agency;
- they were directed by the employer not to work due to a concern that the employee could expose others to the reportable disease in the workplace;
- they are required to care for a family member or dependent who is affected by the reportable disease; or
- they are directly affected by travel restrictions related to the emergency, depending on the circumstances.

Eligibility

Emergency Leave does not require an employee to have worked for an employer for any set amount of time in order to be eligible for the leave.

Employees applying for Emergency Leave are not required to submit a doctor's note. However, an employer can request reasonable verification of the employee's entitlement to the leave. What is considered reasonable will vary depending on the circumstance.

The period of leave ends when the employee is no longer unable to work as a result of the emergency or when the emergency ends.

Emergency Leave for COVID-19

An employee is entitled to unpaid Emergency Leave for COVID-19 when the employee is unable to work because:

- they are under individual medical investigation, supervision or treatment related to the COVID-19 pandemic;
- they are attending a clinic or appointment to receive a COVID-19 vaccination;
- they are required to self-isolate or quarantine as a result of the direction of a health officer, health care professional or government agency;
- they were directed by the employer not to work due to a concern that the employee could expose others to COVID-19 in the workplace;
- they are required to care for a family member or dependent who is affected by COVID-19, including as a result of a school or day care closure;
- they are directly affected by travel restrictions related to the COVID-19 pandemic that were put into place after the employee began their travel and, in the circumstances, the employee cannot reasonably be expected to travel to their workplace; or
- they are required to self-isolate as a result of essential travel.

Essential Travel

Essential travel means:

- medical travel or travel as a non-medical escort to a family member;
- travel relating to the death of a family member of the employee;
- travel relating to a critically ill family member of the employee;
- travel necessitated by a written legal obligation, including travel required by a child custody arrangement and travel required by court orders; or
- travel required by the employee in the performance of their duties as an employee.

An employee is not entitled to Emergency Leave as a result of self-isolation requirements due to non-essential travel.

Retroactive Leave

Entitlement to Emergency Leave for COVID-19 is retroactive to March 18, 2020, when the territory-wide Public Health Emergency was declared under the NWT Public Health Act.

Employees who were terminated from their employment because they were unable to work as a result of COVID-19 may have grounds to file a complaint with the Employment Standards Office.

Complaints for terminations due to COVID-19 that occurred between March 18, 2020 and June 30, 2021 must be received by the Employment Standards Office by January 2, 2022.

If you have a complaint, please contact the Employment Standards office to discuss.

Exception to Group Termination Notice

When an unforeseeable event or circumstance beyond an employer's control prevents them from providing adequate group termination notice, the Employment Standards Officer may waive, by order, the amount of notice required by the Act.

An employer would still be required to provide notice of group termination to the Employment Standards Officer and any applicable trade union, as soon as possible. The proposed exception would only affect the amount of notice required when an unforeseeable event prevented an employer from respecting the periods of notice set out in Act.

Employees will retain their entitlement to individual termination notice or pay in lieu of notice (termination pay).

When it Applies

The exception only applies to situations beyond an employer's control, such as the destruction or major breakdown of machinery or equipment, climatic or economic conditions, or emergencies, including a public health emergency.

In order for the exception to apply:

- The employer must have exercised due diligence to foresee and avoid the cause of termination; and
- The cause of termination must prevent the employer from respecting the periods of notice set out in Act.

How it Works

Upon receipt of insufficient amount of group termination notice from an employer, the Employment Standards Officer would make a determination whether the exception applied to the situation by verifying that:

- the circumstances that prevented the employer from providing notice were truly beyond the employer's control;
- the employer exercised due diligence to foresee and avoid the cause of termination; and
- the cause of termination prevented the employer from respecting the periods of notice set out in Act.

If it was determined that the exception applied to the situation, the Employment Standards Officer would waive, by order, the amount of notice of group termination required by the Act.

Any decision or order made by the Employment Standards Officer to waive the group termination notice periods in the Act will be served to the employer and any affected trade union.

The Employment Standards Officer is required to post a notice of their decision on the Employment Standards webpage.

The employer is required to post a copy of the notice at the worksite where possible or provide copies of the notice to affected employees, if it is not possible to post a notice at the worksite.

Other Changes

The Regulations have been amended to clarify that if an employee is temporarily laid off, the temporary layoff period does not affect their continuity of employment.

A temporarily laid off employee can apply to the Employment Standards Officer to order the waiver of their entitlement to an annual vacation, which would require the employer to pay the employee vacation pay for the portion of annual vacation waived.

Contact Information

Education, Culture and Employment

Employment Standards Office

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