

Amendments to *Employment Standards Act*: Paid Sick Leave

On May 20, 2021 the provincial government amended the [Employment Standards Act](#) (ESA) via [Bill 13 - 2021](#) to provide paid sick leave during the COVID-19 pandemic and afterwards. The provincial government has stated that the purpose of these changes is to support employees in staying home when ill.

The two key changes are:

1. Temporary paid COVID-19-related leave (section 52.121 added); and
2. Future paid general sick days (section 49.1 amended).

ESA Paid COVID-19-Related Leave

The new section 52.121 provides as follows:

From May 20, 2021 until December 31, 2021, upon request, employees are entitled to up to three days of paid sick leave if they are on leave under sections [52.12\(2\)\(a\), \(b\), or \(c\)](#):

- (a) 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;
- (b) 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;
- (c) the employer, due to the employer's concern about the employee's exposure to others, has directed the employee not to work [...]

How Does This Affect My School District?

The new ESA paid COVID-19 sick leave (section 52.121) only applies to employees if, on the whole, the employees as a group would be better off with section 52.121 than with the similar provisions of their collective agreement. In other words, the ESA paid COVID-19 sick leave provision only applies if the collective agreement does not already “meet or exceed” the comparable section of the ESA. **It is BCPSEA’s view that each school district’s collective agreement meets or exceeds section 52.121. [Please see “Recommendation” on page 2.]**

Recommendation

However, in order to support employees to stay home during the COVID-19 pandemic, BCPSEA recommends that **for the period of May 20 – December 31, 2021**, school districts take a case-by-case approach to leave requests under ESA section 52.121, **granting up to three days of paid sick leave on a strictly without prejudice basis in those rare circumstances where an employee meets the criteria in section 52.12 (a), (b) or (c) and is not eligible for paid sick leave under their collective agreement.**

When granting the leave described above, it is **critical** that the district formally advise the employee and their local union **in writing** that the leave is granted on a **strictly without precedent and prejudice basis**, is granted without precedent and prejudice to the district's position that the collective agreement meets or exceeds the provisions of the ESA, and that these leaves will **only be accessible during a temporary period ending December 31, 2021.**

Frequently Asked Questions

- 1. Should the without prejudice leave be granted to employees who are eligible for paid sick leave, but do not have sufficient credits in their sick bank at the time they request the leave?**

No, the leave should not be granted in those cases, as the employee is already eligible for the accrual of paid sick leave under their collective agreement.

- 2. Should the leave be granted to employees who are not eligible for paid sick leave under the collective agreement but who receive pay in lieu of benefits?**

In those circumstances, BCPSEA recommends that districts grant the leave, on a strictly without prejudice and temporary basis as outlined above.

- 3. Should the leave be granted to casuals and/or TTOCs?**

Yes, districts should grant the leave as outlined above, if a casual or TTOC (who does not have eligibility to accrue paid sick leave under the collective agreement) is scheduled to work on a day when the criteria in section 52.12 (a), (b) or (c) apply to them.

- 4. Should the leave be granted to employees who travel for non-essential reasons outside of Canada contrary to PHO orders or guidance, and must quarantine afterwards?**

Districts should not grant the leave outlined above in this situation.

- 5. Should districts grant three days of without prejudice leave each and every time an employee meets the criteria in sections 52.12(2)(a), (b), or (c)?**

No, only **up to a total** of three days between May 20 and December 31, 2021 should be granted to any one employee.

- 6. May employees use the leave exclusively to care for others who are ill?**

No, the without prejudice leave should be available to those employees who meet the eligibility criteria in sections 52.12(2)(a), (b), or (c), and who are not eligible for paid sick leave under the collective agreement.

7. Will school districts be eligible for reimbursement for the new ESA paid COVID-19?

Government media releases have indicated that employers will be reimbursed up to \$200 per day for the new ESA COVID-19 paid leave if there is no existing paid sick leave plan at the workplace. The details of the reimbursement program through WorkSafeBC will be announced in June, so it is not yet clear what the precise eligibility criteria may be for reimbursement of paid leave under ESA or whether school districts will meet that criteria.

8. What kind of documentation can employers request?

There is no change to the documentation employers can request in respect of COVID-19 leaves under the ESA. Employers may request reasonably sufficient proof that the employee is entitled to leave, but an employer cannot request a medical note (from a medical practitioner, nurse practitioner or registered nurse) to confirm entitlement to the ESA leave.

ESA Paid General Sick Days

Under the amended section 49.1, effective January 1, 2022 ill or injured employees may become eligible for a number of paid sick days. The number of days will be set via Regulation after government consultation with stakeholders.

The applicability of this leave is subject to the “meet or exceed” test set out above. BCPSEA will provide more information about this change and its effect on school districts when it is available.

Questions

Should you have any questions, please do not hesitate to contact your [BCPSEA liaison](#).