

LETTER OF UNDERSTANDING

As of May 1, 2021;
Revised as of November 15, 2022

Paul Klassen
Executive Director
BC Council of Film Unions
555 Brooksbank Ave.,
Bldg. #9, Ste. 310-B
North Vancouver, BC V7J 3S5

Re: COVID-19 Protocols

Dear Messr. Klassen:

The British Columbia and Yukon Council of Film Unions, comprised of three separate and distinct local trade Unions (hereinafter referred to as the “Council”) and the Negotiating Producers (referred to together with the Council as “the Parties”) previously entered into a Letter of Understanding (“LOU”) dated May 1, 2021, which addressed issues regarding COVID-19. One of those issues was described in the second paragraph of Item 1.i.(1) of the LOU dated May 1, 2021, which provided:

“Self-administered ‘at home’ COVID-19 tests are currently not available in British Columbia. Should such tests become available for use in British Columbia, the parties will meet to discuss an appropriate fee.”

Since May 1, 2021, self-administered “at home” COVID-19 tests have become available in British Columbia. The Parties met and discussed an appropriate fee for “at home” COVID-19 testing, and reached agreement on the provisions in Item 1.i.(2) below, which shall become effective on November 20, 2022. The Parties also agreed to modify the “Temporary COVID-19 Paid Sick Leave” provisions in Item 2 below, effective November 20, 2022. Accordingly, the Parties revise the LOU dated May 1, 2021 as provided herein.

The temporary “COVID-19 Protocols” contained in this LOU are intended to last only during the duration of the COVID-19 pandemic and shall expire on March 31, 2024. However, depending on the circumstances, the parties may mutually agree to terminate the “COVID-19 Protocols” in this LOU prior to that date, or to renew or extend the “COVID-19 Protocols” beyond that date.

The Council shall make the terms of this LOU available to any Employer currently producing in British Columbia under the BCCFU Master Agreement or Supplemental Master Agreement, as well as to any Employer that starts a new production under the BCCFU Master Agreement or Supplemental Master Agreement.

COVID-19 PROTOCOLS

In reaching the agreements contained in this LOU, the Parties have considered the following:

- A. The Employer's obligation to provide a safe workplace, including WorkSafeBC requirements that Employers create a COVID-19 safety plan, consult with the applicable joint health and safety committee/representatives on the plan, post the plan in the workplace, and train Employees on the plan;
- B. The BC Provincial Health Officer's ("PHO") guidance on private testing of asymptomatic individuals for COVID-19, including the letter re: PHO advice to businesses seeking to conduct private testing of asymptomatic employees dated June 17, 2020;
- C. The BC Human Rights Code;
- D. BC Employment and Labour law, including the Labour Relations Code and Employment Standards Act;
- E. BC's Personal Information Protection Act ("PIPA");
- F. COVID-19-related safety recommendations, guidelines and/or orders issued by public health authorities with jurisdiction over British Columbia, such as the Provincial Health Officer or the BC Centre for Disease Control ("BC CDC"); and
- G. Types of COVID-19 testing available and their relative invasiveness.

1. COVID-19 Testing

The Parties agree to the following in the event that an Employer decides to implement COVID-19 testing for its Employees:

- a. The Employer is responsible for health and safety in the workplace. Should the Employer choose to conduct COVID-19 testing in the workplace, it will do so in accordance with the applicable laws of British Columbia and in consideration of Items A.-G. above.
- b. Whether or not COVID-19 testing is reasonable depends on all of the circumstances, including the community infection rate, the Employee's position and whether other less intrusive measures are sufficient to achieve workplace safety.

