Employee Sick Leave Compliance Game Plan

How many times have you urged your employees not to come to work when they're sick? Employment standards laws provide for sick leave so that employees who heed that advice don't risk losing their jobs. In addition, 4 jurisdictions now entitle employees to paid sick leave days. That number is likely to increase as additional provinces add paid sick leave days to their employment standards laws in the aftermath of the COVID-19 pandemic. As HR director, you need to ensure that your company complies with the sick leave requirements of your own jurisdiction, regardless of where in Canada you operate. Here's an 11-step game plan you can implement to ensure compliance in all parts of the country.

Defining Our Terms

The term "sick leave" refers to employment standards short-term leave giving employees who can't work due to short-term injury to themselves or family members days off, as opposed to long-term leave lasting weeks or months. The name of such leave varies by province:

- Sick leave: NB, NT, ON, PEI, YK.
- Personal injury or illness leave: BC, SK.
- Medical leave: FED, QC.
- Family responsibility leave: MB.
- Personal and family responsibility leave: AB.
- Sick or family responsibility leave: NL, NS.

Step 1. Verify Employee Has Minimum Service Required for Sick Leave

In most provinces, employees must work for the employer for a minimum amount of time to become eligible for unpaid sick leave. Ninety days or 3 months of continuous employment is the most common standard, but there are wrinkles:

- In 6 provinces (BC, NL, ON, PEI, QC, SK), minimum service required for sick leave eligibility must be consecutive or continuous.
- In PEI, employees become eligible for unpaid sick leave after 3 continuous months and paid sick leave after 12 months' continuous employment.

- Federally regulated employees are eligible for unpaid medical leave regardless of service time but then earn 3 days' paid medical leave after 30 days and an additional 1 day of paid medical leave for each month of service completed after that, up to 10 paid days per year.

Table 1. Minimum Employment Required for Sick Leave Eligibility by Jurisdiction

Jurisdiction	Unpaid Leave	Paid Leave
Federal	None.	30 days continuous service for 3 days of paid leave + 1 additional day of paid leave for each month after that up to 10 paid days per year.
Alberta	90 days with same employer.	N/A
British Columbia	90 consecutive days with same employer.	90 consecutive days with same employer.
Manitoba	30 days with same employer.	N/A
New Brunswick	91 days for same employer.	N/A
Newfoundland	30 days of continuous employment with same employer.	N/A
Nova Scotia	None.	N/A
Ontario	2 consecutive weeks with same employer.	N/A (1)
Prince Edward Island	3 months of continuous employment.	1 paid day for each 12 months continuous employment with same employer up to 3 paid days for 36 months continuous employment.
Québec	3 months of continuous employment with same employer.	N/A
Saskatchewan	More than 13 consecutive weeks with same employer.	N/A (1)
Northwest Territories	30 days with same employer.	N/A
Nunavut	N/A	N/A
Yukon	1 day for each month worked for same employer up to 12 per year.	N/A

Note:

(1) In Ontario and Saskatchewan, employees are entitled to paid emergency disease leave regardless of how long they’ve worked for the employer.

Source: Bongarde Media

Step 2. Be Sure Employees Have Grounds for Sick Leave

Employees can take sick days, whether paid or unpaid, when they can’t work due to illness or injury. But there are variations. Thus, in some jurisdictions, sick leave also extends to illness or injury to family members to whom the employee has care responsibilities. In addition, leave covers medical appointments during work hours under Federal and Nova Scotia laws.

Table 2. Grounds for Sick Leave by Jurisdiction

Jurisdiction	What Leave Is Called	Leave Allowed Where Employee Can't Work Due to:
Federal	Medical leave	• Personal, i.e., non-work-related, injury or illness. • Medical appointments during work hours • Organ or tissue donation. • Quarantine.
Alberta	Personal & family responsibility leave	Employee's own health or because employee must meet their responsibilities to a family member.
British Columbia	Personal illness or injury leave	Non-work-related, illness, or injury.
Manitoba	Family responsibility leave	Employee's own health or because the employee must meet their responsibilities to a sick family member.
New Brunswick	Sick leave	Personal illness or injury.
Newfoundland	Sick or family responsibility leave	Employee's own health or because the employee must meet their responsibilities to a family member.
Nova Scotia	Sick and family responsibility leave	• Employee's own health. • Employee must meet their responsibilities to a sick family member. • Medical or dental appointments during work hours.
Ontario	Sick leave	Personal injury, illness, or medical emergency.
Prince Edward Island	Sick leave	Personal illness or injury.
Québec	Medical leave	• Non-work-related illness or sickness. • Organ or tissue donation. • Accidents. • Domestic violence or sexual violence in which the employee was a victim.
Saskatchewan	Personal illness or injury leave	Illness or injury to the employee or to an immediate family member who's dependent on the employee.
Northwest Territories	Sick leave	Personal illness or injury.
Nunavut	N/A	N/A
Yukon	Sick leave	Personal illness or injury.

Source: Bongarde Media

Step 3. Properly Calculate Each Employee's Sick Leave Allotment for the Year

Employment standards laws limit the number of sick days employees may take, either in a calendar year or a 52-week period that doesn't align with the calendar year.

Table 3. Number of Employee Sick Days per Year by Jurisdiction

Jurisdiction	Maximum Sick Days
Federal	27 weeks unpaid + 10 days paid medical leave per year.
Alberta	5 days unpaid personal family responsibility leave per calendar year.
British Columbia	3 days unpaid + 5 days paid personal injury or illness leave per calendar year.
Manitoba	3 days unpaid family responsibility leave per calendar year.
New Brunswick	5 days unpaid sick leave per calendar year.
Newfoundland	7 days unpaid sick or family responsibility leave per calendar year.
Nova Scotia	8 days unpaid sick and family responsibility leave per year.
Ontario	3 days unpaid sick leave per calendar year.
Prince Edward Island	3 days unpaid + 3 days paid sick leave per calendar year.
Québec	26 unpaid weeks in which first 2 days are paid medical leave per 12-month period.
Saskatchewan	12 days unpaid personal injury or illness leave per calendar year.
Northwest Territories	5 days unpaid sick leave per 12-month period.
Nunavut	N/A
Yukon	12 days unpaid sick leave per year.

