

AMENDING PAID SICK LEAVE IN BC

Introduction

As of January 1, 2022, BC employers are required to provide at least 5 days of paid illness or injury leave, otherwise known as ‘sick leave’ to all employees. This new employer obligation, while laudable in its aim to support workers and protect workplaces, represents an unnecessary intrusion by the government into the employer-employee relationship, creates a new financial and administrative burden on businesses that are only starting to recover from the pandemic, and has been implemented and interpreted in a very broad way that negatively impacts employers, and in some cases, even workers.

Background

Following a brief consultation period, the provincial government announced on November 24, 2021 that in less than 6 weeks all employers would have to implement a new paid sick leave program for all employees – including part-time, full-time, and casual. As a result of this truncated process, details of the new requirement and interpretations from the Employment Standards Branch only started to be released in the fading days of 2021 and in the first week of the new year. Since then, several flaws and questionable interpretations have emerged which make this law a further burden on employers to implement, administer and afford and require it to be amended.

Allowing Employment Year versus Calendar Year

The obligation to provide 5 days of paid sick leave is applied based on an individual employee’s “employment year”, or their anniversary date of employment. Upon each new anniversary date, the individual employee is entitled to a new allotment of 5 days of paid sick leave. Unfortunately, there was no pro-rating of this benefit, so in this transition year employees are granted 5 paid sick days from January 1, 2022 and then a new allotment of 5 days on their anniversary date!

What this use of “employment year” also means for employers is that they must track the assignment and usage of sick days on an individual employee basis, adding a new administrative burden to business owners and managers. Whereas many businesses who had already provided paid sick leave did so on a calendar year basis, they now have to manage this entitlement completely different.

Instead of forcing employers, especially those with existing paid sick leave policies, to use individual employment years to administer this new leave, the provincial government should extend the same accommodation it provides for Family Responsibility Leave and allow businesses to opt to use calendar year (or any common date) to calculate the leave.¹

Allowing a Mechanism for Partial Days

Currently, the Employment Standards Act and this new sick leave requirement contains no provision for partial sick days, applicable when an employee goes home part-way through a shift for example. The

¹ The *Employment Standards Act – Regulations* contains a provision allowing for employment year to mean “a year beginning on a common date that is used by an employer to calculate family responsibility leave for all employees under section 52 of the Act, so long as this does not result in a reduction of any employee's rights under that section.”

implications of this are that any amount of time an employee takes as off as sick counts as a sick “day” and triggers the payment of one paid sick day, calculated as an ‘average day’s pay’.²

For the employee, this means if they miss any amount of time due to illness, they use up one of their sick days. For example, an employee leaving two hours early from an 8-hour shift due to illness will use an entire paid sick day for those two hours, leaving them with less coverage for when potentially more serious illness is encountered.

More concerning, for the employer this means they must pay an employee for a full paid sick day no matter how many hours they actually missed due to illness. If an employee misses two hours of an 8-hour shift due to illness, it triggers an obligation to provide a³full paid sick day payment. Compounding this, if an employee leaves a shift early due to illness, they also are owed regular wages for whatever time they *did* work prior to leaving, creating duplication of payments in these scenarios.

Another scenario where a partial day mechanism would be beneficial is for when employees work shifts of different lengths. In this scenario, an employee who works a regular 40-hour work week but is scheduled to work an extra 2-hour shift on the weekend would be entitled to eight hours of pay if they miss that weekend shift due to illness, not just the two hours they are actually missing. Even though the employee was only scheduled for two hours, they are entitled to an average day’s pay.

This flaw in the legislation negatively impacts both employers and employees and should be adjusted to provide for partial sick days by creating a mechanism for hours worked in a day to be deducted from the sick pay provided, and for payment of less than an average day’s pay when the hours actually missed are less than that average.

