

The background is an aerial, high-angle photograph of a large crowd of people. The ground is marked with a grid of thin, light-colored lines. Several large, semi-transparent circular areas are overlaid on the grid, highlighting specific sections of the crowd. The overall color palette is warm, dominated by yellows and oranges, suggesting a bright, sunny day. The people are seen from above, some standing, some walking, and some sitting, creating a sense of a busy public space.

大成 DENTONS

# Review of new paid sick leave and what you need to know about rapid antigen testing

May 28, 2021

**DENTONS WEBINAR SERIES**  
COVID-19 - LEGAL UPDATE  
FOR CANADIAN EMPLOYERS

# Panelists



**Stephanie Lewis**

Counsel, Ottawa  
Employment and Labour

D +1 613 783 9651  
stephanie.lewis@dentons.com



**Eleni Kassaris**

Partner, Vancouver  
Employment and Labour

D +1 604 629 4982  
eleni.kassaris@dentons.com



**April Kosten**

Partner, Calgary  
Employment and Labour

D +1 403 268 3108  
april.kosten@dentons.com



**Larysa Workewych**

Associate, Toronto  
Employment and Labour

D +1 416 863 4613  
larysa.workewych@dentons.com



**Brian Frappier**

Product Manager Covid B2B at  
LifeLabs Medical Laboratory  
Services

brian.frappier@lifelabs.com

# British Columbia sick leave

The background of the slide is a solid orange color. It features three large, semi-transparent circles in a lighter yellow shade. One circle is positioned in the lower-left quadrant, another is in the upper-right quadrant, and a smaller one is in the lower-right quadrant, overlapping the larger one.

## Section 52.121 – COVID-19 related paid leave

- All employees can take up to three days of paid leave between May 20, 2021 and December 31, 2021.
- An employee can access the paid sick days if they are unable to work for any of the following reasons:
  - The employee has been diagnosed with COVID-19 and is following the instructions of a medical health officer or the advice of a doctor or nurse;
  - The employee is in isolation or quarantine and is acting in accordance with an order of the provincial health officer, an order made under the Quarantine Act (Canada), guidelines from the BC Centre for Disease Control or guidelines from the Public Health Agency of Canada
  - The employer has directed the employee not to work due to concern about exposure to others
- If a collective agreement contains any provisions respecting paid leave that apply to these circumstances that meet or exceed these requirements, the provisions of the collective agreement replace the requirements of the legislation in respect of employees covered by the collective agreement.

## Employer reimbursement

- Employers will be required to pay workers their full wages and the Province will reimburse those employers without an existing sick leave program up to \$200 per day for each worker to cover costs.
- The reimbursement program will be administered through WorkSafeBC.
- Details on how to register for the reimbursement program to be announced.

# Calculating an average day's pay

- Employers must pay at least an average day's pay for each day of paid leave as follows:

**Total wages ÷ number of days worked = an average day's pay**

- The calculation is based on days worked during the 30 calendar days before the first day of the leave and includes all wages except overtime (salary, commission, statutory holiday pay and paid vacation).
- Days do not have to be taken consecutively.

## Section 51.12: COVID-19 related leave (unpaid)

- The paid sick days are in addition to the unpaid leave provisions brought into force in 2020 which provide that employees can take unpaid, job-protected leave related to COVID-19 if the employee is unable to work because the employee:
  - has been diagnosed with COVID-19 and is following the instructions of a medical health officer or the advice of a doctor or nurse;
  - is in isolation or quarantine and is acting in accordance with an order of the provincial health officer, an order made under the Quarantine Act (Canada), guidelines from the BC Centre for Disease Control or guidelines from the Public Health Agency of Canada;
  - has been directed by the employer not to work due to concern about exposure to others;
  - needs to provide care to an eligible person for a reason related to COVID-19 (including a school, daycare or similar facility closure and assisting a dependent being vaccinated against COVID-19);
  - is outside of BC and unable to return to work due to travel or border restrictions;
  - is more susceptible to COVID-19 in the opinion of a medical professional because of an underlying health condition, ongoing treatment or other illness and are receiving Canada recovery sickness benefits for the leave.

