

From: [Hughes, Trevor LBR:EX](#)
To: [Wright, Don J. PREM:EX](#)
Cc: [Kennedy, Christine JEDC:EX](#)
Subject: Draft - Paid Sick Leave During the COVID-19 Crisis
Date: April 28, 2020 5:42:18 PM
Attachments: [59460 - Paid Sick Leave BN.pdf](#)
Importance: High

Don, further to our discussion yesterday morning, my team has prepared the attached for discussion with you. I am NOT sending it to MHB until you and I have talked about it. It's a bit longer than I asked for but in hindsight is okay with me because of the detailed analysis.

Look forward to talking.

T.

MINISTRY OF LABOUR
INFORMATION NOTE

Cliff #: 59460

Date: April 28, 2020

PREPARED FOR: Honourable Harry Bains, Minister of Labour

ISSUE: Paid Sick Leave During the COVID-19 Crisis

BACKGROUND:

A recent outbreak of COVID-19 at two poultry processing plants in the Lower Mainland has raised questions about the effectiveness of measures aimed at stopping the spread of the virus in workplaces.

According to media reports, some employees who were exhibiting symptoms of COVID-19 were continuing to work, and thus spreading the virus to their co-workers. However, it is not clear from these reports as to the reasons why these employees continued to work or why their employer allowed them to continue to work.

Possible explanations have included speculation that:

- The employer threatened the employees with job-loss if they did not continue to work;
- The employees were not aware of their existing right to job-protected unpaid leave and of their potential eligibility for federal or provincial benefits that may have covered at least part of any wage loss;
- This lack of awareness of their rights may have been exacerbated due to some or many of these employees having language or other issues making them particularly vulnerable, possibly because they were migrant or temporary foreign workers; or
- Despite the existing protections, employees needed to have more of their wages covered in order for them to not work.

The Premier, the Provincial Health Officer and others have strongly and repeatedly made the point that if a worker is sick, they should stay home. However, this incident has given rise to questions about whether workers and employers have adequate knowledge about existing entitlements and responsibilities, whether existing protections and incentives are sufficient, and whether greater paid sick leave benefits should be provided during the COVID-19 crisis.

This briefing note summarizes the existing protections and benefits, s.13
s.13

DISCUSSION:

Existing Protections:

The *Employment Standards Act*:

On March 23, 2020, the *Employment Standards Act* (the Act) was amended (Bill 16-2020) to provide unpaid job protected leave to employees in British Columbia during the COVID-19 crisis. This leave is available to an employee if, in relation to COVID-19, they meet one of several categories of eligibility (e.g., diagnosed with COVID-19 and staying at home on an order of the provincial health officer).

With respect to the outbreak at the poultry processing plants and the allegation that employees may have felt compelled to continue to work because of threats from their employer, the employees' jobs are protected under the Act, and any action by the employer to terminate employment for reasons related to COVID-19 would contravene the Act.

The Canada Emergency Response Benefit:

The Canada Emergency Response Benefit (CERB) provides temporary income support to workers who have stopped working related to COVID-19. The CERB provides \$500 per week for a maximum of 16 weeks, and is available from March 15, 2020 to October 3, 2020. The CERB is available to workers:

- Residing in Canada, who are at least 15 years old;
- Who have stopped working because of reasons related to COVID-19 or are eligible for Employment Insurance (regular or sickness benefits);
- Who had employment and/or self-employment income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application; and
- Who have not quit their job voluntarily.

A person is not required to be a Canadian citizen or permanent resident of Canada in order to be eligible for the CERB. This means that temporary foreign workers and other foreign nationals working in British Columbia may receive the CERB as long as they

meet the eligibility requirements, which include residing in Canada and having a valid Social Insurance Number. In addition, unlike Employment Insurance (regular or sickness benefits), there is no waiting period before a person may begin receiving the benefit. Finally, a provincial one-time payment of \$1,000 is also available to people whose ability to work has been affected due to COVID-19.

With respect to the outbreak at the poultry processing plants and the suggestion that the sick employees needed to work because they had no access to financial supports, the employees are eligible for the \$500/week CERB benefit along with the one-time provincial benefit of \$1,000, regardless of whether they are migrant or temporary foreign workers, as long as they meet the other eligibility requirements.

Workers' Compensation Benefits under the *Workers Compensation Act*

Workers' compensation benefits are available for an injury or illness that arises out of and over the course of employment. This means that benefits may be payable to a worker who has been diagnosed with COVID-19 if the disease arose out of or over the course of employment. To accept a claim for workers' compensation, WorkSafeBC may thus require evidence that the employee came into contact with the virus while working – for example, a health care worker having treated a known infected patient.

