



FIR Labour Relations Ltd

ADVISORY LETTER

BY E-MAIL

June 18, 2021

AL-04-21

TO: ALL FIR ACCREDITED MEMBERS

Gentlemen and Mesdames:

Re: Employment Standards Act/Paid Covid-19 Leave

Further to our **AL-01-21** and **AL-02-21** we have now clarified certain points about the BC Government's amendments to the *Employment Standards Act. The Employment Standards Amendment Act (No.2), 2021* ("Bill 13") does two things:

- a. adds a temporary paid COVID-19 leave, up to 3 days ("Paid COVID Leave"); and
- b. adds permanent paid sick leave, effective January 1, 2022. The number of paid sick days per year has not been determined yet.

This Advisory Letter focuses on the Paid COVID leave only.

1. Paid COVID Leave was effective May 20, 2021 and ends December 31, 2021. It is not retroactive. It applies to all employees and there is no minimum amount of employment time to qualify.
2. The *Employment Standards Act* ("ESA") was amended in March 2020 to add s. 52.12 - COVID-19-related leave, which was all unpaid leave. Bill 13 adds 3 days Paid COVID Leave for certain types of s. 52.12(2) COVID leave:

- (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
 - (i) an order of the provincial health officer,
 - (ii) an order made under the [*Quarantine Act \(Canada\)*](#),
 - (iii) guidelines of the British Columbia Centre for Disease Control, or
 - (iv) 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;
3. The circumstances under s. 52.12(2)(a),(b) or (c) are numerous and evolving. For a summary of their recent state, see [Appendix A \(Grounds for Paid COVID Leave\)](#). None of the grounds cover leave to care for others related to COVID; it is the employee who must fall under s. 52.12(2)(a),(b) or (c).
 4. Employees must **request** Paid COVID Leave, it is not presumed. Specifically, they must advise that they are taking Covid leave and additionally request that it be paid. Prior to paying, employers can request “reasonably sufficient proof” that one of the grounds for Paid COVID Leave applies to the employee. Employers cannot request “a note from a medical practitioner, nurse practitioner or registered nurse”. [Appendix A \(Grounds for Paid COVID Leave\)](#) also includes potential examples of “reasonably sufficient proof” for each of the grounds.
 5. If an employee requests Paid COVID Leave under one of the grounds, it is important that they are not permitted to return to work until the conditions and time frames for the ground are met. For example, if an employee is diagnosed with COVID-19 and requests paid leave under grounds (a) or (b)(iii), they cannot just request 3 days paid leave then

expect to return to work on day 4, as the BC CDC guidelines require at least 10 days self-isolation.

6. Paid COVID Leave has no connection to being vaccinated or not, and employers cannot deny based on vaccination status. Paid COVID Leave is not intended to cover adverse reactions to vaccinations, but given how broad (b) is, it would likely apply if it is not clear whether the symptoms were caused by the vaccine or not.
7. The formula for the Paid COVID Leave's "average day's pay" is the same as ESA statutory holiday pay, which uses a 30 calendar day period and divides the amount paid (excluding overtime) by the number of days worked (e.g. if an employee works 20 days in the 30 day period, and makes \$5,000 (excluding any overtime pay), the average day's pay would be \$250 (less normal deductions). A practical approach would be to pay the employee what he would have been paid(excluding overtime)had he come to work for those 3 days.
8. The maximum entitlement is 3 days Paid COVID Leave, from May 20 until December 31, 2021. The 3 day maximum is regardless of how many times the grounds apply (e.g. cannot get 3 days paid under ground (a) and then another 3 days paid under ground (b) at a later date).
9. The Weekly Indemnity Plan ("WI") for illnesses will overlap with ground (a): diagnosed with COVID-19. Grounds (b) and (c) do not necessarily involve an illness and should not trigger WI. Below are our guidelines for paying the Paid COVID Leave and administering WI for a positive COVID diagnosis:

Given that the WI waiting period has been waived in the USW-Coastal Forest Industry Plan for a positive COVID diagnosis, the employer is required to pay the Paid COVID Leave for the first 3 days at the ESA "average day's pay" formula and then WI will start on the 4th day. Member companies are reminded to definitively communicate to the WI carrier (BC Life) when they have paid the first 3 days in order that WI claims can be paid accordingly.

