

## Samath, Mayura LBR:EX

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**From:** Wright, Don J. PREM:EX  
**Sent:** June 22, 2020 9:58 AM  
**To:** Hughes, Trevor LBR:EX  
**Subject:** Do you think this will be helpful  
**Attachments:** The Risks of Relying on Section 72 to Deal with the Temporary Layoff Issue.docx

It may seem s.22 But I am trying to make it concret.

Page 02 of 72 to/à Page 04 of 72

Withheld pursuant to/removed as

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## Samath, Mayura LBR:EX

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**From:** Tim McEwan <Tim@icba.ca>  
**Sent:** June 5, 2020 3:58 PM  
**To:** Hughes, Trevor LBR:EX  
**Subject:** Employment Standards Act – Request for further Extension of Temporary Lay-off Provisions  
**Attachments:** Letter\_PJH\_ESA\_Temporary\_Layoff\_Extension\_FINAL\_June\_5\_2020\_FINAL\_2 (003).pdf

Please see attached, FYI.

Tim McEwan  
Senior Vice President  
Policy & Stakeholder Engagement  
Independent Contractors and Businesses Association  
e. [tim@icba.ca](mailto:tim@icba.ca) t. 604-298.7795 c. 604-761-1892  
[icba.ca](http://icba.ca) | [facebook](https://www.facebook.com/icba.ca) | [twitter](https://twitter.com/icba_ca) | [linkedin](https://www.linkedin.com/company/icba-ca)



June 5, 2020

Honourable John Horgan  
Premier of British Columbia  
PO BOX 9041  
STN PROV GOVT  
Victoria, BC V8W 9E1

Submitted via Email: [Premier@gov.bc.ca](mailto:Premier@gov.bc.ca)

Dear Premier Horgan:

**Re: Employment Standards Act – Request for further Extension of Temporary Lay-off Provisions**

We would like to thank your government for continuing to work collaboratively with British Columbia's businesses and workers during the unprecedented COVID-19 health and economic crisis. Since the onset of COVID-19, a staggering 353,000 jobs have been lost in our province.

The far-reaching impact of COVID -19 will require even greater collaboration and common purpose to rebuild confidence and to attract the private sector investment capital needed to get people back to work and to create family supporting jobs for British Columbians. Recently your government extended provincial COVID-19 emergency orders alongside plans to re-open the BC economy. The current recovery is very tenuous, and your immediate attention is required to save potentially thousands of businesses from insolvency and/or bankruptcy and significant further job losses for BC workers.

We are writing to request that your government revisit Order in Council (OIC) No. 219, dated May 4, 2020, which extended the temporary layoff timeframe under the *Employment Standards Act* from 13 to 16 weeks in a 20-week period. We appreciate your government's original effort to extend the statutory period by three weeks. However, the three-week extension under OIC No. 219 has now lapsed, and there is an urgent need to extend the timeframe again. This request follows up on a commitment from your office to revisit this matter depending on the duration of the COVID-19 emergency period following the original May 4, 2020 OIC, No. 219.

By way of background, *Employment Standards Act* provisions governing temporary layoffs require that if an employee is laid off voluntarily, they are deemed to be terminated after 13 weeks thereby requiring the employer to pay severance. For many employers hit hard by COVID-19, severance payments will be significant and, in many cases, will lead to bankruptcy and/or insolvency. We are seeking an extension of the **temporary layoff** timeframe to cover the current extraordinary circumstances presented by COVID-19 and to protect as many livelihoods as possible by keeping businesses solvent and ensuring employees actually have a job to return to. The requirement to immediately pay severance at the expiry of the 16-week period (i.e. approximately end-of-June 2020) may exhaust working capital and force businesses into bankruptcy and/or insolvency at precisely the time when we are all working together to reopen hard-hit sectors and facilitating the conditions for a safe and staged return-to-work.




Accordingly, we recommend that your government extend the temporary layoff provision for at least a further 13-week period through to August 31, 2020 to provide employers with certainty during the tenuous recovery period currently underway. We also urge your government to ensure that the temporary layoff period runs the full duration of your government's COVID-19 emergency orders plus an additional six (6) weeks beyond their expiry. This approach has recently been taken in Ontario, and is designed to help facilitate business recovery and to maintain employee attachment to their employer. In the interim, an employee can continue to access federal (emergency) income support programs. At stake, Premier, are literally thousands of potential further permanent job losses, particularly among younger workers and vulnerable people in our society.

On a final note, one suggestion in previous discussions with your officials was to make use Section 72 to allow individual employers to apply for temporary layoff extensions. This is not a suitable option for two reasons; first, time-to-decision within the Employment Standards Branch is too long due to backlogs; and, second, the application process requires too much paperwork and presents too much uncertainty for already overstressed and overburdened businesses coping with COVID-19 fallout.

Premier, thank you again for your continued collaboration and commitment to work with the business community through the current COVID-19 public health and economic crisis. We look forward to your prompt response to this critically important issue.

Sincerely,




  
 Greg D'Avignon  
 President & CEO

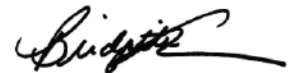


  
 Val Litwin  
 President & CEO

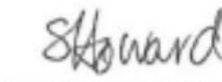


  
 Chris Gardner  
 President




  
 Bridgitte Anderson  
 President and CEO

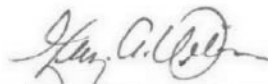


  
 Samantha Howard  
 Senior Director, B.C.




  
 Anita Huberman  
 President & CEO



  
 Greg Wilson  
 Director  
 Government Relations




  
 Mark von Schellwitz  
 Vice President,  
 Western Canada

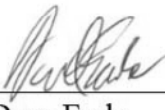


  
Ingrid Jarrett  
President & CEO




  
Walt Judas  
CEO



  
Dave Earle  
President & CEO



  
Alex Rueben  
Executive Director

**Ted Lee**

Acting President and CEO, Tourism Vancouver  
Chair, Metro Vancouver Tourism and Hospitality  
Response and Recovery Task Force

CC: Honourable Harry Bains, Minister of Labour  
Honourable Michelle Mungall, Minister of Jobs, Economic Development and Competitiveness  
Mr. Geoff Meggs, Chief of Staff to the Premier  
Mr. Don Wright, Deputy Minister to the Premier, Secretary to Cabinet and Head of the Public Service  
Mr. Trevor Hughes, Deputy Minister of Labour  
Mr. Fazil Mihar, Deputy Minister, Jobs, Economic Development and Competitiveness

## Samath, Mayura LBR:EX

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**From:** Hughes, Trevor LBR:EX  
**Sent:** June 24, 2020 2:44 PM  
**To:** Zacharuk, Christina PREM:EX; Wright, Don J. PREM:EX  
**Subject:** FW: 1000-20sub-temporary lay-off-june-final.pdf  
**Attachments:** 1000-20sub-temporary lay-off-june-final.pdf

s.13

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**From:** Meggs, Geoff PREM:EX <Geoff.Meggs@gov.bc.ca>  
**Sent:** June 24, 2020 11:13 AM  
**To:** Wright, Don J. PREM:EX <Don.J.Wright@gov.bc.ca>  
**Cc:** Hughes, Trevor LBR:EX <Trevor.Hughes@gov.bc.ca>; Bains, Harry LBR:EX <Harry.Bains@gov.bc.ca>; MacDonald, Alex LBR:EX <Alex.MacDonald@gov.bc.ca>  
**Subject:** Fwd: 1000-20sub-temporary lay-off-june-final.pdf

Don, it would helpful to know if the director could take a promise of recall into consideration on reviewing Section 72 applications. Would seem to support the objectives.

Geoff

Sent from my iPhone

Begin forwarded message:

**From:** "Meggs, Geoff PREM:EX" <Geoff.Meggs@gov.bc.ca>  
**Date:** June 24, 2020 at 11:06:49 AM PDT  
**To:** "Meggs, Geoff PREM:EX" <Geoff.Meggs@gov.bc.ca>  
**Subject:** 1000-20sub-temporary lay-off-june-final.pdf

# BC FEDERATION OF LABOUR

Temporary Lay-Off

June 2020



# INTRODUCTION

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Should the government intervene to make a further amendment to the *Employment Standards Act* (“ESA” or “the Act”) to extend the period of temporary layoff beyond 16 weeks?

As we understand it employers’ organizations have asked government for a blanket extension of the temporary layoff provisions in the *ESA* so that the temporary layoff period extends for six weeks beyond the end of the state of emergency.

**The BC Federation of Labour opposes taking a blanket approach to extending the temporary layoff period. Instead we suggest employers use the variance provisions of the Act to achieve a similar result, but with the support of their employees. Alternatively, if this option is not acceptable, we say any extension of the temporary layoff period must be accompanied by recall rights guaranteeing laid off employees that they will be first to be rehired.**

## Who is impacted?

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**T**he BC government declared a state of emergency on March 17, 2020 due to the global COVID-19 pandemic. To minimize the spread of the disease, several businesses were required to shut down e.g. casinos, hair salons and bars. Additionally, many other businesses decided to close their doors due to public and worker safety issues, loss of customer base, supply chain problems etc. Other business remained open but saw a drop in revenue. On the other hand, some businesses, like grocery stores and delivery services, have seen an increase in business.

Labour force data shows that in May 2020, 13.4% of British Columbians were out of work. Several economists assert the number is even higher as labour force data only includes those actively seeking work. This unprecedented level of job loss has had a profound impact on workers and their families.

And while the sheer numbers are alarming, what is even more concerning is the unequal impact of the pandemic on members of our community. Government data shows that those who are most impacted are the same workers who are already facing the greatest inequities.