WorkSafeBC has announced plans to conduct an expedited consultation on a proposal to establish an occupational disease presumption for COVID-19. A presumption would mean that if workers in certain occupations are diagnosed with COVID-19, it is presumed that their disease is work-related and evidence that they specifically caught COVID-19 at work is not required. If enacted, this presumption would make it easier for workers to obtain workers' compensation benefits if they are working in certain occupations where the scientific and medical evidence show they are at greater risk of exposure to COVID-19. However, under both the current rules and the rules that could be established if a presumption is enacted, a COVID-19 diagnosis would be required. Workers' compensation would not be available for workers who withdraw from work for preventative reasons.

A presumption would not operate to presume that a person has COVID-19 if they are simply showing COVID-19 symptoms. As indicated, eligibility for workers' compensation requires a diagnosis of COVID-19, but a presumption would remove the requirement for specific evidence that it was contracted through work. In other words, once diagnosed with COVID-19, work-relatedness is presumed.

WorkSafeBC's guidance with respect to COVID-19 is as follows:

- Every employer should have a policy around sick leave and compensation if a worker cannot work due to COVID-19 concerns. These policies must abide by

the *Employment Standards Act*, which sets standards for payment, compensation, and working conditions in most workplaces;

- Workers who have to undergo quarantine due to COVID-19 concerns and are not entitled to employer-paid sick leave should apply for the federal CERB benefit; and
- Workers' compensation benefits are only available for a work-related injury or illness and are not provided to workers who withdraw from work for preventative reasons.

With respect to the outbreak at the poultry processing plants and the suggestion that sick employees needed to work because they had no access to financial supports, workers' compensation benefits may be payable to some workers who have been diagnosed with COVID-19 under certain circumstances.^{s.13}

s.13

s.13

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Withheld pursuant to/removed as

s.13; s.14

s.13; s.14

NEXT STEPS/CONCLUSION:

TBD

From: [Blakely, John H LBR:EX](#)
To: [Hughes, Trevor LBR:EX](#); [Leduc, Danine LBR:EX](#)
Cc: [Hourston, Sveah LBR:EX](#); [Tanner, Michael A LBR:EX](#)
Subject: FW: For your review
Date: May 21, 2020 12:21:13 PM
Attachments: s.12; s.13

For discussion at 12:30. Thanks

From: Tanner, Michael A LBR:EX <Michael.Tanner@gov.bc.ca>
Sent: May 21, 2020 12:04 PM
To: Blakely, John H LBR:EX <John.Blakely@gov.bc.ca>
Subject: For your review

There are a couple of comments for you and s.13
s.13

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Withheld pursuant to/removed as

s.12; s.13

From: [Hughes, Trevor LBR:EX](#)
To: [Meggs, Geoff PREM:EX](#); [Evans, Donna GCPE:EX](#)
Cc: [Wright, Don J. PREM:EX](#); [Kennedy, Christine JEDC:EX](#)
Subject: Issue Note COVID-19 | WorksafeBC Support for Workplaces Resuming Operation
Date: April 29, 2020 12:06:31 PM
Attachments: [WorkSafeBC Prevention COVID-19 - Reopening Issue Note final - 29Apr20 TH.pdf](#)
Importance: High

Geoff and Donna: further to our call yesterday evening, WorkSafeBC has prepared the attached short Briefing Note setting out a high level their workplan to support workplaces resuming operations. They have built in reference to how actions taken to make workplaces safe lead to public safety, too. They identify the process they will follow to develop guidelines, engage stakeholders, support employers and workers with questions, manage inspections, and raise awareness of workplace health and safety. I hope that this is what you were hoping to see at a high level. Happy to answer any questions or facilitate a follow-up with WorkSafeBC.

Thanks.

T.

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Trevor Hughes
Deputy Minister
Ministry of Labour (BC)

Office: (778) 974-2189

Ministry of Labour

Date: April 29, 2020

COVID-19 | Support for Workplaces Resuming Operation

WorkSafeBC recognizes the importance of getting British Columbians back to work with the appropriate measures in place to address health and safety to reduce the risk of COVID-19 transmission. Establishing safe and healthy workplaces is a shared responsibility, and WorkSafeBC will support workers and assist employers as they take ownership to effectively manage the risk of COVID-19 transmission in the workplace. A benefit of this approach is that safe workplaces for employers and workers can mean safe spaces for the public.

As the BC government plans a phased approach for the reopening of BC businesses in sectors such as education, accommodation, transportation, film and production, administration, personal services, finance, entertainment, restaurants, and hospitality, WorkSafeBC will support workers and employers in these sectors through the development of protocols and resources to ensure British Columbians are safe working at and patronizing these places of work. These protocols will be supported through education, consultation, and workplace inspections to verify they are effectively implemented and operational.

