

MINISTRY OF LABOUR
INFORMATION NOTE

Cliff #: 61084

Date: March 5, 2021

PREPARED FOR: Honourable Harry Bains, Minister of Labour

ISSUE: Ministry of Labour's involvement with the 2021 Canada-British Columbia Immigration Agreement

BACKGROUND:

BC (represented by the Ministry of Municipal Affairs) and Canada (represented by Immigration Refugees and Citizenship Canada (IRCC)) are signatories to the Canada-British Columbia Immigration Agreement (the "Agreement"). This Agreement outlines BC and federal roles in managing immigration and provides a platform to co-operate on issues of shared interest. Various versions of the Agreement have been in place since 1998.

The current Agreement was signed in 2015 and expires on April 6, 2021. Following a joint review of the current Agreement, completed in 2019, Canada and BC began negotiations on a renewed Agreement in late 2019 to reflect new federal immigration policy/program directions and provincial priorities.

The Agreement contains general provisions, which set out the roles and responsibilities of the parties, and four Annexes: Provincial Nominees, Foreign Workers, International Students and Information Sharing.

Under these Annexes, BC has the authority to nominate potential immigrants through the Provincial Nominee Program, receive immigration data, collaborate on foreign worker protection and international student immigration policy, and support expedited processing of foreign workers in certain circumstances. BC does not receive any funding through the Agreement.

Of main interest to the Ministry of Labour are the provisions which relate to Temporary Foreign Workers and their protection. Ministry of Labour staff provided input on the Foreign Worker Annex to the Agreement.

The Foreign Worker Annex has remained mostly unchanged for the life of the Agreement. However, in this negotiation, both parties agreed to add provisions to:

- 9.3 - collaborate to inform Foreign Workers about their rights under applicable federal and provincial laws, including those that regulate employment and recruitment in British Columbia, and

- 12.1.1 - establish a Canada-British Columbia Foreign Worker Working Group to discuss areas of potential collaboration with respect to the TFW Program and the International Mobility Program, and to oversee the implementation of this Annex (Ministry of Labour staff will be invited to sit on this committee.)

DISCUSSION:

Municipal Affairs' interest is predominantly with immigration policy, whereas the Ministry of Labour focuses on worker protection. The focus of our interests lay in the promotion of workers' rights and protections, which is included in the Foreign Worker Annex to this agreement.

Ministry of Labour staff do not have any concerns with the proposed agreement.

NEXT STEPS:

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Upon approval and deposit of the OIC prior to April 6, 2021, the Agreement will be signed by Minister Osborne and then by the federal Minister.

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Prepared by: Luke Krayenhoff, Senior Policy Advisor

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MINISTRY OF LABOUR
INFORMATION NOTE

Cliff #: 61091

Date: March 9, 2021

PREPARED FOR: Honourable Harry Bains, Minister of Labour

ISSUE: BC Labour Relations Board (the Board) 2020 Annual Report

BACKGROUND: The *Labour Relations Code* (the Code) requires the Board to prepare an annual report for the previous calendar year on or before March 1st. The annual report must be tabled in the Legislature “as soon as is practicable” (in accordance with Section 157 of the Code). The Attorney General, who has responsibility for that section of the Code, tabled the report in the Legislature on March 8, 2021.

DISCUSSION: The report summarizes the Board’s activities for 2020, describes the Board’s organization and services, highlights major decisions made by the Board, and gives case summaries of judicial review decisions on Board decisions over the year. It also contains a comprehensive set of statistical tables regarding applications and complaints to the Board. Key highlights from the report are as follows:

