

# **HRLive CLIENT UPDATE**

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# Disclaimer

## **Note & Disclaimer:**

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# Current Status

[] Stay-at-Home Order until at least **June 2, 2021**

[] **Step 1** anticipated June 14, 2021

[] **Each Step** requires “**Key Health Indicators**” (declining case rates, & ICU / hospitalizations)

[] **Emergency brakes** remain ‘on’

## Step 1

**60%**

Adults with one dose

### Permit with restrictions

Outdoors first with limited, well-managed crowding and permitting restricted retail

- Larger outdoor gatherings for up to 10 people
- Outdoor dining for up to 4 people per table
- Essential retail capacity at 25%
- Non-essential retail at 15%
- Outdoor religious services, rites and ceremonies with capacity limited to permit physical distancing of 2 metres
- Outdoor sports, fitness and personal training up to 10 people
- Day camps
- Campsites and campgrounds
- Overnight camping at Ontario Parks
- Outdoor horse racing and motor speedways
- Outdoor pools and wading pools

+21 days before next stage →

## Step 2

**70%**

Adults with one dose  
20% Fully vaccinated

### Permit with restrictions

Open indoors with small numbers and face coverings and expand outdoors

- Larger outdoor gatherings for up to 25 people
- Small indoor gatherings for up to 5 people
- Outdoor dining for up to 6 people per table
- Essential retail at 50% capacity
- Non-essential retail capacity at 25%
- Personal care services where face coverings can be worn at all times
- Outdoor meeting and event spaces
- Outdoor amusement and water parks
- Outdoor boat tour operators
- Outdoor county fairs and rural exhibitions
- Outdoor sports leagues and events
- Outdoor cinemas, performing arts, live music events and attractions

+21 days before next stage →

## Step 3

**70-80%**

Adults with one dose  
25% Fully vaccinated

### Permit with restrictions

Expand indoors where face coverings can't always be worn

- Larger indoor and outdoor gatherings
- Indoor dining
- Essential and non-essential retail open with limited capacity
- Larger indoor religious services, rites, and ceremony gatherings
- Indoor meeting and event spaces
- Indoor sports and recreational facilities
- Indoor seated events
- Indoor attractions and cultural amenities
- Casino and bingo halls
- Other outdoor activities from Step 2 permitted to operate indoors

## ESA – Declared Emergency Leave

The Ontario government declared a state of Emergency on March 17, 2020.

- Employees have unpaid, job-protected “*Infectious Disease Emergency Leave*” (IDEL).
  - Reinstatement to the position they held previously, or a comparable one.
  - Entitled to benefit continuation and accrued vacation time.
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## **ESA – Infectious Disease Emergency Leave**

- IDEL is only available for COVID-19 related absences & illnesses.
  - Employees who take IDEL are generally entitled to the same rights as employees who take pregnancy or parental leave.
  - If an employee is fired or not offered a return to their position, the employer is required to reinstate the employee.
  - Employers cannot require an employee to provide a certificate from a physician as evidence.
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## **ESA – Declared Emergency Leave**

- Employee is entitled to leave if they can't perform their duties because a government order prevents them from doing so or if they must provide “care / assistance” to family members.
  - Entitled to the leave if caring for children not in school.
  - There is no specified limit to the number of days an employee can be on infectious disease emergency leave.
  - Written notice is not required.
  - IDEL continues until (at least) July 3, 2021.
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## Temporary Layoffs – IDEL exemption ESA

- *Permitted* by the ESA for up to 13 weeks in a 20 week period.
  - Can be longer (35 weeks in a 52 week period but different considerations apply and you must continue some form of compensation – ie. benefits).
  - If the temporary layoff exceeds either time limit, its deemed termination.
  - Must be in writing.
  - July 3, 2021.
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## Temporary Layoff (Constructive Dismissal Considerations)

- Some lawyers advising the public to seek damages for constructive dismissal if they are laid-off.
  - Check your employment contracts: if they state its permissible to lay-off in accordance with the ESA -- you can.
  - What do your policies say? Have employees signed-off?
  - Have you done seasonal layoffs in the past? (precedent).
  - Unionized?
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## **Paid IDEL (3 Sick Days)**

- Current rules provide 3 paid IDEL-days only if the employer provides no paid sick days.
  - If you provide 3 or more paid sick days, no eligibility.
  - If you provide 1 or 2 paid days, the government program tops-up to 3 paid days in total.
  - Employer applies for reimbursement through WSIB system (max \$200 per day).
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## Paid IDEL (3 Sick Days)

### NEW

- If on April 19, 2021, your staff member had more than 3 paid sick days but *used them* all before then, we are told they will get three more days.