Protocols for Safe and Healthy Workplaces

- WorkSafeBC will develop guidance for workers and employers as they resume operations to reduce the risk of COVID-19 transmission. This will include information and best practices that can be used by all employers to manage the risk, including hygiene practices and physical distancing.
- WorkSafeBC will also develop industry-specific protocols and procedures to assist employers in bringing workers back to work safely.
 - Industry-specific protocols will be developed following the guidance of Provincial Health Officer and using research and best practices from around the world as other jurisdictions develop a path forward in re-opening sectors of the economy.
 - Protocols will be specific, job-focused, and practical risk-reduction measures that will allow workers to perform their job role in the safest manner. They will be developed in consultation with industry and labour groups to ensure they are practical and applicable at all workplaces.
 - Protocols will be published, distributed, and communicated to all employers so that they understand how to conduct their business while managing the risk, and supported through resources, guides, and materials that workers and employers can use to implement them at their workplace.
- Existing protocols and resources developed for businesses that have been in continual operation, including essential services, will continue to be reviewed and updated as new information and best practices become available, and to maintain alignment with updated guidance and orders as they are issued by the Provincial Health Officer. These materials are

available on worksafebc.com and have been widely accessed through the COVID-19 pandemic.

Resources for Workers and Employers

- WorkSafeBC will develop industry-specific resources including checklists, planning guides, education and training materials, signage, and other tools as required to support employers in understanding and implementing the protocols developed for their industry.
- Resources will be distributed through worksafebc.com, through industry and labour associations, Health and Safety Associations (HSAs), and through direct engagement with employers and workers to ensure every worker and employer in the province has access to the resources they need to manage the risk.
- WorkSafeBC will continue to directly connect with individual employers, industry associations, HSAs, and labour organizations to provide information and respond to questions and concerns. Resource materials will be created and amended as needed to meet the needs of workers and employers.

Prevention Information Line

- Workers and employers with questions or requiring additional assistance in reducing the risk of COVID-19 transmission at their workplace as they resume operations can call the Prevention Information Line at 1.888.621.7233 to speak directly with a prevention officer to receive advice and direction.
- Prevention officers will support these callers by directing them to appropriate occupational health and safety resources, providing additional information about requirements and protocols or conducting a workplace inspection to determine the nature of the risk and the effectiveness of the employer's control measures.
- Workers have the right to refuse work if they believe it to be unsafe. Any worker who raises concerns about COVID-19 transmission to their employer that is not resolved can contact WorkSafeBC, and a prevention officer will be assigned to assess the nature of the risk and to order the employer to undertake corrective actions if required.

Education, Consultation, and Workplace Inspections

- WorkSafeBC will engage directly with employers and workers in returning industries through education, consultation, and workplace inspections to support them as they return to partial or full operation and to disseminate resources, tools, and materials.
- Prevention officers will verify that risk reduction protocols are in place at workplaces and functioning appropriately. Prevention officers can assist employers by clarifying the protocols for their industry and explaining how the protocols may be applied in specific contexts. Prevention officers can also enforce as required to compel employers to implement the measures required to keep workers safe.
- Prevention officers will coordinate with Public Health and other enforcement agencies to ensure that businesses are operating in a manner that protects both worker and public safety.

Raising Awareness of Workplace Health & Safety to all British Columbians

- In support of Public Health lifting restrictions and the government of British Columbia re-opening sectors of the economy, WorkSafeBC will create a province-wide, multi-channel, multi-language awareness campaign about workplace health and safety during the COVID-19 pandemic.

- The province wide initiative will re-enforce that healthy and safe workplaces contribute to a healthy and safe Province for employers, workers, and the public, and will encourage us all do our part as restrictions are lifted and businesses re-open.
- This campaign will raise awareness among workers and employers about health and safety roles and responsibilities and will provide information on the many workplace health and safety supports currently available as businesses re-open throughout the province. In order to develop an effective and impactful campaign, WorkSafeBC is currently conducting research to better understand current attitudes and beliefs among workers and employers about returning to the workplace as well as gathering information on any additional COVID-19 workplace health and safety support, tools and information needed.
- WorkSafeBC will look to consult and liaise with partners as we develop and deliver messaging and resources that support COVID-19 safety for workers. In alignment with Public Health messaging and communication efforts, WorkSafeBC will engage with health and safety organizations, industry groups and other community partners to help extend the reach of this campaign. Through our multi-channel outreach we will enable messaging across a number of platforms in order reach people on their preferred channel including radio, web, social media and others. Further, workers who have questions or concerns about the risk of COVID 19 can reach out to a Prevention officer through our HSIC line, or engage with us through social media for responsive action.
- The launch of this campaign will coincide with the government announcement and we anticipate a mid-May launch.

From: [Hughes, Trevor LBR:EX](#)
To: [Wanamaker, Lori FIN:EX](#); [Wright, Don J. PREM:EX](#)
Cc: [Mihlar, Fazil EMPR:EX](#); [Kennedy, Christine JEDC:EX](#)
Subject: Paid Sick Leave BN
Date: May 13, 2020 8:29:55 AM
Attachments: [59518 - Paid Sick Leave BN.pdf](#)
Importance: High

Good morning. Attached as promised is a DRAFT BN on paid sick leave. Dated Monday but is current to today and was sent to MHB last night for his review and direction – and we are discussing it in a briefing tomorrow afternoon. Happy to have a discussion with you before then s.13

s.13

Copying in

Fazil given this is a piece that has been raised in our Thursday ERTF sessions.
Look forward to any comment/advice.