- c. COVID-19 testing must be conducted in compliance with applicable human rights and privacy legislation, including the BC Human Rights Code and PIPA. Any COVID-19 testing will be done using the least invasive collection method approved by an accredited laboratory for the test being utilized by the Employer.
- d. All test results must be collected, used, disclosed and protected within the requirements of PIPA. Employers are responsible for securing individual Employee consent to the collection, use and disclosure of their personal information. All test results must be retained and destroyed in accordance with the retention of personal information requirements set out in PIPA.
- e. Testing does not reduce the safety precautions an Employer should take with regard to all other forms of mitigating risk of virus transmission.
- f. An Employer may require an Employee to undergo testing prior to entering the workplace.
- g. After an Employee commences employment, an Employer may require the Employee to undergo additional testing (including regular periodic testing) as a condition of ongoing employment.
- h. An Employer may require an Employee to undergo one or more temperature check(s) prior to the start of and/or during the workday. In addition, the Employer may also require an Employee to complete a health assessment survey prior to the start of work each day.
- i. Compensation for Time Spent Undergoing Testing
 - (1) An Employee who travels outside the Employee's home to undergo a test on a day in which the Employee does not work for the Employer shall receive a stipend (which shall be considered taxable income, but is not subject to fringe) equal to two hundred fifty dollars (\$250.00) CAD. Such stipend may also cover payment for time spent completing COVID-19 training of up to one (1) hour, which need not occur on the same day as the test, and time spent completing start paperwork, if an Employer elects to require the Employee to complete start paperwork on a day when the Employee does not work.

However, no stipend is due if the Employee is otherwise paid for the day (e.g., payment of a travel allowance).

(2) Effective November 20, 2022:

- i. An individual who undergoes a test at home (an “at-home” test) at the direction of the Employer on a day in which the individual does not work for the Employer shall receive a stipend of twenty dollars (\$20.00) CAD (no fringe), provided that the Employer does not require the individual to leave the individual’s home to take, pick up or drop off the “at-home” test and the Employer allows the individual to take the test at any time during a window of at least twelve (12) hours.

No stipend is due if the “at-home test” occurs during a period covered by the Employee’s guarantee.

- ii. The following applies when an individual is required to take an “at-home” test prior to reporting to work on a day when the individual is scheduled to work for the Employer, provided that the Employer does not require the individual to leave the individual’s home to take, pick up or drop off the “at-home” test and the individual is not required to take the test at an appointed time:

- (a) If the result of the “at-home” test is negative, the Employer shall pay the individual a stipend (no fringe) for the time spent taking the test based on the Employer’s choice of one of the following amounts: (i) twenty dollars (\$20.00) CAD; or (ii) an amount equal to pay for three-tenths (3/10) of an hour at the individual’s rate. The “at-home” test shall not start the individual’s work time.

- (b) If the result of the “at-home” test is positive, the “Temporary COVID-19 Paid Sick Leave” provisions of this LOU shall apply.

- iii. An individual who picks up an at-home test at the Employer’s premises on a day when the individual works for the Employer is not required “to leave the individual’s home” for purposes of i. and ii. above.

All parties reserve their respective positions on what payment, if any, is due for an “at-home” test in circumstances other than those described above in this subparagraph (2).

- (3) An Employee who is required to self-administer a temperature check or fill out a Health Assessment Survey prior to reporting to work on a day in which such Employee also does work for the Employer shall be paid an additional one-tenth (1/10) of an hour. Once the Employee's engagement has commenced, if the Employer instructs the Employee not to report to work based on the results of the temperature check and/or Health Assessment Survey, the Employee will first receive paid sick leave pursuant to the paid sick leave provisions in the 2021-2024 BCCFU Agreement, and once exhausted, pursuant to the temporary COVID-19 paid sick leave policy in this LOU. Paid sick leave shall be inclusive of the one-tenth (1/10) of an hour payment for undergoing the temperature check or filling out the Health Assessment Survey.

In no event shall time spent undergoing health screening procedures prior to reporting to work affect the Employee's start time, meal times, rest periods or overtime.

- (4) Any time that an Employee spends undergoing health screening procedures after reporting to work shall be considered work time.

j. Should an individual test positive:

- (1) The individual shall not be allowed to report to a workplace outside the individual's home.
- (2) The expectation would be that the individual will be directed to self-isolate by the Employer or the applicable Health Authority.
- (3) The individual may be required to undertake subsequent COVID-19 testing in order to return to work, as directed by the Employer or the applicable Health Authority.

k. The Employer shall not unlawfully discriminate against an Employee who has a positive COVID-19 test.