10. Disputes regarding Paid COVID Leave are dealt with via the grievance and arbitration process.

11. Reimbursement up to \$200/day per employee for employers who do not have paid sick leave was promised in a BC government press release when Bill 13 was introduced. The three industry labour relations associations (FIR, CONIFER and IFLRA) consulted with the Ministry of Labour on reimbursement and have been advised that any employer with a sick leave program (such as WI) for any of its employees would not be entitled to reimbursement. This does not impact the requirement to comply.
12. FIR anticipates involvement in the consultation process prior to finalization of the Government's design of Paid Sick Leave commencing in 2022. You can expect further communication regarding Paid Sick Leave 2022 in due course. The Paid COVID Leave is completely separate and different from Paid Sick Leave commencing in 2022.

Further information can also be found in the attached Appendices. Call or email us if you have any questions.

T.J Getzie

Appendix A (Grounds for Paid COVID Leave)

The below are non-exhaustive details regarding what facts may fall under the applicable grounds for Paid COVID Leave and potential examples of reasonably sufficient proof for each ground.

Situations covered under s. 52.12(2)(a)

(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;

This situation is the most clear cut of the subsections as it turns on an actual diagnosis (generally a test result but could be epidemiologically linked). Further, the order and advice under (i) and (ii) have been consistently to self-isolate. These are detailed below under (b)(i), (ii) and (iv).

Potential examples of reasonably sufficient proof: verbal details from the employee; copies of the instructions from the person giving the instruction/order/advice; records of calls, emails or texts.

Situations covered under s. 52.12(2)(b)

These situations cover a wide range of evolving direction/orders from the health authorities. Further, many of the sub-items in (b) will overlap.

(i) The employee is in quarantine or self-isolation in accordance with an order of the provincial health officer:

Order of the Provincial Health Officer of British Columbia dated April 14, 2020:

<https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-travellers-employers.pdf>

Persons entering Canada from another country, unless the traveller is an exempt person or essential worker, must self-isolate for 14 days from date of arrival.

Potential examples of reasonably sufficient proof: verbal details from the employee; copies of the instructions from the person giving the order; travel records; records of calls, emails or texts.

(ii) The employee is in quarantine or self-isolation in accordance with an order made under the Quarantine Act (Canada)

<https://www.canada.ca/en/public-health/services/publications/diseases-conditions/coronavirus-disease-covid-19-how-to-self-isolate-home-exposed-no-symptoms.html>

<https://www2.gov.bc.ca/gov/content/covid-19/travel/self-quarantine>

Quarantine Act: The Government of Canada has implemented an Emergency Order under the Quarantine Act that requires persons entering Canada-whether by air, sea or land-to quarantine (self-isolate) themselves for 14 days if they are asymptomatic in order to limit the introduction and spread of COVID-19. The 14-day period begins on the day the person enters Canada.

Workers providing essential goods and services are exempt if asymptomatic.

Potential examples of reasonably sufficient proof: verbal details from the employee; travel records; records of calls, emails or texts.

(iii) The employee is in quarantine or self-isolation in accordance with guidelines of the British Columbia Centre for Disease Control.

<http://www.bccdc.ca/health-info/diseases-conditions/covid-19/self-isolation#:~:text=1..14%20days%20upon%20their%20arrival>

The general recommendation is for people to stay home if they feel unwell, even if they do not have COVID-19. This will help prevent the spread of other illnesses, especially during cold and flu season.

