

## COVID-19 RESOURCE CENTER

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### *Protected Leaves in BC & Alberta due to COVID 19*

March 24, 2020

BC has amended the *Employment Standards Act* to add two new protected unpaid leaves: a leave for “personal illness or injury” and a “COVID-19-related leave.”

The *Employment Standards Amendment Act (No. 2), 2020*, (the “Amendment”) (excerpted below as “Appendix A”), received Royal Assent yesterday and is therefore in force. Details of the two new protected leaves are as follows:

1. Employees are entitled to three days of unpaid leave each year for “personal illness or injury” ( s. 49.1);
  - This leave is only available to employees who have been employed for 90 days;
  - An employer is entitled to ask for proof that an employee is entitled to this leave.
2. Employees are entitled, on their request, to an unpaid “COVID-19-related leave” (s. 52.12) in any of the following situations:
  - Diagnosed with COVID-19: an employee is diagnosed with COVID-19 and (1) they are acting in accordance with instructions or an order of a medical health officer, or (2) they are acting in accordance with the advice of a medical practitioner, nurse practitioner or registered nurse.
  - Quarantine or self-isolation: an employee is in quarantine or self-isolation in accordance with an order made by provincial health officer, under the *Quarantine Act* (Canada), the guidelines of the British Columbia Centre for Disease Control, or guidelines of the Public Health Agency of Canada.

\*It is significant here that an employee must be self-isolating on the basis of instructions or orders from one of the above authorities, so it will not be based on an employee’s discretion.

- Directed not to work by Employer: an employee is directed not to work by an employer due to the employer's concern about the employee's exposure to others;

\*Accordingly, an employer that tells its workforce that they are being sent home due to exposure concerns may be facilitating this leave for employees who request it (i.e. these employees will receive the protections under the ESA to be brought back to the same or comparable job when circumstances normalize).

- Providing care: the employee is providing care to an “eligible person” including because of closure of a school or daycare or similar facility;

\*An eligible person is defined in the amendment (in short) as (1) a child who is under the care and control of the employee, or (2) a person, 19 years old or older, who is unable to care for themselves and is under the care of the employee.

- Unable to return to BC: the employee is outside the province and cannot return to BC because of travel or border restrictions.

The Act also provides that situations prescribed by regulation will make employees eligible for this leave, and this may come into play as the situation with the virus develops.

There is no limitation on the length of the leave for employees, but this leave will last as long as any of the situations enumerated in section 52.12 that apply to employees.

An employer may request proof from the employee that one of the above situations apply, but employers are prohibited from asking for a note from a medical practitioner, nurse practitioner, or registered nurse. As John noted, this is likely aimed to reduce the burden on BC's health care system.

The provisions of the Amendment with respect to the "COVID-19-related leave" (s. 52.12) are retroactive to January 27, 2020, to the extent that employees who were eligible for the leave after January 27, but before March 23, can request the leave. Moreover, if an employee was terminated between January 27- March 23 because one of the circumstances enumerated in section 52.12 applied to them, they must be offered re-employment in the same or a comparable position and, if the employee is re-employed, the employee's absence from employment following the termination is deemed to be a leave under section 52.12.

## Alberta

Alberta has recently enacted a regulation that provides employees with a 14-day unpaid leave if they are under quarantine.

The Lieutenant Governor issued an order in council containing the *Employment Standards (COVID-19 Leave) Regulation* (COVID-19 Regulation) on March 17, 2020. This regulation is retroactive, as it is deemed effective March 5, 2020.

According to the Alberta Regulations Act, RSA 2000, c R-14, Regulations come into force on the day they are filed with the registrar, which has been done here (see the regulation attached)

The COVID-19 Regulation provides that an employee is entitled to 14 days of unpaid job-protected leave if they are under "quarantine". The definition of "quarantine" is left broad, but specifically includes any "self-isolation and self-quarantine as a result of COVID-19."

The fact that the leave is unpaid is a reversal of the government's previous communication that the leave would be paid.

