



Sick Leave

REVIEW AND CONSULTATIONS

December 2023

Post-Secondary Education, Training and Labour



Table of contents

Background and Legislative Context.....2

Policy Options3

Consultation Summary.....5

Quotes from Respondents.....7

BACKGROUND

On December 6, 2022, David Coon, leader of the Green Party, introduced a private members Bill to the legislature. The Bill, *An Act to Amend the Employment Standards Act* (Bill 27), proposed amendments to the *Employment Standards Act* (the “ESA”) to provide employees with up to ten paid sick days each year, provided the employee has been employed for a period of more than ninety days. The Bill also proposed the implementation of a temporary financial support program to assist employers with any increased costs associated with paid sick leave.

Bill 27 was debated at second reading and referred to the Standing Committee on Law Amendments for review. This review included input from stakeholders, who were called to appear before the Committee in February 2023. The Standing Committee then referred the Bill back to the Department of Post-Secondary Education, Training and Labour (PETL) for further review and consultation.

LEGISLATIVE CONTEXT

Unpaid Leave

The ESA sets the minimum requirements by which employers in the province must abide. The section of the ESA covered in Bill 27 currently requires employers to provide employees with “leaves of absence without pay of up to five days during a twelve-calendar month period for sick leave if the employee has been in the employ of the employer for more than ninety days”.

Across the other jurisdictions in Canada, unpaid sick-leave ranges from three to 12 days per year. These leaves are intended generally for short-term illness, injury or family responsibilities. In some provinces, there are longer-term, unpaid leaves that provide job protection when employees are unable to work due to illness or injury. These leaves vary by province but typically fall between 12 to 17 weeks.

There are other forms of leaves available in most jurisdictions, including those that cover situations such as organ donation, interpersonal violence and compassionate care leaves. The lengths of these leaves vary across jurisdictions and, in most cases, are entirely unpaid and intended as job protection for the purposes of accessing Employment Insurance (EI) benefits. The length of time an individual must have been employed before being eligible for these leaves varies from province to province, as well.

In December 2022, the federal government made changes to EI sickness benefits, which increased the length of these benefits from 15 to 26 weeks.

Appendix “A” includes further detail on unpaid leaves in Canada.

Paid Leave

Currently, Prince Edward Island, British Columbia and Québec are the only provinces that offer any amount of paid sick leave. In PEI, employees are eligible for one paid sick day per year after they have 5 years of continuous employment. In November 2023, Bill 106, *An Act to Amend the Employment Standards Act*, passed in the PEI legislature. The changes will result in employees receiving one day of paid leave after 12 months of service, two days the next year and three days after three years of service.

In Québec, employees are eligible for two days after three months of uninterrupted service for sickness or family responsibility, and in British Columbia, employees are eligible for five days per year after 90 days of employment. Federally regulated businesses must provide employees with up to ten days of paid medical leave per year.

Appendix “A” includes further detail on paid leaves in Canada.

POLICY OPTIONS

Employer and employee perspectives were considered ahead of the launch of consultation on sick leave.

Considerations: Employer Perspective

The Canadian Federation for Independent Business (CFIB) has reported that business members in New Brunswick are overwhelmingly against being mandated to offer paid sick days. Businesses would rather make the decision themselves to offer sick time, as they feel it is a hiring incentive.

Depending on the nature of the work being performed and existing compensation structures, additional cost to employers from the addition of paid sick days would vary greatly. For example, an employer that operates an hourly payment model that would require a replacement worker to fill the shift of a worker on sick leave would have to pay the replacement cost, whereas a position that would not be replaced for the day would not result in an additional staffing cost but could incur costs associated with the loss of productivity.

Absenteeism is estimated to cost Canadian employers \$16.6 billion annually. A growing reason for absenteeism is the impact of psychological health concerns, which are estimated to cost the economy \$20 billion per year. There is evidence from the United States that shows an increase in employment by an average of 1.9% in jurisdictions that have implemented paid sick leave. Evidence from the U.S. also suggests that paid sick leave correlates with higher employee morale and job satisfaction, higher employee retention and higher profitability.