Women, people of colour, younger workers and those in the lowest wage categories were most likely to have lost their jobs. They are also likely to be the last to return to work. In contrast, men and high-income earners were more likely to retain employment. These workers were more likely to be in sectors that were not closed down during the height of the pandemic, to have greater flexibility in their jobs or the opportunity to work from home. Higher income earners are also more likely to be protected by collective agreements or to have negotiated written employment contracts. These workers have considerably more power in their employment relationships.

So why is this important? Because the workers who have been most impacted by job loss during the pandemic are precisely those who most rely on the ESA for their basic rights in the workplace. These are the workers who need the protection of government.

Changes to weaken protections or eliminate a workers' ability to make choices regarding their financial security and employment will only further exacerbate the income and social inequality experienced by these workers.

## What are Workers Entitled to?

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The *Employments Standards Act* sets out the minimum terms of employment for workers who are considered employees, including those who are covered by a collective agreement.

Part 8 outlines the obligations an employer has to its employees when work terminates. According to Section 63 (1) this obligation is triggered after 3 consecutive months of employment. After three months, if an employer severs the employment relationship, the Act then requires the employers to pay "an amount equal to" wages for a specified number of weeks based on length of service. For example, after 3 consecutive months the obligation is one week's wages and after 12 consecutive months it is 2 weeks' wages. The maximum compensation for length of service liability is 8 weeks' pay. As an alternative to payment, employers can provide employees working notice of termination or a combination of working notice and wages.

Additional provisions apply to group terminations of 50 or more workers. Group terminations could result when a business reorganizes, downsizes or faces other financial pressures. The Act recognizes that these mass layoffs are more disruptive to individual workers and our economy and, therefore, sets out more stringent requirements. Group terminations require a greater amount of working notice or pay in lieu of notice depending on the number of employees being terminated as follows:

- (a) at least 8 weeks before the effective date of the first termination, if 50 to 100 employees will be affected;*
- (b) at least 12 weeks before the effective date of the first termination, if 101 to 300 employees will be affected;*
- (c) at least 16 weeks before the effective date of the first termination, if 301 or more employees will be affected.*

However, the *Act* also indicates no pay or notice is required in the event of a retirement, when an employee quits without notice or when there is dismissal for just cause. There are also other exemptions set out in section 65 such as an employee refusing reasonable alternative employment offered by the employer.

So the *Act* clearly sets out what both employers and workers can expect upon the severance of employment. Further the *Act* sets out additional provisions to address more extraordinary changes in a business that result in group terminations.

## Why do minimum standards matter?

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The *Employment Standards Act* sets out minimum standards. It is important to understand that these standards are by no means generous, nor do they necessarily reflect the full extent of a workers' entitlement. They create a baseline that all employees can count on. A worker may, in fact, be entitled to additional compensation for length of service. For example, workers who are terminated may seek compensation in excess of the minimum standards through civil litigation. A court may find the right to compensation for length of service is much higher. Courts may take into consideration, length of service, age of the employee, ability to find other work, and other factors that led to the termination.

Even shorter periods of employment may result in a compensation obligation that exceeds the minimum standards. In *Kevin Bavaro v. North American Tea, Coffee and Herbs Trading Co. Inc.*, BC's Court of Appeal upheld awarding Mr. Bavaro 6 months' salary after an abrupt dismissal following only 14 months of employment. He was initially offered two weeks' pay in lieu of notice as required by the *ESA*.

But most workers don't have access to remedy through the court. Litigation is expensive and financial aid is reserved for the most egregious cases. In other words, unless you have the financial means, civil litigation is off the table. Therefore, the majority of workers only receive the minimum standards in the *Act*. That is why it is so important that these standards are fair. For most workers, this is all they will get.

# What is a temporary lay-off?

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An employer can only defer their termination obligation to workers in the event of a “temporary layoff.” According to the government’s guide to the Act, a temporary layoff is only permissible if it is:

Normal and expected in the industry (e.g. in the logging industry where work cannot be performed during “break-up”) **OR**  
Part of an employment contract **OR**  
Agreed to between the employee and the employer

The *Employment Standards Act* defines temporary layoff as:

*“temporary layoff” means*

- (a) *in the case of an employee who has a right of recall, a layoff that exceeds the specified period within which the employee is entitled to be recalled to employment, and*
- (b) *in any other case, a layoff of up to 13 weeks in any period of 20 consecutive weeks;*

On May 4<sup>th</sup> the BC government, at the request of several employers’ organizations extended the temporary layoff period in (b) from 13 to 16 weeks.

It is important to emphasize that an employer is not permitted to unilaterally impose a temporary layoff. This has been settled in law in *Hooze v. Gillwood Remanufacturing Inc.* One of the three above noted conditions must be met.

In the case of temporary layoff due to COVID-19, it is very likely that many, if not most employers did not ask their employees if they agree to temporary layoff as required and have incorrectly applied this section of the *Act*.

During the pandemic, a number of employers have activated (in most cases incorrectly) this “temporary layoff” period. They argued that they can retain more workers or are more likely to rehire in greater numbers without the immediate financial pressure of a compensation for length of service obligation. This 16-week period is now coming to an end and employers’ organizations have requested a further extension of the temporary layoff period.

However, a blanket approach to an extension does not require employers to provide any evidence of their plan for re-employment and cuts workers themselves out of the equation.



It is also worth noting that both the federal and provincial government have established a number of programs to discourage employers from laying workers off at all. The federal government's Canadian Emergency Wage Subsidy (CEWS) along with cuts to commercial property tax, commercial rent and eviction relief, and tax deferral programs buffer the financial hit of the pandemic and incentivize employers to retain their staff.

## What if a business still needs an extension?

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Extensions to the recall period have already been contemplated by the ESA. Section 72 covers variances and sets out that:

*An employer and any of the employer's employees may, in accordance with the regulations, join in a written application to the director for a variance of any of the following:*

*(a) a time period specified in the definition of "temporary layoff"...*

This section makes it clear that there is no requirement for government to further intervene to provide an extension. The Act clearly contemplates circumstances that may require variance and set out clear guidelines on how variances should be awarded. Variances require a joint application by the employer and a majority of the affected workers.

The important distinction between what is outlined in section 72 and what employers are asking for is that section 72 involves workers. In other words, seeking a variance cannot be a unilateral position of the employer. Workers are protected from exploitation by ensuring that they must agree the layoff is indeed temporary and that they do believe the employer will return them to work when work is available.

An example of this is outlined on the government's own website. A workplace is undergoing renovation and those renovations will take longer than 13 weeks. Both the employer and the workers agree they want to return to employment, so the workers and employer jointly apply for a variance. In this scenario, the extension benefits both the workers and the employer.

Upon application from the employer and employees, a variance may be granted by the Director to alter the time period of temporary layoff provided that:

- (a) a majority of the employees who will be affected by the variance are aware of its effect and approve of the application, and*
- (b) the variance is not inconsistent with the purposes of this Act set out in section 2.*

In the case of variances to section 64, the Director must also consider whether the variance will facilitate:

- (a) *the preservation of the employer's operations,*
- (b) *an orderly reduction or closure of the employer's operations, or*
- (c) *the short-term employment of employees for special projects.*

The test does not create a heavy administrative burden. These applications go directly to the director who can prioritize their adjudication. They do not need to go into the complaint stream where we understand there are currently delays. But most significantly the variance process involves employees themselves in a decision about their employment relationship. The variance process set out in the Act provides a requirement for employers to both communicate and engage with workers to get their joint approval for an extension. This could include discussions regarding the economic health of the business and the prospect of future work. What could be more important for workers nervous and concerned about their future employment security than to hear directly from their employer about the prospects of returning to work?

If an employer can present a sound case and convince workers that their business is likely to reopen, it is likely employees will agree to request a variance. However, should an employer be attempting to delay without good reason or to better position themselves during an eventual business closure or bankruptcy, workers should have the right to say no to an extension request.

## What could happen if workers don't get a say?

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The importance of worker voice in making these kinds of decisions cannot be overstated. The best workplaces are built upon good communication and trust - where workers have a say in decisions that will impact them. And there is no decision, more important to a worker than whether they will have a job or not. Certainly, there is no reason to eliminate their agency, especially in a crisis that will require all of us to work together to rebuild our economy.

Additionally, neither government nor employers (or a union for that matter) can know the individual circumstances of workers without asking them what they need and want.

For some workers, delaying access to compensation for length of service may mean the loss of their home, the inability to pay for childcare, an increase in debt or make it impossible to afford retraining for alternate employment.

For others, a variance and the prospect of returning to work may provide them the security they need. Some workers may want that assurance to help them renew a mortgage, secure a rental agreement, extend a line of credit or for their personal mental health.

There are very few areas in the *Employment Standards Act* where workers are given voice. Section 72 is one of the few opportunities workers in non-union workplaces have a chance to have their say. It is inappropriate and flat out wrong to take that opportunity away from them.

## Do workers have a right to get their job back when an employer reopens?

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It is important to clarify that under the current temporary layoff system, even with an agreed upon variance, there is no obligation for an employer to recall an employee unless they have negotiated a right to recall in a written employment contract or collective agreement.

That means despite waiting out the temporary layoff period (regardless of its length), a worker could be dismissed, and the available work could be offered to another worker. However, if an employer does not offer work to an employee at or before the end of the temporary layoff period, the employer will need to pay CLOS plus any liability for group termination if it applies.

Temporary layoff, therefore, provides no assurance to workers that they will be re-hired and the employer has significant discretion over re-offering employment.

