
April 15, 2021

BULLETIN

COVID-19 EMPLOYEE VACCINATIONS LEAVE ADDED TO EMPLOYMENT STANDARDS ACT

In our March 24, 2020 blog post titled “Changes to the Employment Standards Act in Response to the COVID-19 Crisis”, we summarized the provisions for unpaid, job-protected leave for employees affected by COVID-19. That post stated that employees who were unable to work for the following five reasons would qualify for this leave:

- they are diagnosed with COVID-19 and are following the instructions of a medical health officer, or the advice of a doctor or nurse;
- they are providing care to their minor child or dependent adult child, including because of school, daycare or similar facility closures;
- they are in quarantine or self-isolation and acting in accordance with an order of the provincial health officer, an order made under the Quarantine Act (Canada), guidelines from the BC Centre for Disease Control, or guidelines from the Public Health Agency of Canada;
- their employer has directed them not to work due to concern about their exposure to others; or
- they are outside BC and unable to return to work due to travel or border restrictions.

On April 1, the provincial government amended the Employment Standards Regulation to add further reasons employees will qualify for this leave:

- the employee, in the opinion of a medical health officer, medical practitioner, registered nurse, or nurse practitioner, is more susceptible to COVID-19 because the employee has an underlying condition, is undergoing treatment, or has contracted another illness, and will receive the Canada Recovery Sickness Benefit; or
- the employee requires leave to be vaccinated against COVID-19 or to assist a dependent who is being vaccinated against COVID-19.

The amendment defines “dependent” in the Regulation for the purposes of COVID-19 leave for vaccinations as including:

- a child;
- an adult child who is dependent on the employee because of illness or disability;

- a member of the employee’s family who is dependent on the employee due to illness or disability; or
- any individual who requires care and who is like a close relative, and is dependent on the employee due to illness or disability.

These new regulations require employers to grant unpaid leave to employees who are attending vaccine appointments. Employers cannot request medical notes for COVID-19 leave, but they can ask for other forms of “reasonably sufficient proof” that the employee has a vaccine appointment.

As more people become eligible for the COVID-19 vaccine, local government employers should consider implementing a COVID-19 vaccine policy that communicates their approach to employee vaccines. Currently, it is extremely unlikely local government employers could successfully defend a policy that requires employees to receive the vaccine. Local government employers can, however, provide incentives for vaccines, such as paid leave for vaccine appointments and recovery time. A vaccination policy should include whether and how a local government employer could collect vaccine status information from employees, customers, and the public, and what health and safety measures will be in place as employees return to the workplace after vaccination.

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