Thank you.

T.

MINISTRY OF LABOUR
INFORMATION NOTE

Cliff #: 59518

Date: May 11, 2020

PREPARED FOR: Honourable Harry Bains, Minister of Labour

ISSUE: Paid Sick Leave During the COVID-19 Crisis

BACKGROUND:

A recent outbreak of COVID-19 at two poultry processing plants in the Lower Mainland has raised questions about the effectiveness of measures aimed at stopping the spread of the virus in workplaces.

According to media reports, some employees who were exhibiting symptoms of COVID-19 were continuing to work, and thus spreading the virus to their co-workers. However, it is not clear from these reports as to the reasons why these employees continued to work or why their employer allowed them to continue to work.

Possible explanations have included speculation that:

- The employer threatened the employees with job-loss if they did not continue to work;
- The employees were not aware of their existing right to job-protected unpaid leave and of their potential eligibility for federal or provincial benefits that may have covered at least part of any wage loss;
- This lack of awareness may have been exacerbated due to some or many of these employees having language or other issues making them particularly vulnerable, possibly because they were migrant or temporary foreign workers; or
- Despite the existing protections, employees needed to have more of their wages covered in order for them to not work which may not have been covered by an employer-paid sick leave plan, assuming one was even in existence.

The Premier, the Provincial Health Officer and others have strongly and repeatedly made the point that if a worker is sick, they should stay home, including during the Premier's May 6, 2020 announcement of the next stage of BC's response to the COVID-19 pandemic. However, this incident has given rise to questions about whether workers and employers have adequate knowledge about existing entitlements and responsibilities, whether existing protections and incentives are sufficient, and whether greater paid sick leave benefits should be provided during the COVID-19 crisis.

This briefing note summarizes the existing protections and benefits, and sets out for consideration options for providing greater paid sick leave benefits in the context of the COVID-19 crisis.

DISCUSSION:

Existing Protections:

The *Employment Standards Act*:

On March 23, 2020, the *Employment Standards Act* (the Act) was amended (Bill 16-2020) to provide unpaid job protected leave to employees in British Columbia during the COVID-19 crisis. This leave is available to an employee if, in relation to COVID-19, they meet one of several categories of eligibility (e.g., diagnosed with COVID-19 and staying at home on an order of the provincial health officer).

With respect to the outbreak at the poultry processing plants and the allegation that employees may have felt compelled to continue to work because of threats from their employer, the employees' jobs are protected under the Act, and any action to terminate employment for reasons related to COVID-19 would contravene the Act.

Employer Paid Sick Leave:

Although the Ministry of Labour does not have access to data providing an accurate estimate of workers covered by employer paid sick leave, the Ministry's best estimate is that fewer than 50% of the 2.1 million paid employees in B.C. have access to paid sick leave, either on its own or in connection with employer-sponsored short and long-term disability insurance plans. Evidently, employer-paid sick leave was not available to the workers at the poultry processing plants.

The Canada Emergency Response Benefit:

The Canada Emergency Response Benefit (CERB) provides temporary income support to workers who have stopped working related to COVID-19. The CERB provides \$500 per week for a maximum of 16 weeks, and is available from March 15, 2020 to October 3, 2020 to workers:

- Residing in Canada, who are at least 15 years old;
- Who have stopped working because of reasons related to COVID-19 or are eligible for Employment Insurance (regular or sickness benefits);
- Who had employment and/or self-employment income of at least \$5,000 in 2019 or in the 12 months prior to the date of their application; and
- Who have not quit their job voluntarily.

A person is not required to be a Canadian citizen or permanent resident of Canada in order to be eligible for the CERB. This means that temporary foreign workers and other foreign nationals working in British Columbia may receive the CERB as long as they meet the eligibility requirements. In addition, unlike Employment Insurance (regular or sickness benefits), there is no waiting period before a person may begin receiving the benefit. Finally, the BC Emergency Benefit for Workers provides a one-time payment of \$1,000 to people whose ability to work has been affected due to COVID-19.

With respect to the outbreak at the poultry processing plants and the suggestion that the sick employees needed to work because they had no access to employer-paid sick leave or other financial supports, the employees are eligible for the \$500/week CERB benefit along with the one-time provincial benefit of \$1,000. For illnesses of up to 20 days or less, these benefits would cover at least 100% of the wages of approximately 50% of BC's employed workforce¹.

Workers' Compensation Benefits under the *Workers Compensation Act*

Workers' compensation benefits are available for an injury or illness that arises out of and over the course of employment, but not for injuries and illnesses that workers contract outside of work. This means that benefits may be payable to a worker who has been diagnosed with COVID-19 if the disease arose out of or over the course of employment. To accept a claim for workers' compensation, WorkSafeBC may thus require evidence that the employee came into contact with the virus while working – for example, a health care worker having treated patients infected with COVID-19.