Implementing Further Eligibility Criteria for Casual and Part-Time Employees

The new paid sick leave was extended to include not just full-time employees, but all part-time and casual employees as well, with very little in terms of limitations on their eligibility for the leave. It is important to note that for many businesses, when part-time or casual employees are unable to work, employers must bring in replacement staff to cover that shift, creating a second layer of cost beyond the initial paid sick day.

As government has already included casual and part-time employees in the legislation, implementing further eligibility criteria in the form of a minimum-hours-worked requirement would be beneficial.

Currently, as long as an employee works or earns any amount in the 30 days preceding a sick day, they are eligible for the day to be paid. Instead, to be eligible for paid sick days a part-time employee should be required to have worked a minimum number of hours in the 90 days preceding the day in question, such as 200 hours (or approximately two full shifts a week). This would be similar to the model already used by employers to gauge whether employees are entitled to statutory holiday pay, and would limit this new paid obligation to workers with a more consistent tie to the employer.

Reducing the Burden on Employers and Providing for 3 Paid Sick Days

² Employees are entitled to an ‘average day’s pay’ for each sick day. An average day’s pay is calculated by dividing the amount paid or payable in the 30 calendar days before the leave by the number of days worked during that 30-day period.

During the development of this sick leave requirement, the government considered three options of either 3, 5, or 10 days in duration. Of these three options, the 3-day model would have the least economic impact on businesses and would have been the most targeted and appropriate allotment.

In the provincial government's own paid sick leave public survey, it was found that 50% of employers thought more than 3 days of mandated paid sick leave would have a major negative impact on their business, with that increasing to 75% for 6-10 days. This compares to only 25% who foresaw problems with providing up to 3 days, making the 3-day model the option with the least negative impact on business.⁴

The provincial government's survey also found that more than half of BC workers had paid sick leave already, with 90% of them receiving more than 3 days. However, the survey also revealed that 70% of those workers did not even use all of those paid sick days they already had. This suggests that providing anything more than 3 days of paid sick leave would be an over-allotment, would not likely be fully utilized by workers anyways, and thus would be unnecessary.

Further, where government must step in to the free market to provide minimum standards, its intervention should seek to do so in as limited a fashion as possible. If the government wished to regulate this area, the focus should have been on establishing a minimum, base standard only, and thus government should have opted for the least prescriptive model of 3-days.

As changing the number of days provided would require a revision to regulations only -- not fully new legislation -- a revision to reduce the provided days to 3 should be implemented, reducing the burden and cost on employers already struggling with surging wage and materials costs, labour shortages, rising inflation, and increasing business costs.

THE CHAMBER RECOMMENDS

That the Provincial Government:

1. Create a mechanism in the Employment Standards Act and Regulations to allow for partial sick days, allowing employers to deduct the wages paid for hours worked during a partial sick day from the amount owed for the "sick day".
2. Implement a minimum-hours-worked requirement for eligibility for paid sick days
3. Cap the total number of sick days a person is eligible to claim in a year regardless of how many employers they have.
4. Amend the Employment Standards Act Regulations to reduce the number of paid sick days provided to three.

Submitted by the Burnaby Board of Trade

⁴ Summary of Government of BC's engagement efforts:
https://engage.gov.bc.ca/govtogetherbc/impact/permanent_paid_sick_leave_results/

BUILDING BC'S BIO-MANUFACTURING SUPPLY CHAIN

Introduction

Throughout the COVID-19 pandemic, both the provincial and federal governments have spoken to the importance of domestic bio-manufacturing capacity to produce tests, vaccines and therapeutics to combat the COVID-19 pandemic and pandemics of the future. However, before a test, vaccine or treatment can ever be manufactured, the constituent parts and ingredients must be secured. Without also investing in a local supply chain that can provide the necessary inputs for bio-manufacturing, BC and Canada risk undercutting our own efforts to bolster our domestic capacity and increase our self-sufficiency.

