



British Columbia's H1N1 Pandemic Influenza Response Plan (2009)

Compensation for Healthcare Workers During Pandemic Influenza

December 2009

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1. INTRODUCTION

1.1 Purpose

To provide information and guidance to B.C. health sector employers on compensation for the following groups:

- Employees including:
 - Unionized employees;
 - Excluded non-management (non-union) employees;
 - Excluded management (non-union) employees;
 - Excluded executive (non-union) employees;

- Healthcare Volunteers;
- Healthcare Contractor Workers; and
- Temporary Pandemic Event Workers.

The overarching purpose of this guidance is to ensure that the supply of health care workers in British Columbia is not adversely impacted by compensation issues that may arise in the health sector during a pandemic influenza.

1.2 Background

The B.C. H1N1 Pandemic Influenza Response Plan (2009) is intended to provide BC's health sector with updated and current plans and guidelines for the provincial response to the H1N1 pandemic. Guidelines have been updated from the 2005 Pandemic Preparedness Plan to focus on the immediate priorities and issues of the current H1N1 pandemic, a portion of which involves health human resources compensation matters.

This compensation guidance was prepared by the Health Employers Association of BC in consultation with the following:

- Human Resources (HR) and Occupational Health & Safety Directors from the six provincial health authorities and select affiliates;
- Members of the Human Resources Advisory Group;
- Representatives from WorkSafeBC, the Occupational Health & Safety Agency for Healthcare in BC (OHSAH), and representatives from B.C.'s health care unions. The unions included:

- British Columbia Government and Service Employees' Union (BCGEU);
- BC Nurses' Union (BCNU);
- Health Sciences Association of British Columbia (HSABC);
- Hospital Employees' Union (HEU); and
- United Food and Commercial Workers Union Local 1518 (UFCW).

In preparing this guidance, pandemic plans and human resources management practices from other Canadian and international jurisdictions were reviewed. This process included reviewing information developed through a series of Federal / Provincial / Territorial Common Briefing Notes prepared by the Assistant Deputy Ministers of Health Human Resources, for approval by the federal Deputy Ministers' group as part of a process that occurred over the spring and summer of 2009 to help ensure general understanding of the various approaches and to encourage alignment between the provinces.

It is important to note that the labour environment in British Columbia, manifested in the province's regime of employment law and "master" collective agreements, is unique to BC and therefore it was determined that many of the approaches from other jurisdictions may not be transferrable to the BC situation.

1.3 Scope

To prepare this guidance, the review examined the existing health and welfare benefits for HCEs, both union and non-union. It considered the coverage for full-time, part-time, casual and volunteer workers including those

1.4 Definitions

The following terms are defined:

- Health Care Worker (HCW) – HCWs are professionals (including trainees and retirees), non-professionals and volunteers, working/volunteering to provide health care services.
- Health Care Employee (HCE) – HCEs are professionals (including trainees and retirees) and non-professionals but excluding volunteers, who are employed to provide health care services and who are being paid to provide those services. When it is intended herein to refer to paid employees the term HCE will be used.
- Health Care Volunteer (HCV) – HCVs are professionals (including trainees and retirees) and non-professionals who are volunteering to provide health care services and who are not being paid to provide those services. When it is intended to refer to unpaid volunteers the term HCV will be used.
- Health Authority (HA) – HA refers to one of the six BC Health Authorities (Northern, Interior, Vancouver Island, Vancouver Coastal, Fraser and the Provincial Health Services Authority).
- Compensation – as used by HR practitioners and healthcare managers the

To help put this guidance in context for BC's HR response during a pandemic, readers are encouraged to review the Human Resources Framework (HR Framework). The HR Framework is available elsewhere on this web site.

who are excluded from union membership. The review also included wage-related benefits such as Workers' Compensation, sick leave, special leave, etc.

term includes a range of pay and perquisites that comprise the overall pay package of HCEs. Each component of pay and perquisites is often further broken down as follows:

- Pay
 - Straight time pay or salary;
 - Premium pay for work in special circumstances such as overtime, statutory holidays, after short-notice shift change, etc.;
- Perquisites
 - Health and welfare benefits such as medical, dental, extended health, life insurance, pensions, etc.;
 - Time off work and leaves of absence for a variety of reasons including vacation, statutory holidays, sickness, long term disability, and leaves for maternity, paternity, adoption, family emergency, jury duty, military duty, etc.; and
 - Other perquisites might include allowances for meals, travel, education, etc.

