

## **Compendium**

### ***COVID-19 Putting Workers First Act, 2021***

The bill proposes to amend the Employment Standards Act, 2000 to provide employees with an entitlement to three paid days of leave in certain circumstances related to a designated infectious disease. (COVID-19 is a “designated infectious disease” pursuant to Ontario Regulation 228/20.) The proposed entitlement to paid leave would be in addition to the entitlement to unpaid leave currently provided for in that section.

A proposed new section 50.1.1 would provide that an employer is entitled to be reimbursed for payments made to an employee for paid leave taken under section 50.1 and that certain employers could apply to the Workplace Safety and Insurance Board for such reimbursement.

#### **Section 1**

##### **Definitions [proposed amendments to subsection 1 (1)]**

Subsection 1 (1) of the Act would be amended by adding “infectious disease emergency leave pay” as a defined term that means pay for any paid days of leave taken under subsection 50.1 (1.2).

The definition of “regular wages” would be amended by adding “infectious disease emergency leave pay” after “domestic or sexual violence leave pay” and by adding “subsection 50.1 (1.2)” after “section 49.7”.

#### **Section 2:**

##### **Emergency leave: declared emergencies and infectious disease emergencies Interpretation, treatment [proposed new subsection 50.1 (1.0.1)]**

For greater certainty, proposed subsection 50.1 (1.0.1) would state that a reference to treatment related to a designated infectious disease in section 50.1 includes receiving a vaccine for the designated infectious disease and recovery from associated side-effects from the vaccine.

##### **Leave of absence with pay [proposed new subsection 50.1 (1.2)]**

In addition to any entitlement to unpaid infectious disease emergency leave under subsection (1.1), an employee would be entitled to a paid leave of absence if the employee is not performing the duties of the employee’s position because of one or more of the following reasons related to a designated infectious disease:

1. The employee is under individual medical investigation, supervision or treatment related to the designated infectious disease.
2. The employee is acting in accordance with an order under section 22 or 35 of the *Health Protection and Promotion Act* that relates to the designated infectious disease.
3. The employee is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.
4. The employee is under a direction given by his or her employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the designated infectious disease.
5. The employee is providing care or support to an individual referred to in subsection (8) because,
  - i. the individual is under individual medical investigation, supervision or treatment related to the designated infectious disease, or
  - ii. the individual is in quarantine or isolation or is subject to a control measure (which may include, but is not limited to, self-isolation), and the quarantine, isolation or control measure was implemented as a result of information or directions related to the designated infectious disease issued to the public, in whole or in part, or to one or more individuals, by a public health official, a qualified health practitioner, Telehealth Ontario, the Government of Ontario, the Government of Canada, a municipal council or a board of health, whether through print, electronic, broadcast or other means.

In accordance with subsection 50.1 (8), an individual for whom an employee could provide care or support pursuant to paragraph 5 of proposed subsection 50.1 (1.2) would be:

1. The employee's spouse.
2. A parent, step-parent or foster parent of the employee or the employee's spouse.
3. A child, step-child 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, step-brother, sister or step-sister 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, provided the prescribed conditions, if any, are met.
13. Any individual prescribed as a family member for the purposes of this section.

**Limit, number of days [proposed new subsection 50.1 (1.3)]**

Subject to proposed subsection (1.4), an employee would be entitled to take a total of three paid days of infectious disease emergency leave under proposed subsection (1.2).

**Paid leave taken under employment contract [proposed new subsection 50.1 (1.4)]**

If, on April 19, 2021, an employee is entitled to take paid leave under an employment contract in any of the circumstances for which the employee would also be entitled to take a paid infectious disease emergency leave under proposed subsection (1.2), the employee's entitlement to paid infectious disease emergency leave under proposed section (1.3) would be reduced by the employee's entitlement under the employment contract.

**Same [proposed new subsection 50.1 (1.5)]**

Proposed subsection (1.4) would apply only if the amount the employer is required to pay the employee under the employment contract is equal to or greater than what the employee would be entitled to under proposed subsection (1.11).

**Leave deemed to be taken in entire days [proposed new subsection 50.1 (1.6)]**

If an employee takes any part of a day as paid infectious disease emergency leave under proposed subsection (1.2), the employer would be permitted to deem the employee to have taken one paid day of infectious disease emergency leave on that day for the purposes of proposed subsection (1.3).

**Paid days first [proposed new subsection 50.1 (1.7)]**

Subject to proposed subsections (1.8) and (1.9), an employee would be entitled to take the proposed three paid days of infectious disease emergency leave before any of the unpaid days of infectious disease emergency leave.

