

Questions and Answers About Mandatory Paid Sick Leave in B.C

written by Tina Tsonis | December 15, 2021



On 24 November 2021, the B.C. Government announced that the province will become the first in Canada to require that every employer give their employees five paid sick days per year. Please find our initial alert [here](#).

Here are some of the questions (and answers) that arise:

When do employers have to start providing paid sick leave?

1 January 2022

How do you calculate a day of paid sick leave?

- Total wages earned in the 30 calendar days before the first day of the leave. Include vacation days.
- Wages includes salary, commission, statutory holiday pay and paid vacation. Wages do not include overtime.
- Divide by the number of days the employee worked or earned wages (eg. was on vacation).

The result is a day of sick pay.

Are there eligibility requirements to receive sick pay?

Yes. There are two:

- The employee must have been employed for at least 90 days; and
- The BC Employment Standards Act ("BC ESA") must apply to the employee (eg. professions excluded from the BC ESA such as lawyers and accountants would not have a statutory right to paid sick leave)

Do part-time, temporary or casual employees get paid sick leave?

Yes. Provided they meet the eligibility criteria in the prior question.

Is paid sick leave prorated for part-time or casual employees?

No. Even though an employee may only work one or two days per week, or even one or two days per month, that employee is still entitled to five full days of paid sick leave.

If the employee works less than a full day so their daily wages are lower than an employee who works a full day, their sick pay will be lower based on the formula for calculating a day of sick pay.

What if the employee is still sick after the five days of paid leave?

The employee is entitled to a further three days of unpaid leave under the ESA.

What if the employee is still sick after the eight days of paid and unpaid leave?

The employee will be put on a medical leave of absence. If the sickness amounts to a disability, the employee will have protections under the *Human Rights Code*. If the employer has benefits that address sickness, such as short or long term disability coverage, the employee would be entitled to those.

Can an employer make an employee take the three unpaid sick days first?

No. The employee gets to elect whether any day of sick leave will be with or without pay.

Can an employee use paid sick days to look after other sick people in their family?

No. Paid sick leave is only for when the employee is sick. There are other unpaid leave days that allow an employee time off (without pay) to care for family members who are sick.

How does an employer calculate a “year”?

Employees get five paid sick days per “employment year”. For current employees, the entitlement starts 1 January 2022, and therefore would be based on a calendar year. For new employees hired after 1 January 2022, the BC ESA does not define “employment year”, but it appears reasonable to understand this to mean the year from date of hire and not the calendar year.

Can employees carry over unused paid sick leave into the following year?

No. An employee gets only five days per year, even if that employee has not taken any paid sick leave for multiple years.

Does an employer have to pay out unused paid sick leave on termination of employment?

No.

Can an employer require proof from the employee that they were really sick?

Yes. An employer may make reasonable requests for sufficient proof. In practice, this likely will be limited to the employee providing a doctor’s note confirming they were indeed sick.

Can employees take sick leave in periods of less than one day? For example, could an employee take 10 half days of paid leave?

No. Any time taken off on any day (even one hour) qualifies as one day for purposes of sick leave, unless the employer and employee agree otherwise.

If an employer already has a paid sick leave policy, do they have to increase that policy by an additional five days per year?

No. So long as an employer has a paid sick leave policy in place that meets the

minimum requirements of the BC ESA, an employer will not need to amend that policy.

We suggest that for greater certainty that even employers who have policies which provide five or more paid sick days per year amend those policies to expressly state that the paid sick leaves under those policies include the paid sick leave required by the BC ESA.

Can an employee claim a paid sick day if they are not sick, but feel a wellness day is required?

Technically no. The employee must have an illness or injury that prevents them from attending at work to claim a paid sick day. The employee must also be able to supply sufficient proof of that illness or injury if required to do so by the employer.

However, we anticipate many employees will take wellness days and that doctors will write medical notes for those employees in support of same. Employers may wish to consider whether to proactively allow a paid sick day to be used for general wellness.

The BC Government is reimbursing employers up to CAD200 per day for COVID sick pay through WorkSafeBC. Will this continue for the five days paid sick leave?

No. There is no indication the Government will continue this reimbursement.

Will the five days of paid sick leave be in addition to the current three days of paid COVID leave?

No. Paid COVID leave ends on 31 December 2021, and will be replaced by the five days of paid sick leave.

Do the BC ESA paid sick leave provisions apply to a unionized employer?

The BC ESA paid sick leave provisions apply on a “meets and exceeds” basis. If the employer has a collective agreement that provides for paid sick leave on terms that are the same as or better than those set out in the BC ESA, then the collective agreement language will prevail. Otherwise, the BC ESA language is deemed to be part of the collective agreement.

Source: [Richard Press](#)