Employers are concerned about the potential cost increases that would occur with paid sick leave requirements. Most data points to a relatively small increase to operating costs as a result, which are often offset by the benefits produced by paid sick leave: improved productivity by a healthier workforce. Research from the Centre for Future Work conducted in 2021 estimated that the overall increase in cost to businesses in British Columbia would have amounted to 0.21% if that province had gone with ten days of paid sick leave.

Abuse of sick leave policies, while rare in practice, is another concern raised by employers. These concerns may be addressed through appropriate communication with staff and clarity around work attendance expectations.

Considerations: Employee Perspective

Having access to paid sick leave assists employees by ensuring appropriate care and attention is afforded to their medical needs while ill or injured short-term. Providing sick leave can support employees and prevent situations where an employee goes to work ill and potentially spreads their sickness amongst others in the workplace and potential customers they serve, exacerbating the loss of production and spread of illness. The practice of reporting to work while ill is referred to as “presenteeism”. Presenteeism refers to the overall loss in productivity that happens when employees are not able to fully function in their workplace because of illness or injury. They are unable to complete their normal amount of work and may also make errors due to feeling unwell.

In many cases, access to sick leave depends on the sector in which an individual works. Many low-wage workers do not have access to any form of paid sick leave. This can lead to individuals having to make decisions between reporting to work while ill or not having enough income to meet their needs. In Canada, workers making under \$50,000 annually were more likely to have no access to paid sick leave compared to higher income workers. In New Brunswick, 45% of full-time workers make under this amount. Data from 2016 showed that only 21% of workers in New Brunswick making less than \$25,000 annually had access to paid sick leave, while 61% of workers making \$75,000 or more had access to paid leave.

Workplaces were significant sites of transmitting COVID-19 and, depending on the nature of the work being completed, this can represent a significant risk to the public and business productivity. While the impact of COVID-19 was particularly significant to individuals and society, outbreaks of other illnesses, such as Noroviruses, strains of Influenza and other respiratory infections, can lead to significant impacts across society. Paid sick leave can support public health measures, increase work productivity, reduce overall absenteeism and prevent further spread of illness between workers, their families and the broader public. Without any form of paid sick leave, individuals are left to determine their own risk-management strategy, which can negatively impact their health and the health of those around them.

Several policy options were created to facilitate the consultation process. The options presented were:

1. Maintain the status quo.

If the ESA is maintained as currently written, five days of unpaid leave would continue to be provided to employees. This would result in no additional financial impact to business and would not provide employees, who may be in a precarious situation because of their illness or injury, with job protection beyond the current five days.

2. Include 26 unpaid weeks of job protection.

Amending the ESA to provide unpaid leave to an employee of up to 26 weeks would match the length of time provided through the Federal EI sickness benefits. This would provide employees with job protection for longer term leave for illness or injury (such as cancer treatments).

3. Include five paid sick days in the ESA.

The ESA could be amended to require five paid sick days. This would provide some level of financial relief for employees when they require time off due to illness or injury. This would also introduce operational costs to employers who do not currently offer paid sick leave to employees. The inclusion of five paid days would match the amount of paid leave provided by British Columbia.

4. Include ten paid sick days in the ESA.

Including ten paid sick days would make New Brunswick have the highest number of required, paid sick days in Canada. The inclusion of ten paid days would match the amount of paid leave available to employees in federally regulated businesses. As with the option of five paid days, the introduction of paid sick leave creates additional operational costs to employers who do not currently offer paid sick leave to employees. The extent of the operational costs is impacted by the number of paid sick days introduced into the ESA.

5. Combination of options.

New Brunswick could explore a combination of the options listed above or another length of time for paid and/or unpaid sick leave.

CONSULTATION SUMMARY – WHAT WE HEARD

PETL sent the consultation document directly to over 140 stakeholders to request their input on the policy options. The stakeholders included large employers and business organizations, labour groups, unions and social agencies. Industries represented by these stakeholders included food and beverage services, agriculture, construction, retail, transportation and trucking and tourism. These stakeholders represent large numbers of employers and employees in New Brunswick.

A list of stakeholders that were directly contacted with the consultation document is attached as Appendix “B”.

Along with the groups noted above, consultation was open to the public from November 11th, 2023, until December 11th, 2023.

Thirty-nine respondents provided their perspectives on the consultation questions. The responses received were from employers and business groups (13), labour/social organizations (10), and members of the broader public (16).

