

June 6, 2023

Honourable Harry Bains

Minister of Labour

P.O. Box 9206 Stn Prov Govt

Victoria, B.C. V8W 9T5

Harry.Bains.MLA@leg.bc.ca

Dear Minister:

Re: Personal Illness or Injury Leave Under *Employment Standards Act*

We write on behalf of the Public Policy Committee of the Chartered Professionals in Human Resources of British Columbia and Yukon (CPHR BC & Yukon). Founded in 1942, CPHR BC & Yukon has grown to include more than 7,500 members encompassing CEOs, VPs, directors of HR, HR generalists, HR advisors, consultants, educators, students and small business owners in B.C. and the Yukon. We support our members with education and advocacy and, where public policy topics affect HR professionals, we provide our feedback and recommendations to government.

We write today to address the matter of personal illness or injury leave under s. 49.1 of the *Employment Standards Act* (the "ESA") and, specifically, with respect to:

- what we understand is a proposal to increase the number of days of paid leave prescribed under s. 49.1(1)(a) of the *ESA* from five days to ten; and
- the amount payable to an employee who takes the paid leave under s. 49.1(1)(a), currently determined by calculating an "average day's pay" through the formula under s. 49.1(3).

Number of days of paid leave should not be increased to ten days

We strongly caution against an increase in the number of days of paid leave from five to ten.

Costs for employers in British Columbia, including the small and midsize enterprises (SMEs) which are the engine of our provincial economy, have been increasing steadily and considerably over the last few years. Part of that can be attributed directly or indirectly to the COVID-19 pandemic and inflationary pressures but a good deal of it can be traced to public policy choices made by government – choices which are often very laudable but have serious cost consequences nonetheless. The upshot is that many employers in this province are facing significant financial challenges, which in some instances are crippling and devastating, and simply will not be able to bear the additional cost associated with increasing the number of days of paid leave.

Proponents of 10 days of paid leave point to the decision of the federal government in December 2022 to provide 10 days of paid sick leave for employees in the federally-regulated private sector. Any comfort which can be had from the experience in the federal context is, however, illusory. Federally-regulated employers tend to be large enterprises often with deep pockets, including banks, telecommunications companies, airlines, radio and television broadcasters, and railway and road transportation services that cross provincial and international borders. They clearly stand on a different footing than the substantial majority of employers in this province, including SMEs in particular.

Proponents of increasing the number of days of paid leave also ignore the fact that in the context of unionized workplaces, paid leave under s. 49.1 of the *ESA* is not subject to the “meet or exceed” test under s. 3. Any statutory requirement to provide paid sick leave – be it five days or otherwise – is simply layered on top of any leave obligations under the collective agreement between the employer and the union, irrespective of how generous the negotiated leaves in the contract might already be. Increasing the number of days of paid leave to ten will simply create additional, unanticipated and possibly paralyzing cost obligations for unionized employers.

Similar concerns arise in relation to non-unionized workplaces where employers already have in place generous paid sick leave policies or plans. Increasing the number of days of paid leave could well have the undesirable consequence of causing such employers to revisit and rethink their existing obligations under contract and cut or roll those back.

This, at the risk of stating the obvious, would be counterproductive and at odds with the stated policy basis for introducing paid sick leave in B.C. in the first place: encouraging employees who are ill – including specifically those in low-paying jobs (often marginalized and equity-deserving groups) – to stay at home without fear of losing wages.

On November 24, 2021, the Greater Vancouver Board of Trade estimated that “[t]he announcement ... of five days of employer-paid sick leave” would “cost between \$506 million and \$1.1 billion on an annual basis”. The Board of Trade cautioned that this would “be challenging for many small businesses”. One can only imagine that these concerns remain and would indeed be more pronounced or amplified in today’s business and operating environment.

Amount payable to employee who takes paid leave should not be calculated with reference to an “average day’s pay”

We are of the strong view that the amount payable to an employee who takes paid leave should not be determined by calculating “an average day’s pay” through the formula under s. 49.1(3) of the *ESA*.

Experience among HR professionals over the last 1.5 years or so – since employer-paid sick leave was introduced in British Columbia – has shown that there can be challenges or difficulties when calculating an average day’s pay using the statutory formula, including in some cases inequity for affected employees. Consider, for instance, the employee who has not worked or earned wages in the 30-calendar day period preceding the leave and query whether it is fair that one employee should receive a less valuable paid sick day than another employee when they are both ill and cannot attend at work. For reasons of simplicity and ease of administration, an alternative for government to consider is to simply have the employer pay the employee for the hours that the employee was scheduled to work that day but could not work on account of illness.

In addition, the “average day’s pay” approach also creates the opportunity for mischief. Imagine an employee who is scheduled to work in the morning at one employer and in the afternoon or evening at another employer. The way the legislation currently operates, if the employee is ill and cannot report to work at either employer, there is an entitlement to receive an average day’s pay from both employers. That does not

represent indemnification for actual loss. It represents an unwarranted windfall and is not fair – to the employer, the employee’s co-workers or generally. This is surely an unintended consequence of the approach currently dictated by the legislation.

Please do not hesitate to contact us should you have any question or concern regarding the issues raised in this letter. Similarly, members of our Committee would be happy to meet with you in person should you find that helpful.

Truly yours,

**Chartered Professionals in Human Resources of British Columbia and Yukon
(CPHR BC & Yukon)**

Per:

James D. Kondopulos, CPHR
Chair, Public Policy Committee and Board Director

cc: Public Policy Committee
File