## Section 52.13: Leave for COVID-19 vaccination (paid)

- Employees can also take up to **3 hours of paid leave** each time (both doses) they need to be vaccinated against COVID-19.
- Employees are entitled to this leave no matter how long they have been employed.
- Vaccination leave is retroactive to April 19, 2021 and is in addition to the separate leave from the three paid sick days.
- If the employee takes this leave, the employer needs to pay at least the average hourly wage for each hour of leave, up to 3 hours calculated as follows:

$$\text{Hourly wage} = \text{amount paid} \div \text{hours worked}$$

- The calculation is based on days worked during the 30 calendar days before the leave started and includes all wages except overtime (salary, commission, statutory holiday pay and paid vacation days).

## Proof can be requested

- An employer may ask for “reasonably sufficient proof” within a reasonable time that an employee is entitled to a COVID-19-related leave.
- An employer must not require a medical note as proof the leave is required.
- Regarding vaccination leave, specifically, the published interpretation guidelines state:

*An employer can ask for proof that an employee is entitled to take this leave, for example, confirmation of a vaccine appointment. An employer cannot require a doctor’s note or proof of vaccination.*

## Permanent paid sick leave

- Currently, employees working for longer than 90 days are eligible for up to three days of unpaid personal illness or injury leave in each year of employment (section 49.1).
- Effective January 1, 2022, a permanent paid sick leave will be in force in British Columbia.
- Amount of paid days to be determined.

# **Paid sick leave in Alberta**

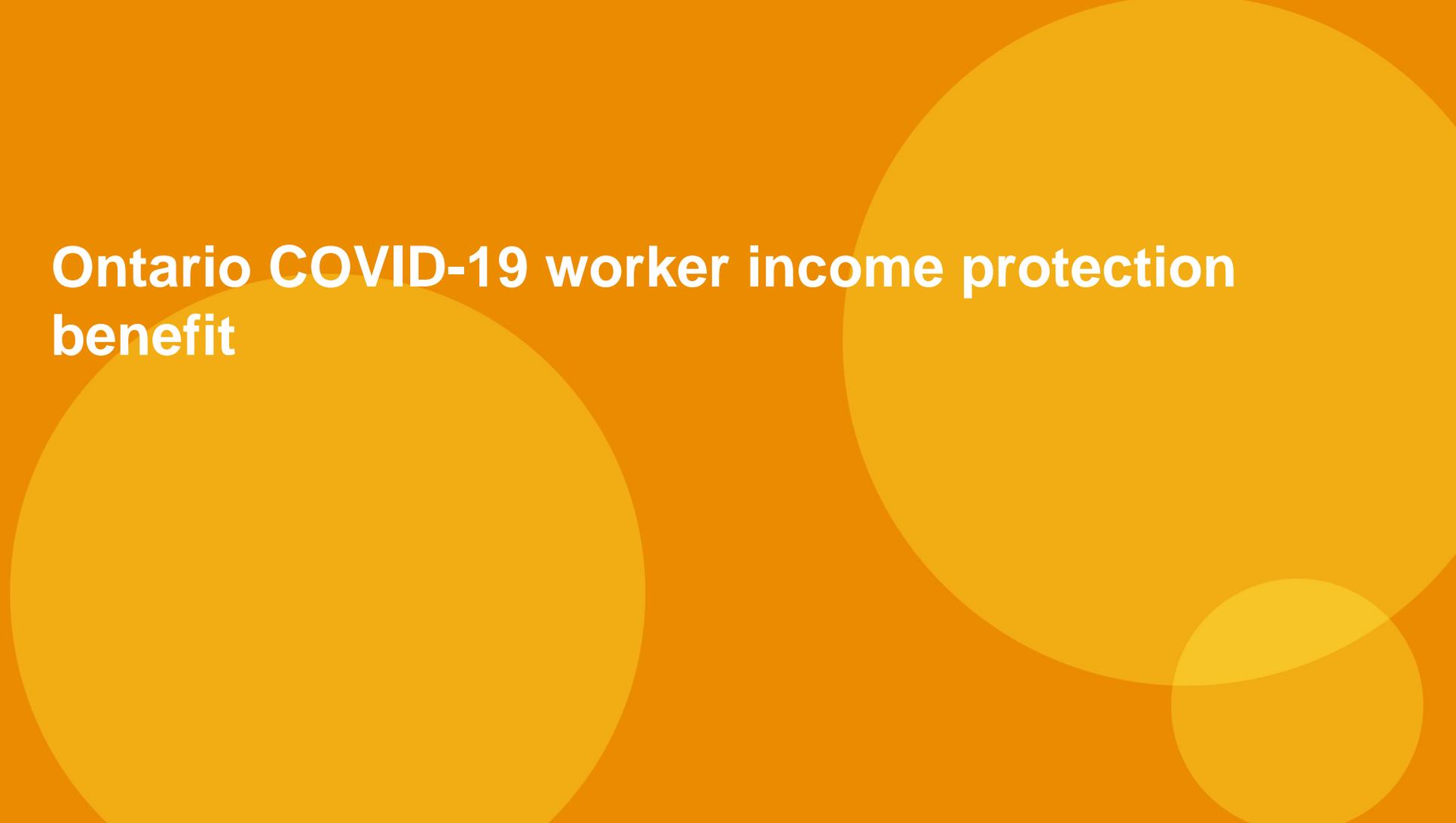
The background features a solid orange color with a subtle gradient. Three large, semi-transparent circles in a lighter shade of orange are overlaid on the background. One circle is positioned in the lower-left quadrant, another is in the upper-right quadrant, and a smaller one is in the lower-right quadrant, overlapping the larger one.