Feedback provided a number of important points for consideration. Some responses included additional options that were not listed in the policy options such as:

- providing no paid sick leave at all;
- amending the ESA to include 16 weeks of unpaid sick leave;
- amending the ESA to include three weeks of unpaid sick leave;
- amending the ESA to include seven to ten days of unpaid sick leave; or
- requiring the government to provide businesses with financial assistance due to the increase in operational costs, especially for small/medium sized businesses and non-profit groups.

Table 1: Summary of responses from consultation of paid sick leave 2023

	Maintain status quo	26 weeks of unpaid leave	5 paid sick days	10 paid sick days	General support for amending ESA.
Employers and Business groups	9	2	2	1	2
Labour and social organizations	0	7	2	6	1
Broader public	0	1	0	4	12

The Employer and Business groups that support amending the ESA to implement paid sick days claim that the net effect of mandating these changes is positive. This is due to their own experience of increased productivity, lower turnover levels and increased levels of worker’s morale and wellbeing. The responses that prefer to maintain the status quo highlight the possible increase in operational costs for employers and a consequential increase in prices

for consumers. This could have a bigger effect on small and medium sized businesses, especially in customer facing industries. In other words, this would have a greater impact on businesses that would have to replace the worker who is out sick and pay the wages of another worker to fulfill that day of work. Employers reported that paid sick leave can be a beneficial incentive and that the provision of paid leave should be left to the market to implement.

Submissions received from labour/social organizations and the broader public support amending the ESA to include paid sick days as this will prevent workers from having to choose between being able to make ends meet and recovering from illness. Respondents highlighted that the current five days of unpaid leave can leave employees in a precarious employment situation after a single bout of illness.

Pandemic impact

The COVID-19 pandemic was referenced frequently in the provided responses. Responses in favour of paid sick leave often referenced the importance of individuals being able to remain home while ill to reduce the spread of illness and that paid sick leave would reduce the likelihood of someone having to make the decision to report to work while ill in order to be paid. Most highlighted that the COVID-19 pandemic clearly showed the importance of breaking the chain of infection as well as the strain that is currently placed on the provincial medical system.

Respondents opposed to the introduction of paid sick leave also referenced the impacts that the pandemic has had. Concerns referenced reductions in business since the pandemic and difficulty in finding staff. Supply chain challenges and inflation were also concerns that businesses expressed. Respondents opposed to paid sick leave felt that additional costs that could arise from the introduction of paid sick leave would be another hardship that may lead to closures and additional job losses.

QUOTES FROM RESPONDENTS

“When people must decide if they come to work sick and contagious or possibly lose their apartment, their car, not be able to feed themselves or their family, every single time they will go to work” – Quote from respondent.

“In our case, what we find is that workers are rare and if they want a day off, they just take it and come back whenever. We have tolerated more than five unpaid sick leaves per year because we just cannot find anyone to replace them. We also found that sick days are taken mostly on Fridays and Mondays” – Quote from respondent.

“Do you really want your child’s daycare worker or someone who cares for your parents to come with the flu? Are you willing to risk their health like that?” – Quote from respondent.

“Employers understand very well both the value and cost of paid sick leave. While we appreciate the good intentions behind the bill, it will have significant ramifications for the provincial economy that may not have been fully considered” – Quote from respondent.

APPENDIX A: DETAIL ON UNPAID AND PAID LEAVES IN CANADA

Jurisdiction	Illness/Injury related leaves (Paid and Unpaid)	Eligibility Requirements	Documentation Requirements
Alberta	5 unpaid days per year to attend to personal or family responsibilities (including personal health)	90 days of employment	Medical certificate required
	16 unpaid weeks per year due to illness, injury or quarantine		
British Columbia	5 paid days per year for personal illness or injury. Workers are also eligible for 3 unpaid sick days	90 consecutive days of employment	Reasonably sufficient proof must be provided on request
Saskatchewan	12 unpaid days per year in the case of illness or injury that is not serious	13 consecutive weeks of employment	Medical certificate must be provided on request
	12 unpaid weeks per year in the case of serious illness (extended to 26 weeks if employee is receiving compensation through Workers' Compensation)		
	26 unpaid weeks for the purpose of organ donation		
Manitoba	3 unpaid days per year for the health of the employee or for family responsibilities	30 days of employment	Medical certificate typically required however as of March 1, 2020 employers are not currently allowed to request physician's or medical certificates for Organ Donation Leave or Long-Term Leave for
	17 unpaid weeks per year for seriously ill or injured employees		

