



FIR Labour Relations Ltd

ADVISORY LETTER

BY E-MAIL

October 28, 2021

AL-06-21

TO: ALL FIR ACCREDITED MEMBERS

Gentlemen and Mesdames:

Re: Paid Sick Days and “Meets or Exceeds”

In our AI-04-21 we advised you that the Provincial Government has promised to finalize an amendment to the Employment Standards Act (“the ESA”) which will commence January 1, 2022 and will likely provide either 3, 5, or 10 permanent paid sick days.

This amendment will not necessarily automatically apply to FIR member unionized workplaces. This is because the Employment Standards Act of B.C. (Section 3) contains a “meets or exceeds” criteria which indicates that if collective agreement provisions regarding rights and entitlements in respect of certain matters (in this case, paid illness or injury leave) meet or exceed the provisions in the Employment Standards Act (ESA), then the collective agreement provisions will apply.

FIR, along with CONIFER and IFLRA met with the Deputy Minister of Labour and subsequently sought legal advice regarding our Industry Weekly Indemnity Plans and whether their provisions would pass the “meet or exceed” test under Section 3 of the ESA.

We will need to review the details once the Government's position is revealed, however, we anticipate that a strong case can be made that our Industry Weekly Indemnity provisions, when considered together, will meet or exceed the sick days that are legislated and the Union should not be entitled to both wage indemnity benefits under the collective agreement as well as fully paid sick leave under the ESA.

At this point, major employers and the three industry industrial relations associations favour taking the position that solid wood employers will not comply with the Sick Leave amendment provisions commencing January 1, 2022 because the collective agreement provisions will meet or exceed the ESA Paid Sick Leave.

We will advise you further once the amendment is made public.

Please contact us at your convenience should you wish to discuss any aspect of this matter.