

BC GOVERNMENT ANNOUNCES IMPORTANT CHANGES TO THE EMPLOYMENT STANDARDS ACT IN RESPONSE TO COVID-19

Posted on March 24, 2020

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The Government of BC announced today the following important changes to the *Employment Standards Act* in response to the COVID-19 emergency:

1. Illness or Injury Leave (Section 49.1)

After 90 consecutive days of employment with an employer, an employee is entitled to up to 3 days of unpaid leave in each employment year for personal illness or injury. If requested by the employer, the employee must, as soon as practicable, provide to the employer reasonably sufficient proof that the employee is entitled to leave under this section.

2. COVID-19 related leave (Section 52.12)

An employee who requests leave under this section is entitled to unpaid leave if, in relation to COVID-19, any of the following apply:

- the employee has been diagnosed with COVID-19 and is acting in accordance with (i) instructions or an order of a medical health officer, or (ii) advice of a medical practitioner, nurse practitioner or registered nurse;
- the employee is in quarantine or self-isolation in accordance with (i) an order of the provincial health officer, (ii) an order made under the *Quarantine Act* (Canada), (iii) guidelines of the British Columbia Centre for Disease Control, or (iv) guidelines of the Public Health Agency of Canada;
- the employer, due to the employer's concern about the employee's exposure to others, has directed the employee not to work;
- the employee is providing care to an eligible person, including because of the closure of a school or daycare or similar facility;
- the employee is outside the province and cannot return to British Columbia because of travel or border restrictions;
- prescribed situation exists relating to the employee.

An “eligible person” includes (a) a child who is under the day-to-day care and control of the employee, (b) a person who is 19 years of age or older, is unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of the person's parent or former guardian, and is under the day-to-day care and control of the employee, who is the person's parent or former guardian, and (c) a prescribed person.

An employee is entitled to leave under this section for as long as a circumstance described above applies to the employee.

If requested by the employer, the employee must, as soon as practicable, provide to the employer reasonably sufficient proof that a circumstance described above applies to the employee. An employer must not request, and an employee is not required to provide, a note from a medical practitioner, nurse practitioner or registered nurse.

3. Transition – rights and obligations retroactive to January 27, 2020

Section 52.12 is retroactive to January 27, 2020, which means that employees can request and are entitled to COVID-19 related leave, if on the date section 52.12 came into force, the employee was employed by an employer, one of the circumstances set out in section 52.12 applied to the employee, and that circumstance began before section 52.12 came into force, but on or after January 27, 2020.

If an employer terminated an employee on or after January 27, 2020 but before section 52.12 came into force, due to a circumstance described in section 52.12 (2) applying to the employee, **the employer must offer the employee re-employment in the same or a comparable position** and, if the employee is re-employed, the employee's absence from employment following the termination is deemed to be a leave under section 52.12. There are very limited exceptions to this obligation.

These changes are intended to provide additional protections to employees during this difficult time and came into effect on March 23, 2020. Therefore it is important that all employers in the province understand the changes, especially those set out in section 52.12, as they have retroactive effect.

For more information on this topic, please do not hesitate to contact us.

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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.

The logo for mcmillan, featuring the word "mcmillan" in a lowercase, sans-serif font. The "m" and "c" are in a dark red color, while the "m", "i", "l", "l", "a", and "n" are in a light blue color. The logo is positioned in the upper left corner of a banner image.

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