## Options

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### **Option 1: Make no change and encourage employers to use the variance system -**

The *Act* already provides what employers' associations are asking for, and it does it better by ensuring that workers are active participants in the decision. Government does not have to do anything in this scenario except ensure the Director of the Employment Standards Branch has the necessary resources to do their job. The variance system sets out a clear pathway for employers to obtain a longer temporary layoff period, and it provides some hope to employees that their services may be re-engaged.

There is little downside to this option except that employers have dug their heels in and publicly stated that talking to their workers and obtaining consent is too onerous in light of the pandemic.

### **Option 2: Extend the temporary layoff period beyond 16 weeks.**

In this option, legislation is needed to extend the layoff period. This would give employers extended relief from CLOS and group termination requirements (provided that they have received the consent of their employees to go on temporary layoff in the first place). Employees would continue waiting to be offered work. If they are not offered work, they would collect CLOS or group termination entitlements when the extended temporary layoff period expires.

The downside of this option is that it may lead to many employers and employees falsely believing the employer complied with the ESA when they originally enacted the temporary layoff. In fact, it is unlikely that many employers appropriately applied this provision and acquired the required consent of the worker to accept the temporary layoff. It does not, therefore, prevent workers from filing employment standards complaints alleging that their rights were violated.

This option also prevents employees from collecting CLOS and group termination entitlements until the temporary layoff period is over. While that benefits employers, it may be a hardship for employees. And finally, it still doesn't guarantee employees a job at the end of the extended temporary layoff period. So in many ways, this option does not satisfy the needs of employers or workers.

If government chooses to go this route, we recommend that before an employer can exercise this extension, each employee be given the choice to either accept CLOS and any group termination entitlement or to remain on extended temporary layoff. This would help to rectify any misapplication of this section of the Act when the temporary layoff originally occurred.

### **Option 3: Implement a right to recall**

As noted above, under the current temporary layoff system, there is no obligation for an employer to recall an employee. An alternative solution would be to provide a new arrangement – give employees the right to recall in exchange for extending the temporary layoff period. If recalled during the extended layoff period, workers should then be provided with 14 days to decide whether to return to work. This option would require a change in legislation.

In this option employees could choose to remain on a recall list for the extended period of time with recall rights (tbd) or give up their right to recall by exercising their right to compensation for length of service and group termination notice if applicable. If an employee chooses to remain on the recall list, the employer must offer work to the employee when it becomes available. If at the end of the layoff period, the employer has not offered work, the employee would remain entitled to CLOS and group termination notice if applicable.

While this option still gives employees the right to elect CLOS and group termination entitlements in lieu of remaining on a recall list, it provides them greater enticement to remain on the recall list. A promise of work is, for many workers, more valuable than termination payments.

This solution neatly resolves the issue for both workers and employers by providing more financial flexibility to employers while helping to ensure they will have an available workforce. And for workers it provides a much greater degree of certainty by guaranteeing they can return to their jobs when operations resume.

\*Note: An extension to the temporary layoff period IN ANY of these 3 options, should include a prohibition on employers having the ability to hire alternative workers to perform work normally done by any workers that are on a temporary layoff.

## CONCLUSION

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Option 1 remains the cleanest and our preferred solution. That said, we recognize that Option 3 may better address both the political pressures and the needs of both workers and employers in a fair manner.

## Relevant sections of the *Employment Standards Act*

### Definitions:

"temporary layoff" means

- (a) in the case of an employee who has a right of recall, a layoff that exceeds the specified period within which the employee is entitled to be recalled to employment, and
- (b) in any other case, a layoff of up to 13 weeks in any period of 20 consecutive weeks;

"termination of employment" includes a layoff other than a temporary layoff;

### Part 8 — Termination of Employment

#### Definition

**62** In this Part, "week of layoff" means a week in which an employee earns less than 50% of the employee's weekly wages, at the regular wage, averaged over the previous 8 weeks.

#### Liability resulting from length of service

**63** (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.

(2) The employer's liability for compensation for length of service increases as follows:

- (a) after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;
- (b) after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.

(3) The liability is deemed to be discharged if the employee

- (a) is given written notice of termination as follows:
  - (i) one week's notice after 3 consecutive months of employment;
  - (ii) 2 weeks' notice after 12 consecutive months of employment;
  - (iii) 3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;
- (b) is given a combination of written notice under subsection (3) (a) and money equivalent to the amount the employer is liable to pay, or
- (c) terminates the employment, retires from employment, or is dismissed for just cause.

(4) The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by

- (a) totalling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,
- (b) dividing the total by 8, and
- (c) multiplying the result by the number of weeks' wages the employer is liable to pay.

(5) For the purpose of determining the termination date under this section, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff.

(6) If, after 3 consecutive months of employment, an employee gives notice of termination to the employer and the employer terminates the employment during that notice period, the employer is liable to pay the employee an amount equal to the lesser of

- (a) an amount in money equal to the wages the employee would have earned for the remainder of the notice period, or
- (b) an amount in money equal to the amount the employer is liable to pay on termination.

#### **Group terminations**

**64** (1) If the employment of 50 or more employees at a single location is to be terminated within any 2 month period, the employer must give written notice of group termination to all of the following:

- (a) each employee who will be affected;
- (b) a trade union certified to represent, or recognized by the employer as the bargaining agent of, any affected employees;
- (c) the minister.

(2) The notice of group termination must specify all of the following:

- (a) the number of employees who will be affected;
- (b) the effective date or dates of the termination;
- (c) the reasons for the termination.

(3) The notice of group termination must be given as follows:

- (a) at least 8 weeks before the effective date of the first termination, if 50 to 100 employees will be affected;
- (b) at least 12 weeks before the effective date of the first termination, if 101 to 300 employees will be affected;
- (c) at least 16 weeks before the effective date of the first termination, if 301 or more employees will be affected.

(4) If an employee is not given notice as required by this section, the employer must give the employee termination pay instead of the required notice or a combination of notice and termination pay.

(5) The notice and termination pay requirements of this section are in addition to the employer's liability, if any, to the employee in respect of individual termination under section 63 or under the collective agreement, as the case may be.

(6) This section applies whether the employment is terminated by the employer or by operation of law.

## Exceptions

- 65 (1) Sections 63 and 64 do not apply to an employee
- (a) employed under an arrangement by which
    - (i) the employer may request the employee to come to work at any time for a temporary period, and
    - (ii) the employee has the option of accepting or rejecting one or more of the temporary periods,
  - (b) employed for a definite term,
  - (c) employed for specific work to be completed in a period of up to 12 months,
  - (d) employed under an employment contract that is impossible to perform due to an unforeseeable event or circumstance other than receivership, action under section 427 of the *Bank Act* (Canada) or a proceeding under an insolvency Act,
  - (e) employed at one or more construction sites by an employer whose principal business is construction, or
  - (f) who has been offered and has refused reasonable alternative employment by the employer.

(2) If an employee who is employed for a definite term or specific work continues to be employed for at least 3 months after completing the definite term or specific work, the employment is

- (a) deemed not to be for a definite term or specific work, and
- (b) deemed to have started at the beginning of the definite term or specific work.

(3) Section 63 does not apply to

- (a) a teacher employed by a board of school trustees,
  - (a.1) a teacher who is employed with or who has a service contract with a francophone education authority as defined in the *School Act*, or
- (b) an employee covered by a collective agreement who
  - (i) is employed in a seasonal industry in which the practice is to lay off employees every year and to call them back to work,
  - (ii) was notified on being hired by the employer that the employee might be laid off and called back to work, and
  - (iii) is laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation.

(4) Section 64 does not apply to an employee who

- (a) is offered and refuses alternative work or employment made available to the employee through a seniority system,
- (b) is laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation, or



(c) is laid off and does not return to work within a reasonable time after being requested to do so by the employer.

#### **Director may determine employment has been terminated**

**66** If a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated.

#### **Rules about notice**

- 67** (1) A notice given to an employee under this Part has no effect if
- (a) the notice period coincides with a period during which the employee is on annual vacation, leave, temporary layoff, strike or lockout or is unavailable for work due to a strike or lockout or medical reasons, or
  - (b) the employment continues after the notice period ends.

(2) Once notice is given to an employee under this Part, the employee's wage rate, or any other condition of employment, must not be altered without the written consent of

- (a) the employee, or
- (b) a trade union representing the employee.

#### **Rules about payments**

- 68** (1) A payment made under this Part does not discharge liability for any other payment the employee is entitled to receive under this Act.

(2) The termination pay requirements of section 64 apply whether or not the employee has obtained other employment or has in any other way realized or recovered any money for the notice period.

(3) If an employee is not covered by a collective agreement, the director may determine that a payment made to the employee in respect of termination of employment, other than money paid under section 64, discharges, to the extent of the payment, the employer's liability to the employee under section 63.

#### **Repealed**

**69-70** [Repealed 2002-42-34 and 35.]

#### **Adjustment committee**

- 71** (1) If an employer is required to give notice under section 64, the minister may require the employer to establish an adjustment committee.

(2) The adjustment committee is to consist of

- (a) an equal number of representatives of the employer and of the affected employees, and
- (b) anyone else the minister considers suitable for appointment to the committee.

(3) The purpose of the adjustment committee is to develop, by cooperation, an adjustment program

- (a) to eliminate the need for terminating the employment of the affected employees, or

(b)to minimize the impact of terminating their employment and to help them obtain other employment.

(4)The adjustment committee may require any of the following to provide it with any information necessary for carrying out its purpose:

- (a)the employer;
- (b)the representatives of the employer and the affected employees;
- (c)any other member of the adjustment committee.