Example One: 5 paid sick days used before April 19, 2021

- Employee receives 3 paid IDEL sick-days
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## **Paid IDEL (3 Sick Days)**

Bottom-line:

- If your staff have 3 or more employer-paid sick days as of April 19, 2021, no more sick days are owing.
  - If they have less than 3 days, it appears you must top-up to 3 days and seek reimbursement for those top-ups.
  - Only applies to Covid-related absences and illnesses.
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## Paid IDEL (3 Sick Days)

Bottom-line:

- Staff do not have to take these paid 3-days – they can elect to take *unpaid* IDEL or the [Canada Recovery Caregiving Benefit \(CRCB\)](#) (for longer absences like quarantine or illness).
  - Paid IDEL covers many Covid-related reasons including taking the day off to get vaccinated.
  - Partial days off reduce the entitlement by one full day.
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# Questions & Answers

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## Questions & Answers

**Q:** For safety reasons, I have the right to demand my staff get vaccinated?

**A:** Incorrect.

Presently vaccines are not mandatory in Canada and there are reasons that an individual may not get the vaccine.

With limited exceptions (healthcare) mandatory vaccine programs may not be an acceptable practice.

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## Questions & Answers

**Q:** My personal health is private: my employer cannot ask me questions related to COVID-19, including whether I intend to be vaccinated?

**A:** (We think) Incorrect.

Employers determine fitness for work and are responsible for ensuring the workplace is safe. You are entitled to ask questions to determine if staff pose a health and safety risk.

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## Questions & Answers

- We believe you can ask employees whether they have been vaccinated, intend to, or do not intend to get vaccinated.
  - If an employee refuses vaccination, they could be asked to disclose the reason, to allow the employer to determine if a prohibited ground of discrimination is engaged (accommodation analysis).
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## Questions & Answers

### Possibilities:

- Employees who are required to travel as a term of employment might have no choice but to be vaccinated.
  - If the government mandates vaccinations in certain workplaces or jobs, employers will then be justified in implementing policies.
  - Government may exempt vaccinated people from having to wear masks indoors.
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## Questions & Answers

**Q:** I haven't been able to schedule a vaccine. If workplaces are permitted to re-open, can I choose to stay home from work until vaccinated and collect **EI** or the [Canada Recovery Benefit \(CRB\)](#)?

**A:** No. If you refuse to work, you could be deemed to have voluntarily quit your job and you cannot claim EI benefits. It must be objectively proven to a Ministry H&S Inspector that the work is unsafe and can't be modified to make it safe.

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## Questions & Answers

**Q:** If I earn more on lay-off, can I stay on EI and refuse to RTW?

**A:** No. If you refuse to return to work, you have effectively quit your job and you will not receive CRB or EI.

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## Questions & Answers

**Q:** Not only is it safer, I work more effectively from home anyway, so my employer has to give me that option.

**A:** No. This is an effective social distancing measure, however, when the government permits your workplace to open employers have no obligation to allow you to continue working from home, including during a pandemic, regardless of productivity arguments.

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## Questions & Answers

**Q:** My kids schools are still closed and I don't have childcare, so my employer cannot make me return to work.

**A:** Correct. Employees have job-protected IDEL protection in this instance and the employee also remains eligible to collect [Canada Recovery Caregiving Benefit \(CRCB\)](#).

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## Questions & Answers

**Q:** I'm still working from home. I have 4 weeks vacation this year. My employer is forcing me to take one week of vacation by the end of June. Can she do that?

**A:** Yes. Unless your organization's policies say otherwise, in Ontario, your employer can direct when you take your vacation.

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# Questions



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