

JOB-PROTECTED LEAVE

CUPE

On March 19, 2020, the Ontario government passed the *Employment Standards Act (Infectious Disease Emergencies), 2020*, which provides job protection for workers taking unpaid leave relating to COVID-19.

WHEN DOES THIS LEAVE APPLY?

Job-protected leave applies to provincially regulated workplaces, but not federally regulated workplaces such as airlines, telecommunications, or the RCMP. Under the act, in the event of a "designated infectious disease," such as COVID-19, these leaves become available if one of the following applies to an employee:

1. The employee is under medical investigation, supervision or treatment related to the "designated infectious disease";
2. The employee is acting in accordance with an order made under section 22 or 35 of the *Health Protection and Promotion Act* relating to the "designated infectious disease";
3. The employee is in quarantine or isolation, or is subject to a control measure (such as self-isolation) and the quarantine, isolation or control measure was implemented because of information or directions regarding the "designated infectious disease" issued to the public or to a specific person or group 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;
4. The employee is under direction given by their employer in response to a concern the employee may expose others in the workplace to the "designated infectious disease";
5. The employee is providing care or support to a person in a list set out below because of a matter relating to the "designated infectious disease" that concerns the individual from the list, including school and day care closures;
6. The employee is directly affected by travel restrictions related to the "designated infectious disease" and in the circumstances cannot reasonably be expected to travel back to Ontario; or
7. Any other reason that may be established by a regulation.

In the case of point five (5) above, the job-protected leave applies if the worker is providing care or support to:

- The employee's spouse
- A parent, step-parent or foster parent of the employee or the employee's spouse
- A child, step-child or foster child of the employee or the employee's spouse
- A child who is under legal guardianship of the employee or the employee's spouse
- A brother, step-brother, sister or step-sister of the employee
- A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse

- A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee
- A son-in-law or daughter-in-law of the employee or the employee's spouse
- An uncle, aunt, nephew or niece of the employee or the employee's spouse
- The spouse of the employee's grandchild, uncle, aunt, nephew or niece
- A person who considers the employee to be like a family member, provided any conditions that might be set out in a regulation are met, and
- Any individual that is deemed to be a family member in a regulation.

WHAT EVIDENCE MUST I PROVIDE TO MY EMPLOYER?

The legislation says employers may require "evidence reasonable in the circumstances," but cannot require a medical certificate.

While the unpaid leave does not require a doctor's note or a formal order for quarantine or self-isolation, if you are taking leave to self-isolate or enter quarantine, you should be prepared to provide documentation of the advice you are acting on (e.g. a public advisory by the medical officer of health).

Note that while you do not have to provide a doctor's note for this unpaid leave, this does not waive any requirement in your collective agreement should you choose to use the agreement's provisions for paid sick leave. These are different leaves with different requirements.

HOW LONG DOES THE LEAVE LAST?

This unpaid leave lasts as long as the employee is not working for one of the reasons set out above, and so long as there is a "designated infectious disease."

Will I get paid?

No. These are unpaid leaves and simply ensure you cannot be fired when you must go into self-isolation or quarantine or be absent from work to care for a family member in such a situation.

Check your collective agreement and contact your local to find out about any paid leaves or sick time that could provide better income protection. If relevant paid leave is not available, talk to your local about other income supports that may be available through, for example, the Employment Insurance (EI) system. If you are taking a leave because you have contracted COVID-19 at work, also apply for WSIB benefits.