#### **Part 9 — Variances**

##### **Application for variance**

**72** An employer and any of the employer's employees may, in accordance with the regulations, join in a written application to the director for a variance of any of the following:

- (a)a time period specified in the definition of "temporary layoff";
- (b)section 17 (1) (paydays);
- (c)section 25 (special clothing);
- (d)section 33 (split shifts);
- (e)section 34 (minimum daily hours);
- (f)section 35 (maximum hours of work);
- (g)section 36 (hours free from work);
- (h)section 40 (overtime wages for employees not working under an averaging agreement);
- (h.1)a period specified in section 37 (1) (number of weeks covered by an agreement to average hours of work);
- (i)section 64 (notice and termination pay requirements for group terminations).

##### **Power to grant variance**

**73** (1)The director may vary a time period or requirement specified in an application under section 72 if the director is satisfied that

- (a)a majority of the employees who will be affected by the variance are aware of its effect and approve of the application, and
- (b)the variance is not inconsistent with the purposes of this Act set out in section 2.

(1.1)The application and operation of a variance under this Part must not be interpreted as a waiver described in section 4.

(2)In addition, if the application is for a variance of a time period or a requirement of section 64 the director must be satisfied that the variation will facilitate

- (a)the preservation of the employer's operations,
- (b)an orderly reduction or closure of the employer's operations, or
- (c)the short term employment of employees for special projects.

(3)The director may

- (a)specify that a variance applies only to one or more of the employer's employees,
- (b)specify an expiry date for a variance, and
- (c)attach any conditions to a variance.

(4) On being served with a determination on a variance application, the employer must display a copy of the determination in each workplace, in locations where the determination can be read by any affected employees.

DM/mp

*moveup*

1000-20sub-paid sick leave-june

## **Samath, Mayura LBR:EX**

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**From:** Hughes, Trevor LBR:EX  
**Sent:** June 18, 2020 10:57 AM  
**To:** Kennedy, Christine JEDC:EX; Mihlar, Fazil EMPR:EX  
**Subject:** FW: 59729 D'Avignon  
**Attachments:** 59729 Signed.pdf  
  
**Importance:** High



Ref: 59729

June 18, 2020

Greg D'Avignon  
President and Chief Executive Officer  
Business Council of British Columbia  
960-1050 West Pender Street  
Vancouver, BC V6E 3S7  
Email: [greg.davignon@bccbc.com](mailto:greg.davignon@bccbc.com)

Dear Greg D'Avignon:

Thank you for your letter of June 5, 2020, addressed to the Honourable John Horgan, Premier, regarding concerns of a number of employer associations about the temporary layoff provisions under the *Employment Standards Act* (ESA) in the context of the COVID-19 public health emergency. As Minister of Labour, I am pleased to respond to you directly. I trust that you will share this letter with your colleagues who co-signed the letter to Premier Horgan. I recognize that your letter was sent based on the input and views of a broad range of stakeholders.

The time you have taken to express your views and concerns is appreciated. Please be assured that Government continues to work to support workers, businesses and all British Columbians through this difficult time. We recognize businesses are facing tough challenges right now—that is why there are supports in place to help:

- Deferrals and reductions of taxes—including carbon, employer health, commercial property and sales taxes.
- Deferral of WorkSafeBC premiums and waiver of premiums for employers receiving the Canada Emergency Wage Subsidy (CEWS).
- Monthly rent and wage subsidies, deferred bill payment and waived late payment penalties for utilities.
- Credit and financing assistance, including low-interest/interest-free loans and repayment deferrals.
- Expanded unpaid leave protections and temporary layoff deadlines to help give employers and workers flexibility.
- More funding to hard-hit sectors like tourism, farming, and energy.

For detailed updates on provincial tax and revenue changes related to the COVID-19 emergency, you may wish to view this website at: <https://www2.gov.bc.ca/gov/content/taxes/tax-changes/covid-19-tax-changes>.

.../2

As you note in your letter, on May 4, 2020, Government approved a regulatory change to extend the maximum allowable length of temporary layoffs due to the COVID-19 emergency. A temporary lay-off, which must be agreed to by the employee, can now last for 16 weeks rather than 13 weeks in any 20-week period if the COVID-19 emergency is a reason for all or part of the layoff. This extension allows affected employees to hold on to their employment status for the full 16 weeks of the Federal Canada Emergency Response Benefit (CERB) and allows employers impacted by COVID-19 to defer the costs of permanent employee layoff by another three weeks. The COVID-19 emergency temporary layoff provisions are not intended to be permanent and will be repealed when no longer needed.

The change does not apply to employees who, under a collective agreement, already have a right to be recalled to work within a specified time after a layoff. More information on employment standards around temporary layoffs is available at: [www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/termination#laying-off](http://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/termination#laying-off).

At this time, there are no plans for a further extension of the temporary lay-off time limits.

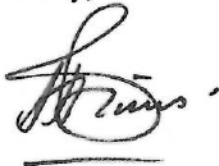
As you know, in a specific situation where employers and employees require longer than 16 weeks for a temporary layoff caused by COVID-19, an option that would be available to the parties if they agree, would be to jointly apply to the Director of Employment Standards for a variance authorizing a longer period under existing provisions of the ESA. The Director may grant the requested variance if a majority of affected employees approve.

I do recognize that you feel this option is not sufficient to address your concerns. I am advised that the Employment Standards Branch is aware of this situation and understands the importance of timely responses to variance requests. You may be interested to know that the Employment Standards Branch has provided detailed guidelines on the application of the ESA, including recent updates in response to the COVID-19 emergency. These include guidelines on "quitting, getting fired, or laid off" which can be viewed at: <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/termination>.

Employers with a specific question or concern about how the ESA applies to their particular situation, are encouraged to contact the Employment Standards Branch by telephone at: 1 833 236-3700, or visit the website at: <http://www.labour.gov.bc.ca/esb/>.

Thank you again for writing.

Sincerely,



Harry Bains  
Minister

.../3

pc: Honourable John Horgan  
Premier

Honourable Michelle Mungall  
Minister of Jobs, Economic Development  
and Competitiveness

Val Litwin  
President and Chief Executive Officer  
BC Chamber of Commerce

Chris Gardner  
President  
Independent Contractors and Businesses Association

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Bridgitte Anderson  
President and Chief Executive Officer  
Greater Vancouver Board of Trade

Samantha Howard  
Senior Director  
BC and Strategic Projects  
Canadian Federation of Independent Business

Anita Huberman  
President and Chief Executive Officer  
Surrey Board of Trade

Greg Wilson  
Director  
Government Relations  
Retail Council of Canada

Mark von Schellwitz  
Vice President  
Western Canada  
Restaurants Canada

Ingrid Jarrett  
President and Chief Executive Officer  
British Columbia Hotel Association

Walt Judas  
Chief Executive Officer  
Tourism Industry Association of BC

.../4

Greg D'Avignon  
Page 4

Dave Earle  
President and Chief Executive Officer  
BC Trucking Association

Alex Rueben  
Executive Director  
Association of British Columbia Marine Industries

Ted Lee  
Acting President and Chief Executive Officer  
Tourism Vancouver  
and  
Chair

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Metro Vancouver Tourism and Hospitality  
Response and Recovery Task Force



## Samath, Mayura LBR:EX

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**From:** Wright, Don J. PREM:EX  
**Sent:** June 22, 2020 10:36 AM  
**To:** Hughes, Trevor LBR:EX  
**Subject:** FW: Draft notes on severance  
**Attachments:** Temp layoffs - severance proposed approach.docx

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**From:** Geoff Meggs <Geoff.Meggs@gov.bc.ca>  
**Date:** Sunday, June 21, 2020 at 12:53 PM  
**To:** "Wright, Don J. PREM:EX" <Don.J.Wright@gov.bc.ca>  
**Cc:** Amber Hockin <Amber.Hockin@gov.bc.ca>, Bob Dewar <Bob.Dewar@gov.bc.ca>, s.17  
**Subject:** Draft notes on severance

Don, as discussed, some thoughts on next steps for severance. Alex is checking with Trevor on whether the sunseting of the change is automatic or by OIC.

Geoff

Page 32 of 72 to/à Page 37 of 72

Withheld pursuant to/removed as

s.13

### From ESB web page:

<https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/forms-resources/igm/esr-part-7-section-45-01>

### Summary

This section explains how the time period of a temporary layoff may be extended from 13 weeks to 16 weeks for reasons related to the COVID-19 emergency.

### Text of Legislation

**45.01** (1) In this section, “COVID-19 emergency” means the emergency that is the subject of:

(a) the notice provided on March 17, 2020 by the provincial health officer under section 52 (2) of the *Public Health Act*, and

(b) the declaration of a state of emergency made on March 18, 2020, and any extension of that declaration, under section 9 of the Emergency Program Act.

(2) If an employee is laid off and does not have a right of recall and the COVID-19 emergency is a cause of all or part of the layoff, the definition of “temporary layoff” in section 1 of the Act does not apply in relation to the employee and that layoff and the conditions of employment for the employee are altered in relation to that layoff by substituting the following definition:

“**temporary layoff**” means a layoff of up to 16 weeks in any period of 20 consecutive weeks.

(3) Subsection (2) does not apply in relation to a layoff described in section 37.7 (7).

### Policy Interpretation

#### Subsection (1)

The B.C. government declared a state of emergency on March 18, 2020. This declaration is referred to in this subsection.

In a provincial state of emergency, B.C.’s Provincial Health Officer has the authority to make orders as needed. The Provincial Health Officer has issued several orders, notices and guidance under the *Public Health Act*. One of them, the notice provided on March 17, 2020 is referred to in this subsection.