**Same, election re unpaid days [proposed new subsection 50.1 (1.8)]**

If an employee is entitled to both paid and unpaid infectious disease emergency leave under section 50.1, the employee could elect to take one or more days or parts of a day of leave as unpaid leave only if the employee advises the employer in writing, before the end of the pay period in which the leave occurs, that the employee has elected to take that time as unpaid infectious disease emergency leave.

**Same [proposed new subsection 50.1 (1.9)]**

If between April 19, 2021 and the day the *COVID-19 Putting Workers First Act, 2021* receives Royal Assent, an employee takes unpaid infectious disease emergency leave under subsection (1.1) in circumstances for which the employee would also be entitled to take a paid infectious disease emergency leave under proposed subsection (1.2), the employee could elect to be paid for that leave only if the employee advises the employer in writing before the day that is 14 days after the *COVID-19 Putting Workers First Act, 2021* receives Royal Assent, that the employee has elected to take the leave as paid infectious disease emergency leave, and the employee would be deemed to have taken the paid infectious disease emergency leave under proposed subsection (1.2).

**Same [proposed new subsection 50.1 (1.10)]**

Despite subsection 11 (1) of the Act, if an employee elects to take paid infectious disease emergency leave under proposed subsection (1.9), the employer would be required to pay the employee the amount to which the employee is entitled no later than the pay day for the pay period in which the employee made the election.

Subsection 11 (1) provides that an employer shall establish a recurring pay period and a recurring pay day and shall pay all wages earned during each pay period, other than accruing vacation pay, no later than the pay day for that period.

**Paid leave [proposed new subsection 50.1 (1.11)]**

Subject to proposed subsections 50.1 (1.12) and (1.13), an employee who takes a paid day of infectious disease emergency leave under proposed subsection (1.2) would be entitled to the lesser of \$200 per day and either the wages the employee would have earned had they not taken the leave or, if the employee receives performance-related wages, the greater of their hourly rate (if they have an hourly rate) and the minimum wage for the number of hours the employee would have worked had they not taken the leave. Another manner of calculating the employee's entitlement for the paid day of

leave could be prescribed by regulation.

**Paid leave where higher rate of wages [proposed new subsection 50.1 (1.12)]**

If the paid day of infectious disease emergency leave under proposed subsection (1.2) is taken on a day or at a time when overtime pay or a shift premium (or both) would be payable, the employee would not be entitled to the overtime pay or shift premium.

**Paid leave on public holiday [proposed new subsection 50.1 (1.13)]**

If the paid day of infectious disease emergency leave under proposed subsection (1.2) is taken on a public holiday, the employee would not be entitled to premium pay.

**Evidence of entitlement, infectious disease emergency [proposed amendments to subsection 50.1 (4.1)]**

Subsection (4.1) of the *Employment Standards Act, 2000* would be amended by adding “or subsection (1.2)” after “clause (1.1) (b)”.

Subsection 50.1 (4.1) provides that an employer may require an employee who takes infectious disease emergency leave to provide evidence reasonable in the circumstances, at a time that is reasonable in the circumstances, that the employee is entitled to the leave, but an employer is not permitted to require an employee to provide a certificate (medical note) from a qualified health practitioner as evidence.

**Same, paid leave [proposed new subsection 50.1 (5.2)]**

An employee’s entitlement to paid infectious disease emergency leave under proposed subsection (1.2) would be deemed to have started on April 19, 2021 and would end on September 25, 2021 or such later date as may be prescribed by regulation.

**Same [proposed new subsection 50.1 (5.3)]**

An employee would be entitled to paid infectious disease emergency leave under proposed subsection (1.2) for such additional periods as may be prescribed by regulation.

***Protecting a Sustainable Public Sector for Future Generations Act, 2019*  
[proposed new subsection (7)]**

Section 50.1 of the *Employment Standards Act, 2000* would apply despite the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*. Payments made in accordance with proposed subsection (1.11) would not be an increase to existing compensation entitlements or new compensation entitlements for the purposes of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019*.

### **Section 3**

#### **Reimbursement of certain payments under section 50.1**

##### **Definition [proposed new subsection 50.1.1 (1)]**

Under proposed new section 50.1.1, “Board” would mean the Workplace Safety and Insurance Board, continued under subsection 159 (1) of the *Workplace Safety and Insurance Act, 1997*, despite the definition of “Board” in subsection 1(1).

