

COVID 19 – BULLETIN August 14, 2020 Updates

RELEASE DATE AUGUST 14, 2020

The purpose of this bulletin is to supply updated information regarding the quickly approaching deadline to extend a COVID-19 temporary layoff with a variance, as well as the application process. The government of British Columbia has also expanded the scope of COVID-19 liability protections to all for-profit business, and some non-profit businesses.

AS OF AUGUST 14, 2020:

*This bulletin is current to the morning of **August 14, 2020**. Please note that while we continue to monitor the situation, the circumstances remain very fluid as legislative and government rules and policies are ever changing. The responses of federal and provincial governments will continue to evolve, and this may impact the accuracy of the information in this bulletin and any information is subject to revision with the introduction of new or additional government guidelines.*

COVID-19 TEMPORARY LAYOFF VARIANCE

The time period established for a temporary layoff related to COVID-19 may be extended to a maximum of 24 weeks, ending on or before August 30, 2020, whichever date comes first. However, employers with reasonable plans to recall employees by a specific date that falls after August 30, 2020 can apply to extend the temporary layoff through a variance.

The variance is set to amend parts of the B.C. Employment Standards Act for work situations that do not strictly meet the Act requirements, but are consistent with the intent of the Act, in protecting employee rights in good faith.

Employers and employees can apply together to the Employment Standards Branch for a variance to extend a temporary layoff. **Applications must be submitted by August 25, 2020 to ensure they will be processed before August 30, 2020.**

What do you need to know?

Employers facing uncertainty determining a firm recall date for employees because of variables affecting BC's Restart Plan and reopening of the economy should determine a date that most closely aligns with their reasonable business plans in which they will be able to partially or fully resume operations.

- In exercising discretion to grant a variance, the Director of Employment Standards retains authority to set an expiry date and after considering all the circumstances and the purposes of the Act, may grant a variance for a shorter duration than requested in the application
- While all applications are considered on a case-by-case basis, the Director of Employment Standards will only exercise discretion to grant an extension of the temporary layoff period past December 31, 2020 in exceptional circumstances

Do you qualify?

Under the Employment Standards Act, a variance only applies to non-unionized and non-excluded employees. For information regarding who qualifies as excluded employees, please visit this [link](#).

How does this variance benefit your business?

Employer Benefit

- Employer does not have to terminate employees and does not have to provide termination pay
- Ability to retain existing and stable employees

Employee Benefit

Employee remains continuously employed, with no interruption to:

- Rate of pay
- Vacation accrual
- Years of service
- Benefits
- Leaves of absence

How can you apply?

The variance application process encompasses two main actionables that will need to be taken by the employer:

1. This is a joint application. Before applying, you must make sure that the majority of affected employees are aware of the application and agree to continue to be temporarily laid-off from work.
 - a. More than 50% of affected employees must approve the decision to apply for a variance. If a majority decision is not reached, an employer cannot proceed with the application.

- b. Applications that demonstrate more than 50% employee support are highly encouraged
 - c. In order to document employee support, it is recommended that you email employees with detailed information on how a temporary layoff related to COVID-19 impacts their employment. Clearly explain what a variance is, how the process works, as well as the benefits provided to them.
2. If the majority of employees affected by the variance are in support, the employer must then complete the variance application through the online portal or by emailing the Employment Standards Branch a pdf version of the application.
 - a. To help in having your submission reviewed faster, it is recommended that you upload a list of all affected employees as part of your application.

Once your application has been reviewed, you will receive notice from the Employment Standards Branch. If granted the variance, you can then implement and communicate the change to the affected employees.

For more information regarding the application process, please visit the [application portal](#).

COVID-19 LIABILITY PROTECTIONS IN BC

In April 2020, the BC government took steps to protect those providing essential services by ensuring they cannot be held liable for damages caused by exposure to COVID-19 while continuing to operate, so long as they are complying with orders from the provincial health officer and other authorities, and undertaking protocols to prevent the spread of the virus, such as proper handwashing, regular cleaning and disinfecting and identifying individuals who are sick.

The order was introduced in response to a number of essential service business owners identifying challenges with their insurance as a result of the pandemic.

Essential service providers who are not compliant with respective authorities, or who are grossly negligent do not receive protection under the order and will be held liable for damages. The order only applies to situations related to COVID-19 and will remain in effect for as long as the state of emergency remains in place. Additionally, it will continue to protect essential service providers until any relevant limitation periods have expired.

Who is considered an essential service in this context?

The essential services British Columbians rely on in their daily lives in the context of COVID-19 response and recovery have been defined by the province, in consultation with Dr. Bonnie Henry, provincial health officer. Please visit this [website](#) for more information and the listed

services which are defined as essential for these purposes. These services are distinct from essential service designations under the Province's Labour Relations Code.

Expansion of the Scope of Covid-19 Liability Protections

On August 6, 2020, the Order in Council No. 459 was passed, bringing into effect COVID-19 (Limits on Actions and Proceedings) Regulation. The Regulation provides greater certainty of the types of COVID-19-related civil liability protections provided within the *COVID-19 Related Measures Act*.

The Regulation asserts that no legal proceeding for prescribed damages related to the COVID-19 pandemic lies or may be commenced or maintained against a prescribed person or a person in a prescribed class of persons because of:

- any prescribed act or omission of the person, or
- any act or omission of the person in a prescribed class of acts or omissions.

Again, this does not apply in relation to damages caused by gross negligence.

The Regulation specifies that the “prescribed damages” mentioned, for which no legal proceeding may be brought, are those arising directly or indirectly from an individual being, or likely being, infected from COVID-19.

The civil liability protections provided by the Regulation extend to any person engaged in one of the following acts:

- the operation or provision of an essential service
- an activity that has the purpose of benefiting the community or any aspect of the community including in relation to:
 - the relief of poverty
 - the advancement of education or religion
 - the promotion of health
 - the protection of the environment
 - the provision of services to a vulnerable or disadvantaged person or group, or
 - the provision of community recreation or leisure activities
- an activity, including a business, that is carried on for direct or indirect gain or profit

Importantly, [the Regulation has expanded COVID-19-related civil liability protections](#) from just essential services, [to all for-profit businesses](#) and certain non-profit businesses. The Regulation does not provide civil liability protections to private individuals in their personal lives.

For an entity or person to be protected under the Regulation, they must have been acting in accordance with, or had reasonable belief that they were acting in accordance with, all applicable emergency and public health guidance.

Emergency and public health guidance is defined in the Regulation to include:

- a COVID-19 provision
- a regulation made under the *Emergency Program Act*
- an instruction or order of a health officer, as defined in the *Public Health Act*
- guidelines of the British Columbia Centre for Disease Control
- guidelines of the Public Health Agency of Canada
- guidelines published on a website maintained by or on behalf of the government
- guidelines of a health authority
- guidelines of a regulatory authority or body having jurisdiction with respect to a person engaging in a prescribed act

The Regulation also does not protect these entities from liability for gross negligence.

The Regulation will remain in effect until the *COVID-19 Related Measures Act* is repealed. Currently, the *Act* is slated to remain in effect for one year after its July 10, 2020 enactment date. Any civil liability protections gained under the *Act* and the Regulation will not be affected by the eventual repeal of the *Act*.

*Please note that this information bulletin is current to **August 14, 2020**. As this situation is evolving rapidly, we urge you to remain informed to the greatest extent you can. To understand how the information contained in this bulletin might apply in the context of your particular business or operation, please do not hesitate to contact us.*

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