Jurisdiction	Illness/Injury related leaves (Paid and Unpaid)	Eligibility Requirements	Documentation Requirements
			Serious Injury or Illness,
Ontario	3 unpaid days per year for personal illness, injury or medical emergency	2 consecutive weeks of employment	Employer can require medical certificate
	13 unpaid weeks for organ donation	13 weeks of employment	
Québec	<i>2 paid days</i>	3 consecutive months of employment	Employer can require documentation / medical certificate
	26 unpaid weeks per year for sickness, organ/tissue donation, an accident, domestic violence or sexual violence of which the employee has been a victim	N/A	
	104 unpaid weeks if the employee suffers serious bodily injury as a result of a criminal offence that renders the employee unable to work		
Nova Scotia	3 unpaid days per year to care for an ill parent, child, or family member and personal medical, dental or other similar appointments for the employee or the employee's family member	N/A	N/A
Prince Edward Island	3 unpaid days per year for sickness *1 additional paid day after 5 years of continuous employment	3 months continuous employment	Employer can require medical certificate

Jurisdiction	Illness/Injury related leaves (Paid and Unpaid)	Eligibility Requirements	Documentation Requirements
Newfoundland & Labrador	7 unpaid days per year for sick leave or family responsibilities	30 days continuous employment	Medical certificate required for an absence of 3 or more consecutive days
Yukon	12 unpaid days per year for illness or injury	N/A	Employer can require medical certificate
	Up to 40 hours of paid sick leave-Subsidized by Yukon government (April 2023 until March 2025)	Program is available to employees (including self employed) making less than \$33.94 hourly who do not have access to 40 hours of paid sick leave through their employer. This is a temporary modified version of a support program initially created during COVID response.	Employer must apply and submit supporting documentation within 30 days of the claimed sick time to access subsidy.
Northwest Territories	5 unpaid days per year for illness or injury	30 days of employment	Employer can require medical certificate
Nunavut	N/A	N/A	N/A
Federally Regulated Employees	27 unpaid weeks for illness or injury, organ or tissue donation attending medical appointments, or quarantine.	N/A	If a medical leave of absence is 5 days or longer the employer may request a certificate issued by a health care practitioner.

Jurisdiction	Illness/Injury related leaves (Paid and Unpaid)	Eligibility Requirements	Documentation Requirements
			Employees must provide one in writing if requested by the employer within 15 days of return to work.
	3 days paid sick leave, after 30 days of continuous employment, additional accrual at 1 paid day per month of continuous employment up to 10 paid days per year.	30 days of continuous employment	Employer can request medical certificate

APPENDIX B: LIST OF STAKEHOLDERS CONTACTED

Large employers and business organizations	Labour groups, unions and social agencies	Other
Atlantic Provinces Trucking Association	Conseil économique du Nouveau-Brunswick inc.	The Canadian Bar Association
Canadian Federation of Independent Business	New Brunswick Federation of Labour	New Brunswick Power Corporation
Canadian Homebuilders Association - New Brunswick	Association of Professional Engineers and Geoscientists of NB	Joint Economic Development Initiative (JEDI)
Construction Association of New Brunswick Inc.	General Contractors Alliance of Canada (Atlantic Chapter)	Le Regroupement féministe du Nouveau-Brunswick
Electrical Contractors Association of NB Inc.	Architects Association of NB	NB Women's Council
Mechanical Contractors Association of NB Inc.	Association of Consulting Engineering Companies of NB	NB Multicultural Council
New Brunswick Road Builders & Heavy Construction Association	Union of the Municipalities of NB	Fredericton Anti-Poverty Association
Saint John Construction Association Inc.	Cities of NB Association	Treasury Board (Human Resources) - ADM
MRDC Operations Corporation	Association francophone des municipalités du Nouveau-Brunswick	Women's Equality Branch - ADM
Brun-Way Highways Operations (SNC Lavalin)	The Association of Municipal Administrators of New Brunswick	Social Development - DM
Gateway Operations	Chartered Professionals in Human Resources New Brunswick (formerly Human Resources Association of New Brunswick- CPHR New Brunswick)	Tourism, Heritage and Culture - DM
Coastal Transport	Farm NB	Opportunities New Brunswick - CEO
Restaurants Canada	National Farmers Union in NB	Human Rights Commission