## Samath, Mayura LBR:EX

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**From:** Wright, Don J. PREM:EX  
**Sent:** June 22, 2020 9:56 PM  
**To:** Meggs, Geoff PREM:EX  
**Cc:** Hughes, Trevor LBR:EX  
**Subject:** FW: Draft options  
**Attachments:** Options - temp layoff - Jun 22 2020.docx

Geoff,

I asked Trevor to work up a short note on the options. Here it is. Please note his point that the S72 process cannot be retroactive.

s.13; s.14

Dib

---

**From:** Trevor Hughes <Trevor.Hughes@gov.bc.ca>  
**Date:** Monday, June 22, 2020 at 9:50 PM  
**To:** "Wright, Don J. PREM:EX" <Don.J.Wright@gov.bc.ca>  
**Subject:** RE: Draft options

Here it is. Needed to be clear the S72 process has to be completed before the 16 weeks expire as applications for variance can't be retro.

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T.

**Issue:**

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s.13 Government has indicated an option for employers is a variance application with majority employee support to the Employment Standards Branch (ESB). Employers have written to the Premier and Minister expressing concern with this decision. The 16 weeks is expected to expire for most employers in mid-July 2020 to correspond with the mid-March 2020 Orders from the Provincial Health Officer (PHO) to close or restrict operations in a number of sectors.

**Principles:**

- a) Workers should not be negatively impacted. Severance entitlements should be preserved and not nullified/voided. Further, workers should be aware of their rights with respect to agreeing to extension of temporary layoffs and right to be recalled to work prior to end of the extension (or otherwise permanent layoff and severance entitlements result).
- b) Government wants to provide conditions that enable businesses to withstand the current public health crisis and contribute to economic recovery.
- c) Whatever government decides, communications are key – in particular, employer obligations and responsibilities as well as worker rights.

**Options:**

s.13



**Samath, Mayura LBR:EX**

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**From:** Wright, Don J. PREM:EX  
**Sent:** June 18, 2020 12:36 AM  
**To:** Hughes, Trevor LBR:EX  
**Subject:** FW: Temporary Layoff Issue  
**Attachments:** Temporary Layoff Issue.docx

FYI

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**From:** "Wright, Don J. PREM:EX" <Don.J.Wright@gov.bc.ca>  
**Date:** Thursday, June 18, 2020 at 12:35 AM  
**To:** Geoff Meggs <Geoff.Meggs@gov.bc.ca>  
**Subject:** Temporary Layoff Issue

Hi Geoff,

I said I would get a note to you on this issue. This is what it looks like to me.

Happy to discuss in the morning.

Don

## Temporary Layoff Issue

### What do employers seek?

Employers seek an extension to the revised requirement of 16 weeks in a period of 20 to mirror Ontario's change of a couple of weeks ago. Specifically, to at least 6 weeks after state of emergency is ended. Given we have extended the state of emergency to June 23, this would represent an end date in early to mid-August (or later if the state of emergency is extended further).

### Why do employers seek this extension?

An additional period of time would allow an employer to bridge a period of time when it is unable to operate at full capacity (restaurants, retail, hotels) or even at all (casinos, conventions, international tourism) and maintain its workforce without having to pay severance. In the event of no extension, once the temporary layoff period is over, the employer must return workers or permanently layoff the workers which triggers severance.

Employers are saying that if there is no extension, the requirement to pay severance may result in them closing down permanently especially if they have no capacity to defer these costs and where government is limiting or restricting their ability to be open at all and thus mitigate damages (restaurants at 50% and then those sectors in Phase 4). They want to keep the connection to their workers, not lay them off.

Employers are saying if they have to pay the severance at expiry of 16 weeks, it will result in businesses being severely financially hamstrung, and quite possibly be forced into receivership. This will make it more difficult or impossible to reopen or to scale up to normal levels of operation. If they have to make the severance payments now, it could tip a number of employers to decide to not reopen at all.

### Key Point: Even if the Extension is Provided, Employers Still Need Consent of Employees

The Act **does not** give employers a general right to temporarily lay off employees. From Employment Standards Website (see Appendix):

#### *Employees must agree to be laid off*

*This means that the layoff is:*

- *Normal and expected in the industry (e.g. in the logging industry where work cannot be performed during "break-up") OR*
- *Part of an employment contract OR*
- *Agreed to between the employee and the employer.*



In the absence of an express or implied provision allowing temporary layoff, a layoff constitutes termination of employment. If not in term of contract, employer has onus to establish there is agreement. Could be tick box. If employee doesn't agree or consent, then he/she does go to ESB with complaint that could end up in adjudication.

### **What is the impact on workers?**

Organized labour has not agreed the change should be made, arguing the variance process in Section 72 of the ESA provides an existing alternative.

The obligation to pay severance is not extinguished – just deferred. .

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s.13

Further, the worker still has the benefit of the CERB to tide them over for the longer period (and PMJT has announced this benefit will be extended).

Many employers have been continuing worker health and benefit plans (e.g., dental and extended health) during this period. If employers must lay off workers permanently sooner than hoped, these benefits would be discontinued and the workers would then have no connection to that employer if it were to eventually reopen (meaning they'd be in the job market looking for work with 13% unemployment).

If an employee would prefer to take their chances in the current labour market, that option remains. As discussed in the previous section, an extension of the layoff as temporary requires an employee's explicit or implied consent. If an employee does not want to maintain the relationship with the employer, they are under no compulsion to accept it and would be entitled to statutory severance.

### **Why is the Section 72 variance a challenge?**

Section 72 of the ESA allows an employer, with consent of employees, to apply to the Employment Standards Branch to vary the definition of temporary layoff and thus its length. This means that locally, an arrangement could be made to address the COVID-19 circumstances; however, it requires the ESB to approve the variance application.

s.13

**Recommendation:**

The Covid emergency is an unprecedented event, and the economic disruption has lasted far longer than was envisioned back in March – the rationale for the “lockdown” was that it would be of relatively short-term duration to “flatten the curve.”

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s.13

## APPENDIX – FROM THE EMPLOYMENT STANDARDS WEBSITE

### Temporary Layoffs

An employee is laid off when they're given less work or no work – **with the plan that the employee will return to a regular work schedule.**

If an employee's hours are reduced, they are considered laid off as soon as they earn less than 50 percent of their weekly wages at the regular rate (averaged over the previous eight weeks). If the employee won't be returning to work, the layoff is a termination of employment.

If an employee is laid off, they're still considered to be employed. Any benefits and entitlements (including vacation and leaves of absence) are protected.

### Layoffs must meet certain conditions

If they don't, they may be considered a termination of employment. Except for some limited exceptions, the rules are the same as for ending employment.

An employee's decision on whether to refuse a layoff and end their employment may affect their eligibility for federal government benefits.

### Employees must agree to be laid off

This means that the layoff is:

- Normal and expected in the industry (e.g. in the logging industry where work cannot be performed during “break-up”) **OR**
- Part of an employment contract **OR**
- Agreed to between the employee and the employer

### Layoffs have a maximum length

Layoffs can only be up to 13 weeks in a period of 20 weeks (about three months in a period of five months).

If the employee is covered by a collective agreement, the maximum length of a layoff is the period of time during which they have the right to be recalled.

**If the layoff is for reasons related to the COVID-19 emergency**, the layoff may be extended up to a maximum of 16 weeks.

## Samath, Mayura LBR:EX

---

**From:** Boyte, William (Bill) LBR:EX  
**Sent:** June 23, 2020 10:07 AM  
**To:** Hughes, Trevor LBR:EX; Leduc, Danine LBR:EX; Blakely, John H LBR:EX; Tanner, Michael A LBR:EX  
**Subject:** Fwd: Prolongation de certaines périodes de mise à pied - Règlement du Canada sur les normes du travail / Extension of certain lay-off periods - Canada Labour Standards Regulations

Forwarding in the event that you haven't seen this already.

B

Begin forwarded message:

**From:** "nathalie.nadon@labour-travail.gc.ca"  
**Date:** June 23, 2020 at 9:23:46 AM PDT  
**To:** "Boyte, William (Bill) LBR:EX", "Ryan.McFarland@gov.ab.ca", "Haley\_Mathisen@gov.nt.ca", "Yvonne.Spyropoulos@gov.mb.ca", "Livia.Wong@ontario.ca", "vchira@gov.nu.ca", "RGYEO@gov.pe.ca", "Jaime.Mellott@gov.yk.ca", "andrew.speight@gnb.ca", "sonya.kamal@gov.ab.ca", "kclements@gov.nl.ca" <'kclements@gov.nl.ca'>, "Lynn.Hartley@novascotia.ca", "nathalie.roxbourgh@cnesst.gouv.qc.ca", "Humyra.Sabir@gov.ab.ca", "tracy.imai@gov.ab.ca", "Louise.Michaud@gov.yk.ca", "sameema.haque@gov.sk.ca", "phmcpmail@gov.pe.ca", "Nathan.Saruk@novascotia.ca", "Melissa.Faber@ontario.ca", "rhyderevans@gov.nl.ca"  
**Cc:** "danijela.hong@labour-travail.gc.ca", "greg.t.macdougall@hrsdc-rhdcc.gc.ca"  
**Subject:** Prolongation de certaines périodes de mise à pied - Règlement du Canada sur les normes du travail / Extension of certain lay-off periods - Canada Labour Standards Regulations

*English message follows*

Bonjour,

Le 22 juin 2020, le Règlement du Canada sur les normes du travail (Règlement 30) a été modifié afin de prolonger certaines périodes de mise à pied. Cette modification permet de protéger les emplois des employés dans les secteurs sous réglementation fédérale qui ont été mis à pied et qui autrement l'auraient été en raison de sa durée et ceci en vertu des dispositions précédentes. De plus, cette prolongation permet de soutenir les employeurs dans leurs obligations financières associées aux licenciements.

