



BC'S NEW PAID SICK LEAVE LEGISLATION

Frequently Asked Questions

On November 24, 2021, the provincial government announced that it will be amending the British Columbia Employment Standards Act (the “ESA”) to provide employees in British Columbia with 5 days of paid sick leave (“Paid Sick Leave”) in each employment year. The following addresses some of the common questions associated with the new Paid Sick Leave.

Q1. When does the legislation come into effect and is there a grace period?

The Paid Sick Leave legislation comes into effect on January 1, 2022. There is no grace period and all employers will be required to comply with the legislation immediately upon it coming into effect.

Q2. How does this tie into the 3 government-funded paid sick days for COVID-related illness?

As of December 31, 2021, the Paid COVID-19 Related Leave is ending.

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Q3. Who is entitled to Paid Sick Leave under this legislation?

The Paid Sick Leave entitlement applies to most employees working in British Columbia, including, full-time, part-time, and fixed-term employees, as well as temporary foreign workers. The Paid Sick Leave entitlement is not reduced or limited for part-time or temporary employees. To be entitled to Paid Sick Leave, an employee must have a minimum of 90 consecutive days with the employer. Paid Sick Leave does not apply to Federal workers under the Canada Labour Code, independent contractors, self-employed workers, or professions that are excluded from the ESA (i.e. doctors, accountants and lawyers).

Q4. Can an employer ask for proof of illness?

An employer is entitled to request reasonably sufficient proof that the employee is in fact entitled to Paid Sick Leave. In most cases, this means that an employer can request limited medical evidence (i.e. a doctor's note) in support of the employee's leave. Requiring proof of illness is a business decision and will vary depending on the operation/workplace.

Q5. Who is responsible for paying for the wages for sick employees? Is there government funding?

The employer is responsible for compensating an employee's Paid Sick Leave. There is currently no plan for government assistance relating to Paid Sick Leave.

Q6. Do the sick days have to be taken consecutively? What if they miss only a half-day?

There is no requirement that Paid Sick Leave days be taken consecutively. Any time taken off qualifies as a day for the purposes of Paid Sick Leave. If an employee works a half-day and uses their Paid Sick Leave for the other half of the day, the employer would be obligated to ensure the employee is compensated for a full day of work.

Q7. Do unused days carry over to the following year?

Paid Sick Leave days do not carry over to the following year and are not accrued over the course of the year. Paid Sick Leave days reset at the beginning of each employment year.

Q8. What qualifies as illness?

For the purposes of Paid Sick Leave, the definition of “illness” will be broad and include a medical condition that prevents the employee from working. Illnesses are diagnosed by medical professionals and if the employer has concerns about the legitimacy of an illness, it is entitled to reasonably sufficient proof. Legislation in BC recognizes mental health issues as a disability/illness and if an employee is requesting Paid Sick Leave in relation to mental health, they should be prepared to provide supporting medical evidence.

Q9. Is this something that employees can request to be paid out for if unused?

No, unused Paid Sick Leave days do not have to be paid out. Any unused Paid Sick Leave days are extinguished at the end of the employment year and new Paid Sick Leave days are granted.

Q10. I already have a paid sick day policy, what does this mean for me?

An employer’s policy dealing with paid sick time may already be compliant with the new Paid Sick Leave requirements. Employers with an existing paid sick time policy should review that policy and ensure it meets the Paid Sick Leave requirements in the ESA. For clarity, employers should indicate in their paid sick time policy that the policy covers the Paid Sick Leave entitlements under the ESA.

Q11. Can an employer offer less than 5 days of paid sick days? Can an employer offer more than 5 days?

The ESA sets out minimum entitlements for employees in BC and employers and employees cannot agree to reduce those minimum entitlements. Employers cannot reduce the Paid Sick Leave entitlement of 5 days but can offer more. If an employer offers more than 5 days, it should be aware that the Employment Standards Branch will enforce this greater amount as necessary.

Q12. What are the consequences if an employer doesn't pay their employees for sick days?

Failing to comply with the Paid Sick Leave requirements in ESA would result in a breach of the ESA. An employer would be liable for paying the employee all unpaid wages (i.e. the Paid Sick Leave days), and would be liable to pay an administrative penalty under the ESA. The administrative penalties under the ESA increase with each breach and range from \$500 for a first breach, \$2,500 for a second breach, and \$10,000 for a third or subsequent breach.

Q13. What happens when the 5 days are used up?

Employees are also entitled to 3 Unpaid Sick Leave days in an employment year. Unpaid Sick Leave is job-protected leave, meaning that an employer cannot terminate an employee's employment because they missed work due to being sick on an Unpaid Sick Leave day. There is no obligation to pay the employee during the 3 Unpaid Sick Leave days. If an employee continues to be unable to work due to illness past these 3 days, the employee may be placed on a medical leave of absence. If the illness qualifies as a disability, the employee will be protected by the British Columbia Human Rights Code. The employee may also be entitled to other benefits, such as short or long-term disability coverage.

Q14. How does an employer determine how much to pay their part-time employee for days they are sick?

The ESA provides a formula for determining Paid Sick Leave pay. An employer must pay an employee an amount equal to the employee's "average day's pay", which is determined by dividing the employee's total earnings in the previous 30 days by the number of days work in the previous 30 days. This calculation should include vacation pay, but must exclude any overtime worked.

Q15. My business is shut down due to public health orders. My employee was sick before the shut down. Do I have to continue paying them sick pay while we are shut down?

No. If an employee would not have been able to work because of a shortage of work, such as a closure due to COVID-19, there is no entitlement to be paid for time away from work due to illness or injury.

Q16. Is there a provincial guidance document to help navigate this?

The Employment Standards Branch publishes and updates a “Guide to the Employment Standards Act and Regulation”. Further information and guidance from the Employment Standards Branch on Paid Sick Leave can be found [here](#).

Q17. What can the sick days be used for?

The employee must be unable to work due to a personal illness or injury, not to care for a family member. There are other provisions in the ESA that entitle an employee to job-protected unpaid time off to care for family members and others. A Paid Sick Leave day could be used to attend a doctor’s appointment if the employee is unable to work due to illness or injury.

Q18. What counts as an “employment year”?

For employees that will be immediately entitled to Paid Sick Leave as of January 1, 2022, the employment year will follow the calendar year (i.e. January 1 to December 31). and will reset each year on January 1. For employees hired after January 1, 2022, the employment year appears to mean the year from the date of hire. For example, an employee hired on March 1, 2022, would become eligible for Paid Sick Leave on June 1, 2022, and their Paid Sick Leave days would reset on March 1, 2023.

Q19. Does Paid Sick Leave apply to unionized workplaces?

If a collective agreement does not address paid sick leave, then the ESA Paid Sick Leave is deemed to be part of the collective agreement. If the collective agreement does address paid sick leave, it must “meet or exceed” the entitlements set out in the ESA. Whether or not the language in a collective agreement meets or exceeds the ESA requirements is a complex issue and should be addressed with legal advice.

Q20. Who can I contact for more information?

For any further questions or inquiries about Paid Sick Leave, please email Jordan Thompson at jthompson@fasken.com.

The information in this FAQ is intended to provide general comments on legal issues. The information in this FAQ is not intended to provide legal advice. Participants should seek out legal advice on issues specific to them before acting on any information provided in this FAQ. We would be pleased to provide additional information upon request.