Source: Bongarde Media

Step 7. Ask Employees to Verify Need for Sick Leave

Employers are usually allowed to require employees to provide evidence verifying their need to take particular kinds of leave under employment standards laws. For leave involving health issues, that evidence would normally be written certification from a doctor or other health care practitioner verifying that the employee was ill and couldn't work (or a family member needed care in the case of family responsibility leave). But while requiring such certification is allowed for long-term illness and injury leave expected to last weeks, it's more problematic for sick leave that's taken in days at a time, especially after the COVID-19 crisis. Accordingly, several jurisdictions now impose restrictions on demanding medical verification of sick leave. Rules governing verification of sick leave vary by jurisdiction:

Table 5. Sick Leave Employee Verification Requirements by Jurisdiction

Jurisdiction	Required Verification
Federal	Employer may, in writing, no later than 15 days after employee's return to work ask employee for a health care practitioner's certificate certifying that the employee was incapable of working during their medical leave.
Alberta	Employee must provide medical certificate for long term injury or illness but not personal and family responsibility leave.
British Columbia	Employer may not require employee to provide note, document or other record verifying need for personal illness or injury leave
Manitoba	Employer may require employee to provide reasonable verification of need for family responsibility leave.

Jurisdiction	Required Verification
New Brunswick	Employer may require employee to provide a certificate of a medical practitioner, nurse practitioner or midwife certifying that employee is incapable of working due to illness or injury if requested sick leave is for 4 or more consecutive calendar days.
Newfoundland	Employee not required to provide employer certificate from a medical practitioner or nurse practitioner even for sick leave lasting 3 or more consecutive days.
Nova Scotia	To be determined by regulation.
Ontario	Employer may require employee to provide reasonable evidence of entitlement to leave but may not require a certificate from a qualified health practitioner.
Prince Edward Island	Employer may require certificate signed by a medical practitioner certifying that the employee is or was unable to work due to illness or injury for sick leave of 3 consecutive calendar days.
Québec	Employer may require employee to provide written attestation of reasons for absence when such a request is warranted such as by its duration or repetitive nature.
Saskatchewan	Employer may, in writing, require employee to provide certificate of a duly qualified medical practitioner certifying that the employee was incapable of working due to illness or injury or certifying the illness or injury of the member of the employee's immediate family, as the case may be.
Northwest Territories	If employer requests, employee must provide a certificate of a medical practitioner or nurse practitioner for sick leave lasting more than 3 consecutive days.
Nunavut	N/A
Yukon	Not required.

Source: Bongarde Media

Step 8. Differentiate between Sick Leave & Long-Term Illness Leave

Leave rights under employment standards laws often overlap. Thus, employees who can't work due to health-related reasons may be entitled not just to sick leave but other kinds of leave, including long-term illness and injury or disability leave. Provinces where employees have both sick leave and long-term or serious illness leave include Alberta, Manitoba, Nova Scotia, and Québec. It's important to recognize that employment standards entitlements and leave rules vary depending on the kind of leave the employee is taking. Thus, for example, as we noted above, employers may be able to demand verification of long-term illness but not sick leave.

Step 9. Differentiate between Sick Leave & COVID-19/Emergency Disease Leave

Sick days take on a whole new meaning when the disease prompting the need for leave is COVID-19 or another infectious illness for which a public health emergency has been declared. Explanation: Most jurisdictions (FED, QC, and YK are the lone exceptions) have adopted special leave for such diseases. Accordingly, employees taking leave for COVID and other public emergency leaves should be treated as taking emergency disease and not sick leave. The key differences:

- Emergency disease leave lasts as long as the circumstances that required an

employee to take it continue.
- Emergency disease leave may be paid whereas sick leave is unpaid (this is the case in or vice versa.
- Emergency disease leave covers not only personal illness to the employee but also to family members, including collateral effects of emergencies such as school closings.
- You can’t require employees to furnish medical certifications of emergency leave.

Table 6. Sick Leave vs. Emergency Disease Leave Pay Rules by Jurisdiction

Jurisdiction	Sick Leave	Emergency Disease Leave
Federal	Paid	Paid
Alberta	Unpaid	Unpaid
British Columbia	Paid	Unpaid
Manitoba	Unpaid	Unpaid
New Brunswick	Unpaid	Determined on emergency-by-emergency basis
Newfoundland	Unpaid	Unpaid
Nova Scotia	Unpaid	Unpaid
Ontario	Unpaid	Paid
Prince Edward Island	Paid	Unpaid
Québec	Paid	N/A
Saskatchewan	Unpaid	Paid
Northwest Territories	Unpaid	Unpaid
Nunavut	N/A	Unpaid
Yukon	Unpaid	N/A

Source: Bongarde Media

Step 10. Maintain Confidentiality of Employees Who Take Sick Leave

Take measures to protect the privacy of employees who take sick leave and keep personal records generated by processing of leave, including leave requests and records of verification, confidential and ensure that they’re not disclosed except as authorized, permitted, or required by law.

Step 11. Don’t Retaliate Against Employees for Taking Sick Leave

Employers aren’t allowed to terminate, demote, cut the pay or benefits, or take other adverse employment action against employees for taking or asking about their sick or other employment standards leave rights.