2. PRINCIPLES

The following key principles were considered when developing the compensation guidelines:

- A. Extra compensation is not required for working with infectious patients – this is already part of the daily work of healthcare workers and is accounted for in current compensation practices.
- B. Practices should be consistent across all health employers – it is important that compensation practices be common both within health authorities and across all BC health authorities. This principle flows from fundamental principles of fairness and equity. Otherwise there may be mistrust that will affect staffing during a pandemic and lingering ill will that may affect employee engagement subsequent to the crisis.
- C. Employees exercising managerial functions have distinctions requiring special consideration – there are actually three groups of “managers”: Executives (Execs), Management Excluded Employees (MEEs) and Non-

managerial Excluded Employees (NMEEs).

- a. For a variety of legal, compensatory and public relations reasons the Execs need to be dealt with separately from the MEEs and the NMEEs on issues such as overtime compensation.
 - b. The MEEs and the NMEEs have different legal entitlements to overtime (for example) but whenever possible should be considered as a single group for a number of reasons including fairness, clarity and consistency, and because in practice they already view themselves as a single group.
- D. Compensation practices should not be altered for some parts of the health sector and not others – it would be disruptive to provide a benefit for employees of one part of the sector that is not extended in similar fashion to the other employees of the sector.

3 FACTORS CONSIDERED WHEN DEVELOPING THE COMPENSATION GUIDELINES

The following factors were considered when developing the compensation guidelines:

1. BC healthcare workers are already governed by agreements that contemplate many and varied compensation schemes. New or increased compensation isn't the issue nor is it the answer.
2. Compensation isn't the problem, rather education before, during and after a pandemic influenza supplemented by solid personal protective measures will have a significant impact on HCW attendance. It is these areas in which the sector needs to focus its efforts in support of HCWs.
3. The existing benefits packages are generous and are comparable to other Canadian jurisdictions.
4. HCWs already provide care to ill patients and work around diseases that are far more dangerous and deadly than PI.
5. Many of the professions within healthcare require extensive education and training. Providing extra money or benefits for unqualified people isn't going to resolve a shortage of particular skills.
6. As noted in the HR Framework the most significant source of extra hours of work during a pandemic will come from first protecting our existing employees and next maximizing their use. Existing employees are far more valuable than replacement workers as new staff normally require extensive orientation and sometimes training.
7. However, during a pandemic there may be unemployed yet qualified and trained people from compatible industries or providers such as pharmacies, laboratories, physiotherapy and hotels who will be available to work due to travel restrictions, forced closure of gathering places and the reticence of the public to travel because of the inherent disease risk. This should create an ability to hire temporary pandemic workers who are already familiar with services such as pharmacy, laboratory, food, housekeeping, laundry, etc. These temporary workers should be paid according to the existing contractual requirements and in concert with the guidance contained herein.

4. COMPENSATION GUIDELINES

4.1 Unionized Employees

HCEs will receive the compensation that normally flows from their collective agreement during pandemic influenza, i.e. regular rates of pay for regular time and overtime rates for overtime work.

HEABC continues discussing with the unions the matter of premium pay for short notice schedule changes, call-in language and employment of temporary pandemic workers within the bargaining units.

4.2 Management and Non-management Excluded Employees

Pursuant to the provisions of the Labour Relations Code, employees may be precluded from union membership because they are management excluded employees (MEE) or for other reasons in which case they are non-management excluded employees (NMEE).

Regardless of the reason for their exclusion from the union, within a healthcare facility and region the non-union employees typically see themselves as part of a single group. Usually the employer will have a single set of terms and conditions of employment for the entire excluded group.

Management Excluded Employees

The managers are not so entitled because that Act excludes them from the sections dealing

with overtime (Employment Standards Regulation 34[f]). During a pandemic managers and non-managers can be expected to work significant amounts of overtime. In this regard it would be unfair and contrary to the general principle of consistency to treat the managers differently from the non-managers.

Health Authorities will pay overtime to their excluded employees at an overtime rate that is an average for their excluded group. This is similar to what HAs normally do during work stoppages and essential service designations.

Non-management Excluded Employees

The non-managers are entitled to overtime pay pursuant to the terms of the Employment Standards Act of BC.

4.3 Excluded Executives

HAs are recommended to not pay overtime compensation for executive employees and are to judiciously apply the applicable clauses in

their respective terms and conditions of employment for executive staff.

4.4 Temporary Pandemic Event Workers

Union Positions

Provisions are already in place in all of the collective agreements (Nurses, Facilities, Community, Health Science Professionals and Professional Association of Residents) for various types of temporary and casual employees. Those provisions spell out in detail the pay and prerequisites to which such employees are entitled.

Temporary pandemic event workers engaged in union positions will be compensated as per the terms of the appropriate collective agreement.

