

Are Employees Taking the COVID-19 Vaccination During Work Hours Entitled to Pay?



Saskatchewan is the first—but certainly won't be the last—to provide paid COVID-19 vaccination leave.

By the time you're done waiting in line, getting the shot and cooling down, it can take 2 or 3 hours to get the COVID-19 vaccine. And if it's your second shot, you might also need time to work through the side-effects. So going through this whole process on scheduled work days can cost employees significant lost paid work hours, income that may be tough to forgo given the recent tough economic times. Thus while 81% of the respondents to a recent health care workers' union member survey found 81% willing to take the vaccine, 64% said they might not do so because they can't afford to lose the paid work hours.

Paid COVID-19 Vaccine Leave

To counteract this chilling effect, some firms, including luxury apparel manufacturer Canada Goose, have offered their employees paid vaccine leave. Such leave is especially advisable for health care, education or other organizations with mandatory employee vaccination policies. Unfortunately (or fortunately, depending on your point of view), it's not legally required; but that could be changing. Saskatchewan has just become the first province to provide for paid COVID-19 vaccination leave. Under the new OHS regulation, which took effect on March 18, 2021, employees get 3 consecutive hours of paid leave during work hours to receive a COVID-19 vaccine. To account for post-vaccine recovery and other unforeseen circumstances, the regulation says that employees are entitled to more than 3 consecutive hours if their employer determines that the circumstances warrant a longer break from work. Leave time is not only paid but also counts toward the employee's benefits accrual.

What About the Rest of the Country?

The big question is whether other jurisdictions will adopt their own COVID-19 paid vaccination leaves. BC, Manitoba and the Federal jurisdiction are among those considered most likely to follow the Saskatchewan example. Ontario Premier Doug Ford has suggested that he'd be open to paid vaccine leave but only for health care workers.

Unless and until paid vaccination leave legislation is adopted, employees outside Saskatchewan who want to get vaccinated during work time will have to look elsewhere for entitlement to be paid for the work hours lost. The 2 possibilities:

- Paid COVID-19 vaccination leave provided by their employers voluntarily, either under current collective agreements, individual employment contracts or benefits plans and policies, or as a new benefit adopted to address the COVID situation a la Canada Goose, which is something to consider, especially if you have a mandatory vaccine policy; or
- Vacation pay or other forms of paid leave provided by the employment standards laws of their jurisdiction (ESA leave).

Sick Leave or Bust

Sacrificing vacation days to get the COVID vaccine isn't the kind of thing employees are apt to find appealing. And because employers control the timing of vacations, even those who are willing to make the sacrifice may be unable to get organizational approval to take off the time on their scheduled vaccination date.

Giving up paid ESA leave may be just as difficult as giving up vacation, except that employees can control the timing. But employees who want to go this route will have to figure out which leave they can actually use. The new COVID-19 and infectious disease emergency leaves that most jurisdictions have adopted during the pandemic won't work because while they typically provide for leave to carry out measures required by public health and government authorities, the government isn't requiring people to get the COVID-19 vaccination; besides, COVID-leave is unpaid.

Family care, compassionate care, child loss, reservist duty, domestic violence and other common forms of ESA leave won't work for vaccination. Neither will leaves for serious, long-term illnesses and injuries. The only kind of leave that may be available for employees who want to get vaccinated during work hours is sick leave. The problem is that only 10 jurisdictions provide for ESA sick leave: FED, BC, NB, NL, NS, NT, ON, PEI, SK and YK. And in all but one of these jurisdictions, sick leave is unpaid. The lone exception is PEI where employees get one day of paid sick leave per year—but only if they have at least 5 years of continuous service. (Click here to see the sick leave rules of your jurisdiction.)

Takeaway

Employees who trust the COVID-19 vaccine and would like to get it have 3 choices (assuming they don't work for Canada Goose or another company offering paid vaccination leave):

1. Do it on the weekend or during other personal time—provided, of course, they can get such an appointment;
2. Do it during work and be prepared to forgo pay for those hours; or
3. Use a personal vacation day.

Faced with these choices, many employees will opt for “none of the above.” But thanks to the new OHS paid vaccine leave regulation, employees in Saskatchewan

will be spared this dilemma. **Prediction:** At least 3 other jurisdictions will adopt their own paid vaccination leave laws by the time May rolls around.