

## **British Columbia enacts unpaid employment-protected sick leave and COVID-19 related leave of absence**

Retroactively effective January 27, 2020 British Columbia (B.C.) enacts unpaid employment-protected sick leave and COVID-19 related leave of absence.

Re-employment obligations apply for certain employees terminated between January 27, 2020 and March 23, 2020 due to COVID-19 related conditions.

### **Applicable legislation**

The changes were introduced by the [Employment Standards Amendment Act, 2020 \(No. 2\)](#) (Bill 16 – 2020). The Act received Royal Assent on March 23, 2020 and is retroactively effective as from January 27, 2020.

### **Affected employers**

All employers are affected by the provisions of the Employment Standards Amendment Act, 2020 (No. 2).

### **Affected employees**

All employees are affected by the provisions of the Employment Standards Amendment Act, 2020 (No. 2).

### **Employment-protected sick leaves**

Retroactively effective January 27, 2020 B.C. employees are entitled to three days of unpaid leave for personal illness or injury, provided they have been employed by their employer for a minimum of ninety consecutive days. The employee must provide proof that they are entitled to this leave, if requested by the employer. Prior to this change the province of B.C. did not have statutory sick leave.

### **Covid-19 related leave of absence**

Retroactively effective January 27, 2020 employees are entitled to a COVID-19 related unpaid leave of absence for as long as a Covid-19 circumstance outlined below applies to them. If requested by the employer, the employee must provide a proof that they are entitled to the leave. However, an employee is not obligated to provide a note from a medical practitioner, nurse practitioner, or registered nurse and an employer must not request such proof of entitlement.

An employee is entitled to unpaid COVID-19 related leave, if any of the following apply:

- The employee has been diagnosed with COVID-19 and is acting in accordance with instructions or an order of a medical health officer, or advice of a medical practitioner, nurse practitioner, or registered nurse;
- The 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;
- The employer has directed the employee not to work due to the employer's concern about the employee's exposure to others;
- The employee is providing care to an eligible person, including situations resulting from a closure of a school or daycare or similar facility. Eligible person means any of the following:
  - 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;
  - a person who is nineteen years of age or older unable to obtain the necessities of life or withdraw from the charge of the person's parent or former guardian, and is under the day-to-day care and control of the employee, who is the person's parent or former guardian;
  - a prescribed person.
- The employee is out of B.C. and cannot return due to travel or border restrictions;
- Any other prescribed situation exists relating to the employee.

#### Employer obligations retroactive to January 27, 2020

An employee is entitled to and may request COVID-19 related leave of absence on 27 January 2020 if:

- They were employed by an employer
- They met one of the conditions outlined above
- The condition began before March 23, 2020 (date the Employment Standards Amendment Act, 2020 - No. 2 came into force) but on or after January 27, 2020.

Applicable to employees terminated on or after January 27, 2020 but before March 23, 2020 due to one of the COVID-19 related conditions outlined above, the employer must re-employ the employee in the same or in a comparable position and the employee's absence from employment following the date of termination is deemed to be a COVID-19 related leave of absence.

#### **Employer actions**

Retroactively effective January 27, 2020, British Columbia (B.C.) enacted unpaid employment-protected sick leave and COVID-19 related leave of absence.

As a result, re-employment obligations apply for certain employees terminated between January 27, 2020 and March 23, 2020 due to COVID-19 related conditions.

Employers may wish to consider paid leave benefits for their employees.

Human resources specialists are reminded that employee handbooks and other communication pieces will need to be revised to reflect the changes in sick leave and COVID-19 related leave of absence. Employment contracts may also have to be revised.

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