

MINISTRY OF LABOUR  
**INFORMATION NOTE**

Cliff #: 59518

Date: May 19, 2020

**PREPARED FOR:** Honourable Harry Bains, Minister of Labour

**ISSUE:** Paid Sick Leave During the COVID-19 Crisis

**BACKGROUND:**

The spread of the COVID-19 pandemic to Canada and British Columbia has raised questions about the effectiveness of measures aimed at stopping the spread of the virus in workplaces. In particular, this includes concerns that the absence or inadequacy of existing paid sick leave for many workers in Canada and BC encourages sick people to go to work because they cannot afford the income loss, undermining the public health principle that sick workers should stay home.

Historically, as a society, we have tolerated a system that sees workers coming to work when mildly ill despite the risk of spreading infectious diseases like the common cold and seasonal flu to other workers and members of the public. COVID-19, however, has raised the stakes. The experiences of countries like Italy, Spain, Britain and the United States hit hard by the COVID-19 pandemic – and our own experiences in long-term care facilities in BC and elsewhere in Canada – reveal the serious consequences (more severe illness, fatalities, strains on the health care system, and business shutdowns) when individuals infected with a serious infectious agent go to work because they cannot afford to stay at home.

A recent outbreak of COVID-19 at two poultry processing plants in the Lower Mainland provides another example that highlights some of the questions and issues for British Columbians. 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 throughout the COVID-19 emergency 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, the outbreaks in BC's long-term care facilities and these two poultry processing plants have brought public focus 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.

Other jurisdictions recognized the role that paid sick leave plays in public health and economic policy. The United States enacted federal legislation providing up to two weeks of employer-paid sick leave for COVID-19 that applies to certain employers, while California, Oregon, Washington and seven other U.S. states have laws providing for employer-paid sick leave on an ongoing basis. Internationally, most European and many Latin American countries, as well as Australia and others, have legal requirements in place for paid sick leave.

While almost all jurisdictions in Canada mandate a certain amount of **unpaid** sick leave under employment standards legislation, employer-paid sick leave is only required in Prince Edward Island (1 day), Quebec (2 days) and the federal jurisdiction (3 days). There is also the federal Employment Insurance sickness benefit that provides eligible Canadians with 55% of their earnings to a maximum of \$573 a week for up to 15 weeks, following a one-week waiting period, if they cannot work for medical reasons. As well, as set out in the Discussion below, financial assistance from the federal and provincial governments has been enhanced specifically to respond to the COVID-19 pandemic.

The Canadian Labour Congress, specific unions such as Unifor, and the Retail Action network (a workers' rights group) are calling on the federal and British Columbia governments to ensure adequate paid sick leave for COVID-19 and/or more generally. Business leaders from British Columbia and across Canada have written to the Prime Minister in support of having paid sick leave covered through enhancements to the Employment Insurance sickness benefits or through the Canada Emergency Response Benefit.

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 workforce<sup>1</sup>.

#### 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.

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

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<sup>1</sup> 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).

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.<sup>s.13; s.17</sup>

s.13; s.17

## OPTIONS FOR DISCUSSION:

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