

Employers Take Note: Manitoba lifted its State of Emergency as of October 21, 2021 and why this matters to non-unionized workplaces with staff on lay-off

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Under the Regulation to *The Employment Standards Code* (the “Code”), an employee on lay-off is normally deemed to be terminated if the lay-off lasts more than 8 weeks in a 16 week period (with the termination deemed effective as of the first day of the lay-off), unless one of a few regulated exceptions is applicable. That means that an employee who is laid-off for 8 weeks within a 16 week period may be entitled to pay in lieu of notice under the *Code*. Additional group termination provisions may apply if this affects 50 or more employees within a 4 week period.



Last year, the Government of Manitoba amended the Regulation so that the period between March 1, 2020 and the date that Manitoba’s State of Emergency ends does not count toward the 8 week lay-off period prior to a deemed termination taking place. As a result of this amendment, while the State of Emergency was in place, employers were entitled to lay-off employees for longer than 8 weeks within a 16 week period without that lay-off being deemed to be a termination under the *Code* and its Regulation.

Manitoba lifted its State of Emergency on **October 21, 2021**. This means that unless there is another applicable exception, a non-unionized employee who is on lay-off as of October 21, 2021 may be deemed terminated for the purposes of the *Code* once they have been laid off for 8 weeks within a 16 week period. Additionally, for employers who may have employees on lay-off since the early days of the pandemic, any period that the employee was on lay-off prior to March 1, 2020 will also count toward the 8 week period. The status of unionized employees will be subject to the applicable collective agreement.

Employers who may be affected by this change are encouraged to consult with legal counsel to determine how this may apply to their workplaces.

Please contact businessdevdept@tdslaw.com to connect with a lawyer on this topic.

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