

COVID-19 Vaccinations And Infectious Disease Emergency Leave



When dealing with employees who fail or refuse to take the COVID-19 vaccine, employers in Ontario may wish to consider, among other things, whether such employee(s) should be placed on an infectious disease emergency leave.

The *Employment Standards Act, 2000* provides that an employee can take an infectious disease emergency leave if they will not be performing the duties of their position because, among other qualifying reasons, they are under a direction given by their employer in response to the employer's concern that the employee may expose others in the workplace to the infectious disease.

A failure or refusal to take the COVID-19 vaccine may give rise to such a concern, qualifying the employer to place an employee on infectious disease emergency leave. This position appears to be supported by the recent amendment to the Ministry of Labour's *Your Guide to the Employment Standards Act* which now provides, as an example of a qualifying reason for infectious disease emergency leave, circumstances "where the employer is concerned that employees who have not received the COVID-19 vaccine may expose others in the workplace to COVID-19 and tells them not to come to work until they have been vaccinated."

Prior to resorting to infectious disease emergency leave, employers should consider all other relevant factors, including privacy law, human rights and any contractual obligations. We encourage employers to seek advice specific to their unique circumstances.

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