



MEMORANDUM

**Infectious Disease Emergency Leave (IDEL) and Declared Emergency Leave  
An addendum to all employee handbooks**

To: All Staff of Jeffery's Greenhouses Inc and Jeffery's Greenhouses Plant II

Date: Friday, May 14, 2021

On March 19, 2020 Ontario amended the job protected leave provisions in the Employment Standards Act (ESA), 2000 to include two new unpaid leaves relating to Declared Emergencies and Infectious Diseases, arising from the Covid-19 pandemic.

**Declared Emergencies Leave (DEL)**

Declared emergency leave is a leave of absence without pay for employees who cannot perform their job duties because of :

1. The declared emergency and
2. One or more of the following:
  - An emergency order that applies directly to the employee (either individually or as part of a group) was made under the Emergency Management and Civil Protection Act (EMCPA) (for example an order to stay-at home)
  - An order that applies to directly to the employee was made under the Health Promotion and Protection Act (HPPA) (for example an order to self-isolate for 14 days) or
  - The employee is needed to provide care or assistance to a specified individual because of the declared emergency or
  - Other reasons that may be prescribed

An employee is entitled to take declared emergency leave for as long as they are not performing the duties of their position as determined by the provisions above. Entitlement will end on the day the declared emergency order is terminated.

On April 7, 2021, a third emergency was declared in Ontario because of COVID-19 and is expected to last until June 2, 2021. The first emergency in respect of COVID-19 was in effect from March 17, 2020 to July 24, 2020 and the second emergency in respect of COVID-19 was in effect from January 12, 2021 to February 9, 2021.



### **Infectious Disease Emergency Leave (IDEL)**

Infectious disease emergency leave is a job-protected leave without pay for employees who cannot perform their job duties for any of the following reasons:

- The employee is under individual medical investigation, supervision, or treatment (*treatment includes receiving a vaccination or recovering from any side effects*) for the designated infectious disease. **Note:** Receiving a vaccine does not require an entire day off. Employees are requested wherever possible to book their appointments outside of working hours. Alternatively, Jeffery's is offering flexible scheduling to accommodate vaccine appointments to ensure wages are not lost to receive the vaccine. *The paid emergency day will only be processed IF a flexible schedule OR appointments outside of work hours are not available. Unless there is a severe reaction rendering them unable to safely perform their duties, employees are expected to return to work after receiving the vaccine when scheduled during a shift.*
- The employee is acting in accordance with an order under section 22 or 35 of the Health Promotion and Protection Act (HPPA);
- The employee is in quarantine, isolation, or subject to a control measure, such as self-isolation, because of information or directions issued to all or some of the public or one or more individuals, by an authority designated by the legislation.
- The employer directed the employee not to work in response to a concern that the employee may expose other individuals in the workplace to the designated infectious disease.
- The employee is providing care or support to a specified individual because of a matter related to the designated infectious disease that concerns that individual, such as school or day care closures.
- The employee is directly affected by travel restrictions and, under the circumstances, cannot reasonably be expected to travel back to Ontario; or
- Other reasons that may be prescribed.

An employee is entitled to take infectious disease emergency leave starting on the prescribed date for as long as they are not performing the duties of their position as determined by the provisions above and the infectious disease is designated by the regulations.

### **Specified Individual for purposes of the DEL or IDEL**

Includes the following individuals that receive support or care from the employee as a result of the declared emergency or designated infectious disease.

- The employee's spouse (same or opposite sex, whether married or not)
- Parent, stepparent or foster parent of the employee or employee's spouse



**Specified Individual for purposes of the DEL or IDEL (continued)**

- A child, stepchild or foster child of the employee or the employee's spouse or a child under the legal guardianship of either spouse
- A brother, stepbrother, sister or stepsister of the employee
- A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse
- A brother-in-law, step-brother-in-law, sister-in-law, or step-sister-in-law of the employee
- A son-in-law or daughter-in-law of the employee or the employee's spouse
- An uncle or aunt of the employee or the employee's spouse
- A nephew or niece of the employee or the employee's spouse
- The spouse of the employee's grandchild, uncle, aunt, nephew, or niece
- A person who considers the employee to be like a family member, provided the prescribed conditions are met (currently no prescribed conditions)
- Any individual prescribed as a family member (currently no additional prescribed family members)

This includes taking leave to care for a child whose school or child-care is closed, or baby-sitter is in quarantine/isolation because of a designated infectious disease or because the employee did not send them to school or child-care out of fear of exposure to the infectious disease.

**Deemed Infectious Disease Emergency Leave (DIDEL)**

ESA regulation also sets out circumstances in which an employee is "deemed" to be on infectious disease emergency leave, as opposed to taking infectious disease emergency leave. Subject to a few exceptions, a non-unionized employee is "deemed" to be on an infectious disease emergency leave any time the employee is not performing their duties because their employer has temporarily reduced or temporarily eliminated their hours of work for reasons related to the infectious disease. During The COVID-19 period which is from March 1, 2020 to July 3, 2021 the worker deemed by the employer to be on IDEL is not considered to have had their employment terminated and is therefore not entitled to receive written notice or wages in lieu of notice.

**Rights During Declared Emergency Leave and Infectious Disease Emergency Leave**

The ESA does not require employers to pay an employee while on these leaves unless the employee has a right under their employment contract or collective agreement. Employees who take these leaves are generally entitled to the same rights as employees who take other ESA job protected leaves. For example, employers are required to reinstate an employee at the end of the



**Rights During Declared Emergency Leave and Infectious Disease Emergency Leave  
(continued)**

leave and are prohibited from threatening, firing or penalizing in any other way an employee who takes or plans on taking a declared emergency or infectious disease emergency leave.

