

Questions and Answers COVID-19 Leaves in the Workplace

March 20, 2020

On March 18, 2020 the Government of Saskatchewan declared a provincial state of emergency outlining specific measures. On March 17, 2020 amendments were made to *The Saskatchewan Employment Act* to ensure leave for employees during public health emergencies. Regulatory changes were also announced on March 20, 2020.

We know that as employers are making decisions about how best to ensure the health and safety of workers and of citizens they serve there are a number of questions that have arisen. The information below is intended to assist employers and employees at this time.

Please note that given the COVID-19 pandemic, information can change quickly. This information is current as of March 20, 2020.

Who does the public health emergency leave apply to and what does it include?

This leave is intended for employees to assist in protecting their jobs during leaves as ordered by their employer, the government, their doctor, or the chief medical health officer of the province to isolate themselves or, if they are required to care for their child or family member who are affected by the order or direction of the Government of Saskatchewan or an order of the chief medical health officer.

e.g. direction of government- closure of day cares as a result of school closures

e.g. orders of government – closure of schools indefinitely

e.g. order of chief medical health officer- when returning from outside of Canada individuals must isolate for 14 days

In order to ensure the health and safety of the public, employees required to provide critical public health and safety services are not entitled to this leave.

How long is the leave for?

Employees will be entitled to leave for the length of time they are ordered by their employer, government, their doctor or the chief medical health officer.

Is the public health emergency leave paid leave?

This is an unpaid leave. However, employees are entitled to be paid their regular wages if their employer authorizes them to work from home during the period of time as set out by the order of the employer, chief medical health officer or government.

Is there a minimum employment time required for the leave?

No. Employees do not have to have worked for an employer for any set time.

Do I need to give my employer notice to take leave?

While notice is not required, employees are encouraged to be in regular contact with their employer regarding their leave.

Do I need to give notice to return to work?

While notice is not required it is encouraged that you stay in contact with your employer to ensure a smooth transition back to work.

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How long can I take leave?

The length of time will depend on the order and may be different in each individual circumstance. The protected leave is for as long as the public health order is in place.

e.g. returning to Canada from vacation outside of the country—individuals need to isolate for 14 days

e.g. caring for children who are out of school—if you are able to find alternate means of care you may be on leave for a couple of days only or longer periods of time.

Is the public health emergency leave in place right now?

Yes. The unpaid leave is effective retroactive to March 6, 2020.

Do I need a doctor's note to access the leave or if my employer asks me for a doctor's note if I am ill?

No. The doctor's note is waived for the leave. However, employees will still be expected to give a doctor's note as may be required by their employer if the illness or injury is unrelated to COVID-19.

What about sick workers?

If the employee is ill, then *The Saskatchewan Employment Act* protects the employee from discriminatory action for either 12 days or 12 weeks, depending on the severity of the illness. Severity may depend on the impact of this flu on the employee.

What about workers whose place of business has closed temporarily or permanently

Employers with 10 or more employees who are closing temporarily to deal with Covid-19, whether it's for health reasons or a temporary lack of customers, would not be required to provide group termination notice.

Employers can lay the employees off temporarily or permanently terminate employment. Please refer to the next couple of questions regarding lay off and termination provisions.

How do the layoff provisions work during a public emergency?

An employer now has the option to implement a short term layoff as part of their response to the public health emergency during an order of the medical health officer or an emergency declaration by the Government of Saskatchewan. With this new regulation, an employer may temporarily lay off an employee for up to 12 weeks in a 16 week period without having to provide notice or pay instead of notice to the employee.

Employees on a temporary layoff would still be considered employees but would be able to apply for Federal Employment Insurance Benefits.

Does this delay my eligibility for pay instead of notice if my employment was terminated?

No, if you have not been laid off and your employment has been permanently terminated you would be eligible for pay instead of notice payable within 14 days of the termination.

With this new provision, employers may adjust their layoff and termination provisions with their employees as part of their expectations to bring those employees back to work within the 12 weeks in the 16-week layoff period.

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When does the 16-week period start?

The 16-week period starts at the first day of interruption of work

What happens at the end of the 16 weeks?

An employer can lay off an employee for maximum 12 weeks in a 16-week period. The employee would be entitled to pay instead of notice if they have no work for more than 12 weeks in that 16-week period.

For example, if employee is laid off for over 12 weeks straight, the employee is entitled to pay instead of notice after 12 weeks rather than having to wait until end of week 16.

If my employer doesn't reinstate me how much pay instead of notice will I get?

If you have worked more than 13 weeks prior to the temporary layoff and you are laid off for more than 12 weeks, you will be entitled to pay instead of notice based on your service with that employer as well as the temporary layoff period. In this example 13 weeks plus 12-week layoff period equals length of service of 25 weeks of employment. The pay instead of notice varies from one week if you have worked more than 13 weeks but less than a year, up to 8 weeks if you have worked more than 10 years.

Length of Service	Notice by Employer
13 weeks to 1 year	1 week
1 year to 3 years	2 weeks
3 years to 5 years	4 weeks
5 years to 10 years	6 weeks
More than 10 years	8 weeks

What earnings will be used to determine my pay instead of notice?

Under normal circumstances average earnings for the past 13 weeks are used to determine the pay instead of notice assessment. However, during the public health emergency leave, while the temporary layoff provisions are in place, employees are not likely to be earning their typical wages even if they returned to work fully or partially due to changes in business operations. The pay instead of notice assessment will be based on average weekly earnings prior to layoff notice date.

What if I don't qualify for Employment Insurance?

With the enhanced coverage from the federal government – it is anticipated that individuals that have been laid off will have options for compensation.

What financial assistance is available to employers/business to assist them?

The federal government has made several announcements around employment insurance and other benefits available at this time. For more information, we encourage individuals to visit <https://www.canada.ca/en/department-finance/news/2020/03/canadas-covid-19-economic-response-plan-support-for-canadians-and-businesses.html>

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**What about workers who need to take time off to care for their children who are no longer in school?
Is this leave paid?**

These workers are entitled to job protected leave under the new public health emergency leave provisions. This would be considered unpaid leave, however employees would be entitled to employer benefit plans and provisions of collective agreements where applicable.

Employees are entitled to be paid their regular wages if their employer authorizes them to work from home during the period of time as set out by the order of the chief medical health officer or government.

What about freelance workers, contract workers, and gig workers?

The Saskatchewan Employment Act does not apply to self-employed individuals such as freelance workers, independent contractors or business owner operators.

The federal government has made several announcements around employment insurance and other benefits available at this time. For more information, we encourage individuals to visit <https://www.canada.ca/en/department-finance/news/2020/03/canadas-covid-19-economic-response-plan-support-for-canadians-and-businesses.html>

Where can I find more information?

The Government of Saskatchewan has created a single online resource for the most current information, statistics and guidelines regarding COVID-19. This information can be accessed the following link:

<https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus>

Employment insurance contact info:

- **General:** 1-800- 206-7218
- **COVID:** 1-833-381-2725

Saskatchewan Employment Standards 1-800-667-1783 or email employmentstandards@gov.sk.ca