This leave can be extended if recommended by the chief medical officer (an official appointed under the *Public Health Act*), which will allow the government to respond to the rapidly changing situation with the virus.

## Appendix "A"

### BILL 16 – 2020

#### EMPLOYMENT STANDARDS AMENDMENT ACT (No. 2), 2020

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

**1 *The Employment Standards Act, R.S.B.C. 1996, c. 113, is amended by adding the following section to Part 6:***

#### **Illness or injury leave**

**49.1** (1) After 90 consecutive days of employment with an employer, an employee is entitled to up to 3 days of unpaid leave in each employment year for personal illness or injury.

(2) If requested by the employer, the employee must, as soon as practicable, provide to the employer reasonably sufficient proof that the employee is entitled to leave under this section.

**2 *The following section is added:***

#### **COVID-19-related leave**

**52.12** (1) In this section, "**eligible person**", with respect to an employee, means any of the following:

(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;

(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;

(c) a prescribed person.

(2) An employee who requests leave under this section is entitled to unpaid leave for the period described in subsection (3) if, in relation to COVID-19, any of the following applies:

(a) the employee has been diagnosed with COVID-19 and is acting in accordance with

(i) instructions or an order of a medical health officer, or

(ii) advice of a medical practitioner, nurse practitioner or registered nurse;

(b) the employee is in quarantine or self-isolation in accordance with an order made by provincial health officer, under the *Quarantine Act* (Canada), the guidelines of the British Columbia Centre for Disease Control, or guidelines of the Public Health Agency of Canada.

(c) the employer, due to the employer's concern about the employee's exposure to others, has directed the employee not to work;

(d) the employee is providing care to an eligible person, including because of the closure of a school or daycare or similar facility;

(e) the employee is outside the province and cannot return to British Columbia because of travel or border restrictions;

(f) a prescribed situation exists relating to the employee.

(3) An employee is entitled to leave under this section for as long as a circumstance described in subsection (2) applies to the employee.

(4) If requested by the employer, the employee must, as soon as practicable, provide to the employer reasonably sufficient proof that a circumstance described in subsection (2) applies to the employee.

(5) An employer must not request, and an employee is not required to provide, a note from a medical practitioner, nurse practitioner or registered nurse for the purposes of subsection (4).

(6) This section may be repealed by order of the Lieutenant Governor in Council.

## Transitional Provision

### Transition – rights and obligations retroactive to January 27, 2020

3 (1) The employee may request and is entitled to leave under section 52.12 if, on the date section 52.12 of the *Employment Standards Act* came into force,

(a) an employee was employed by an employer,

(b) a circumstance described in section 52.12 (2) applied to the employee, and

(c) that circumstance began before section 52.12 came into force but on or after January 27, 2020.

(2) If an employer terminated an employee on or after January 27, 2020 but before section 52.12 of the *Employment Standards Act* came into force, due to a circumstance described in section 52.12 (2) applying to the employee, the employer must offer the employee re-employment in the same or a comparable position and, if the employee is re-employed, the employee's absence from employment following the termination is deemed to be a leave under section 52.12.

(3) An employer's obligation under subsection (2) of this section does not apply if the situation that applied to the employee is one that was prescribed under section 52.12 (2) (f) of the *Employment Standards Act* after that section came into force.

(4) An employer's obligation under subsection (2) of this section does not apply in connection with a person who was prescribed as an eligible person under section 52.12 (1) (c) of the *Employment Standards Act* after that section came into force.

### Commencement

4 This Act comes into force on the date of Royal Assent.

### Explanatory Notes

SECTION 1: [*Employment Standards Act, section 49.1*] adds a provision for unpaid leave for personal illness or injury.

SECTION 2: [*Employment Standards Act, section 52.12*] adds a provision for unpaid leave related to COVID-19.

SECTION 3: *[Transition – rights and obligations retroactive to January 27, 2020]* establishes that COVID-19-related rights of employees and corresponding obligations of employers are retroactive to January 27, 2020.



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