

# B.C. Introduces Two New Categories Of Job Protected Leave: Illness Or Injury Leave And COVID-19-Related Leave



On March 23, 2020, the Government of British Columbia introduced and passed *Bill 16–2020: Employment Standards Amendment Act (No. 2)*, which amends the *Employment Standards Act* to include three days of unpaid leave for personal illness or injury and COVID-19-related leave.

The Government of British Columbia has amended the *Employment Standards Act* by adding two new categories of job protected leave. Specifically, employees are now eligible to receive an unpaid leave of absence in connection with a personal illness or injury, as well as an unpaid leave of absence in connection with COVID-19-related issues.

## Illness or Injury Leave

With respect to Illness or Injury Leave, employees will be entitled to three days of unpaid job protected leave in each year of employment in connection with a personal illness or injury. In order for an employee to be eligible to receive Illness or Injury Leave, the employee must have ninety consecutive days of employment with the employer, and, if requested by the employer, provide reasonably sufficient proof that the employee is entitled to such leave.

## COVID-19-Related Leave

With respect to COVID-19-Related Leave, employees will be entitled to unpaid job protected leave in the following circumstances:

1. If an employee has been diagnosed with COVID-19 and is acting in accordance with instructions or an order issued by a medical health officer, or on the advice of a medical practitioner, nurse practitioner or registered nurse.
2. If an employee is in quarantine or self-isolation in accordance with:
  - an order of the provincial health officer;
  - an order made under the Quarantine Act (Canada);
  - guidelines of the British Columbia Centre for Disease Control; or

- guidelines of the Public Health Agency of Canada.

As of March 25, 2020, guidelines of the British Columbia Centre for Disease Control recommend self-isolation if a person: (i) has arrived in B.C. from outside of Canada; (ii) has been or could have been exposed to the virus but does not have symptoms; and/or (iii) develops symptoms of COVID-19.

As of March 25, 2020, the guidelines of the Public Health Agency of Canada recommend an individual to quarantine if they have symptoms of COVID-19 and have been diagnosed with COVID-19 or are awaiting test results for COVID-19. Individuals with no symptoms are required to self-isolate if they have travelled outside of Canada within the last 14 days and/or have been identified as a close contact of someone diagnosed with COVID-19 by a Public Health Authority.

3. If the employer, due to the employer's concern about the employee's exposure to others, has directed the employee not to work.
4. If the employee is providing care to an eligible person as a result of a COVID-19 related issue, including caring for an eligible person due to the closure of a school, daycare or similar facility. The term "eligible person" is defined as: (a) a child who is under the day-to-day care and control of the employee by way of agreement or court order or because the employee is the child's parent or guardian; or (b) a person who: (i) is 19 years of age or older, (ii) is unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of the person's parent or former guardian, and (iii) is under the day-to-day care and control of the employee, who is the person's parent or former guardian.
5. If the employee is outside the province and cannot return to British Columbia because of travel or border restrictions.

The COVID-19-Related Leave is retroactive to January 27, 2020. Therefore, if an employer terminated an employee between January 27, 2020 and March 23, 2020, due to a circumstance described above, the employer must offer the employee re-employment in the same or a comparable position. Upon reinstatement, the employee's absence from employment following the termination will be deemed to be a leave of absence. An issue not addressed by the amendment is what employers are to do if they have paid a reinstated employee termination pay and/or severance pay given that the *Employment Standards Act* does not permit deductions from pay without written direction and presumably, employers cannot make repayment a condition of reinstatement.

Unlike Illness or Injury Leave, COVID-19-Related Leave is for an unspecified duration, and an employee will be entitled to COVID-19-Related Leave for as long as a circumstance described above applies to the employee. The employer may request reasonably sufficient proof that a circumstance described above applies to the employee; however, an employer is not permitted to request, and an employee is not required to provide, a note from a medical practitioner, nurse practitioner or registered nurse. It remains unclear what type of "proof" will need to be provided by an employee in support of the leave request. As the situation continues to develop rapidly, employers should be aware that not every employee may be entitled to an unpaid leave and we will update readers as new information becomes available.

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