

Amendments to the New Brunswick Employment Standards Act

On April 17, legislation was passed to amend the *Employment Standards Act* to provide for an emergency leave to protect workers' jobs during states of emergency and public health threats. *An Act to Amend the Employment Standards Act* (the "Act") provides that an employer must grant an employee a leave of absence in accordance with the regulations made by the provincial government (yet to be released), during the current state of emergency and any future states of emergency or threats to public health.

The Act provides that the government may make regulations regarding matters such as:

- the eligibility requirements for emergency leaves,
- the purposes for which the leave may be taken, and
- whether the leave may be taken as paid or unpaid.

The Act also gives the government power to make regulations which deem a suspension, layoff, dismissal or termination of employment an emergency leave of absence.

An emergency leave must be in accordance with the regulations. The regulations have not yet been released but we will provide an update once further information is available.

What does an employee need to do in order to take an emergency leave?

In order for an employee to take an emergency leave, they must meet the eligibility requirements prescribed by regulation. As the regulations have not yet been released, it is not clear at this time what will be required for an employee to take an emergency leave.

What does this mean for employers?

In effect, the amendments allow for the government to make regulations that:

- deem a suspension, layoff, dismissal, or termination of employment an emergency leave of absence,
- determine on which date the leave of absence commenced, and
- determine the duration of the leave.

The Act provides that the government can determine that a leave of absence was deemed to commence before the date on which the regulations come into force. This means that, with respect to any employees currently laid off, suspended, dismissed, or terminated for COVID-19-related reasons, the government could make regulations that deem those employees to be on a leave of absence, rather than laid off, suspended, or terminated.

The details with respect to the eligibility for an emergency leave, the length of the leave, any documentation required to verify the leave, whether the leave will be paid or unpaid, and whether certain layoffs, suspensions, or terminations will be deemed to be emergency leaves will be established by regulation. We will provide further details about the requirements for emergency leaves when the regulations become available.