- The 2019 amendments to the Code (Bill 30) were a theme for the work of the Board in 2020, along with impacts due to COVID-19. As a result of the statutory changes, including the time period for conducting a vote, significant internal work had to be done to ensure that the Board was able to operationalize its new mandate.
- Necessitated by the pandemic, the Board successfully implemented online voting in certifications. With the exception of a handful of mail ballot votes, all votes held since June 8, 2020 have been conducted electronically and within the five business-day window set out in the Code.
- The annual report indicates that the shift to online voting improved employee participation in the certification process. Almost 45% of in-person votes resulted in voter turnout of less than 85%, in comparison to just under 30% of online votes resulting in turnout of less than 85%. Online voting was more than twice as likely to result in voter turnout in the 85% to 94% range than in person or mail voting.
- In 2020, the Board disposed of 1,164 complaints and applications. This compares with 1,333 in 2019.
- In 2020, 35 applications for a reconsideration of a Board decision were disposed of, with 3 applications resulting in a revision of the original decision.
- With respect to the number of certifications granted by the Board, the report shows a slight uptick since 2019 from the pattern in the 4 years preceding:
 - 61 in 2015.
 - 55 in 2016.
 - 58 in 2017.
 - 58 in 2018.

- 85 in 2019.
- 66 in 2020. Organizing drives were down compared to 2019 (likely due in part to workplaces being closed or workers working remotely), yet certifications still exceeded every year from 2015 to 2018.
- Remedial certifications (as a remedy for employer unfair labour practices) were used for the first time since 2015 – in 2 cases in 2019 and 1 in 2020.
- There were 50 unfair labour practice complaints filed in 2020 related to issues such as employer right to communicate and prohibition of coercion and intimidation – with 34 filed in 2019. There were 19 filed in 2017 and 59 in 2018.

Implications for future changes to the Code:

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- With respect to the impact of Bill 30 on the certification process, the initial statistics point to a potential noteworthy trend when looking at the percent of certification applications that result in certifications being granted:
 - For the years 2019 and 2020: roughly 60% were granted [64% in 2019 and 56% in 2020].
 - For the 5 years before 2019 (2014-2108): roughly 53% were granted.
 - For the 5 years previous to that (2009-2013): roughly 47% were granted.
- It is noteworthy that one of the decisions noted above granting remedial certification was a direct result of the Bill 30 changes and confirmed government's intent when it amended section 14 of the Code. In that decision the Panel stated:

"We find that under the new language, a union is no longer required to establish that "but for" the unfair labour practice it would likely have achieved majority support, at least in circumstances where the unfair labour practice "hit hard and hit early". As explained in the [section 3] Report, Section 14 was amended precisely because the "but for" requirement tended to incentivize "hit hard, hit early" unfair labour practices".

CONCLUSION/NEXT STEPS: The report demonstrates the Board's success at continuing to operate effectively as it adapted to the challenges of the Pandemic. The report provides helpful information and initial statistics which will be a useful starting point in the analysis of Bill 30's impact on worker access to collective bargaining.

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Prepared by: Jake Ayers, Assistant Director, Labour Policy and Legislation Branch

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MINISTRY OF LABOUR

DECISION NOTE

Cliff #: 61102

Date: March 11, 2021

PREPARED FOR: Honourable Harry Bains, Minister of Labour

ISSUE: Job-protected leave for employees to receive their COVID-19 vaccinations

BACKGROUND:

Neither the *Employment Standards Act* (the Act) nor other provincial legislation provides paid or unpaid job-protected leave for employees in BC to take time off work to receive their COVID-19 vaccination dose(s).

Employees currently require their employers' agreement, which may be reflected in employer policies or in collective agreements, to receive their vaccinations during working hours without the risk of job loss, or the employees must schedule their appointments during off-work hours.

DISCUSSION:

Since early in the pandemic (March 2020), the Act provides unpaid job-protected leave for specified situations related to COVID-19, such as if the employee is diagnosed with COVID-19 or is required to self-isolate. Other situations related to COVID-19, including vaccination leave, may be prescribed by regulation for the purpose of this unpaid leave.

