

2021-06

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By E-mail: Two Pages

Amendments to *Employment Standards Act: Paid Personal Illness or Injury Leave*

Effective January 1, 2022, the [Employment Standards Act](#) (ESA) will be amended to provide up to five (5) days of paid personal illness or injury leave to eligible employees

This entitlement is in addition to the three (3) days of unpaid personal illness or injury leave currently provided by the ESA.

How does this affect school district employees covered by collective agreements?

The new paid personal illness or injury leave (section 49.1(a)) is subject to a “meet or exceed” test under s. 3 of the Act. This means if the collective agreement’s paid illness or injury leave provisions, when considered together, meet or exceed the five (5) days paid illness or injury leave requirements of the Act, the collective agreement replaces the requirements of the Act.

It is not necessary to show that all employees covered by the collective agreement are eligible to receive benefits at least as generous as those set out in the Act in order to establish that collective agreement provisions “meet or exceed” the Act. A collective agreement can still be found to “meet or exceed” the Act where some employees receive less than the Act provides, provided other employees receive more than what the Act requires.

Teachers and support staff are covered by collective agreements containing paid illness or injury leave entitlements far greater than five (5) days per year. These collective agreements typically contain lengthy paid sick leave and short-term and long-term disability benefits for all regular employees. Where all regular employees receive benefits far greater than the Act and part-time and casual employees receive no paid sick days, it remains BCPSEA’s view that the collective agreement provisions “meet or exceed” the Act.

The result is that the new paid personal illness or injury leave under the Act would not be applicable to any employee covered by the collective agreement.

It is important to note that the three (3) days of unpaid personal injury and illness leave in the ESA is not subject to the “meet or exceed” test and applies to all employees.

How does this affect exempt employees?

As of January 1, 2022, exempt employees who have been employed by the district for at least 90 calendar days and who have less than five (5) days of annual paid sick/injury leave entitlement are entitled to the new paid personal illness and injury leave.

What happens between now and January 1, 2022 to the 3 days paid COVID-19 leave?

BCPSEA's advice relating to three (3) days paid COVID-19 leave under sections [52.12\(2\)\(a\), \(b\), or \(c\)](#) of the ESA remains unchanged until December 31, 2021. For further information, please see [Legislative Update Bulletin 4 dated May 26, 2021](#).

Frequently Asked Questions

- 1. Should the new ESA leave be granted to unionized 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 collective agreement meets or exceeds the Act and, therefore, the Act does not apply to members of a bargaining unit.

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

No. The collective agreement meets or exceeds the Act and, therefore, the Act does not apply to members of a bargaining unit.

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

No. The collective agreement meets or exceeds the Act and, therefore, the Act does not apply to members of a bargaining unit.

- 4. How long does an exempt employee need to have worked with the school district before they become eligible for the 5-days paid leave?**

This leave applies to exempt employees who have worked for their employer for at least 90 calendar days, and who have less than 5-days annual paid sick/injury leave entitlement in their contract.

- 5. Should districts grant five days of leave each and every time an exempt employee meets the criteria in sections 49.1?**

No, only up to a total of five days in each calendar year should be granted to any one exempt employee.

- 6. Will school districts be eligible for reimbursement for the new ESA paid leave?**

We have had no indication that government will be providing any additional funding.

Questions

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