WorkSafeBC has announced plans to conduct an expedited consultation on a proposal to establish an occupational disease presumption for COVID-19. A presumption would mean that if workers in certain occupations are diagnosed with COVID-19, it is presumed that their disease is work-related and evidence that they specifically caught COVID-19 at work is not required. If enacted, this presumption would make it easier for workers to obtain workers' compensation benefits if they are working in certain occupations where the scientific and medical evidence show they are at greater risk of exposure to COVID-19. However, under both the current rules and the rules that could be established if a presumption is enacted, a COVID-19 diagnosis would be required. Workers' compensation would not be available for workers who withdraw from work for preventative reasons, including because of possible exposure in their home or employment (in the absence of actual illness).

A presumption would not operate to presume that a person has COVID-19 if they are simply showing symptoms associated with COVID-19. As indicated, eligibility for workers' compensation requires a diagnosis of COVID-19, but a presumption would remove the requirement for specific evidence that it was contracted through work. In other words, once diagnosed with COVID-19, work-relatedness is presumed.

¹ According to Statistics Canada data, in 2018, approximately 56% of British Columbians had employment income of \$39,000 or less (equivalent to \$750/week or less).

With respect to the outbreak at the poultry processing plants and the suggestion that sick employees needed to work because they had no access to financial supports, workers' compensation benefits may be payable to some workers who have been diagnosed with COVID-19 that was contracted at work. It is unclear at this point as to whether a presumption would have made access to workers' compensation benefits easier for some of the affected workers (it may depend upon the results of WorkSafeBC's scientific and medical review and the occupations to be covered by the presumption). However, it should be reiterated that a diagnosis of COVID-19 would be required, and that unlike the CERB, benefits would not be payable if employees withdraw from work for preventative reasons.

As currently constructed, the Accident Fund established in the *Workers Compensation Act* can not act as a general paid sick leave to provide pay to a worker who stays at home in the absence of a work-related illness or injury. An alternative idea could be to provide workers' compensation wage-loss benefits to workers who are required to take a "prevention leave" from work in order to avoid spreading or coming into contact with an infectious disease. "Prevention leave" would require an amendment to the *Workers Compensation Act* and would be a new concept for British Columbia and, as far as we know, a new precedent within Canada. The intent would be to provide workers' compensation benefits when employees must stay home to prevent the spread of an infectious disease in their workplace, which in turn may prevent future workers' compensation claims for an illness contracted at work. It could also support public health policy objectives for employees to stay home when sick or when there is the risk of community spread in a workplace, and if desired be limited to diseases for which a state of emergency is declared.

OPTIONS FOR DISCUSSION:

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Withheld pursuant to/removed as

s.13

From: [Hughes, Trevor LBR:EX](#)
To: [Wright, Don J. PREM:EX](#); [Brouwer, Shauna TAC:EX](#); [Allan, John FLNR:EX](#); [Baskerville, Shannon AEST:EX](#); [Bond, Allison MCF:EX](#); [Krishna, Kaye MAH:EX](#); [Jardine, Kevin ENV:EX](#); [Caul, Doug D IRR:EX](#); [Galbraith, David J SDPR:EX](#); [MacDonald, Scott D EDUC:EX](#); [Brown, Stephen R HLTH:EX](#); [Main, Grant TRAN:EX](#); [Mihlar, Fazil EMPR:EX](#); [Nikolejsin, Dave EMPR:EX](#); [Kot, Jill CITZ:EX](#); [Ethier, Tom AGRI:EX](#)
Subject: RE: Distribution List
Date: May 4, 2020 5:13:34 PM
Attachments: [Process for Safe Workplaces for Restart - Prepared by TH - May 4 2020.pdf](#)

Folks, attached as promised is a draft document outlining the process and some tips for you, including input directly from WorkSafeBC on their process for the restart/re-opening. Some of you have seen an earlier version of this from April 1 or thereabouts when we were establishing the process for essential sectors. There are several new elements to today's document. I'm happy to answer any questions you may have. Also want to acknowledge Dave N's team who gave me some helpful edits to address mines and work camps. I wrote this so any errors are mine.
T.

From: Wright, Don J. PREM:EX <Don.J.Wright@gov.bc.ca>
Sent: May 4, 2020 8:50 AM
To: Brouwer, Shauna TAC:EX <Shauna.Brouwer@gov.bc.ca>; Allan, John FLNR:EX <John.Allan@gov.bc.ca>; Baskerville, Shannon AEST:EX <Shannon.Baskerville@gov.bc.ca>; Bond, Allison MCF:EX <Allison.Bond@gov.bc.ca>; Hughes, Trevor LBR:EX <Trevor.Hughes@gov.bc.ca>; Krishna, Kaye MAH:EX <Kaye.Krishna@gov.bc.ca>; Jardine, Kevin ENV:EX <Kevin.Jardine@gov.bc.ca>; Caul, Doug D IRR:EX <Doug.Caul@gov.bc.ca>; Galbraith, David J SDPR:EX <David.Galbraith@gov.bc.ca>; MacDonald, Scott D EDUC:EX <D.Scott.MacDonald@gov.bc.ca>; Brown, Stephen R HLTH:EX <Stephen.Brown@gov.bc.ca>; Main, Grant TRAN:EX <Grant.Main@gov.bc.ca>; Mihlar, Fazil JEDC:EX <Fazil.Mihlar@gov.bc.ca>; Nikolejsin, Dave EMPR:EX <Dave.Nikolejsin@gov.bc.ca>; Kot, Jill CITZ:EX <Jill.Kot@gov.bc.ca>; Ethier, Tom FLNR:EX <Tom.Ethier@gov.bc.ca>
Subject: Distribution List