##### **Reimbursement for paid leave [proposed new subsection 50.1.1 (2)]**

An employer may apply to the Board, in accordance with the proposed new section, to be reimbursed for payments made to an employee for paid leave taken under proposed subsection 50.1 (1.2).

##### **Same, maximum [proposed new subsection 50.1.1 (3)]**

An employer’s entitlement for reimbursement for payments made to an employee for paid leave taken under proposed subsection 50.1 (1.2) would be up to a maximum of \$200 per day, per employee.

##### **Same, exclusion [proposed new subsection 50.1.1 (4)]**

Despite proposed subsection 50.1 (1.9), an employer would not be entitled to be reimbursed for payments made to an employee on or after the day the *COVID-19 Putting Workers First Act, 2021* receives Royal Assent for a paid leave of absence under an employment contract in circumstances for which the employee would also be entitled to take a leave under proposed subsection 50.1 (1.2).

##### **Same, exclusion re change to employment contract [proposed new subsection 50.1.1 (5)]**

If, under an employment contract that was in effect on April 19, 2021, an employee was entitled to a paid leave of absence in circumstances for which the employee would also be entitled to take a leave under proposed subsection 50.1 (1.2), but due to a change to the employment contract on or after April 19, 2021, the employee is no longer entitled to some or all of the paid leave of absence that the employee was entitled to before the change, the employer would not be entitled to be reimbursed for payments made to that employee for a paid leave of absence, whether the leave is taken under proposed subsection 50.1 (1.2) or under the employment contract, to the extent that the employee was entitled to the leave of absence under the employment contract before the change.

##### **Same, exclusion re payments made under the WSIA [proposed new subsection 50.1.1 (6)]**

An employer would not be entitled to be reimbursed for payments made to an employee for paid leave taken under proposed subsection 50.1 (1.2) if the employee received benefits under the *Workplace Safety and Insurance Act, 1997* for the days of leave.

#### **Application for reimbursement [proposed new subsection 50.1.1 (7)]**

An application under this section could be made by filing the following with the Board:

1. A completed application in the form approved by the Board.
2. 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 taken under subsection 50.1 (1.2),
  - 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.
3. A record of the payment made to the employee in the form approved by the Board.
4. Information about claims filed with the Board under the *Workplace Safety and Insurance Act, 1997* in respect of the employee.
5. Any other information required by the Board.

#### **Time limit [proposed new subsection 50.1.1 (8)]**

An application under proposed section 50.1.1 would need to be made within 120 days of the payment in respect of which the application is made.

#### **Same, final date for application [proposed new subsection 50.1.1 (9)]**

Despite proposed subsection (8), no application under proposed section 50.1.1 could be made by an employer or accepted by the Board

- (a) after January 25, 2022;
- (b) if a later date is prescribed for the purposes of proposed subsection 50.1 (5.2), 120 days after that later date; or
- (c) if an additional period is prescribed for the purposes of proposed subsection 50.1 (5.3), 120 days after the last day of that period.

#### **No determination if application incomplete [proposed new subsection 50.1.1 (10)]**

The Board would not be permitted to make a determination regarding an employer's entitlement to reimbursement under proposed section 50.1.1 if the employer's

application does not meet the requirements of proposed subsection (7) or is not filed within the time limits set out in proposed subsections (8) and (9).

**Determination of entitlement [proposed new subsection 50.1.1 (11)]**

The Board would be required to make a determination regarding an employer's entitlement to reimbursement under proposed section 50.1.1 after receiving the employer's application and would be required to advise the employer of its determination in writing after making its determination.

**Same, payment [proposed new subsection 50.1.1 (12)]**

If the Board determines that an employer is entitled to be reimbursed under this section, the Board would be required to pay the employer the amount to which the employer is entitled.

**No right of reconsideration or appeal [proposed new subsection 50.1.1 (13)]**

A determination made by the Board regarding an employer's entitlement to reimbursement under proposed section 50.1.1 would not be a final decision of the Board for the purposes of the *Workplace Safety and Insurance Act, 1997* and an employer would have no right of reconsideration by, or appeal to, the Board or the Workplace Safety and Insurance Appeal Tribunal in respect of a determination made by the Board under proposed section 50.1.1.

**Hearing not required [proposed new subsection 50.1.1 (14)]**

The Board would not be required to hold a hearing when making a determination or exercising a power under proposed section 50.1.1.

**No complaint [proposed new subsection 50.1.1 (15)]**

Section 96 would not apply to a determination made by the Board under proposed section 50.1.1.

**Overpayments [proposed new subsection 50.1.1 (16)]**

If the Board pays an employer an amount in excess of the amount to which the employer is entitled under proposed section 50.1.1 the amount of the excess would be an overpayment and would be an amount owing under this Act.