Non-union Positions

There will also be temporary pandemic event workers engaged in non-union positions. The existing workers in such positions already have terms and conditions of employment that deal with compensation in a comprehensive manner. A sample employment agreement for non-union temporary pandemic event workers is attached as Appendix B.

Temporary pandemic event workers engaged in non-union positions will be compensated as per the terms and conditions of appointment for other non-union employees in that workplace.

4.5 Healthcare Contractor Workers

In many health sector facilities there are contract workers (i.e. the employees of other employers) performing specific work such as food services, security and housekeeping.

In addition there are sometimes contract workers from temporary agencies filling relief roles for employees who are absent and for whom no temporary employee could be found.

4.6 Volunteers

Health sector employers are recommended to adopt a policy of not paying volunteers or providing any sort of health and welfare benefit or insurance. When volunteers receive compensation they cease to be volunteers and

4.7 Overtime and Days Off

Ensuring that individual employees don't work themselves to the point of exhaustion will be a key factor in providing quality care. Limiting overtime is critical both to the health of the employee and to the quality of care being provided. Unrestricted overtime may have liability consequences as well.

The Employment Standards Act normally requires a 32 hour break each week (otherwise overtime applies – Section 36[1]). Otherwise there is no clear guidance in law or contract as

In such circumstances there are usually contracts in place with each contractor-employer.

Contractors should deal with contract employees in ways that do not diverge in principle from the manner in which the health employers are dealing with their employees.

become employees which raises numerous common law, statutory and collective agreement issues all of which may be avoided by adopting the “no compensation” policy.

to maximum amounts of overtime that an employee can work. If we are to bring some consistency to the health care system during a pandemic influenza and assist employees and supervisors alike in making considered decisions then it is important that there be some guidance in this area.

It is recommended that health employers make the best effort possible to avoid scheduling employees for more than a total of 60 hours per week during a pandemic event.

APPENDICES

Appendix A: Bibliography

The following documents were referred to in the preparation of this document:

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31. The Great Influenza: The Epic Story of the Deadliest Plague in History, John M. Barry [2004],
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32. Ethics in Practice, Canadian Nurses Association [August 2008 ISSN Number 1480-9990]
33. Ethics and SARS: Learning Lessons from the Toronto Experience, A report by a working group of
The University of Toronto Joint Centre for Bioethics, Toronto, Canada,
<http://www.utoronto.ca/jcb/>

Appendix B: Temporary Pandemic Event Worker Contract of Employment

Between:

Name of Health Employer:

Address of Health Employer:

And:

(A) Name of temporary pandemic event worker:

[Title] [First Name] [Surname]

(B) Address:

[Address 1][Address 2][Address 3][Address 4][Postcode]

(C) Professional Registration Reference Number (where applicable):

Introduction

The purpose of this contract is to provide short-term temporary service for **[insert name of Health Employer]**, hereafter referred to as 'the employer, during the current pandemic influenza outbreak. This is a fixed-term contract for a specific purpose i.e. to provide additional service to the employer for the duration of the influenza pandemic.

This document sets out your terms of employment as a flexible worker and forms the terms of your contract of employment with the employer. Outside of this contract which is solely for the specific purpose of dealing with the influenza pandemic, there will be no contractual relationship between you and the employer. Specifically you shall not be regarded as having been taken into the employment of the employer for any purpose beyond the employer's needs during the current pandemic influenza outbreak.

You are being engaged in the position of: **Flexible** _____ **worker**

The person you are accountable to is: _____

Your rate of pay will be: _____

Payment will be made weekly/bi-weekly/monthly **[circle as appropriate]**

1. Term of Your Employment

This employment is solely for the purpose of assisting with staffing health care facilities in response to pandemic influenza and will be terminated when the employer, in its sole discretion, has no further need for extra staffing due to the pandemic.

The employer may decide at any time to end your employment to work under this contract of employment. The employer shall endeavour to give reasonable notice and as a minimum, will comply with the termination notice provisions of the Employment Standards Act of BC or provide payment in lieu of notice. Employees shall also give reasonable notice of termination which shall not be less than two (2) weeks except in the event of circumstances completely beyond the control of the employee.

The employer may terminate this contract of employment at any time for cause and without notice.

The requirement to give notice is not taken to prevent either party waiving their right to notice.

2. Job Role and Description

During the period of this contract, you are engaged as **[insert job title according to job held]** to carry out duties within your competence as determined by the employer.

Your duties and responsibilities will vary according to your job title, level of experience and qualifications/competencies. Appropriate training will be provided to enable you to undertake duties as required.

