

# PAID SICK LEAVE FOR BC EMPLOYEES: WHAT WE KNOW SO FAR

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On November 24, 2021, we published an [article](#) about the BC Government's announcement to introduce permanent paid sick leave in BC with effect from January 1, 2022. Since then we have been inundated with questions from BC employers about how this new paid sick leave will work and how it will impact their businesses. Employers understandably want as much information as possible to help them prepare before the new paid sick leave comes into effect.

Below is a list of some of the questions we have received with our answers based on information available at the moment. We are actively monitoring legislative and other updates and will publish further updates as more information become available.

## Who is Eligible to Receive the Paid Sick Leave?

Paid sick leave will be introduced into the British Columbia *Employment Standards Act* (the "**Act**") as an amendment to s. 49.1 of the Act. S. 49.1 of the Act currently entitles eligible employees to 3 days of unpaid leave for illness or injury per year after 90 consecutive days of employment with an employer. Employees who are currently eligible to receive unpaid leave under s. 49.1 of the Act will also be eligible to receive paid leave for illness or injury (i.e. sick leave).

### *Who is Covered by the Act?*

The Act, and therefore s. 49.1, applies to "employees" of provincially regulated employers who are not otherwise expressly excluded from its operation. Most businesses operating within BC, such as schools, universities, restaurants, retailers, hotels, professional service businesses (i.e. law firms, accountants, dental offices, etc.) are provincially regulated.

An "employee" for purposes of the Act is defined broadly to include:

- a person, including a deceased person, receiving or entitled to wages for work performed for another;
- a person an employer allows, directly or indirectly, to perform work normally performed by an employee;
- a person being trained by an employer for the employer's business;
- a person on leave from an employer; and

- a person who has a right of recall.

Despite the Act's broad application, not all individuals working in BC will be covered by the Act.

*Who is not covered by the Act?*

The Act does not apply to:

- Federally regulated employers;
- Independent and dependent contractors;
- Certain professions are completely exempt from the Act (for example, lawyers, doctors, accountants, engineers, architects, etc. – are all expressly exempted from the application of the Act as long as they are performing their profession).

Employers should be alive to the fact that there may be some employees in their workplace that are governed by the Act and some who are exempted from its application.

*What about unionized employees?*

The Act will apply to unionized employees in certain circumstances. If a collective agreement either does not deal with an issue covered by the Act (such as paid sick leave), or if the provisions of a collective agreement do not “meet or exceed” the minimum standards in the Act, then the Act will apply to unionized employees.

For example, if a collective agreement does not provide for paid sick leave, then with effect from January 1, 2022, employees to whom that collective agreement applies will be entitled to paid sick leave by virtue of s. 49.1 of the Act.

### **How many paid sick leave days will eligible employees be entitled to?**

Up to 5 days paid sick leave.

### **Will the 90 day “waiting period” apply to paid sick leave?**

Yes. Only employees who have completed 90 consecutive days of employment with an employer will be entitled to receive paid and unpaid leave for illness or injury pursuant to s. 49.1 of the Act.

### **If an eligible employee qualifies for paid sick leave, what must the employee be paid?**

The proposed amendments to s. 49.1 includes a new s. 49.1(3) that provides a formula to calculate what an employee must be paid.

An employer must pay an employee for each sick leave day an amount equal to an “average day's pay”

calculated according to the following formula:

$$\text{amount paid} \div \text{days worked}$$

where:

**amount paid** is the amount paid or payable to the employee for work that is done during and wages that are earned within the 30 calendar day period preceding the leave, including vacation pay that is paid or payable for any days of vacation taken within that period, less any amounts paid or payable for overtime, and

**days worked** is the number of days the employee worked or earned wages within that 30 calendar day period.

### **Who pays for the sick leave, the employer or the government?**

The obligation to pay is that of the employer. It will be a fully employer funded leave.

### **Will eligible employees be required to provide a sick note to receive paid sick leave?**

Yes, if the sick note is requested by the employer. S. 49.1(2) of the Act currently provides that if requested by an employer an employee must, as soon as practicable, provide the employer with reasonably sufficient proof that the employee is entitled to the leave under s. 49.1. This requirement will also apply to paid sick leave.

This means that if an employer requires a sick note before approving paid sick leave the employee will be required to provide a sick note before being paid. If the employee does not provide a sick note, then in our view the employer can either:

- Not approve the leave; or
- Approve unpaid leave.

We would strongly recommend that employers update their sick leave policies to address the requirement to provide a sick note to receive paid sick leave.

### **Will eligible employees continue to receive unpaid leave for illness or injury?**

Yes. With effect from January 1, 2022, eligible employees will be entitled to paid sick leave in addition to the 3 days unpaid leave currently provided for in s. 49.1 of the Act.

### **Will eligible employees continue to receive the paid COVID-19 leave in addition to the paid sick leave?**

No, the paid sick leave will replace the paid COVID-19 leave that is currently provided for in s. 52.121 of the Act. The paid COVID-19 leave will expire on December 31, 2021 and the new paid sick leave will come into effect on January 1, 2022.

## **Conclusion**

We encourage employers to review their sick leave policies before the new paid sick leave comes into effect on January 1, 2022. Having a proper policy in place to regulate things like the requirement to provide a sick note to receive paid sick leave will be important. Please do not hesitate to contact us if you have any questions about the new paid sick leave!

by [Dianne Rideout](#) and [Michelle McKinnon](#)

## **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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