You are required to self isolate for at least 14 days when travelling to BC from outside Canada. It may be longer depending on whether you develop symptoms or when you got tested.

You are required to self-isolate for at least 10 days if you have COVID-19. Public health will let you know if you need to self-isolate for more than 10 days.

You are required to self-isolate if you have symptoms of COVID-19. Testing is not always recommended. The period of self-isolation will depend on the circumstances, presence of symptoms and when/if you get tested.

You are required to self-isolate if you are a close contact of a person with COVID-19:

If you are a close contact of a person who has COVID-19, you need to self-isolate for 14 days since you last had contact with this person. Caregivers, parents, household members, roommates, intimate partners and co-workers can be close contacts. See the page on Close Contacts for more information. Review the How Long Should I Self-Isolate page to learn more about self-isolation periods for close contacts.

If you are a close contact, you will need to monitor for symptoms consistent with COVID-19, and visit our testing page to learn more about when you need to go for a COVID-19 test.

You are required to self-isolate if you live in a household with other people and at least one person has COVID-19:

Living in a household with a person who has COVID-19 means you and all of the other people who live in that house are close contacts and need to self-isolate. If another person in your household tests positive for COVID-19, this may extend the amount of time that you will need to self-isolate. Visit our How Long Should I Self-Isolate page to learn more about the right isolation period for you and your household members.

Potential examples of reasonably sufficient proof: verbal details from the employee; copies of the instructions from the person explaining the guidelines; records of calls, emails or texts.

(iv) The employee is in quarantine or self-isolation in accordance with guidelines of the Public Health Agency of Canada:

<https://www.canada.ca/en/public-health/services/publications/diseases-conditions/coronavirus-disease-covid-19-how-to-self-isolate-home-exposed-no-symptoms.html>

You need to quarantine (self-isolate) for 14 days if you:

- are returning from travel outside of Canada (mandatory quarantine under the Quarantine Act)
- had close contact with someone who has or is suspected to have COVID-19
- have been told by public health that you may have been exposed and need to quarantine (self-isolate)

Quarantine (self-isolate) means that, for 14 days you need to:

- stay at home and monitor yourself for symptoms, even just one mild symptom
- avoid contact with other people to help prevent transmission of the virus prior to developing symptoms or at the earliest stage of illness

- do your part to prevent the spread of disease by practicing physical distancing in your home
- monitor yourself for symptoms, such as:
 - new or worsening cough
 - shortness of breath or difficulty breathing
 - temperature equal to or over 38°C
 - feeling feverish
 - chills
 - fatigue or weakness
 - muscle or body aches
 - new loss of smell or taste
 - headache
 - gastrointestinal symptoms (abdominal pain, diarrhea, vomiting)
 - feeling very unwell
- take and record your temperature daily (or as directed by your public health authority)
- avoid using fever-reducing medications (e.g., acetaminophen, ibuprofen) as much as possible these medications could mask an early symptom of COVID-19

If you start to develop symptoms within 14 days of your quarantine, you must:

1. isolate yourself from others as soon as you notice your first symptom
2. immediately call a local public health authority to discuss your symptoms and travel history, and follow their instructions carefully

Note: If you are living with a person who is isolated because they have or are suspected to have COVID-19, your self-isolation period will be extended for an additional 14 days. Seek direction from your public health authority.

Potential examples of reasonably sufficient proof: verbal details from the employee; copies of the instructions from the person explaining the guidelines; travel records; records of calls, emails or texts.

Situations covered under s. 52.12(2)(c)

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

This would likely overlap with direction from the health authorities in (b) and/or WorkSafe BC. However, it would also apply to employers who are extra cautious and direct employees not to work based on an exposure that may not fit under (b).

The employee exposure may be work related or non work related. The exposure information should be obtained by the employer before it directs an employee not to work.

Potential examples of reasonably sufficient proof: verbal details from the employee; copies of the instructions from the person explaining the exposure; records of calls, emails or texts.