Avant cette prolongation temporaire, les employés pouvaient être mis à pied pour une période pouvant aller jusqu'à 3 mois, ou 6 mois dans la mesure où un avis écrit précisant la date de rappel était fourni au moment de la mise à pied. Une fois ces périodes écoulées, la mise à pied devient un licenciement.

Le délai permis avant qu'une mise à pied soit considérée comme un licenciement est temporairement prolongé selon les modalités suivantes :

- employés mis à pied pour une période de trois mois ou moins
  - de six mois pour les employés mis à pied avant le 31 mars 2020;
  - au 30 décembre 2020 pour les employés mis à pied entre le 31 mars 2020 et le 30 septembre 2020.
- employés mis à pied pour plus de trois mois avec une date de rappel déterminée ou une période déterminée dans les six mois
  - de six mois ou jusqu'au 30 décembre 2020, selon la première éventualité, pour les employés mis à pied avant le 31 mars 2020;

- au 30 décembre 2020 pour les employés mis à pied entre le 31 mars 2020 et le 30 septembre 2020, lorsque la date ou la période déterminée qui est précisé dans l'avis écrit est antérieure au 30 décembre 2020;
- jusqu'à la date du rappel lorsque la date ou la période déterminée qui est précisé dans l'avis écrit survient le ou après le 30 décembre 2020.

Les employeurs peuvent rappeler leurs employés au travail à tout moment, sans égard à cette extension.

**Après le 30 septembre 2020**, la prolongation temporaire des périodes de mise à pied ne s'appliquera plus.

La prolongation temporaire des périodes de mise à pied ne s'applique pas aux employés qui :

- sont visés par une convention collective qui prévoit :
  - des droits de rappel;
  - une garantie de travail minimal.
- sont en grève ou en lock-out;
- reçoivent des paiements de leur employeurs (par exemple, paiement effectué pour la rétention de personnel);
- reçoivent de leur employeur des cotisations à un régime de pension ou d'assurance;
- reçoivent ou sont éligible de recevoir des prestations supplémentaires de chômage.

Pour plus d'informations sur les prolongations temporaires, veuillez consulter les liens ci-dessous :

- [Document d'information : Prolongation des périodes de mise à pied - Mesures temporaires](#)
- [Page web sur les modifications temporaires : COVID-19](#)

Si vous avez des questions, n'hésitez pas à me contacter.

Cordialement,

\*\*\*\*\*  
\*\*\*

Good Afternoon,

On June 22, 2020, the [Canada Labour Standards Regulations](#) (Regulation 30) were amended to extend certain allowable lay-off periods. This amendment looks to protect employment of employees in federally regulated workplaces who have been laid-off and who would have otherwise been terminated due to the length of the lay-off under the previous provisions. Furthermore, the extension of the lay-off periods provides employers with temporary relief from the financial obligations associated with terminations.

Prior to this temporary extension of lay-off periods, employees could be laid-off for up to 3 months, or up to 6 months if a recall date was provided in a written notice at the time of the lay-off. Following the conclusion of these time periods, the lay-off would become a termination.

The allowable time before a lay-off is considered a termination has been temporarily extended as follows:

- employees laid off for a period of 3 months or less
  - by 6 months for employees laid off prior to March 31, 2020
  - to December 30, 2020 for employees laid off between March 31, 2020 and September 30, 2020
- employees laid off for more than 3 months with a fixed recall date or a fixed period within 6 months

- by 6 months or until December 30, 2020, whichever occurs first, for employees laid off prior to March 31, 2020
- to December 30, 2020 for employees laid off between the period of March 31, 2020 and September 30, 2020, where the fixed date or fixed period specified in the written notice occurs before December 30, 2020
- until the recall date where the fixed date or fixed period specified in the written notice occurs on or after December 30, 2020

Employers can call their employees back to work at any time, regardless of this extension.

**After September 30, 2020**, the temporary extension of lay-off periods will no longer apply.

The temporary extension of lay-off periods does not apply to employees who are:

- covered by a collective agreement that contains:
  - recall rights
  - a minimum work guarantee
- on strike or a lock out
- receiving employer payments (for example, employer continues to provide payment for retention purposes)
- receiving employer benefits (for example, pension plan or insurance plan)
- receiving or eligible for supplementary unemployment benefits

For additional information on the temporary extensions, please visit the links below:

- [Backgrounder: Extension of lay-off periods- Temporary measures](#)
- [Web page on temporary changes: COVID-19](#)

If you have any questions, please don't hesitate to contact me.

Regards,

Nathalie Nadon

Manager / Gestionnaire

Labour Standards Stakeholder Engagement /

Mobilisation des intervenants des normes du travail

Workplace Directorate / Direction du milieu de travail, COPD / CODP

Employment and Social Development - Labour Program /

Emploi et Développement social - Programme du travail

Tel.: (819) 654-4379

Phase II, 10th floor/10e étage

[nathalie.nadon@labour-travail.gc.ca](mailto:nathalie.nadon@labour-travail.gc.ca)

Suivez-nous sur Twitter | Follow us on Twitter

[@Travail\\_EDSC](#) | [@labour\\_ESDC](#)



## Samath, Mayura LBR:EX

---

**From:** Greg D'Avignon <greg.davignon@bccbc.com>  
**Sent:** June 22, 2020 11:01 AM  
**To:** Meggs, Geoff PREM:EX; Wright, Don J. PREM:EX; Hughes, Trevor LBR:EX  
**Subject:** In case you haven't seen this - Letter on Employment Standards Layoff issue  
**Attachments:** MHB\_Letter\_Response\_Temporary\_Layoff\_Extension\_Denial\_June\_22\_FINAL\_.pdf

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Attached please find a letter going to the Minister and government regarding the Employment Standards regulatory layoff issue confronting largely small medium and Not for profit enterprises in BC that you are aware of.

In case you haven't seen this, here is the letter being sent later this morning . It is to be followed by a release from the signatories

**Greg D'Avignon**  
President and CEO  
Business Council of British Columbia  
960-1050 West Pender Street  
Vancouver , B.C. V6E 3S7

\*\*\*\*Please note our new address. One floor up from our previous location effect June 15, 2019 \*\*\*\*

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June 22, 2020

Honourable Harry Bains  
Minister of Labour  
Government of British Columbia  
Room 342  
Parliament Buildings  
Victoria, BC V8V 1X4

Submitted via Email: Harry.Bains@gov.bc.ca

Dear Minister:

**Re: Ministerial Decision to Deny Business Community Request for Further Extension of Temporary Lay-off Time Limits under the Employment Standards Act**

We are in receipt of your letter dated June 17, 2020 responding to our June 7, 2020 correspondence to Premier Horgan on the above captioned matter.

In your letter, Minister, you state that **“at this time there is no intention to extend the temporary lay-off time limits”**.

Your letter was issued the day after Premier Horgan’s announcement that he intends to consult with British Columbians on the expenditure of \$1.5 billion set aside for COVID-19 economic recovery measures. The Premier pledged to listen to British Columbians to get their input on rebuilding British Columbia – together. Your lack of appreciation for the dire situation facing thousands of small businesses and workers calls into question the sincerity of this overture.

Tens of thousands of businesses were – understandably -- shut down by your government to manage the public health crisis unleashed by the COVID-19 pandemic. Thousands of businesses had no choice but to lay off their employees to cope with what were initially expected to be brief closures to assist with broader efforts to flatten the pandemic curve. We are now approaching the 16-week temporary layoff statutory deadline, and your unwillingness to provide an extension to the statutory time limits means thousands of businesses now face what amounts to “regulated insolvency” because of your inaction.

Effectively, Minister, your inaction means many small businesses will be unable to rehire laid off employees in the worst labour market in decades with unemployment rates approaching 14 percent. It means businesses can’t pay landlords, won’t use BC Hydro power, can’t pay taxes, and many decades-long employees will not have the means to support themselves. It means despair for younger workers facing 30 percent unemployment rates. And it means workers and businesses won’t be able to purchase goods and services from other businesses. The direct and knock-on effects are countless and exactly the opposite of what is required to rebuild consumer confidence, restore government revenues and, most importantly, Minister, provide the family supporting jobs that small businesses create. The business community



repeatedly brought this looming issue to your government's attention, beginning in early April. Regrettably, you have not reached out nor responded to our concerns until last Thursday, June 17, leaving your Ministerial duties to others in your government.

The business community is extremely disappointed with your response and, respectfully, calls upon you to immediately revisit your decision and issue an extension to the temporary layoff time limits as we have requested without delay.

In our June 7 correspondence to Premier Horgan, we note that a staggering 353,000 jobs have been lost in British Columbia since the onset of the COVID-19 pandemic. We trust you agree this is an unprecedented situation that requires Ministers to maintain a "watching brief" and respond to evolving circumstances in the current public health and economic crisis. According to Statistics Canada, there are 133,600 British Columbians currently on temporary lay-off. Of these, fully 127,000 were laid off between February and May, 2020. In this context, every effort should be taken to assist hard-hit businesses to survive, reopen, and recover so that these layoffs don't become permanent.

