



Posted on: June 23, 2020

ESSENTIAL INFORMATION EMPLOYERS NEED TO KNOW ABOUT COVID-19 TEMPORARY LAYOFFS AND ESA TERMINATION PAY

By: Georg Reuter

Many BC employers will have issued temporary layoffs to employees with the start of BC's COVID-19 lock down in March. Soon after the start of the provincial lock down, the BC Government extended the temporary layoff period under the *BC Employment Standards Act* (ESA) from 13 weeks to 16 weeks for COVID-19 related layoffs. On June 26, 2020, the BC Government announced a further extension to 24 weeks expiring on August 30, 2020 and information about this latest extension can be found [here](#).

Employers should be aware that a COVID-19 layoff which extends beyond the 24 week temporary layoff period will result in a deemed termination, and therefore an obligation on the employer to payout ESA termination pay. Furthermore, for employers that have laid off 50 or more employees, this will trigger the ESA group termination pay provisions requiring the employer to pay **each** employee their regular termination pay based on their length of service, **plus** group termination pay (an additional 8 weeks per employee if between 50 to 100 employees are affected, 12 weeks per employee if 101 to 300 employees are affected, and 16 weeks if 301 or more employees are affected).

The liability for such termination pay could therefore be very significant. For example, if an employer has laid off 75 full time employees earning \$15/hr. with 5 years' service, then **each** such employee would be entitled to 13 weeks termination pay (5 weeks regular termination pay + 8 weeks group termination pay). The total liability would therefore be in excess of half a million dollars:

$$((\$15/\text{hr.} \times 40 \text{ hrs.}) \times (5 \text{ weeks} + 8 \text{ weeks})) \times 75 \text{ employees} = \$585,000 \text{ in ESA termination pay}$$

Although there is a potential exemption from paying termination pay in s. 65(1) (d) of the ESA where an employment contract "*is impossible to perform due to an unforeseeable event or circumstance*", we are concerned that this exemption will likely not apply to protect employers now that many BC businesses are able to reopen with the easing of COVID-19 restrictions.

Employers who continue to have employees on layoff, and especially those employers with 50 or more employees laid off, should therefore get legal advice on their situation as soon as possible. They should also consider recalling back to work as many employees as possible





RICHARDS
BUELL
SUTTON^{LLP}
Established in 1871

before the expiry of the 24 week temporary layoff period on August 30, 2020 to avoid incurring substantial liabilities for termination pay.

Should you have questions about this article or require legal support, contact Georg Reuter, Leader of our Employment & Human Rights Practice Group.



VANCOUVER OFFICE:
700 - 401 W GEORGIA STREET
VANCOUVER, BC CANADA V6B 5A1
TEL: 604.682.3664 FAX: 604.688.3830

SURREY OFFICE:
200 - 10233 153 STREET
SURREY, BC CANADA V3R 0Z7
TEL: 604.582.7743 FAX: 604.582.7753

RBS.CA