2. Temporary COVID-19 Paid Sick Leave

- a. An Employee shall receive temporary COVID-19 paid sick leave for each day that the Employee is absent from work due to an Eligible COVID-19 Event for which the Employee is not otherwise paid by the Employer until the earlier of the following:

- (1) The Employee can return to work; or
- (2) The end of the Employee's guaranteed employment period, provided that, for purposes of determining temporary COVID-19 paid sick leave, this period shall include the number of days that it was reasonably anticipated that the Employee would work.

However, in no event shall an Employee receive more than a total of ten (10) days of temporary COVID-19 paid sick leave per Employer during the period beginning on November 20, 2022 and ending on the earlier of March 31, 2024 or the termination date of this LOU, should the Parties agree to terminate this LOU prior to March 31, 2024. Temporary COVID-19 paid sick leave may cover one or more Eligible COVID-19 Events.

- b. There shall be no accrual period. Temporary COVID-19 paid sick leave shall be immediately available to Employees upon commencing work.
- c. Temporary COVID-19 paid sick leave may be used for any of the following "Eligible COVID-19 Events," or any combination of Eligible COVID-19 Events:
 - (1) The Employee has tested positive for COVID-19.
 - (2) The Employee has exhibited symptoms of COVID-19.
 - (3) The Employer has requested that the Employee isolate or self-quarantine because another person with whom the Employee has been in close contact has tested positive for COVID-19 or exhibited symptoms of COVID-19.
 - (4) A member of the Employee's household has tested positive for COVID-19 or exhibited symptoms of COVID-19.
 - (5) A public official or healthcare provider has requested that the Employee isolate or self-quarantine due to COVID-19.
 - (6) The Employee must provide care for a child or senior, whose childcare or senior care provider ceases operations due to COVID-19.
 - (7) The Employee needs to care for a child, parent or spouse who is subject to a federal, provincial or local quarantine or isolation order related to COVID-19 or has been advised by a healthcare provider to self-quarantine related to COVID-19.

- (8) The Employee is experiencing symptoms related to a COVID-19 vaccine that prevent the Employee from being able to work.
 - (9) The Employee is attending an appointment to receive a vaccine for protection against contracting COVID-19. The Employee must make meaningful efforts to cooperate with production in scheduling the appointment so as to minimize disruption to the production. If requested by the Employer, the Employee must, as soon as practicable, provide to the Employer reasonably sufficient proof that the Employee is entitled to leave under this subsection.
- d. Employees on sick leave for COVID-19 symptoms are expected to follow guidance from the BC CDC regarding COVID-19 testing and self-isolation (*i.e.*, they are expected to undertake COVID-19 testing and self-isolate).
 - e. For each day of temporary COVID-19 paid sick leave used by an Employee, the Employee shall receive payment as set forth below, based on the Employee's contracted rate, but in no event more than \$750 CAD per day and \$7,500 CAD in the aggregate. An Employee who is paid the Employee's full regular salary or guarantee for a period that includes absence due to an Eligible COVID-19 Event shall not receive temporary COVID-19 paid sick leave in addition to the Employee's salary or guarantee.
 - (1) Daily Employees – payment for a minimum call.
 - (2) Weekly Employees – one-fifth (1/5) of weekly rate.
 - (3) Employees whose rates are subject to individual negotiation under the collective bargaining agreement – *pro rata* daily rate.

Such payments shall be subject only to pension and health contributions.

- f. The Employee may be required to submit verification (*e.g.*, a doctor's note) of the Eligible COVID-19 Event in order to receive more than three (3) days of temporary COVID-19 paid sick leave for such Eligible COVID-19 Event.
- g. Employer shall comply, to the extent applicable, with BC employment and labour law and human rights law with respect to reinstatement of an Employee following a leave of absence due to COVID-19.
- h. Employees are not entitled to payment for any unused temporary COVID-19 sick leave under this LOU.