**Same [proposed new subsection 50.1.1 (17)]**

If the Board pays an employer an amount under proposed section 50.1.1 and the employee in respect of whom the employer was paid subsequently receives benefits



under the *Workplace Safety and Insurance Act, 1997* for the days of leave for which the employer was paid, the amount of the payment to the employer would be an overpayment and would be an amount owing under this Act.

**Same [proposed new subsection 50.1.1 (18)]**

An overpayment made by the Board under proposed section 50.1.1 would be recovered from the employer by the Board or the Ministry in accordance with the prescribed process.

**Ministry to make payments to Board [proposed new subsection 50.1.1 (19)]**

The Ministry would be required to make payments to the Board to defray the costs of administering proposed section 50.1.1, including the cost of payments made to employers and the administration costs of the Board.

**Same, appropriation [proposed new subsection 50.1.1 (20)]**

Money required to defray the costs of administering proposed section 50.1.1 would be paid out of the money appropriated by the Ministry from the Consolidated Revenue Fund for that purpose by the Legislature.

**Repayment by Board [proposed new subsection 50.1.1 (21)]**

On or before the prescribed date, the Board would be required to pay the Ministry any amounts paid to the Board under proposed subsection (19) that are no longer required for the purpose of administering proposed section 50.1.1.

**Same, payments not part of insurance fund [proposed new subsection 50.1.1 (22)]**

Payments made to the Board under proposed subsection (19) would not form a part of the insurance fund that is administered by the Board under the *Workplace Safety and Insurance Act, 1997* and the Board would not make any payments from the insurance fund for any purpose under proposed section 50.1.1.

**Contract for services [proposed new subsection 50.1.1 (23)]**

The Board may enter into a contract or agreement with any person for the purpose of administering proposed section 50.1.1.

**Recordkeeping [proposed new subsection 50.1.1 (24)]**

The Board would be required to maintain such records relating to the administration of proposed section 50.1.1 as required by the Ministry, including records that are

necessary to verify applications and payments made under proposed section 50.1.1, and the Board would be required to provide those records to the Ministry.

**Collection and use of information [proposed new subsection 50.1.1 (25)]**

The Board may collect and use personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* for the purposes of administering this section.

**Same [proposed new subsection 50.1.1 (26)]**

The Board may use information collected under the authority of proposed section 50.1.1. for the purpose of administering and enforcing the *Workplace Safety and Insurance Act, 1997*.

**Same [proposed new subsection 50.1.1 (27)]**

The Board may use information collected under the authority of the *Workplace Safety and Insurance Act, 1997* for the purpose of administering proposed section 50.1.1.

**Disclosure of information [proposed new subsection 50.1.1 (28)]**

Except as otherwise provided for in proposed section 50.1.1., the Board would be prohibited from disclosing any information collected under the authority of proposed section 50.1.1 unless authorized or required by law to do so.

**False or misleading information [proposed new subsection 50.1.1 (29)]**

Persons would be prohibited from providing false or misleading information under proposed section 50.1.1.

**Same, disclosure to Director [proposed new subsection 50.1.1 (30)]**

If the Board is of the opinion that false or misleading information has been provided by an employer in an application under proposed section 50.1.1, the Board would be required to disclose that information to the Director.

**Investigation [proposed new subsection 50.1.1 (31)]**

An employment standards officer or other prescribed person would be permitted to investigate a possible contravention of proposed section 50.1.1.

**Immunity [proposed new subsection 50.1.1 (32)]**

No action or other proceeding for damages could be commenced against a member of the board of directors, or an officer or employee of the Board, for an act or omission done or omitted by the person in good faith in the execution or intended execution of any power or duty under proposed section 50.1.1.

#### **Section 4**

##### **Copy constitutes evidence**

##### **Same [proposed new subsection 140 (2.1)]**

In a prosecution or other proceeding under the *Employment Standards Act, 2000*, a copy of a record or other document or an extract from a record or other document that appears to be certified as a true copy or accurate extract by the Workplace Safety and Insurance Board would be evidence of the record or document or the extracted part of the record or document and of the facts appearing in the record, document or extract without proof of the signature or office of the person appearing to have certified the copy or extract or any other proof.

#### **Section 5**

##### **Transitional regulations [proposed new subsection 141 (2.0.3.4)]**

The proposed new subsection would allow the Lieutenant Governor in Council (LGIC) to make regulations providing for any transitional matter the LGIC considers necessary or advisable in connection with the implementation of the amendments made by the *COVID-19 Putting Workers First Act, 2021*.

