

New Paid Sick Leave Entitlements for Employees in BC and in Federally Regulated Workplaces

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Over the past week, both the Government of Canada and the Government of British Columbia announced important legislative amendments to expand the availability of paid sick leave to employees working in those jurisdictions.

Employees in BC Eligible for Five Days of Paid Sick Leave Per Year Starting January 2022

On November 24, 2021, the Government of British Columbia announced that, effective January 1, 2022, all employees in BC who are covered by the *Employment Standards Act* (ESA) and who have worked for their employer for at least 90 days will be eligible for up to five days of paid leave per year for any personal illness or injury. These five days of leave do not need to be taken consecutively and are in addition to the three days of unpaid illness or injury leave already available under the ESA.

Although provincially regulated employers in some Canadian jurisdictions are already required to provide employees with a limited amount of paid sick leave under certain conditions,¹ BC will become the first province in Canada to prescribe five days of paid leave for all employees who are ill or injured, including for reasons unrelated to COVID-19.

All employees who are covered by the ESA will be eligible for this leave, including part-time, temporary, and casual employees. For each day of leave, employees will be entitled to an average day's pay, calculated as the amount paid or payable to an employee for work done during the 30 calendar day period preceding the leave (including vacation pay but not including overtime) divided by the number of days the employee worked or earned wages within that 30 calendar day period.

Employees will not be required to provide their employer with a specific amount of notice prior to taking illness or injury leave but should advise their employer as soon as they can that they are ill or injured and unable to work. Employers will be permitted to request "reasonably sufficient proof" of the employee's entitlement to the leave.

Prior to announcing these legislative amendments, the Government of British Columbia sought input from

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employees and employers across the province on the types of paid sick leave programs that were already available in their workplaces and whether three, five or ten paid sick days should be mandated. Feedback from workplaces that were already providing paid sick leave suggested that most employees take between zero and five days of paid sick leave each year. Moreover, many of the employees whose employers did not provide any paid sick leave were the same employees British Columbians had depended on most during the COVID-19 pandemic, including lower-wage grocery store workers and those who prepare food in restaurants.

Paid illness or injury leave will become available to employees in BC immediately following the scheduled expiry of the paid portion of COVID-19-related leave on December 31, 2021. Unpaid COVID-19-related leave will remain available under the ESA until the end of the pandemic.

Government of Canada Introduces Legislation to Provide 10 Days of Paid Sick Leave to Employees in Federally Regulated Workplaces

On November 26, 2021, the Government of Canada tabled Bill C-3, *An Act to amend the Criminal Code and the Canada Labour Code*, which, if passed into law, will amend the *Canada Labour Code* (the Code) to provide ten days of paid medical leave per year to employees working in the federally regulated private sector.

Bill C-3 would amend the medical leave provisions of the Code to provide that:

- after one continuous month of employment with an employer, employees will earn one day of paid medical leave for each month of employment, up to a maximum of ten days in a calendar year;
- for each day of medical leave taken, employees must be paid at their regular rate for their normal hours of work;
- any day of paid medical leave that an employee does not take in a calendar year carries forward to January 1 of the following calendar year and counts toward the ten days that can be earned in the following calendar year; and
- an employer can require an employee to provide a medical certificate confirming that the employee was unable to work for the period of their medical leave, provided that the employer requests this certificate in writing by no later than 15 days after the employee's return to work from medical leave.

In addition to being eligible for up to ten days of paid medical leave per year, employees who are covered by the Code would continue to be eligible for up to five days of personal leave per year, the first three of which are paid if the employee has completed at least three months of service. To avoid duplication with the new medical leave provisions of the Code, the proposed legislation would remove "personal illness or injury" from the list of reasons for which an employee can take personal leave.

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In its news release relating to Bill C-3, the Government of Canada stated that the COVID-19 pandemic has highlighted the need for paid sick leave in the workplace, noting that too many Canadians have been forced to choose between staying home when they are sick and being able to afford rent and groceries. The news release further confirmed the Government's intention to consult with federally regulated employers and employees towards the implementation of this proposed legislation, and to convene with provinces, territories and other interested stakeholders to develop a national action plan to legislate paid sick leave across the country.

Implications for Employers

Employers operating in BC should consider updating their sick leave policies and employee handbooks to address this new paid illness or injury leave entitlement. In particular, sick leave policies should specify whether any paid sick leave an employer is already providing to its employees is inclusive of, or in addition to, an employee's statutory entitlement to paid illness or injury leave. If Bill C-3 in its current form becomes law, employers operating in the federally regulated private sector will need to review and update their paid sick leave policies as well.

Cassels' Employment and Labour Group will provide further updates on these new paid leave entitlements as they become available.

¹ In PEI, employees who have completed five years of service are eligible for one paid day of sick leave per calendar year. In Quebec, employees who have completed three months of service are eligible for two days of paid leave per calendar year on account of a non-work-related accident or illness (among other reasons). In Ontario, between April 19 and December 31, 2021, employees are eligible for three days of infectious disease emergency leave for reasons relating to COVID-19 and to be paid what they would have earned had they not taken such leave, up to a maximum of \$200 per day. Until December 31, 2021, employees in BC are eligible for up to three paid days of COVID-19-related leave.