

**Bargaining Council of B.C. Building Trades Unions  
(B.C.B.C.B.T.U.)**

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February 28, 2022

To: Paul Strangway, Senior director, Labour Relations CLRA of BC

Fr: Geoff Higginson, President, BCBCBTU

Re: Sick Leave (Illness or Injury Leave) Pay Details

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**Without Prejudice**

1. In your communication January 24, 2022 “Re: Sick Leave Pay Details” you say “In hindsight both of those e-mails should have also been sent to the Council to ensure you were aware of this information”. The Council notes that your communication to our Contractors went out on December 16<sup>th</sup> 2021, presumably to ensure they had enough time to integrate sick pay into their payroll systems and train staff, but CLR failed to send the communication to the Council.
2. This lack of communication with Council has been prevalent through the past few years and in particular with the LNG Canada project where we find out changes to policy or implementation of policies after they have been implemented, creating disharmony and unnecessary grievances that cause both monetary and production hardships to our members and contractors. This is contrary to our duties under the code, Part 1, Section 2(d), “The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that”, “(d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity”.

3. For the purposes of Sick Leave CLR considers wages to be hourly pay, vacation and statutory holiday pay and you indicate this is “based on the definition of wages found in the definitions section of the Employment Standards Act (the ‘Act’).” In this Section of the Act, it clearly states that “‘wages’ includes”, “(a) salaries, commissions or money, paid or payable by an employer to an employee for work”, “(e) in Parts 10 and 11, money required under a contract of employment to be paid, for an employee's benefit, to a fund, insurer or other person”. So, this would include anything that is a benefit to an employee. This is further bolstered by the explanation given on the BC Government website here, <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/forms-resources/igm/definitions?keyword=definition&keyword=of&keyword=wages> , where it says under the definition of wages, “Policy Interpretation”, “Subsection (e)”, “Any money an employer agrees to pay on behalf of an employee under s.26 of the Act must be paid in accordance with the terms of the employment contract. Where an employer fails to make the remittance, as required, these amounts are recoverable as wages under Part 10 and 11 of the Act “. You will note that s.26 of the Act reads, “Payments by employer to funds, insurers or others”, “An employer who agrees under an employment contract to pay an amount on behalf of an employee to a fund, insurer or other person must pay the amount in accordance with the contract”.
4. All the payments under the collective agreement are therefore payable, such that sick leave pay would be based on the regular total monetary package in the collective agreement the employee is working under. And also, further to the point, “total monetary package”, CLR and the Council have, for many rounds of bargaining, negotiated increases to the total monetary package, including statutory and holiday pay, pension and health and welfare, training funds and other industry funds. The only exception to this was the micro bonus achieved during the last round where, when increases were applied to wages, they attracted in addition statutory and holiday pay.
5. We consider contributions to pension and health and welfare to be wages under the definition in the Act, as we have argued above. We acknowledge also that “Sections 56(1) and (2) of the Act” which relate to “employment deemed continuous while employee on leave or jury duty”, adds to the validity of our argument for payment of pension and health and welfare contributions while on

sick leave (Illness or Injury Leave), but note that the section does not eliminate other fund payments but in fact says in subsection 2, sub-sub-section (b)", ...or other plan beneficial to the employee". All of our plans are beneficial in some way to our members, our contractors' employees.

6. Your advice, I assume from counsel, "that if employee deductions are not made from sick pay, then an employee will take home more pay on a sick day than they would on a day at work", is utterly incongruous with the CLR's position that certain contributions/payments made should not be included in sick pay because they are not wages. Not paying those amounts has the effect of paying the employee less for a sick day. You cannot have it both ways.
7. The Councils' position is that members Sick Pay (Illness or Injury Leave) is to be calculated based on their total monetary package, as if they had actually worked the hours on the days worked in the previous thirty days. It is astonishing that CLR would nickel and dime employees to make cost savings that will evaporate due to the extra payroll time it will take to calculate the pay for each individual by taking some pay out and leaving some deductions in. Aside from being the correct way to do this, using the total monetary package with all deductions and contributions is a much more sensible and economically viable way of calculating Sick Pay (Illness or Injury Pay).

Regards,

Geoff Higginson