Background

As Canadians watched the initial uneven distribution of COVID-19 vaccines in late 2020 and early 2021, and British Columbians waited for months in late 2021 and early 2022 for rapid testing kits to arrive, many gained a new appreciation for the value of a domestic bio-manufacturing sector. Without such a capacity, Canada has found itself reliant on foreign suppliers for diagnostic testing supplies, vaccines, and therapeutics.

It is critical that in the pandemic or health crisis of the future that Canada can develop and manufacture our own testing, vaccine, and treatment options for quick deployment domestically, but also as part of efforts to support global health. To accomplish this, we need not only robust investment in advancing life sciences research and increasing bio-manufacturing capacity, we also need investment in building a domestic supply chain that can provide the necessary components needed to produce these medical supplies.

In testimony to the House Standing Committee on Health, the president of Pfizer Canada noted that their vaccine “requires more than 280 components, coming from 86 different suppliers,”¹ illustrating the importance of the bio-supply chain to vaccine manufacturing. In regards to COVID-19 tests, the chemical re-agents needed for the tests to actually function are similarly produced only by select manufacturers and were reported to be in short supply throughout much of the pandemic, delaying access to testing supplies for BC and Canada.

Since the start of the pandemic, the Government of Canada has committed over \$1.6 billion to 30 bio-manufacturing projects² but with a focus on research and development, and final “fill and finish” manufacturing capacity. In its *StrongerBC Economic Plan* and the 2022 BC Budget, the Government of BC committed to developing a “Life Sciences and Biomanufacturing Strategy” and committed \$195 million to support life sciences and health research. These are wise and needed strategic investments, but should be augmented with distinct support for building out BC’s bio-manufacturing supply chain.

During the COVID-19 pandemic, BC and Canada found ourselves without a domestic ability to produce the medial supplies and materials we needed, and were dependent on international providers. While efforts are underway to support the research and manufacturing capacity needed to correct this,

¹ House Standing Committee on Health – Number 029 | 2nd Session | 43rd Parliament, *Evidence*, March 08, 2021

² <https://www.ic.gc.ca/eic/site/151.nsf/eng/00006.html>

without also investing in a domestic supply of the necessary re-agents, components, chemicals, other inputs that bio-manufacturing will need, we may find ourselves facing very similar, but nonetheless grave, challenges in the next pandemic or health crisis despite our efforts.

THE CHAMBER RECOMMENDS:

That the Provincial Government, in concert with the Federal Government where appropriate:

1. As part of the Life Sciences and Biomanufacturing Strategy that will be developed, identify specific strategies and actions to support the bio-manufacturing supply chain in BC, through investments in organizations and businesses which can produce the necessary components required for domestic manufacturing of testing supplies, vaccines, and medical therapeutics.

Submitted by the Burnaby Board of Trade

IMPLEMENTING CHANGES TO PROPERTY ASSESSMENTS TO PROTECT BUSINESSES FROM UNSUSTAINABLE TAXATION

Opening Statement

Many businesses across BC are facing an existential threat in the form of unsustainably high property tax bills. This problem is fueled by the BC Assessment process of valuing properties based on the “highest and best use” of the property (such as a redevelopment), and not on its current use. Due to this model, businesses, whether property owners themselves or through their leases, are being taxed on the future development potential of their sites with little regard for the current use of the property, or the cash-flow or profitability of the current business.

These high property tax bills can threaten the survival of many small and medium-sized businesses, and risk hollowing out local economies as businesses are forced to either relocate or close altogether due simply to the skyrocketing cost of their property tax bills. A provincial solution that mitigates the impact of soaring, inequitable property assessments on the tax bills facing the business community is needed.

Background

Property taxes are the principle funding method for local governments, and generate the revenue to fund important local programs such as police and fire services, parks and recreation, and roads, sewers and other basic infrastructure. Property taxes are based on two factors: a *local tax rate* and the *value of a property*.