- i. Paid sick days under this temporary COVID-19 sick leave provision shall not be considered workdays for any purpose.
 - j. Any requirements for prior notice of layoff (or pay in lieu of) in a collective bargaining agreement shall be suspended in the event that an Employee is receiving payment pursuant to the foregoing temporary COVID-19 paid sick leave policy.
 - k. With respect to Companies listed in Sideletter No. 1, the term “Employer,” for purposes of this LOU, shall refer to the Company itself as well as all other Employers that the Company designates under Sideletter No. 1.
 - l. If an Employee has an Eligible COVID-19 Event while on distant location and is unable to return home, the Employer shall provide the Employee with lodging and per diem while on distant location, in addition to temporary COVID-19 paid sick leave under the foregoing provisions of this Item 2.
 - m. The payments in this temporary COVID-19 paid sick leave policy shall be available to Employees in addition to paid sick leave available to Employees under the 2021-2024 BCCFU Agreement. In the event an Employee has an “Eligible COVID-19 Event” as defined in Item 2.c. above, the Employee must use the temporary COVID-19 paid sick leave described in this Item 2 before any other leave available under the 2021-2024 BCCFU Agreement.
 - n. The Parties agree that the temporary COVID-19 paid sick leave provisions in this Item 2 meet or exceed the requirements for paid leave for COVID-19 vaccination under Section 52.13 of the Employment Standards Act and the requirements for COVID-19-related paid leave as set forth in Section 52.121 of the Employment Standards Act.
3. **Payment for Required Isolation or Self-Quarantine (Other than for an Eligible COVID-19 Event)**

This Item 3 applies after an Employee has been engaged and the Employee is required to isolate or self-quarantine at the request of the Employer (other than for an Eligible COVID-19 Event) and/or because the law of the jurisdiction where production is taking place requires travelers from outside the jurisdiction to self-quarantine, under the following circumstances:

prior to the commencement of an Employee’s work on a production; or

when an Employee who has already commenced work travels to a production location where applicable law requires travelers from outside the jurisdiction to self-quarantine.

If the Employee does not perform work at the direction of the Employer while in isolation or self-quarantine:

- a. The Employer may individually negotiate payment for time spent in isolation or self-quarantine with Employees employed in the jurisdiction of the Master Agreement to perform work outside the limits of the United States, its territories and Canada.
- b. All other Employees shall be paid for time spent in isolation or self-quarantine as set forth below, based on scale for the Employee's job classification.¹
 - (1) For each of the first five (5) days out of each seven (7) consecutive day period in which the Employee is in isolation or self-quarantine:
 - i. Daily Employees – payment for a minimum call.
 - ii. Weekly Employees – one-fifth (1/5) of the weekly rate.
 - iii. Employees whose rates are subject to individual negotiation under the collective bargaining agreement – *pro rata* daily rate.
 - (2) For each of the final two (2) days out of each seven (7) consecutive day period in which the Employee is in isolation or self-quarantine:
 - i. Daily and weekly Employees – four (4) hours of pay, plus pension and health/welfare contributions for eight (8) hours.
 - ii. Employees whose rates are subject to individual negotiation under the collective bargaining agreement – one-half (1/2) of the *pro rata* daily rate, plus applicable pension and health/welfare contributions.

¹ This provision does not alter the terms of any agreement entered into prior to the effective date of this LOU regarding payment for time spent in isolation or self-quarantine under the circumstances covered by this Item 3.

Fringe benefits: Such payments shall be subject only to pension and health contributions. Such payments shall not be subject to vacation or unworked holiday payments, nor any other fringe benefit contributions.

If the Employee performs work at the direction of the Employer while in isolation or self-quarantine, the Employee shall instead be paid pursuant to the Employee's contract of employment for any day on which the Employee performs such work.

