



≡ BC RESTAURANT AND FOODSERVICES ASSOCIATION ILLNESS AND INJURY LEAVE



The British Columbia Restaurant and Foodservices Association is a dedicated resource to help restaurateurs grow and succeed in business in our province.

ILLNESS AND INJURY LEAVE

On January 1, 2022, a new Section of the BC Employment Standards Act became law.

This Section is called Illness or injury leave

The Act says:

After 90 consecutive days of employment with an employer, an employee is entitled to up to 5 days of paid leave and up to 3 days of unpaid leave in each employment year for personal illness or injury.

If requested by the employer, the employee must, as soon as practicable, provide to the employer reasonably sufficient proof that the employee is entitled to leave under this section.

HOW DOES THIS AFFECT MY RESTAURANT?

It means you must give any employee who is off work due to illness, 5 days paid leave. If they need it, they are also entitled to 3 additional days of unpaid leave.

DO THESE DAYS HAVE TO BE TAKEN ALL AT ONCE?

No, illness and injury leave can be taken on single days.

CAN I TERMINATE AN EMPLOYEE FOR TAKING THIS LEAVE?

No, the employee cannot be terminated for taking this or any other statutory leave entitlement.

WHO IS ENTITLED TO THIS LEAVE?

Any employee who has been employed for 90 days or longer is entitled to the paid and unpaid leave.

DOES THIS INCLUDE MY CASUAL OR PART-TIME PEOPLE?

Yes. All employees are entitled to this leave after 90 days of employment.

ARE PEOPLE ENTITLED TO 7.5/8 HOURS PAY FOR THEIR SICK DAY?

Sick days are calculated based on an average day's pay over the last 30 days worked. If someone always works 8 hour shifts, they are entitled to 8 hours. If they always work 5 hours, they are entitled to 5 hours. It's more complicated if shift length varies.

HOW DO I CALCULATE WHAT A DAY'S PAY IS?

Take the earnings of the past 30 days and add them together. This includes all wages, including statutory holiday pay and illness and injury pay. Divide this amount by the number of days worked in that 30-day period and you have an average day's pay.

Here's an example:

Jo is a casual worker. They don't have a regular schedule. They come in when needed. From January 1 to January 30 these were Jo's hours:

JANUARY

1 OFF	2 2 HOURS	3 OFF	4 OFF	5 OFF	6 OFF	7 6 HOURS
8 8 HOURS	9 OFF	10 OFF	11 4 HOURS	12 OFF	13 OFF	14 OFF
15 OFF	16 8 HOURS	17 OFF	18 OFF	19 OFF	20 3 HOURS	21 OFF
22 6 HOURS	23 OFF	24 8 HOURS	25 8 HOURS	26 6 HOURS	27 OFF	28 OFF
29 5 HOURS	30 4 HOURS	31 SICK				

ILLNESS AND INJURY LEAVE

On January 30, Jo worked. The shift leader asked if they could come in on January 31 for half a day. Jo said “yes” but the following morning Jo called in to say they weren’t feeling well and couldn’t come in.

Jo is entitled to sick pay for that day.

This is how we calculate the pay:

Jo earns \$20.00 an hour. Jo worked 68 hours in the 30 days prior to becoming ill. Jo worked a total of 12 days in the prior 30 days. Jo’s earnings were \$1,360. An average days pay would be \$1360.00 divided by 12 = \$113.33.

If vacation pay is added on to every pay cheque, 4% must be added to this amount. Illness and injury pay must be counted with overall wages when calculating vacation pay.

SO AFTER JANUARY 1, 2022 EVERY EMPLOYEE GETS ILLNESS AND INJURY LEAVE OF 5 PAID DAYS?

Yes. Every employee who has worked for more than 90 days is entitled to the 5 days paid leave if they are ill or injured. This leave is given for each calendar year. This means every January 1, employees become entitled to 5 days paid sick leave.

On January 1 of every year, each employee with at least 90 days of employment becomes eligible for 5 days paid illness and injury leave.

Example: Jordan is hired to start work on March 1, 2022. They become entitled to 5 days paid sick leave on May 29, 2022 (90 days later). On September 15, Jordan calls in saying they have a sore throat and runny nose and will be staying home. On September 17, Jordan calls and says they are feeling better and will be in tomorrow. Jordan has taken 3 days sick leave they are entitled to be paid for. The paid leave is for any illness or injury. It does not need to be work related. An employee who becomes unable to work as the result of a workplace injury may be entitled to Workers’ Compensation benefits.