Because the Act provides authority to establish COVID-19 vaccination leave by regulation, and such leave is consistent with the scheme of the Act, the Ministry of Labour proposes that an order to enact unpaid job-protected leave under the *Emergency Program Act* need not be considered.

The Act does not currently permit paid vaccination leave to be added by regulation.

In a letter dated March 9, 2021 (see attached), the United Food and Commercial Workers International Union Local 1518 (UFCW) requested that front-line workers in grocery, retail, industrial food, and home care be granted the right to four uninterrupted hours off work to receive their vaccines, similar to how workers in BC have the right to four uninterrupted hours off work to vote.¹

¹ While UFCW refers to the election day model, their request appears to be somewhat different from what the *Election Act* actually provides for, i.e., it entitles voters to "four consecutive hours free from work", while the UFCW is seeking "four uninterrupted hours off work". The *Election Act* does not require employers to give employees any time off if they already have four scheduled hours free from work between 8 am and 8 pm and thus can vote during off-work hours.

If government wishes to pursue job-protected vaccination leave (paid or unpaid), the ministry would have to assess the appropriateness of the four-hour period requested by the UFCW. This includes discussions with health officials on whether a four-hour period would align with BC's vaccine roll-out plan throughout the province, and whether there is authority to specify a time period in the regulation as proposed by the UFCW.

OPTIONS:

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RECOMMENDED OPTION:

For discussion.

ATTACHMENTS: Attachment 1: March 9, 2021, Letter from UFCW
Attachment 2: *Election Act* – Section 74 (“Time off from work for voting”)

Approved / Not Approved	Date:
Minister's Signature:	

DM Contact: Trevor Hughes, 778-974-2189

Prepared by: Michael Tanner, Director, Labour Policy and Legislation Branch

Attachment 1: March 9, 2021, Letter from UFCW



WE FIGHT FOR FAIRNESS
Kim Novak, President & Patrick Johnson, Secretary-Treasurer

March 9, 2021

Email: LBR.Minister@gov.bc.ca

Ministry of Labour
PO Box 9206 Stn Prov Govt
Victoria, BC V8W 9T5

Letter to Minister of Labour, Hon. Harry Bains: Ensure front-line workers have the right to time off to receive a COVID-19 vaccination.

Dear Minister Bains,

As the vaccination effort in British Columbia is ramping up, many front-line workers are anxious to receive their first dose. As you know, these workers have done a phenomenal job in helping their communities withstand the COVID-19 crisis, and they are looking forward to returning to a more normal pace of life. Given their higher levels of contact with the public, these workers must receive vaccinations in a timely fashion so they can continue to help flatten the curve on this terrible pandemic.

During elections, workers have the right to four uninterrupted hours off work to vote. This provision protects the franchise for working people, who otherwise might not be free to vote during the workday. We ask that front-line workers in grocery, retail, industrial food, and home care be granted the right to four uninterrupted hours off work to receive their vaccines.

It is critical that front-line workers have access to vaccination clinics when they are open and that employers cannot retaliate against them or unfairly refuse this time off. Front-line workers in these environments may not have recourse to take regular time off in the short turnaround between becoming eligible for a vaccine and receiving an appointment. The government should step in to prevent logistical barriers to vaccination for front-line workers.

The Government of British Columbia has put forward an incredible effort to vaccinate the most vulnerable people in our province. As more people gain access to the vaccine, every barrier to vaccination must be minimized to move closer to herd immunity and protect those who cannot be vaccinated. Ensuring four uninterrupted hours off work for every front-line worker to receive a vaccine is a sensible measure to keep the vaccination effort on track.

Yours truly,

A handwritten signature in black ink, appearing to be 'KN', written over a horizontal line.

Kim Novak
President, UFCW 1518

cc: Minister Dix (emailed)
Dr. Bonnie Henry (emailed)

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Attachment 2: *Election Act* - Section 74 (“Time off from work for voting”)

Time off from work for voting

74 (1) Subject to subsections (1.1) and (1.2), an employee who is entitled to vote in an election or who, on registration, will be entitled to vote in the election is entitled to have 4 consecutive hours free from employment during voting hours for general voting.