4. Electronic Receipt of Documents

To the extent the Employer implements electronic documents in lieu of paper documents, Employees shall accept e-delivery of and provide e-signatures for the following items: (1) start paperwork; (2) time cards; (3) deal memos; and (4) direct deposit of payroll. If an Employee does not possess or have access to a device or technology which permits receipt and transmission of electronic documents, the Employer will either provide the Employee with a hard copy of the document or make other arrangements for the Employee to receive and sign electronic documents. Upon request, Employer agrees to meet with the Council to discuss measures for ensuring the proper protection of personal information contained in the foregoing documents and other related privacy concerns.

5. All Budget Thresholds Exclude COVID-19-Related Expenses

Under certain provisions of the BCCFU Master Agreement and its Sideletters and the Supplemental Master Agreement, terms and conditions of employment are linked to the budget of a program. The parties have discussed the increased costs that productions will incur to implement various health and safety protocols related to the COVID-19 pandemic. Because those unprecedented costs are additive to the standard production costs on which the parties negotiated the budget tiers that determine terms and conditions of employment, the parties agree that the following costs shall be excluded from consideration of whether a program falls within a given budget tier: health screening (including testing, health assessment surveys and temperature checks), personal protective equipment, salaries of COVID-19 compliance monitor(s) performing only COVID-19-related duties, COVID-19-related cleaning costs in excess of ordinary or usual cleaning costs, portable hand washing stations (unless they would have been necessary in the absence of COVID-19), additional bathroom units, costs of lodging and per diem for Employee who are required to isolate or self-quarantine and payments made to Employees during any self-isolation or quarantine (other than those due to an "Eligible COVID-19 Event," as defined in Item 2.c. above), any contingency required by a bank or bond company for the specific purpose of covering costs related to COVID-19 and costs of an insurance policy for the specific purpose of covering costs related to COVID-19 (also sometimes referred to in such policies as a "communicable disease")."

6. **Work from Home**

The following applies when an Employer requires an Employee to work remotely from home:

- a. If an Employee does not have equipment necessary to work remotely from home and the Employer does not provide such equipment, the employee shall submit a request to the Employer for purchase or rental of the necessary equipment. Employer shall reimburse the Employee for any pre-approved purchases or rental costs after the Employee submits receipts or other appropriate proof of purchase/rental.
- b. Employer shall provide an Employee with any technology training that it determines is necessary in order for the Employee to work remotely from home (which shall not be considered work time).
- c. Employer shall reimburse any necessary and reasonable costs that an Employee incurs as a direct consequence of working remotely from home, provided that the Employer has approved such expenses in advance and the Employee submits appropriate proof of the expense.

7. **Stand-by or Relay Calls**: Notwithstanding the provisions of Article 4.12 of the Master Agreement, Employer shall have the ability to issue a stand-by call or relay call if a production exigency related to COVID-19 arises.

8. **Enabling**: On a case-by-case basis, the Employer or the Council may request modifications to the terms and conditions contained in this LOU to be applicable only to a specific production. The Employer may use the enabling procedure set forth in Article 1.16 of the Master Agreement. The Council may use a procedure similar to that outlined in Article 1.16.

9. **Grievance and Arbitration**: Article 11 (“Grievance and Arbitration”) of the Master Agreement applies.

10. **Conflict of Laws**

In the event that any of the terms and conditions of this LOU are contrary to or unenforceable by reason of any law or governmental decision, ruling or regulation, such terms or conditions shall be deemed to be severed from this LOU, and the illegality or unenforceability thereof shall not in any manner affect or impair any other terms or conditions of this LOU.

Letter to P. Klassen re: COVID-19 Protocols
Revised as of November 15, 2022
Page 12

Sincerely,

Carol A. Lombardini
on behalf of the Canadian Affiliates
of the AMPTP

Jason Lee
on behalf of the CMPA-BC
Producers Branch

ACCEPTED AND AGREED:

Paul Klassen
on behalf of the BC Council of Film Unions