Apologies Jill.

I think this is the complete one now.

Don



May 4, 2020

Memo to Deputy Ministers

Re: Coronavirus COVID-19

Process to determine safe workplaces by industry/sector to facilitate economy restart

Government is working across Ministries and agencies to support the work of the Provincial Health Officer (PHO) who is the lead in managing the approach to combat the current public health crisis associated with the Coronavirus COVID-19 pandemic. In the current provincial state of emergency, the PHO has made orders and published guidelines as needed with which compliance is required. Don this morning has provided a 2-pager that lists all such items with weblinks.

At the same time, there are other agencies that have responsibility for and jurisdiction over a number of related issues. For the purposes of this memo, that includes WorkSafeBC which has responsibility for the application and enforcement of the *Workers Compensation Act* (WCA) and the *Occupational Health and Safety Regulation*. There are other agencies who can and will have a role that may be equivalent to the WorkSafeBC process set out below because of their separate regulatory authority. For example, the mining industry is regulated under the *Mines Act* and compliance oversight and inspections are addressed by the Chief Inspector of Mines and the Mines Health, Safety & Enforcement Division in EMPR. With respect to major industrial work camps, they are subject to the PHO Industrial Camps Order and Industrial Camps guidelines and are regulated under the *Industrial Camps Regulation* which is established under the *Public Health Act*.

Government has identified that it is a priority to establish a process to be able to provide guidelines to help employers determine safe workplaces on an industry or sector-wide basis as the economy begins a restart with an announcement by Premier Horgan on May 6. The Ministry of Labour has worked with the Ministry of Jobs, Economic Development and Competitiveness, the PHO and WorkSafeBC to develop a process which has been in place for about a month to guide essential sectors to operate safely. This work is evolving and the process is iterative as the pandemic evolves, but also as the orders and guidelines are developed, distributed and implemented.

The following principles guide the work on the process:

- There is a balance between ensuring worker, employer and public safety with the need to ensure where it is safe, employers can make the decision to safely re-open. To this point, the decision to operate has mainly been because the business is essential, because

curtailment of the operation could result in severe long-term economic and financial consequences, or because it has been important to keep the economy going (and workers earning wages) as much as possible. As we move to re-open closed sectors and services, the ultimate decision resides with each individual employer – that is, government is not going to mandate re-opening but rather will set the principles for how re-opening can be done safely.

- The *Emergency Program Act* powers of March 26, 2020 expressly give municipal bylaw officers the ability to enforce the orders and directives of the PHO (http://www.bclaws.ca/civix/document/id/mo/mo/2020_m082).
- Employers ultimately are responsible under the WCA for the health and safety of their workplace such that the onus resides with them, with input and advice from WorkSafeBC and the PHO on their respective mandates. As a result, they have a role in identifying the challenges and issues with health and safety in the context of COVID-19. There is also a role for workers and unions in part because they are the ones on the front line, but also because they have expertise and knowledge about health and safety.
- Workers have a right to refuse unsafe work under the WCA. There is no mandate to address the protection of the public under the workers' compensation system; however, what WorkSafeBC is being mindful of is that in the development of plans, employers are going to consider how the workplace can be safe for both workers and the public.

Where are we now?

Several industry/sector specific guidelines have been issued. The first one was issued on March 22, 2020 for construction, which established a template. WorkSafeBC was then able to customize it to add a construction specific OHSR reference to deal with an issue raised by organized labour (hand-washing facilities). The PHO has, on their own initiative, or based on industry requests established more orders and guidelines with further guidelines in progress. As they are issued, WorkSafeBC follows the same process as for construction to link in the applicable OHSR along with any industry Health & Safety Association. There is also an opportunity for review and input by the BC Federation of Labour and its affiliate unions to provide input on guidelines going forward.

Completed PHO guidance documents exist for a number of industries and are available at the following website: <https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/covid-19-novel-coronavirus>

WorkSafeBC has guidance documents for the following ten industries/sectors which are available at the following website: <https://www.worksafebc.com/en/about-us/covid-19-updates/covid-19-industry-information>. Additional guidance documents will be added for non-essential sectors over the coming weeks.

- Agriculture;
- Construction;
- Forestry;
- Health care;
- Hospitality;
- Manufacturing;
- Municipalities;

- Retail;
- Small business; and
- Transportation.