In our previous correspondence, we acknowledged and expressed appreciation for your government's modest 3-week extension of the temporary layoff time limits from 13 to 16 weeks through Order in Council (OIC), No. 219, dated May 4, 2020. Our recent correspondence asked for a further extension, to August 31, 2020, along with six additional weeks once emergency orders are lifted. At the time OIC 219, 2020 was issued on May 4, officials in your government acknowledged the initial extension would likely need to be revisited, hence our letter of June 7 to provide sufficient lead time for you to process an OIC extending the timeframe. Our request for an extension is completely in line with those granted in other provinces. The extension is needed to save hard-hit employers from bankruptcy and/or insolvency when they are obligated by law to pay severance due to the expiry of the 16-week period which, for many employers, begins in early July. An extension would also help to facilitate laid-off workers' return to work as businesses reopen, increase revenue and cash flow and, hopefully, eventually return to pre-COVID-19 operating levels.

To be clear, many employers were forced to issue temporary layoff notices due to COVID-19 public health and emergency orders issued by your government. We all understand the unprecedented nature of the COVID-19 pandemic and the need for these measures. Yet, through your inaction now Minister, you are dismissing the gravity of the situation still facing many businesses who have been forced to close or curtail operations and layoff workers. Many firms are facing stark financial challenges, including low or exhausted operating lines of credit and/or working capital. For those businesses fortunate enough to have available credit or working capital, it is needed to help facilitate the reopening and recovery that your government is now allowing. In many cases, employers are understandably not permitted to reopen at pre-COVID-19 operating levels because of public health guidance, further straining their financial position and ability to immediately rehire workers temporarily laid off. The statutory requirement to pay severance at the end of 16 weeks due to the unforeseen circumstances of COVID-19 is unduly punitive for employers working hard to get back on their feet and is detrimental to the restoration of jobs for temporarily laid off workers.

Your letter's suggestion that employers make use of Section 72 of the *Employment Standards Act* to apply for a variance to extend temporary layoff time limits is a hollow offering and, frankly Minister, insulting to the many businesses struggling to recover or simply keep their doors open as a result of COVID-19. You are aware, or ought to be aware, of the substantial back logs within the Employment Standards Branch. If businesses are required to use this "pathway", it will be several weeks or months before extensions to statutory layoff provisions that are urgently required NOW are granted. The result will be widespread

bankruptcies and insolvencies that you, as Minister of Labour, caused through your inaction. Your approach is perplexing and is unacceptable. It also unnecessarily places at risk thousands of jobs for youth, women, and vulnerable people in our society.

In the interests of doing what is right for workers and employers in British Columbia, Minister, we call on you to act on our reasonable request for an extension to the temporary layoff time limits to August 31, 2020, along with an additional six weeks once emergency orders are lifted. Time is of the essence.

Sincerely,



  
Anita Huberman





Val Litwin  
President & CEO




  
Samantha Howard  
Senior Director, B.C.






Bridgitte Anderson



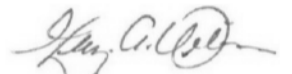
  
Chris Gardner  
President





Greg D'Avignon  
President & CEO



  
Greg Wilson  
Director






Mark von Schellwitz  
Vice President,



  
Ingrid Jarrett  
President & CEO





Walt Judas  
CEO



  
Dave Earle  
President & CEO





Jeff Guignard  
Executive Director

CC: Honourable John Horgan, Premier of British Columbia  
Honourable Carole James, Minister of Finance  
Honourable Michelle Mungall, Minister of Jobs, Economic Development and Competitiveness  
Honourable Bruce Ralston, Minister of Energy, Mines and Petroleum Resources  
Mr. Geoff Meggs, Chief of Staff to the Premier  
Mr. Don Wright, Deputy Minister to the Premier, Secretary to Cabinet and Head of the Public Service  
Mr. Trevor Hughes, Deputy Minister of Labour  
Ms. Lori Wanamaker, Deputy Minister of Finance  
Ms. Christine Kennedy, Deputy Minister, Jobs, Economic Development and Competitiveness  
Mr. Fazil Mihlar, Deputy Minister, Energy, Mines and Petroleum Resources  
Mr. Andrew Wilkinson, Leader of the Opposition

## **Samath, Mayura LBR:EX**

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**From:** Hughes, Trevor LBR:EX  
**Sent:** June 23, 2020 3:32 PM  
**To:** Wright, Don J. PREM:EX; Zacharuk, Christina PREM:EX  
**Subject:** Jurisdictional table on Temp Layoffs  
**Attachments:** Jurisdiction Scan Temp Layoff June 23 2020.docx  
  
**Importance:** High

Adds Canada's change today.  
T.

## Jurisdiction Scan – Temporary Layoff Requirement & COVID-19

as of June 23, 2020

Jurisdiction	Temporary Layoff Requirement
Alberta	The maximum time for temporary layoffs related to COVID-19 was extended from 120 days to 180 days, effective June 18, 2020 ( <i>COVID-19 Pandemic Response Statutes Amendment Act – Bill 24</i> ).
Saskatchewan	Public emergency layoff – Employers can issue layoffs as part of their response to a public emergency during an order of the chief medical health officer or an emergency declaration by the Government of Saskatchewan. Employers do not have to provide notice or pay instead of notice for layoffs that will occur during and up for up to two weeks after a public emergency period. Employees are to be scheduled on or before the end of the two weeks, otherwise their employment is considered to be terminated and pay instead of notice is due.
Manitoba	The time an employee is on layoff during the period that begins on March 1, 2020, and ends on the day on which the declaration of a state of emergency was declared under <i>The Emergency Measures Act</i> concerning COVID-19 is terminated, will not count towards the eight weeks out of the 16-week period used to determine when a temporary layoff is deemed a termination.
Ontario	Employees temporarily laid off since March 1 due to COVID-19 are now on Infectious Disease Emergency Leave, which expires six weeks after the province's declared state of emergency ends. When the six-week period ends, employees who have still not been brought back are then considered on a temporary layoff for up to 13 weeks (or 35 weeks in certain circumstances).
Quebec	No change - an employee who is laid off for a period of 6 months or more must receive, within the time periods stipulated in the Act, a notice of termination of employment.
Nova Scotia	No change – under the <i>Labour Standards Code</i> , an employer can place an employee on a temporary and indefinite layoff if there is insufficient work for the employee.
PEI	Act doesn't specify length of "temporary" layoff, so no change required
New Brunswick	No time limit and there is no severance; with regard to COVID-19, expectation is employer will bring the worker back when they are able
Newfoundland	26 weeks in a period of 33 consecutive weeks (announced June 12)
The Federal Jurisdiction	<p>6 months for employees laid off prior to March 31, 2020, and to December 30, 2020 for employees laid off between March 31, 2020 and September 30, 2020.</p> <p>For employees laid off for more than 3 months with a fixed recall date or a fixed period within 6 months:</p> <ul style="list-style-type: none"> <li>○ by 6 months or until December 30, 2020, whichever occurs first, for employees laid off prior to March 31, 2020</li> <li>○ to December 30, 2020 for employees laid off between the period of March 31, 2020 and September 30, 2020, where the fixed date or fixed period specified in the written notice occurs before December 30, 2020</li> <li>○ until the recall date where the fixed date or fixed period specified in the written notice occurs on or after December 30, 2020</li> </ul>
North West Territories	No change - 45 days during a period of 60 consecutive days

Yukon	No change – 13 weeks in a 20 consecutive week period
Nunavut	No change – 45 days in a period of 60 consecutive days

## **Samath, Mayura LBR:EX**

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**From:** Hughes, Trevor LBR:EX  
**Sent:** June 25, 2020 10:01 AM  
**To:** Wright, Don J. PREM:EX  
**Cc:** Zacharuk, Christina PREM:EX  
**Subject:** Managing Section 72

**Importance:** High

s.13

I hope this helps.  
T.



## Samath, Mayura LBR:EX

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**From:** Hughes, Trevor LBR:EX  
**Sent:** June 22, 2020 12:50 PM  
**To:** Wright, Don J. PREM:EX  
**Cc:** Zacharuk, Christina PREM:EX  
**Subject:** RE: Do you think this will be helpful

This is a good summary, <sup>s.22</sup> Whether it may now be moot is open to debate.  
If this is to go forward, I would only add one bullet at the end.

s.13  
s.13

---

**From:** Wright, Don J. PREM:EX <Don.J.Wright@gov.bc.ca>  
**Sent:** June 22, 2020 9:58 AM  
**To:** Hughes, Trevor LBR:EX <Trevor.Hughes@gov.bc.ca>  
**Subject:** Do you think this will be helpful

It may seem <sup>s.22</sup> But I am trying to make it concret.

## Samath, Mayura LBR:EX

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**From:** Meggs, Geoff PREM:EX  
**Sent:** June 23, 2020 8:00 AM  
**To:** Wright, Don J. PREM:EX  
**Cc:** Hughes, Trevor LBR:EX; Hockin, Amber PREM:EX  
**Subject:** Re: Draft options

Thanks Don, this is helpful

s.13

s.13

Geoff

---

**From:** Wright, Don J. PREM:EX  
**Sent:** Monday, June 22, 2020 9:55 PM  
**To:** Meggs, Geoff PREM:EX  
**Cc:** Hughes, Trevor LBR:EX  
**Subject:** FW: Draft options

Geoff,

I asked Trevor to work up a short note on the options. Here it is. Please note his point that the S72 process cannot be retroactive.

s.13; s.14

Dib

---

**From:** Trevor Hughes <Trevor.Hughes@gov.bc.ca>  
**Date:** Monday, June 22, 2020 at 9:50 PM  
**To:** "Wright, Don J. PREM:EX" <Don.J.Wright@gov.bc.ca>  
**Subject:** RE: Draft options

Here it is. Needed to be clear the S72 process has to be completed before the 16 weeks expire as applications for variance can't be retro.

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s.13

T.

