

Employment Standards Act COVID-19 Leave Update: Expanded Job Protection — Unpaid Leaves

On April 1, 2021, the *Employment Standards Regulation* (the Regulation) was amended [by Order in Council No 216](#), primarily in order to bring the Regulation into alignment with the federal Canada Recovery Sickness Benefit and the Canada Recovery Caregiving Benefit.

As a result, this amendment extended the existing minimum protections for employees to receive unpaid COVID-19 leave under the Regulation, as follows:

- For employees to be vaccinated, or assist a dependent to be vaccinated against COVID-19
- For employees who are more susceptible to contracting COVID-19, provided they meet both of the following conditions:
 - In the opinion of a medical health officer, medical practitioner, nurse practitioner or registered nurse, the employee is more susceptible to COVID-19 because the employee has an underlying condition, is undergoing treatment, or has contracted another illness; and
 - Is in receipt, or will be in receipt of the Canada Recovery Sickness Benefit.

In addition, the definition of “eligible person,” for which COVID-19 related care by an employee under the Regulation is provided, is now expanded to include:

- a member of the employee’s immediate family, a person who is part of the employee’s (or their spouse’s) extended family as defined by the ESA Family Member Regulation, or someone who requires care and who considers the employee to be, or whom the employee considers to be, like a close relative.

❖ **Documentation**

Order in Council No. 216 does not make any changes to what documents may or may not be requested from an employee in support of an ESA COVID-19 leave. If requested by the employer, the employee must, as soon as practicable, provide the employer reasonably sufficient proof that circumstances of the leave apply to the employee; however, an employer must not request a medical note (ESA Sections 52.12(4) and (5)).

❖ **Leave for COVID-19 under the Collective Agreement**

While the ESA creates a protected unpaid leave for all employees as described above, districts may also have an obligation to provide leave under their collective agreements. BCPSEA recommends you review and continue to apply your collective agreement and past practice, keeping in mind that the ESA sets out what districts must provide at a minimum.

Questions

If you have any questions regarding an employee who applies for an unpaid leave under the above noted Regulation, please do not hesitate to contact your [BCPSEA liaison](#).