The *local tax rate* is set by municipal governments to meet the funding requirements of their annual budgets. There are nine classes of properties¹, one of which is assigned to each property. The tax rate for each property class is set by local governments and is then applied against the assessed value of a property to determine its property tax bill.

The *value of a property* is based on an assessment conducted annually by BC Assessment, a provincial crown corporation responsible for maintaining up-to-date assessments of the value of properties throughout BC.

However, as laid out in the BC Assessment Act and executed out by BC Assessment, the value of a property is based on several factors, including its “highest and best” use. This takes into account what a given property could *potentially* be used for or what could possibly be built there that would be of more value than its current use.

For example, a property on a busy corridor may currently be used for a one-story retail bakery even though its local government could permit a future multi-level residential development to be built there. In this instance, BC Assessment would value the property not just as a small, local bakery, but would take into account the value of the potential redevelopment. Then, the property taxes due would be calculated based on that higher, full-market value. This means the bakery would be taxed substantially more than it would be as just a bakery; the property tax will be calculated based on the value of the future potential development.

¹ Residential, Utilities, Supportive Housing, Major Industry, Light Industry, Business Other, Managed Forest Land, and Recreation Property, Non-Profit Organization.

An additional problem arises due to the significant difference in the tax rates of business and residential properties in BC cities, where businesses have substantially higher rates. For example, a city may have a “Business Other” tax rate for that small bakery of 10.6618, whereas the “Residential” tax rate for a residential development might be only 3.169. However, since the bakery’s property in this example will be classified as a business, it will pay the higher *business* tax rate on the *full* value of the property (including the appreciation driven by the residential redevelopment potential).

BC Assessments & Property Taxes



Given the rapid and sustained increases in property values experienced across the province and in particular in population centres, along transit corridors, near popular tourist destinations, or on high streets, this current method of property assessment has created a scenario where BC businesses can be faced with significantly higher, and in some cases unsustainable, property tax bills despite there being no change in the current business use or improvement to the property, based solely on redevelopment potential or speculation.

Unfortunately, in these scenarios, the cash flow of the existing business may simply be insufficient to support the tax bill causing the business to possibly scale back, struggle, or close. It is a system which needs reforms that separate the current-use value from the redevelopment value for the purposes of taxation.

A Provincial Solution

Some limited policy options to mitigate property tax swings do exist at the municipal level, however provincial action is required to develop a solution to property address this problem. One of those solutions should be the creation of a permanent, new sub-classification for the redevelopment potential of commercial properties.

With this solution, BC Assessment, in determining the value of a property, would differentiate between the value of the current building and usage (classified as Class 6-Other Business) and any additional

value based on the unbuilt development potential, which would be classified under a new commercial sub-class.

This new commercial sub-class would enable the separation of “development potential” value from “existing use” value for the purposes of taxation, allowing local governments to then provide a lower tax rate on the “development potential” value portion.

In the above example, under this new model the local bakery would see savings as instead of having the business tax rate applied on the entire \$20 million value of the property, it would only apply on the \$1 million value of its current business use, and then a lower rate – determined by its municipal government – would apply to the portion that is value derived from redevelopment potential.

This solution would provide both a province-wide mechanism for addressing this problem (the new sub-class) and also local control by municipalities in how it is implemented (the mill rate for that new class), which should allow this model to be more successful and widely adopted than mitigation measures thus far, helping to deliver fairer taxation for BC’s small business community.

THE CHAMBER RECOMMENDS

That the Provincial Government work with BC Assessment and municipal governments to address soaring, inequitable property taxes on businesses by:

1. Work with BC Assessment and municipal governments to address soaring, inequitable property taxes on businesses by creating a new commercial sub-classification that would separate a commercial property’s current-use value from the value of its redevelopment potential, and empowering municipalities to apply a different, lower mill rate to that redevelopment value for the purposes of levying property taxes.

Submitted by the Burnaby Board of Trade