You will note that within some of the above sectors, there are sub-sectors. For example, Transportation has sections for ride hailing, transit, and trucking. This may be appropriate for some of your industries so I would ask that you consider high level industry groupings where sub-sectors may make sense.

On April 30, Don distributed a high-level flowchart that shows the steps – with additional context as follows:

- Step 1: As noted above, the PHO and WorkSafeBC have issued general and sector-specific guidelines for safe operation of workplaces. The PHO guidelines are to be relaxed in the coming days, including with reference to specific sectors, including transit, camps, schools, and parks.
- Step 2: You connect with your industry or sector association to invite them to begin preparations of a restart/re-open plan based on the orders and guidelines prepared by the PHO and WorkSafeBC. For essential sectors, they are encouraged to submit plans that incorporate the revised PHO guidelines. There will be some work to sort out which sectors will lead this process (see challenge #1 below).
- Step 3: Industry develops a restart/re-open plan. There will need to be work done to sort out within each sector which groups beyond industry or sector associations should be consulted or engaged. For example, certain sectors are heavily unionized and there could be a role for organized labour to be consulted (e.g., hotels, film, transit). In addition, there may be a Health & Safety Association (HSA) that can provide expert health and safety advice (e.g., in film there is ActSafe and in tourism/hospitality there is go2HR). I can assist with contact to unions and to HSAs where applicable. Further, there are certain regulated professions that may require engagement in the development of a plan (e.g., dental hygienists, optometrists, traditional Chinese Medicine are regulated health professionals under the *Health Professions Act*).
- Step 4: WorkSafeBC can be consulted upon completion of a near final draft of a plan to address any applicable OHS regulations especially in sectors that have unique and specific requirements. I can facilitate that contact. WorkSafeBC is developing guidance for workers and employers as they resume operations. This will include information and best practices that can be used by all employers to reduce the risk of COVID-19 transmission, including physical distancing and good hygiene practices. WorkSafeBC will also develop and publish online industry-specific protocols and procedures to assist employers in bringing workers back to work safely. Protocols will be published, distributed, and communicated to all employers so that they understand how to conduct their business while managing the risk, and supported through resources, guides, and materials that workers and employers can use to implement them at their workplace. The format for the final “approval” is still being worked out (to address the challenge #2 below).
- Step 5: The plan is sent back to the parties in Step 3 to amend, finalize, distribute and apply. WorkSafeBC will engage directly with employers and workers in returning

industries through education, consultation, and workplace inspections to support them as they return to partial or full operation and to disseminate resources, tools, and materials. The guidelines can be amended and revised as circumstances require and evolve.

Challenges:

1. There is a desire to identify the priority non-essential sectors where we will be focusing our attention. WorkSafeBC has asked for a list to be able to prioritize its work and, as you know, we outlined a few sectors this morning. I have passed this along to WorkSafeBC, noting particularly transit, child care and restaurants but also certain personal services, retail/malls, offices, hotels, museums/theatres, film industry, parks, real estate, and meat packing. However, the challenge for this prioritization will be whether industry and employers are ready to prepare plans and actually re-open. Further, we know some of these sectors will get extra scrutiny because of health challenges within them. For example, meat packing plants where we have seen outbreaks and certain personal care services where operators have signed a petition seeking to not be forced to re-open (which as noted above is not the role for government).
2. While WorkSafeBC will prepare and issue guidelines in a number of non-essential sectors to help industry prepare their own plans, WorkSafeBC's review will not result in any formal letter or designation confirming their review or approval. That is because their approval is only of a sector's plan, not a worksite-by-worksite review. Further, the approval is only a point in time – that means that any approval could be immediately out of date if an employer does not fulfill its obligation to maintain the plan's requirements (e.g., maintain social distancing and hygiene controls). I am advised that at least one industry association (restaurants) is considering a process whereby an employer can implement its plan based on the industry plan, apply online and affirm its compliance with the industry plan, and be issued a "sticker" by the association to put on its door to signal compliance to consumers.
3. On enforcement and interpretation, some industries and officials are seeking WorkSafeBC direction on the application of PHO orders. As noted above, this is a jurisdictional challenge. WorkSafeBC has been able to work with Health Authority inspectors to actually do inspections in tandem in some locations (most notably LNG Canada). Further, now that municipal bylaw inspectors have authority to enforce PHO orders, there are now more resources for employers to get answers to questions about those orders instead of going to the PHO or WorkSafeBC.

Trevor Hughes
Deputy Minister

From: [Hughes, Trevor LBR:EX](#)
To: [Scott, Samantha LBR:EX](#); [MacDonald, Alex LBR:EX](#)
Subject: RE: Protection of worker health and safety during COVID-19 pandemic
Date: April 29, 2020 10:34:28 AM
Importance: High

Thanks – if decision is to just do a letter, I want to flag for you WorkSafeBC has taken action on this. They created a worker specific page for COVID-19 and right to refuse unsafe work.