WHAT PROOF OF ILLNESS CAN I REQUIRE?

It’s not really practical to expect every employee to go to their doctor for a note every time they have taken a day off because of a cold or a migraine. In most cases, employers are advised to take employee’s word they were unable to work due to illness. If an employee is suspected of abusing the leave entitlement, the employer can ask for reasonable proof, such as a doctor or nurse report or some proof the employee was ill or injured.

If an employee has been diagnosed with COVID, they may need to use all days at once. An employer can easily ask for their PCR or rapid test results to confirm related COVID leave.

DO THESE ILLNESS AND INJURY ENTITLEMENTS ACCUMULATE SO THE EMPLOYEE CAN CARRY THEM OVER?

No. Unused illness and injury days do not accumulate.

Example: Maria starts work on June 15, 2022. After she has completed her probationary period of 90 days, she becomes entitled to 5 paid illness or injury days and 3 unpaid days. Maria doesn’t get sick or suffer any injury and so doesn’t take any of her illness or injury entitlement. On June 15, 2023, the anniversary of her employment, she becomes entitled to 5 days paid illness and injury leave and 3 days over the next 12 months. The previous year’s entitlement is NOT carried over.

DO I HAVE TO PAY OUT UNUSED ILLNESS AND INJURY WHEN AN EMPLOYEE LEAVES?

No. The paid illness and injury leave is for the sole purpose of providing employees with income when they are too ill or injured to work. It doesn’t accumulate and isn’t paid out if it’s not taken.

HOW DOES THIS WORK WITH THE COVID-19 LEAVES EMPLOYEES ARE ENTITLED TO?

Employees are entitled to 3 hours paid leave to receive a COVID 19 vaccination. This means for their initial shot, second shot and such boosters as the Ministry Health recommends.

Employees off sick or quarantining no longer have a separate paid sick leave entitlement. However, they are entitled to be away from work until they are no longer sick or quarantining. This leave also includes living with or caring for a person who is ill or quarantining due to COVID 19.

ILLNESS AND INJURY LEAVE

I HAVE AN EMPLOYEE WHO HAS BEEN DIAGNOSED WITH CANCER AND WILL BE OFF FOR FAR MORE THAN THEIR ILLNESS AND INJURY ENTITLEMENT. CAN I TERMINATE THEM?

No. This employee's employment is protected in BC by the Human Rights Code, which prohibits discrimination on the basis of disability. A life changing illness such as cancer is considered a disability. Employees who are genuinely ill with a severe condition must be accommodated. The employee may be replaced on a temporary basis but must be allowed to return to work when they have recovered sufficiently. Except for the employee's 5 days paid leave, any long-term illness is unpaid or covered by the terms of your Employee Health Insurance Plan. Employment Insurance will usually provide the employee with basic income while they are unable to work.

CAN I REQUIRE EMPLOYEES EXPLAIN THE REASON THEY WERE OFF ON ILLNESS OR INJURY AND PROVIDE ME WITH PROOF BEFORE I PAY THEM?

No. The statutory benefit cannot be withheld pending proof or explanation. In most cases, the employee's word should be sufficient. If the employer has evidence the employee was neither ill nor injured, the benefit may be withheld.

For example: an employee calls in at 7:00 a.m. to say they are unable to report for their breakfast shift because they are ill. At 8:30 a.m., their co-worker who is on a day off runs into them in line for the ski lift. Since the employee is clearly neither ill nor injured, the benefit need not be paid and the employee may be disciplined.

This is new legislation and it will likely cause ripples throughout your organization trying to implement it. Please note, the purpose of illness or injury leave is to assure employees can take a day off when they are genuinely unwell, particularly with contagious illness. This paid leave encourages employees to stay home when they are ill, without worrying about meeting their financial obligations. A major aim of this leave is to reduce the transmission of viruses and contagious diseases among workers and customers.

It's a positive step in employee care. However, there will be questions that arise that haven't been anticipated or answered here. As always, if you have questions, or need advice, please contact Gillian at the BCRFA. gmacgregor@bcrfa.com or 604 505 2374.