# COVID-19 vaccination leave

- Bill 71, *Employment Standards (COVID-19 Vaccination Leave) Amendment Act, 2021*
  - Effective April 21, 2021
  - 3 hours paid, job-protected leave
  - Not required to provide proof of vaccination but appointment confirmation may be requested
  - Eligible regardless of job status or length of employment

# Unpaid COVID-19 leave

- No legislated paid leave in Alberta
- *Employment Standards (COVID-19 Leave) Regulation*
  - Effective March 5, 2020
  - For quarantine or self-isolation
  - Eligible regardless of length of service
  - Can take leave more than once
  - Can take leave consecutively with any other job-protected leave
  - Not required to provide medical note

The background features a solid orange color with several overlapping circles in various shades of yellow and orange. The circles are of different sizes and are positioned in the upper and lower right areas of the frame.

# **Ontario COVID-19 worker income protection benefit**

## Context: Infectious disease emergency leave

- Right to take an unpaid, job-protected leave if they are not performing the duties of their position because of prescribed reasons relating to designated infectious disease (i.e. COVID-19)
- No end date to the leave entitlement
  - Employee entitled so long as conditions in the *ESA* are met
- Reasons include:
  - Employee under medical investigation, supervision or treatment related to COVID-19
  - Employee is in quarantine, isolation or is subject to a control measure
  - Employee is under a direction given by their employer in response to concern employee may expose others in the workplace to COVID-19
  - Employee providing care to prescribed family members because of a matter related to COVID-19

# COVID-19 Worker Income Protection Benefit

- In addition to an employee's right to the unpaid infectious disease emergency leave
  - Paid infectious disease emergency leave
- Up to **three paid days of leave** available to employees covered by the *ESA*
  - Lesser of \$200 per day and wages employee would have earned per day
- Entitlement to leave reduced if four criteria met on April 19, 2021:
  1. Employee had the right to a paid leave under their employment contract for one or more of the same reasons that paid leave can be taken
  2. Employee has not already used up those days of paid leave under their contract before April 19, 2021 (i.e. the days are remaining)
  3. Employee's contract provided pay for the leave that is at least as much as the employee would be entitled to receive for the paid leave
  4. Employee's contract did not contain conditions for taking the leave that are more restrictive than what is set out in the *ESA* for taking paid leave

# Reasons for Taking Infectious Disease Emergency Leave

Reasons for taking <u>unpaid</u> leave	Reasons for taking <u>paid</u> leave
Employee under medical investigation, supervision or treatment related to COVID-19	Employee under medical investigation, supervision or treatment related to COVID-19
Employee acting in accordance with order under sections 22 or 35 of the <i>HPPA</i> that relates to COVID-19	Employee acting in accordance with an order under sections 22 or 35 of the <i>HPPA</i> that relates to COVID-19
Employee in quarantine or isolation or is subject to a control measure (including self-isolation)	Employee in quarantine or isolation or is subject to a control measure (including self-isolation)
Employee under direction given by employer in response to concern that employee may expose others to COVID-19	Employee under direction given by employer in response to concern that employee may expose others to COVID-19
Employee providing care or support to prescribed individual because of a matter related to COVID-19 that concerns the individual, including but not limited to school or daycare closures	Employee providing care or support to prescribed individual because: <ul style="list-style-type: none"><li>i. Individual is under medical investigation, supervision or treatment related to COVID-19; or</li><li>ii. Individual is in quarantine or isolation or is subject to a control measure (including self-isolation)</li></ul>
Employee is directly affected by travel restrictions related to COVID-19 and, under the circumstances, cannot reasonably be expected to travel back to Ontario	