These responsibilities should not be regarded as exclusive or exhaustive and may need to be amended from time to time in the light of clinical/service requirements of the employer.

3. Place of Work

You will be employed at the employer's operations at the following location(s): **[insert as applicable]**. You may be required to work at other locations should it become necessary to relocate staff.

4. Accountability

On a day-to-day basis, you will be accountable to a designated manager or other member of staff.

5. Hours of Work

As a temporary worker, you will have no set hours unless agreed otherwise. It is the employer's duty generally to monitor your working hours, including hours that you work for an employer other than the employer and in any other employment you may hold with any employer (for instance under a full-time contract of employment). Therefore, you agree that you will inform the employer of:

- Any other work you carry out for any other person, firm or employer other than the employer;
and

- Any other work you carry out in a business of your own; and
- The days and hours that you work for such own business or other person, firm or employer and the times at which you carry out such work.

The employer will monitor working hours and seek to avoid any risk to health and safety from excessive work.

6. Absence Due to Sickness

You are required to notify the employer immediately if you are unable to attend the employer's facility or operation due to ill health. You are **not** entitled to paid sick leave. On any occasion that you are sick and unable to work you must notify the employer as soon as possible by phone at the following number: **[insert number]**.

If you are unable to work due to contracting pandemic influenza, the employer will seek to re-employ you once you are fit to return to work, subject to work being available.

7. Medical Fitness

The employer reserves the right to require you to attend a medical examination carried out by an occupational health practitioner and/or a medical practitioner approved by the employer in order to assess your fitness to work. The outcome of any medical examination will be disclosed to the employer. Failure to complete such medical examination will prevent you from undertaking or continuing in this role. A repeated failure to attend such medical examination will be deemed to be cause for termination without notice or pay in lieu thereof.

8. Smoking Policy

Smoking is prohibited on all premises except in designated areas outside of the facilities.

9. Application of Employer Policies and Procedures

Temporary workers are subject to all existing Employer policies and procedures. As part of orientation to any facility, the Employer will inform you of the location of workplace policies and procedure manuals. You shall ensure that you are aware of existing policies and procedures, where reasonable, in the event that clarification is necessary.

During the course of this contract of service, you will be subject to the provisions of the relevant disciplinary procedure in the event that a disciplinary issue arises. A copy of the employer disciplinary procedure is available from the human resources department.

10. Union Membership and Grievance Procedure

If your employment is within the bargaining unit of one of the unions you shall become a member of the union at the commencement of employment and shall remain a member in good standing throughout the term of your employment. You shall pay union dues at the rate specified for the

appropriate union which shall be deducted from your pay by the employer and remitted directly to the union.

During the course of this contract of employment, should you have any complaint or grievance then this will be dealt with by raising the matter with your manager in the following manner:

- If you are a union member via a shop steward and through the grievance procedure as provided for in the collective agreement; or
- If you are not a union member by meeting with your manager. Any issue you are unable to resolve with your manager in an appropriate amount of time you can then raise with the manager to whom your manager reports.

11. Criminal Records Check and Criminal History Disclosure

You are required to inform the employer of any known criminal investigations, prosecutions or convictions against you while you remain registered as a temporary worker.

TAKE NOTE that your signature on this Temporary Pandemic Event Worker Contract is deemed to be written consent to a Criminal Records Check authorizing a Police service to release criminal record information to the Employer. A completed Criminal Records Check shall be required by the Employer prior to the commencement of any pandemic influenza related assignment of the employee, in accordance with the Criminal Records Review Act of BC (RSBC 1996, Chapter 86).

As your Temporary Pandemic Event Worker position places you in a work environment with children or vulnerable persons, you are not entitled to withhold information about any criminal conviction for any sexual offense listed in the schedule of the *Criminal Records Act* (RSC, 1985, c. C-47) for which you have been pardoned. Any failure to disclose such convictions may result in disciplinary action or termination of this contract of employment.

TAKE NOTE also that your signature on this Temporary Pandemic Event Worker Contract is deemed to be written consent for the Employer to verify with a Commissioner of the Royal Canadian Mounted Police to determine whether you have been granted or issued a pardon for a sexual offense listed in the schedule of the *Criminal Records Act*.

12. Health and Safety

While working with the employer, you have a duty to take reasonable care to avoid injury to yourself, patients and others at your place of work and to cooperate with the employer in meeting its obligations towards the safety of its workers, patients and others throughout the pandemic influenza outbreak and its obligations under health and safety legislation. If, during the contract of employment, you are involved in an accident or incident (whether or not it is affected by the pandemic) or injure yourself or a colleague at work, you must inform your designated manager at that particular location immediately. Personal injury details must be entered in the accident records immediately and the necessary local accident report form completed.

