Ontario Proposes Changes To Sick Leave Under The Employment Standards Act, 2000



The Ontario government has announced it is proposing changes that would restrict an employer from requiring a medical note to substantiate an unpaid sick leave day under the *Employment Standards Act, 2000* (*ESA*).

Currently, an employee who has been employed for at least two consecutive weeks is entitled to up to three days of unpaid sick leave in each calendar year for reasons of personal illness, injury or medical emergency. An employer is entitled to require an employee to provide "evidence reasonable in the circumstances" to verify entitlement to the leave. The government has indicated it will propose changes to prohibit an employer from requiring sick notes from a qualified health practitioner to verify the need for sick leave, which will necessarily require an amendment to the *ESA*. However, other reasonable evidence, such as an employee attestation or declaration, could still be required.

Based on the government announcement, it is expected that any proposed legislation would limit the evidence an employer can require to substantiate the three sick leave days under the *ESA* only. It should therefore not impact an employer's ability to request medical documentation for other reasons, such as to substantiate the need for a requested accommodation under human rights legislation. Nor should it impact an employer policy or collective agreement that requires medical documentation to substantiate sick time taken in excess of three days in a calendar year. However, the full scope of the changes can only be determined when a bill is introduced in the legislature.

We will continue to monitor the progress of this proposed *ESA* amendment. In the meantime, should you have any questions, please feel free to reach out to your regular Hicks Morley lawyer.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

by Agatha Suszek
Hicks Morley Hamilton Stewart Storie LLP