## Election between paid and unpaid leave

- Employees can elect not to receive paid leave
  - E.g. to remain eligible for the Canada Recovery Sickness Benefit
- Must advise employer in writing of decision to take time as unpaid infectious disease emergency leave
  - Before the end of the pay period in which leave occurs

## Employer reimbursement

- Entitled to be reimbursed up to \$200 per employee per day taken
  - Payments made pursuant to a contract for which employee would also be entitled to take leave are not eligible for reimbursement
- Administered through the WSIB
  - Not a WSIB program and not funded by WSIB insurance
- Employers make application for reimbursement to WSIB within 120 days of paying the employee
- No right of reconsideration or appeal to the WSIB or WSIAT

# Covid Rapid Antigen Testing

---





# Safe Return to Work: Best Practice



## Minimum Response

- Formal plan
- Enforced hygiene practices
- Positive COVID case Protocol
- Symptom checking e.g. Temperature
- Sporadic outbreaks



## Best Practice

- Formal plan
- Enforced hygiene practices
- Positive COVID case Protocol
- Symptom checking and daily reporting
- Regular testing
- Low level of Workplace transmission





# Why Rapid Antigen?

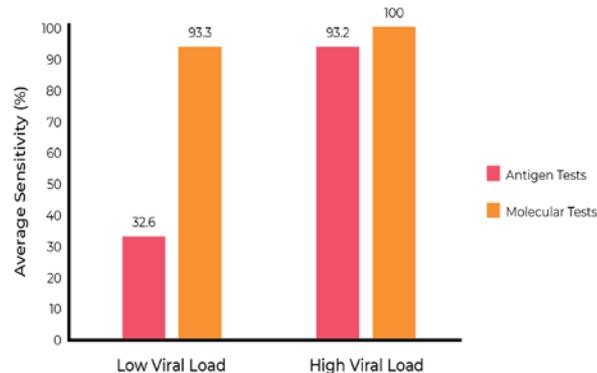
## PCR

- high sensitivity, detects infection early at Low viral loads
- Lab Based with a with 24 hr Turn Around Time
- Diagnosis of infection

## Rapid Antigen

- less sensitive and requires a high viral load for detection.
- less expensive and performed onsite with a 1 hr Turn Around Time
- Effective at detecting COVID-19 when the virus is most infectious
- Test frequently, recommended every 3 days

Test Sensitivity vs. Sample Viral Load



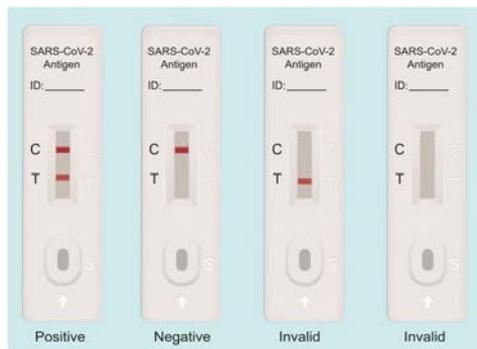
Reference: Rapid, point-of-care antigen and molecular-based tests for diagnosis of SARS-CoVRCoV-2 infection. Cochrane Database of Systematic Reviews.

*Evaluation of 22 publications comparing RA to PCR for the detection of COVID-19, researchers found that RA was not as sensitive at identifying individuals with a low viral load, however in individuals at their most infectious, carrying a high viral load, found sensitivity levels comparable to that of PCR tests.*