**Interaction of DEL And IDEL With Other Leaves**

There are different types of leave under the ESA including, sick leave, family responsibility leave, family caregiver leave, family medical leave, critical illness leave, bereavement leave, declared emergency leave and infectious disease emergency leave.

An employee may be entitled to more than one leave for the same event. Each leave is separate and the right to each leave is independent of any right an employee may have to the other leave(s).

**Interaction with Vacation Rules**

Employees earn vacation time under ESA by completing a vacation entitlement year. Because there is no break in the employment relationship while an employee is on infectious disease emergency leave or declared emergency leave, the time on leave counts toward the completion of a vacation entitlement year. The amount of vacation pay earned during the vacation entitlement year would be a minimum of 4% (or more depending on the employee's length of employment) of any actual wages earned during the year.

**Interaction with Public Holidays**

Employees eligible for paid public holidays, will continue to be eligible for public holidays during their DEL or IDEL leave, if they work their last regularly scheduled day of work before the leave and their first scheduled day of work after the leave. If the employee failed to work either of those days, they will meet the "first and last rule" if they had reasonable cause for failing to work on the day.

**Proof of Entitlement to DEL or IDEL**

The employer may require an employee to provide documentary evidence reasonable for the circumstances within a reasonable time that the employee is entitled to the declared emergency leave or the infectious disease emergency leave. However, the employer cannot require a certificate from a physician or nurse as evidence. Examples with respect to COVID-19 include copies of public health orders to self isolate, or a COVID test result, or a COVID-19 vaccination confirmation receipt. This can include electronic evidence.



### **Paid Infectious Disease Emergency Leave (IDEL)**

On April 29, 2021, the Ontario government tabled and passed Bill 284, COVID-19 Putting Workers First Act, 2021 (Bill). The Bill amends the Employment Standards Act, 2000 (ESA) to provide eligible employees with up to three days of paid emergency leave in circumstances of absences relating to a designated infectious disease (Paid IDEL). COVID-19 is already a designated infectious disease for the purpose of the unpaid infectious disease emergency leave (Unpaid IDEL) under the ESA.

### **Limited Number of Paid Days**

An employee who is unable to perform their duties of their work because of one of the reasons related to the designated infectious disease COVID-19 between April 19, 2021 to September 25, 2021 (or at such later date as may be prescribed) is entitled to receive up to three days of pay at their regular rate of pay for the time missed, to a maximum \$200 per day.

If a paid day or partial day of leave falls on a day or at a time of day when overtime pay or shift premium or both applies, or on a public holiday, the employee is not entitled to more than their regular rate of pay and only for the hours of work that they missed.

### **Leave Deemed to Be Taken in Entire Days**

If an employee takes any part of a day as paid IDEL, the employee is deemed to have taken one paid day of leave.

### **Paid Leave Taken Under Employment Contract**

If, on April 19, 2021, an employee is entitled to take paid leave under their employment contract in any of the circumstances for which the employee would also be entitled to take a leave as stated in this policy, the employee's entitlement to paid IDEL is reduced by the employee's entitlement under the contract. In other words, Jeffery's full-time employees currently entitled to two paid Personal Emergency Leave days have the total reduced to only one additional paid IDEL day. Other employees (Part time and Seasonal contract employees) are entitled to the three paid IDEL days.

### **Interaction with the Canada Recovery Sickness Benefit (CRSB)**

The federal CRSB is a weekly sickness benefit of \$500.00 per week (which starts on a Sunday) for up to four weeks paid to eligible employed and self-employed individuals who cannot work for at least 50% of the time that they would have otherwise worked in the week for which they claim the benefit because they: (i) may have contracted COVID-19, (ii) have contracted COVID-



### **Interaction with the Canada Recovery Sickness Benefit (CRSB) (continued)**

19, (iii) have been advised to self-isolate for reasons related to the COVID-19 pandemic, or (iv) have underlying conditions or are undergoing treatments that make them more susceptible to COVID-19.

A person may apply for the CRSB on the Monday after the one-week period for which they are applying has ended. Direct deposit of the payment takes about three to five business days.

Although a person may apply for the CRSB even if they have access to other paid sick leave through their employer, a person is ineligible for the CRSB in each one-week period if they are receiving paid leave from their employer for the same period. As a result, an employee who receives infectious disease emergency leave pay from their employer in a week will not be able to claim the CRSB in respect of that same week, even if the maximum \$200.00 daily payment does not cover all of the pay they missed that week. Should they qualify for both CRSB and IDEL, employees may choose to apply for CRSB over the paid IDEL days if they determine it to be a better benefit. Notification must be made to Human Resources in writing no later than the end of that pay period that they waive their right to the IDEL to apply for the CRSB benefit through the Canada Revenue Agency.

### **Conditions**

Employees who take emergency leave must advise Jeffery's Greenhouses Inc. in writing that they plan to do so as soon as possible. If an employee must begin the leave before advising the company, they must communicate it in writing as soon as possible. In both cases written notification must be received prior to the end of the pay period it is to be applied.

If after reading this new policy, an employee feels that they were entitled to paid time off for infectious disease emergency leave related to COVID-19 during the periods of April 19 to May 14, 2021 for which they were not paid, they may submit a written application for a retroactive payment review. If full time employees received a paid PEL day for the day in question, then they are not eligible for additional payment.

The **Personal Emergency Leave** form has been updated for this purpose and can be found in the racks of employee forms (Production Office in Inc or Zone 5 in Plant II) as well as on the company website for merchandiser access. ***The form must be completed and signed by the employee and payment will only be processed upon approval by the Human Resources Manager.*** Note: Any requests for retroactive consideration must be received no later than end of day **Tuesday, June 1<sup>st</sup>, 2021.**