Large employers and business organizations	Labour groups, unions and social agencies	Other
Retail Council of Canada	Potatoes NB	WorkSafe NB
Canadian Manufacturers & Exporters	Canadian Union of Public Employees	Agricultural Alliance of NB
Canadian Association of Counsel to Employers	CUPE New Brunswick	Atlantic Human Rights Center
Tourism Industry Association of New Brunswick	NB Union of Public and Private Employees	Canadian Diabetes Association – Maritimes
The Agricultural Alliance of New Brunswick	Equality Representative, CUPE Maritimes Regional Office	Canadian Mental Health Association
Atlantic Canada Fish Farmers Association	New Brunswick Nurses Union	New Brunswick Common Front for Social Justice
Lobster Processors Association of NB and NS	New Brunswick Building Trades Unions (formerly known as New Brunswick Building & Construction Trades Council)	NB Health Council
New Brunswick Business Council	New Brunswick Teachers Association	NB Healthcare Association
Atlantic Provinces Chamber of Commerce	New Brunswick Teachers Federation	NB Social Policy Research Network
Chambre de Commerce du Grand Caraquet	L'Association des enseignantes et enseignants francophone du Nouveau-Brunswick	NB Special Care Home Associatoin
Edmundston Chamber of Commerce	United Food & Commercial Workers International Union	Horizon Health Network
Fredericton Chamber of Commerce	Unifor	Réseau de santé Vitalité
Greater Bathurst Chamber of Commerce	National Farmers Union of NB	
Greater Moncton Chamber of Commerce	Canadian Association of Labour Lawyers	
Mactaquac Country Chamber of Commerce	NB Home Support Workers Association	
Miramichi Chamber of Commerce	Saint John Human Development Council	

Large employers and business organizations	Labour groups, unions and social agencies	Other
New Brunswick Chamber of Commerce	New Brunswick Coalition for Pay Equality	
The Chamber (Saint John Region)	Labour and Employment Board	
Enterprise Saint John	Ability NB	
Campbellton Regional Chamber of Commerce	SPARK (Formerly the Metal Working Association of NB)	
Chaleur Chamber of Commerce	NB Association of Nursing Homes	
Envision Saint John	Worker Appeal Services	
Convenience Industry Council of Canada (formerly Atlantic Convenience Stores Association)	NB Economic and Social Inclusion Corporation	
Food and Beverage Atlantic (formerly Atlantic Food and Beverage Processors Association)	Atlantic Canada Regional Council of Carpenters, Millwrights and Allied Workers	
Canadian Chamber of Commerce	Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 406	
The Chamber Region (formerly SJ Board of Trade)	Bathurst and District Labour Council	
NB Association of CBDC	International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local 842	
Irving Oil	International Association of Heat and Frost Insulators and Allied Workers	
JD Irving	International Association of Machinists and Aerospace Workers, Local 835	

Large employers and business organizations	Labour groups, unions and social agencies	Other
McCain Foods	International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, local 73	
Pattison Signs	International Brotherhood of Electrical Workers Local 1555	
Food & Beverage Atlantic	International Brotherhood of Electrical Workers Local 37	
Atlantic Convenience Stores Association	International Brotherhood of Teamsters, Local 927	
Potatoes NB	International Longshoremen Association Local 273	
	International Union of Bricklayers and Allied Craftworkers, Local 8	
	International Union of Painters and Allied Trades Local 1151	
	NB Construction Labour Relations Alliance	
	NB Council of Hospital Unions CUPE 1252	
	NB Council of Nursing Homes (CUPE)	
	NB Nurses Union	
	NB Teachers Association	
	Port of Saint John Employers Association	
	Sheet Metal Workers' International Association Local 437	
	NB Medical Society	
	Masonry Industry Association of Atlantic Canada	