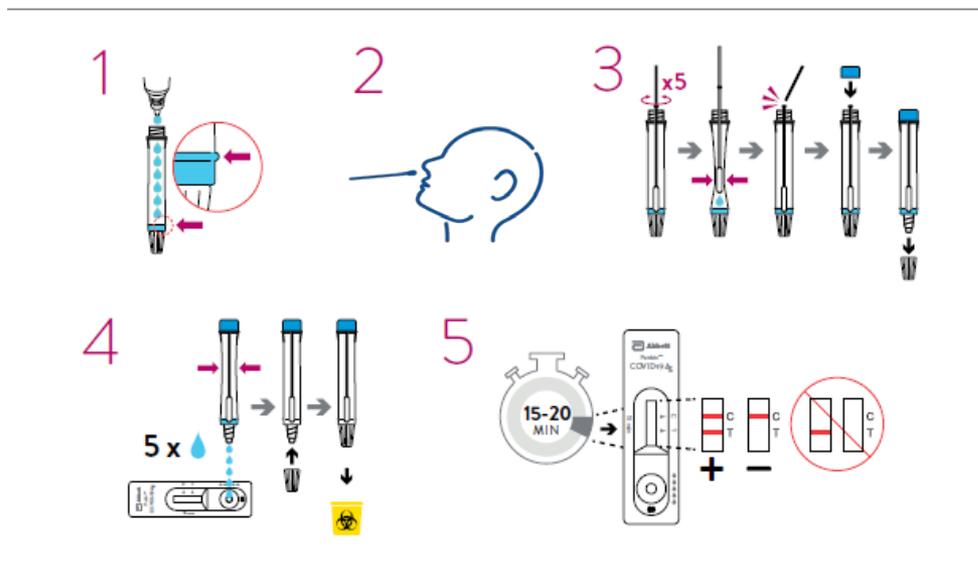


# How is Rapid Antigen Testing performed?

A lateral flow assay involves the proper performance critical steps to produce a valid result.



NOTE: This figure is only used as a reference.



# Provincial programs

## Ontario

- Free kits
- De-regulated
- No reporting requirements
- Positive Antigen tests are referred to Public Health for assessment and follow up
- Highest participation rates
- Low quality

## British Columbia

- Free kits
- BCCDC oversight for companies to Self Test
- DAP accreditation oversight for labs
- Low participation rates
- Quality requirements maintained

# Example of a “Turnkey” solution



## Sample Collection

LifeLabs collected or observed group self collection; employer collected or observed self collection of bilateral nasal



## Symptom Screening

Web/app employee symptom screening questionnaire and reporting.



## Rapid Antigen Testing

Modular testing solution. Scalable solution.



## PCR/Variant Testing

PCR based testing program as well as reflex for positive RA. All positive PCR reflex to identify variants of concern.



## Home-Based Solutions

Virtually supported home solutions to support field-based staff, return to work testing, and remote locations.



## Safe Return to Work

Employee is safe to return to work confirmed by negative test



## Technology Solution & Program Management

Supplies and PPE management • Symptom check in • Schedule testing • Manage results

**Questions?**

The background is a solid orange color. It features three large, semi-transparent yellow circles of varying sizes. One circle is on the left side, another is on the right side, and a smaller one is positioned at the bottom right, overlapping the larger circle on the right.

# Thank you



**Stephanie Lewis**

Counsel, Ottawa  
Employment and Labour

D +1 613 783 9651  
stephanie.lewis@dentons.com



**Eleni Kassaris**

Partner, Vancouver  
Employment and Labour

D +1 604 629 4982  
eleni.kassaris@dentons.com



**April Kosten**

Partner, Calgary  
Employment and Labour

D +1 403 268 3108  
april.kosten@dentons.com



**Larysa Workewych**

Associate, Toronto  
Employment and Labour

D +1 416 863 4613  
larysa.workewych@dentons.com



**Brian Frappier**

Product Manager Covid B2B at  
LifeLabs Medical Laboratory  
Services

brian.frappier@lifelabs.com

© 2021 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This document is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. We are providing information to you on the basis you agree to keep it confidential. If you give us confidential information but do not instruct or retain us, we may act for another client on any matter to which that confidential information may be relevant. Please see dentons.com for Legal Notices.

© 2021 Dentons. Dentons est un cabinet d'avocats mondial qui fournit des services à sa clientèle par l'intermédiaire de ses cabinets membres et des membres de son groupe partout dans le monde. Le présent document n'est pas destiné à servir d'avis d'ordre juridique ou autre et vous ne devriez pas agir, ou vous abstenir d'agir, sur la foi de son contenu. Nous vous communiquons certains renseignements à la condition que vous conveniez d'en préserver le caractère confidentiel. Si vous nous communiquez des renseignements confidentiels sans toutefois retenir nos services, il se pourrait que nous représentions un autre client dans le cadre d'un mandat auquel vos renseignements confidentiels pourraient servir. Veuillez consulter les avis juridiques à l'adresse dentons.com.