



Ontario Government Passes Bill 284 (3 Paid Sick Days) and Plans to Top-Up Canada Recovery Sickness Benefit to \$1000 per week.

May 2, 2021

On April 29, 2021, the Ontario Government passed [Bill 284, COVID-19 Putting Workers First Act, 2021](#), introducing three paid sick days for COVID-19 related absences. The Government also announced its intention to provide additional funding for the *Canada Recovery Sickness Benefit* administered by the federal government to double the maximum amount to \$1,000.00 per week.

Bill 284

Bill 284 adds three paid days of leave to the Infectious Disease Emergency Leave (IDEL) already included in the *Employment Standards Act, 2000* (ESA). In addition, the legislation adds a new employer reimbursement procedure for eligible employers.

a) Amendments to IDEL

- **Who is Entitled?**

The new paid leave is additional to unpaid IDEL leave and is available where employees will not be performing the duties of their position for one or more of the following reasons related to an infectious disease:

- The employee is under medical investigation, supervision or treatment;
- The employee is acting in accordance with certain orders under the *Health Protection and Promotion Act* (including an order to close a business);
- The employee is in quarantine or isolation or subject to a control measure (including self-isolation);
- The employee is under a direction from their employer in response to a concern that the employee may expose other individuals in the workplace;



- The employee is providing care or support to certain individuals (see below) that are under medical investigation, supervision, or treatment, or in quarantine or isolation.
- **Vaccination Leave**

“Treatment” is defined to include receiving a vaccine and recovery from associated side effects. Therefore, employees are entitled to paid IDEL if they take time off work to receive a vaccine, to assist a family member in receiving a vaccine, or if they are unable to work due to side effects of the vaccine.

- **Interaction with Existing Paid Sick Leave**

The three paid IDEL days are not in addition to paid sick leave entitlements that employees may already be entitled to under a collective agreement or sick leave policy that provide for at least the same amount as paid IDEL. If an employee qualifies under the employer’s sick leave policy *and* the paid IDEL leave, the absence reduces the employee’s entitlement under both.

- **How Much Is the Employee Entitled To?**

The paid IDEL leave is the lesser of:

- \$200.00, or
- the wages the employee would have earned on the day, or
- if the employee is paid based on performance, commission, or piece work, the greater of the employee’s hourly wage or the minimum wage for the hours the employee missed.

In determining the wages an employee would have earned for the day, premiums such as those paid for working overtime, on public holidays or shift premiums are not included.

- **Timing**

Absences between April 19, 2021 and September 25, 2021 qualify for payment, with the possibility of an extension.



- **Evidence of Entitlement**

As the new paid leave is included as part of IDEL leave, the restriction on requesting medical notes applies. Employers may request that employees provide “evidence reasonable in the circumstances” that they are entitled to the leave. However, the employer “shall not require an employee to provide a certificate from a qualified health practitioner as evidence”. When an employee requests paid IDEL leave, the employer can ask the employee for the reason that they are taking the leave to confirm that they qualify (are they sick, caring for a family member, quarantined, etc.) Any requests for evidence will depend on the reason for the leave.

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

Similar to the *ESA* emergency leave days, there are no partial paid IDEL days. Employers can count a partial day of absence as one of the employee’s three days of entitlement.

- **Paid days first**

Employees are entitled to take the three paid days of leave before any unpaid leave. However, an employee can elect to take unpaid leave instead if they notify their employer in writing before the end of the pay period in which the leave occurs.

- **Retroactive Payment**

Where an employee was absent between April 19, 2021, and April 29, 2021, for a reason that would qualify for paid IDEL, the employee may choose to be paid for that leave but only if the employee informs their employer of their election in writing within 14 days of April 29, 2021.

- **Bill 124 (An Act to implement moderation measures in respect of compensation in Ontario’s public sector)**

Paid IDEL leave is not an increase to compensation or a new compensation entitlement for the purposes of Bill 124.



b) Reimbursement to Employers

• Eligibility for Reimbursement

Employers may apply to the Workplace Safety and Insurance Board (WSIB) to be reimbursed for payments, up to a maximum of \$200 per day, per employee. Employers are not entitled to be reimbursed if:

- The employee received benefits under the *Workplace Safety and Insurance Act, 1997* for the days of leave;
- The employer already has paid sick leave that would cover the employee's absence; or
- The employer amends a sick leave policy after April 19, 2021 to exclude COVID-19 related absences.

• Application process

Employers must submit a request for reimbursement to the WSIB within 120 days of payment to the employee that includes:

- a. A completed application in the form approved by the WSIB.
- b. 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,
 - 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.
- c. A record of the payment made to the employee in the form approved by the Board.
- d. Information about claims filed with the WSIB under the *Workplace Safety and Insurance Act, 1997* in respect of the employee.
- e. Any other information required by the WSIB.



c) Eligible 'Family Members' an Employee can Take Paid IDEL to Assist

1. The employee's spouse.
2. A parent, stepparent, or foster parent of the employee or the employee's spouse.
3. A child, stepchild, or foster child of the employee or the employee's spouse.
4. A child who is under legal guardianship of the employee or the employee's spouse.
5. A brother, stepbrother, sister, or stepsister of the employee.
6. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
7. A brother-in-law, step-brother-in-law, sister-in-law, or step-sister-in-law of the employee.
8. A son-in-law or daughter-in-law of the employee or the employee's spouse.
9. An uncle or aunt of the employee or the employee's spouse.
10. A nephew or niece of the employee or the employee's spouse.
11. The spouse of the employee's grandchild, uncle, aunt, nephew or niece.
12. A person who considers the employee to be like a family member.

Canada Sickness Recovery Benefit

In our prior [publication](#), we summarize the federal government's paid sick leave plan, and the *Canada Sickness Recovery Benefit* ("CRSB"). Since our publication, the CRSB was increased from two weeks to four weeks.

In addition to announcing the three paid sick leave days, on April 28, 2021, the Ontario government also [announced](#) that it was putting forward a proposal to double the CRSB for Ontario. If implemented, this would mean that Ontario residents will be eligible for up to \$1,000 per week for up to 4 weeks.

As of the date of publication, no further details of this initiative have been published by either the Ontario or Federal Governments.

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