(1.1) If both of the following apply, an employee is entitled to have 4 consecutive hours free from employment during voting hours for advance voting:

(a) the employee has hours of employment scheduled on general voting day such that the employee would not have 4 consecutive hours free from employment during voting hours;

(b) the employee is willing to vote at an advance voting opportunity.

(1.2) An employee who is entitled to time off under subsection (1.1) is not entitled to time off under subsection (1).

(2) If an individual's hours of employment do not allow for the consecutive hours referred to in subsection (1) or (1.1), the individual's employer must allow the individual time off from employment to provide those hours.

(3) The employer may set time off required by subsection (2) as best suits the convenience of the employer.

(4) An employer must not

(a) without reasonable justification, fail to grant to an employee sufficient time off as required by subsection (2), or

(b) make a deduction in pay for the time off or exact any penalty from the employee for the time off.

(5) The following are not entitled to time off under this section:

(a) election officials and individuals employed or retained by the chief electoral officer or a district electoral officer to work on general voting day;

(b) individuals who, by reason of employment, are in such remote locations that they would be unable to reasonably reach any voting place during voting hours.

MINISTRY OF LABOUR
INFORMATION NOTE

Cliff #: 61104

Date: March 12, 2021

PREPARED FOR: Honourable John Horgan, Premier

ISSUE: Premier Horgan is scheduled to meet with David Black, President of MoveUp.

BACKGROUND: MoveUP is the name used by Local 378 of the Canadian Office and Professional Employees Union (COPE). MoveUP represents more than 12,000 union members at public and private sector companies in Western Canada. This includes employees at Fortis, BC Hydro, Translink, BC Transit, and ICBC.

DISCUSSION: In January and February, David Black and other MoveUP officials met separately with the Honourable Harry Bains, Minister of Labour and Parliamentary Secretary Adam Walker. Prior to both meetings a submission was made outlining key issues to be raised by MoveUP (see attached submission).

The labour issues discussed at the meetings were as follows:

Successorship rights: In 2019, government amended the *Labour Relations Code* (Code) after receiving recommendations from a panel of special advisors who reviewed the Code. One of the amendments extended union successorship rights (i.e., the right of a union to maintain its certification when a business is sold or transferred) to situations where contracted services in specified sectors are retendered to another service provider.

MoveUP advocates for a further expansion of the successorship provisions so that they apply to the retendering of ALL contracted services.

Card-check union certification: The 2019 amendments to the Code maintained the secret ballot vote for union certifications, but made several changes to improve the fairness of the certification process. This included shortening the time between certification applications and the secret ballot vote (from 10 days to 5 days), strengthening the restrictions on employer communication during an organizing campaign, as well as expanding the Labour Relations Board's ability to impose certification in response to employer unfair practices.

MoveUP advocates for a return to card-check certification to further enhance the ability of unions to organize workers without the undue interference of employers.

Sectoral Bargaining: MoveUP raises concerns about the increase in remote workers and the challenges this has for union organizing under the traditional certification model. Move-UP advocates for changes to the Code which would facilitate sector wide certification and collective agreement models.

Soft tissue injuries: MoveUP argues that the way WorkSafeBC adjudicates musculoskeletal (MSK) injury or Activity-Related Soft Tissue Disorders (ASTDs) routinely and unfairly results in the denial of compensation to workers. MoveUP advocates for the adoption of recommendations in Janet Patterson's report to government on the workers' compensation system (publicly released in August 2020). That report includes specific recommendations related to soft tissue issues.

SUGGESTED RESPONSES: The following suggested response aligns with the response provided by Minister Bains to MoveUP earlier this year. The Minister stressed the importance of the consultation mechanism being established before workplace legislation will be contemplated to ensure broad-based support.