The Employer will comply with all relevant provisions of the Workers Compensation Act and Regulations in addition to precautionary guidance from the Provincial Health Officer on health and safety measures to minimise the spread of pandemic influenza.

13. Confidentiality

You are required to observe the strictest confidence regarding any information relating to the work of the employer, its patients/clients and employees.

‘Confidential information’ includes but is not limited to information relating to the employer received by you during this contract of employment as a flexible worker and any information relating to patients, personal information, budgeting and financial information, and information in respect of which the employer owes a duty of confidentiality to a third party.

You are required to not disclose any confidential information, either during or after your employment with the employer, unless expressly authorised to do so by the employer or required in the proper performance of your duties or as required by law.

Failure to comply with these requirements will be treated as an act of gross misconduct which will result in your immediate termination for cause and without notice or pay in lieu thereof. Such misconduct may also be subject to prosecution under applicable Privacy legislation, as warranted.

14. Professional Qualification

If you are engaged in an area of work which requires membership in a professional body in order to practise, it is a condition of this contract of employment for you to maintain membership in such a professional body. It is also your responsibility to comply with the relevant body’s code of practice as laid down from time to time.

You are required to advise the employer if your professional body in any way limits or changes the terms of your registration or practice.

Failure to retain registration or to comply with any relevant code of practice may result in the termination of this contract of employment without notice or pay in lieu thereof or other disciplinary action.

If you are required to hold registration with a particular professional body, the employer may require you, on demand, to provide documentary evidence of your registration with that professional body.

15. Personal Particulars

While working under this contract of employment, you are required to notify the employer of any changes in your personal circumstances including changes to your name, address or telephone number,

or eligibility to work in Canada. If you are employed by another employer, you must inform the employer of any suspension or disciplinary action taken against you by them. You must also inform the employer of any referrals or fitness to practise restrictions by your professional bodies. If you leave your employment with any other employer, you must inform the employer, and equally if you take up employment with another employer, then you must disclose that too.

You are required to wear your photo identity badge while working under this contract of employment.

16. Loss of Personal Effects

While working at the employer, you are advised that no liability can be accepted for any loss or damage to personal property while on any of the employer's locations. You are advised to provide your own insurance coverage for such articles.

17. Uniforms

You may be provided with items of clothing or identification by the employer. Any such items shall remain the property of the employer. The uniform must be worn correctly and at all appropriate times. All articles of uniform or identification must be returned to the employer on termination of this contract of employment.

18. Data Protection

You agree that the employer can process any data about you, including sensitive personal data pursuant to the provisions of the Freedom of Information and Protection of Privacy Act of BC, for the purpose of:

- Complying with legal obligations; and
- Management, including (but without limitation) the administration of any benefits; and
- Safeguarding the safety of patients and staff of the employer; and
- Any other general purpose of the employer.

19. Equal Opportunities

The employer is committed to provide equal opportunities. You are therefore required to comply with the equal opportunity and/or dignity at work policies of the employer. In the event that you fail to comply with the relevant policies and/or commit an act of discrimination and/or harassment during this contract of employment, you will be subject to the disciplinary procedure and disciplinary action may be taken against you which may include termination for cause.

20. General Conditions and Benefits

You are subject to such terms and conditions of service and procedures as are notified to you from time to time.

- You are **not** covered under and are specifically excluded from all of the employer's benefit plans except as provided immediately below:
 - You will accrue service for the purpose of pension on the basis of hours worked.

21. Changes in Terms of Employment

Any changes in the terms of employment will be determined by the employer as necessary and you will be notified of such in writing. Upon such notification any changes become part of this contract of service.

22. Layoff Provisions

You will not be entitled to layoff notice or payments thereof other than as specifically provided in this agreement.

23. Leave

As a temporary worker, you are entitled to accrue annual vacation pursuant to the terms of the Employment Standards Act. You shall receive vacation pay in lieu of paid vacation leave. Vacation pay is included in your hourly rate of pay. Should you require leave from scheduled shifts for any purpose other than sick leave as provided in this agreement you shall immediately, or as soon as practicable, request leave without pay from your immediate supervisor. The employer will attempt to provide leave without pay where the reason for the leave is beyond your control and is of great importance.

Acceptance of the terms and conditions of employment

I confirm that I have read the entire terms and conditions of this contract of employment and accept them.

Print Name: _____

Signed:

Date: _____

On behalf of the employer [**Print name and position**]

Signed:

Date: _____