##### **Conflict with transitional regulations [proposed amendments to subsection 141 (2.04)]**

Subsection 141 (2.04) would be amended by striking out “or (2.0.3.3)” wherever it appears and substituting in each case “(2.0.3.3) or (2.0.3.4)”.

This subsection provides that in the event of a conflict between the Act or regulations under the Act and specific transitional regulations, the transitional regulations would prevail.

##### **Regulations re emergency leave, declared emergencies [proposed amendments to subsection 141 (2.1)]**

Proposed new clause (b.1) would allow the LGIC to make regulations that prescribe, for the purposes of proposed subsection 50.1 (5.2), a later date on which the entitlement to paid infectious disease emergency leave under proposed subsection 50.1 (1.2) ends.

Proposed new clause (b.2) would allow the LGIC to make regulations that prescribe, for the purposes of proposed subsection 50.1 (5.3), additional periods during which employees are entitled to paid infectious disease emergency leave under proposed subsection 50.1 (1.2).

Proposed new clause (d.1) would allow the LGIC to make regulations to exempt the Crown, a Crown agency, or an authority, board, commission or corporation all of whose member are appointed by the Crown from the application of section 50.1 or any provision of it.

Subsection 141 (2.1) allows the LGIC to make regulations that:

- (a) designate an infectious disease for the purposes of section 50.1;
- (b) prescribe, for the purposes of subsection (5.1), the date on which the entitlement to emergency leave under clause 50.1 (1.1) (b) starts or is deemed to have started;
- (c) provide that section 50.1, or any provision of it, would apply to police officers and prescribe one or more terms or conditions of employment or one or more requirements or prohibitions respecting infectious disease emergency leave that would apply to police officers and their employers;
- (d) exempt a class of employees from the application of section 50.1 or any provision of it, and prescribe one or more terms or conditions of employment or one or more requirements or prohibitions respecting infectious disease emergency leave that would apply to employees in the class and their employers; and
- (e) provide that a term, condition, requirement or prohibition prescribed under clause (c) or (d) would apply in place of or in addition to a provision of section 50.1.

### **Retroactive regulation [proposed amendments to subsection 141 (2.2)]**

Subsection 141 (2.2) would be amended by striking out “or (2.1)” in the portion before clause (a) and substituting “(2.0.3.4) or (2.1)”.

This subsection provides that a regulation made under subsection (2.0.3.3) or (2.1), or a regulation prescribing a reason for the purposes of subclause 50.1 (1.1) (a) (iv) or (b) (vii) may provide that:

- (a) it has effect as of the date specified in the regulation;
- (b) an employee who does not perform the duties of his or her position because of the declared emergency and the prescribed reason, or because of the prescribed reason related to a designated infectious disease, as defined in section 50.1, is deemed to have taken leave under section 50.1 beginning on the first day the employee does not perform the duties of his or her position on or after the date specified in the regulation; or
- (c) provide that clauses 74 (1) (a) and 74.12 (1) (a) apply, with necessary modifications, in relation to the deemed leave described in clause (b).

## **Regulations**

### **Regulations re section 50.1 [Proposed new subsection 141 (2.5)]**

The LGIC would be allowed to make regulations that prescribe:

- (a) the process for overpayment recovery under subsection 50.1.1 (18);
- (b) the date by which the Board is required to repay the Ministry under subsection 50.1.1 (21);
- (c) for the purposes of proposed subsection 50.1.1 (31), persons who may investigate possible contraventions of section 50.1.1;
- (d) the powers under the *Employment Standards Act, 2000* that a person prescribed under clause (c) may exercise;
- (e) specifying the parts of the *Employment Standards Act, 2000* that apply, with necessary modifications, if a person prescribed under clause (c) investigates a possible contravention of subsection 50.1.1.
- (f) exempting the Crown, a Crown agency, or an authority, board, commission or corporation all of whose member are appointed by the Crown from the application of section 50.1.1 or any provision of it.

## **Section 6**

### **Incorporation of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019***

#### **Same [proposed new subsection 143 (2.1)]**

For greater certainty, proposed subsection 50.1(7) of the *Employment Standards Act, 2000* would prevail over the provisions incorporated into the *Employment Standards Act, 2000* under subsection (1).

## **Section 7**

### **Commencement**

The proposed amendments would come into force on the day this Act receives Royal Assent.

## **Section 8**

### **Short title**

The short title of this Act would be the *COVID-19 Putting Workers First Act, 2021*.