Page 62 of 72 to/à Page 64 of 72

Withheld pursuant to/removed as

DUPLICATE

## Samath, Mayura LBR:EX

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**From:** Boyte, William (Bill) LBR:EX  
**Sent:** June 23, 2020 12:05 PM  
**To:** Leduc, Danine LBR:EX; Hughes, Trevor LBR:EX  
**Subject:** RE: GCPE Request for Web Changes

I understand that there is a desire to have the temporary layoff issue addressed by our branch, but as I have stated on many occasions this is very challenging from an operational perspective. As noted, variances can not be issued retroactively, and they do require the employer to designate the length of time requested which is challenging given the uncertainty over the timing of the pandemic. The process also requires signatures of over 50 percent of employees impacted by the variance application – which have to be collected prior to the variance being submitted. Given the tight timelines,

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s.13 Our process of reviewing the application – and then confirming agreement with the employees – is designed to ensure that both (agreement, ESA purposes met) of those conditions are verified. This a manual and time-consuming process that requires us to talk to the employees.

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If you would like to have a more robust discussion on this – or if it would help for me to explain the operational challenges to the MO, I will happily do so. In the meantime, I will work with my team to finalize and update some appropriate language for our website ASAP.

Thanks,

**William (Bill) Boyte**

**Executive Director**

Employment Standards Branch

British Columbia Ministry of Labour

Direct ☎ 778.974.2069 | Cell ☎ 250.668.3048 | 🌐 [website](#)

*Get information about Employment Standards in the language of your choice at 1 833 236-3700*

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**From:** Leduc, Danine LBR:EX <[Danine.Leduc@gov.bc.ca](mailto:Danine.Leduc@gov.bc.ca)>

**Sent:** June 23, 2020 10:51 AM

**To:** Boyte, William (Bill) LBR:EX <[William.Boyte@gov.bc.ca](mailto:William.Boyte@gov.bc.ca)>; Hughes, Trevor LBR:EX <[Trevor.Hughes@gov.bc.ca](mailto:Trevor.Hughes@gov.bc.ca)>

**Subject:** RE: GCPE Request for Web Changes

I wasn't.

---

**From:** Boyte, William (Bill) LBR:EX <[William.Boyte@gov.bc.ca](mailto:William.Boyte@gov.bc.ca)>

**Sent:** June 23, 2020 10:50 AM

**To:** Hughes, Trevor LBR:EX <[Trevor.Hughes@gov.bc.ca](mailto:Trevor.Hughes@gov.bc.ca)>; Leduc, Danine LBR:EX <[Danine.Leduc@gov.bc.ca](mailto:Danine.Leduc@gov.bc.ca)>

**Subject:** FW: GCPE Request for Web Changes

**Importance:** High

Are you aware that GCPE is asking us to push content?

---

**From:** Sampson, Chris LBR:EX <[Chris.Sampson@gov.bc.ca](mailto:Chris.Sampson@gov.bc.ca)>

**Sent:** June 23, 2020 10:48 AM

**To:** Boyte, William (Bill) LBR:EX <[William.Boyte@gov.bc.ca](mailto:William.Boyte@gov.bc.ca)>; Walsh, Mary LBR:EX <[Mary.Walsh@gov.bc.ca](mailto:Mary.Walsh@gov.bc.ca)>; Clark,

Amanda A LBR:EX <[Amanda.Clark@gov.bc.ca](mailto:Amanda.Clark@gov.bc.ca)>

**Subject:** GCPE Request for Web Changes

**Importance:** High

Hi Bill, Mary, Amanda—

I just had a call from the COVID-19 web team @ GCPE asking us to add a banner to the homepage and the [Quit, Getting Fired or Laid Off](#) page:

**Employers can request an extension to a temporary lay-off beyond 16 weeks.**

**The variance request must have agreement from the majority of employees and promote the fair treatment of employees and employers.**

Note that the “request an extension” link goes straight to the variance application.

If you have concerns about this change, can you please let me know ASAP.

**Chris Sampson** (he/him)

User Experience – Web Content Strategist

Employment Standards Branch, Ministry of Labour

236-478-0294 | [Chris.Sampson@gov.bc.ca](mailto:Chris.Sampson@gov.bc.ca)

Get information about Employment Standards: 1-833-236-3700 | [gov.bc.ca/EmploymentStandards](https://gov.bc.ca/EmploymentStandards)

## Samath, Mayura LBR:EX

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**From:** Boyte, William (Bill) LBR:EX  
**Sent:** June 18, 2020 11:39 AM  
**To:** Hughes, Trevor LBR:EX; Blakely, John H LBR:EX; Tanner, Michael A LBR:EX; Ayers, Jake LBR:EX  
**Cc:** Leduc, Danine LBR:EX; Hourston, Sveah LBR:EX  
**Subject:** RE: Temp layoffs

Hi:

s.13

Under the ESA, in typical circumstances, they would be entitled to s.63 (compensation for length of service) and s.64 (group termination). As previously mentioned there is an exception (s.65(1)(d) which states that s.63/64 may not apply if there is an unforeseeable event that has made the employee's contract of employment impossible to perform.

s.13

s.13

I  
I  
I

Happy to discuss further if questions.

B

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**From:** Hughes, Trevor LBR:EX <Trevor.Hughes@gov.bc.ca>  
**Sent:** June 18, 2020 10:56 AM  
**To:** Boyte, William (Bill) LBR:EX <William.Boyte@gov.bc.ca>; Blakely, John H LBR:EX <John.Blakely@gov.bc.ca>; Tanner, Michael A LBR:EX <Michael.Tanner@gov.bc.ca>; Ayers, Jake LBR:EX <Jake.Ayers@gov.bc.ca>  
**Cc:** Leduc, Danine LBR:EX <Danine.Leduc@gov.bc.ca>; Hourston, Sveah LBR:EX <Sveah.Hourston@gov.bc.ca>  
**Subject:** Temp layoffs  
**Importance:** High

Bill and Policy team:  
This morning, MHB formally confirmed to business there would be no further extension to the temp  
layoff period. This has caused a stir. `

s.13

s.13

s.13

T.



**From:** Hughes, Trevor LBR:EX  
**Sent:** June 15, 2020 6:43 PM  
**To:** Wright, Don J. PREM:EX  
**Subject:** Some bullets

**Importance:** High

Don, some bullets for consideration in relation to the concerns raised by employers supporting a need for a further extension to the temporary layoff notice provisions in the *Employment Standards Act*. I have tried to weigh the ask of employers against a balanced set of pros and cons – plus a consideration of impact on workers.

- What do employers seek? Employers seek an extension to the revised requirement of 16 weeks in a period of 20 to mirror Ontario's change of a couple of weeks ago. Specifically, to at least 6 weeks after state of emergency is ended. Given we have extended the state of emergency to June 23, this would represent an end date in early to mid August (or later if the state of emergency is extended further).
- Why do employers seek this extension? An additional period of time would allow an employer to bridge a period of time when it is unable to operate at full capacity (restaurants, retail, hotels) or even at all (casinos, conventions, international tourism) and maintain its workforce without having to pay severance. In the event of no extension, once the temporary layoff period is over, the employer must return workers or permanently layoff the workers which triggers severance.
- Employers are saying that if there is no extension, the requirement to pay severance may result in them closing down permanently especially if they have no capacity to defer these costs and where government is limiting or restricting their ability to be open at all and thus mitigate damages (restaurants at 50% and then those sectors in Phase 4). They want to keep the connection to their workers, not lay them off.
- Employers are saying if they have to pay the severance at expiry of 16 weeks, it may result in many simply choosing to not reopen at all – or at minimum being severely financially hamstrung to do so especially with PHO restrictions on re-opening in place.
- What is the response of organized labour and the impact on workers? Organized labour has not agreed the change should be made, noting negative impact on workers and the variance process in Section 72 of the ESA. The Ministry of Labour is not aware of the negative impact on workers given the request of employers is to maintain the employment of workers and delay any requirement to pay severance. The obligation to pay severance is not extinguished – just deferred.

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- Further, the worker still has the benefit of the CERB to tide him/her over for the longer period (and PMJT has announced this benefit will be extended).
- Notably, many employers have been continuing worker health and benefit plans (e.g., dental and extended health) during this period. If employers must layoff workers permanently sooner than hoped, these benefits would be discontinued and the workers would then have no connection to that employer if it were to eventually reopen (meaning they'd be in the job market looking for work with 13% unemployment).

- If indeed there are any negative impacts for workers, they are negated by the fact that a temporary lay-off requires an employee's consent. If an employee has not agreed to an extended temporary layoff, they are under no compulsion to accept it.
- Why is the Section 72 variance a challenge? Section 72 of the ESA allows an employer, with consent of employees, to apply to the Employment Standards Branch to vary the definition of temporary layoff and thus its length. This means that locally, an arrangement could be made to address the COVID-19 circumstances; however, it requires the ESB to approve the variance application.

s.13

s.13

Happy to discuss.  
T.

**Samath, Mayura LBR:EX**

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**From:** Meggs, Geoff PREM:EX  
**Sent:** June 25, 2020 11:18 AM  
**To:** Bains, Harry LBR:EX  
**Cc:** Wright, Don J. PREM:EX; Zacharuk, Christina PREM:EX; MacDonald, Alex LBR:EX; Hughes, Trevor LBR:EX; Hockin, Amber PREM:EX; MacLennan, Alex PREM:EX  
**Subject:** Temporary lay-off provision

Minister, as you know, government has decided to extend changes to the temporary lay-off provisions of the ESA to the end of August. Please make the necessary arrangements for a corridor order to achieve this.

Thank you.

Geoff

**GEOFF MEGGS**

Chief of Staff, Premier's Office  
West Annex, Parliament Buildings  
Victoria, BC, V8V 1K7  
250 387-1715