- *Building on the 2019 changes to the Labour Relations Code, one of the priorities in the Minister of Labour's current mandate letter is to ensure that every worker has the right to join a union and bargain for fair working conditions.*
- *Another priority is to create new consultative mechanisms to engage worker and employer representatives on workplace legislation changes.*
- *As we look toward full economic recovery, it will be important to engage with employer and worker representatives regarding any proposed changes to workplace legislation, to ensure the widest possible support.*
- *The Minister of Labour's mandate letter includes direction to increase the number of WorkSafeBC caseworkers and increase workplace safety inspections. The mandate letter also directs the Minister to partner with WorkSafeBC and with support from the Minister of Mental Health and Addictions, to develop better options for chronic work-related pain.*
- *I understand that the detailed report from Janet Patterson includes substantial information and recommendations that will take some significant time to review.*
- *I know the Minister of Labour is looking forward to consulting with worker and employer stakeholders on any further labour legislation changes to ensure the widest possible support.*

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MINISTRY OF LABOUR

MEETING NOTE

Cliff #: 61184

Date: March 24, 2021

PREPARED FOR: Honourable John Horgan, Premier

DATE AND TIME OF MEETING: March 29, 2021 Time: **TBD.**

ATTENDEES: Laird Cronk, President of the BC Federation of Labour; others **TBD.**

DISCUSSION: Premier Horgan is scheduled to meet with the BC Federation of Labour (BCFED) on March 29, 2021. The following information provides context and background on the topic areas that the Ministry of Labour understands are key priorities for the BCFED.

Asbestos

- The Ministry of Labour is leading a cross-ministry Asbestos Working Group mandated to report on outstanding risks that asbestos poses for British Columbians and the environment, and develop strategies and initiatives that the government and its agencies could undertake to address those risks.
- The Ministries of Labour, Health, Environment and Climate Change Strategy and Municipal Affairs, the Ministry Responsible for Housing, and WorkSafeBC are represented on the working group.
- The working group is currently working to advance recommendations developed by the working group in 2018 for Cabinet consideration in Summer 2021.

COVID-19 Response (including paid sick leave)

- In March 2020 government amended the *Employment Standards Act* (ESA) to provide unpaid, job-protected leave to employees during the COVID-19 crisis. It also amended the ESA to provide up to three days of unpaid, job-protected personal illness or injury leave per year.
- The BCFED has called for legislated paid sick days which would provide employees with up to 10 paid days per years (based on hours they worked) plus an additional 10 paid sick days specific to workers needing time off because of COVID-19 (plus 16 weeks further of unpaid leave).
- The Premier's mandate letter directs the Minister of Labour to continue working with the federal government on a paid sick leave program to protect workers and businesses during the COVID-19 pandemic and beyond.
- Minister Bains raised this issue with his colleague Labour Ministers at a Federal/Provincial/Territorial annual meeting on March 1, 2021.

Labour Relations Code (the Code)

- **Card-check union certification:** The 2019 amendments to the Code maintained the secret ballot vote for union certifications, but made several changes to improve the fairness of the certification process.
- This included shortening the time between certification applications and the secret ballot vote (from 10 days to 5 days), strengthening the restrictions on employer communication during an organizing campaign, as well as expanding the Labour Relations Board's ability to impose certification in response to employer unfair practices.
- The BCFED advocates for a return to card-check certification to further enhance the ability of unions to organize workers without the undue interference of employers.

Other

Other areas of interest raised by the BCFED to the Ministry of Labour include:

- Minimum wage and agricultural piece rates for the hand harvesting of certain fruits and vegetables;
- Further changes to the *Workers Compensation Act* with specific request to implement the review report of Janet Patterson;
- The development of a Gig Economy strategy led by Parliamentary Secretary, Adam Walker; and
- Rights and protections for workers in the unionized hotel sector on extended layoff due to COVID-19.

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