<https://www.worksafebc.com/en/about-us/covid-19-updates/health-and-safety/what-workers-should-do>

T.

From: Scott, Samantha LBR:EX <Samantha.Scott@gov.bc.ca>
Sent: April 29, 2020 10:03 AM
To: MacDonald, Alex LBR:EX <Alex.MacDonald@gov.bc.ca>; Hughes, Trevor LBR:EX <Trevor.Hughes@gov.bc.ca>
Subject: FW: Protection of worker health and safety during COVID-19 pandemic

Please see letter attached from Stephen Hunt requesting a meeting with MHB re what steps WorkSafeBC and the province are taking to ensure that workplaces are safe during COVID-19 and that workers are apprised of their Right To Refuse Unsafe Work.

Cheers,

Samantha Scott | Ministerial Assistant to the Honourable Minister Bains
Ministry of Labour
PO Box 9044 Stn Prov Gov, Victoria, BC, V8W 9E2 | 778-679-4889

From: Minister, LBR LBR:EX <LBR.Minister@gov.bc.ca>
Sent: April 28, 2020 4:33 PM
To: Scott, Samantha LBR:EX <Samantha.Scott@gov.bc.ca>
Subject: Protection of worker health and safety during COVID-19 pandemic

Hi Sam,

Would like a Minister's response?

Thanks,

Mayura

From: Hunt, Steve <shunt@usw.ca>
Sent: April 28, 2020 1:54 PM

To: Minister, LBR LBR:EX <LBR.Minister@gov.bc.ca>; Naser, Anne WCB:EX
<Anne.Naser@worksafebc.com>
Cc: president@bcfed.ca
Subject: Protection of worker health and safety during COVID-19 pandemic

Please see attached.

Stephen Hunt, Director
United Steelworkers District 3
300-3920 Norland Avenue
Burnaby, BC V5G 4K7
P: 604-683-1117
C: 604-816-2554
E: shunt@usw.ca

From: [Hourston, Sveah LBR:EX](#)
To: [Hughes, Trevor LBR:EX](#)
Cc: [Tanner, Michael A LBR:EX](#); [Blakely, John H LBR:EX](#); [Leduc, Danine LBR:EX](#)
Subject: RE: Sick Leave BN
Date: May 19, 2020 4:29:54 PM
Attachments: [59518 - Paid Sick Leave BN \(updated May 19\).pdf](#)

Assuming no further changes, PDF copy with edits/changes accepted.

From: Hughes, Trevor LBR:EX <Trevor.Hughes@gov.bc.ca>
Sent: May 19, 2020 4:21 PM
To: Blakely, John H LBR:EX <John.Blakely@gov.bc.ca>; Leduc, Danine LBR:EX <Danine.Leduc@gov.bc.ca>; Hourston, Sveah LBR:EX <Sveah.Hourston@gov.bc.ca>
Cc: Tanner, Michael A LBR:EX <Michael.Tanner@gov.bc.ca>
Subject: RE: Sick Leave BN
Importance: High

This is very good – I made a couple minor edits in the attached. s.13
s.13

Thanks.
T.

From: Blakely, John H LBR:EX <John.Blakely@gov.bc.ca>
Sent: May 19, 2020 3:19 PM
To: Hughes, Trevor LBR:EX <Trevor.Hughes@gov.bc.ca>; Leduc, Danine LBR:EX <Danine.Leduc@gov.bc.ca>; Hourston, Sveah LBR:EX <Sveah.Hourston@gov.bc.ca>
Cc: Tanner, Michael A LBR:EX <Michael.Tanner@gov.bc.ca>
Subject: FW: Sick Leave BN

Trevor and Danine,

If it's not too late, please use this version, which incorporates a reference (bottom of page 2) to the call from business leaders to have paid sick leave covered under the EI program.

Thanks

From: Blakely, John H LBR:EX
Sent: May 19, 2020 3:06 PM
To: Hughes, Trevor LBR:EX <Trevor.Hughes@gov.bc.ca>; Leduc, Danine LBR:EX <Danine.Leduc@gov.bc.ca>; Hourston, Sveah LBR:EX <Sveah.Hourston@gov.bc.ca>
Cc: Tanner, Michael A LBR:EX <Michael.Tanner@gov.bc.ca>
Subject: FW: Sick Leave BN

Trevor and Danine,

Here is the latest draft of the paid sick leave note. ^{s.13}

s.13

of employer-paid sick leave to cover the EI waiting period.

Let us know if you would like some other edits, or if you have comments or questions.

Thanks

From: Tanner, Michael A LBR:EX <Michael.Tanner@gov.bc.ca>

Sent: May 19, 2020 2:13 PM

To: Blakely, John H LBR:EX <John.Blakely@gov.bc.ca>

Subject: Sick Leave BN

I tracked my changes in a new version in the appropriate folder in the BN directory on LAN.

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Withheld pursuant to/removed as

s.13