

Working in BC

Your Legal Rights & Responsibilities



- Do you know how BC law applies to the overtime you work?
- Do you know the differences between what happens when you quit your job, are laid off, or are fired?
- How can you protect yourself when you have a problem at work?

This booklet is about your rights as an employee. These rights are protected by a provincial law called the *Employment Standards Act*.

Knowing your rights about applying for a job, and working, leaving or losing your job is important. Keep in mind, though, that your rights are only one side of the coin. The other side is your responsibilities as an employee.



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WORKING IN B.C.
Your Legal Rights & Responsibilities

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CAUTION

The law is complex and ever-changing. The Government of BC sometimes makes changes to the laws which cover working in this province. **Do not rely on this booklet for legal advice.** This booklet is intended for general information purposes only, and may contain out-of-date information by the time you read it.

The Employment Standards Branch

For the most up-to-date information about BC's employment law, you should contact the Employment Standards Branch. You can telephone the Branch toll-free at 1-800-663-3316. Or you can visit the Branch's website at: www.labour.gov.bc.ca/esb/

Legal Help

If you have a specific legal problem, you should see a lawyer. You can call the Lawyer Referral Service at 604-687-3221 or toll free 1-800-663-1919.

This service will give you the name and telephone number of a lawyer who can provide up to a half-hour consultation for \$25, plus taxes.

This booklet explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person's case is different, you may need a lawyer.

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RIGHTS & RESPONSIBILITIES

When you accept a job, you enter into a contract with your employer. He or she agrees to give you a salary and other benefits in return for your work. Your employer will usually set out what he or she expects in terms of the work you perform, the hours you will work, and other conditions of the job.

Fair is Fair

In addition to the rights we describe in this booklet, you have obligations to your employer. Generally, these obligations include showing up for work on time, doing a good job, and being honest with your employer. In a good working environment, the employer plays fair with you and you play fair with the employer.

If you don't live up to your part of the bargain, it is quite possible the employer will decide to fire you. There is no right against being fired. As a practical matter, you won't go far in the workplace if you only pay attention to your rights but not to your responsibilities.

The *Employment Standards Act*

The *Employment Standards Act* is a BC law that outlines the rights of employees, and the responsibilities of employers. The Act sets the **minimum** standards for working conditions.

The Act applies equally to all employees who have the same job. **The law is the same for people who work full time as it is for those who work part time.** It doesn't matter how many hours you work or if your job is permanent or temporary.

There are no special rules or exceptions for people who work for their relatives. Some workers who pay their own taxes or have signed a contract are still covered by the Act. Check with the Employment Standards Branch if you want more information on workers who may be covered by the Act.



The Employment Standards Branch

The Employment Standards Branch is the government office that enforces the law. To contact the Branch phone: 1-800-663-3316 or check their website at www.labour.gov.bc.ca/esb/

Who is Not Covered by the *Employment Standards Act*?

People who work in certain jobs are **not** covered by the Act. These include:

- babysitters;
- secondary school students working at their schools or enrolled in work experience or occupational study;

- newspaper carriers who attend school and work 15 hours a week or less; and
- persons receiving financial assistance from government who participate in certain government- sponsored employment programs.

If you are one of these workers, ask your employer about your rights and benefits. The Employment Standards Branch may also provide information.

Other workers who are not covered by the Act include people who are federal government employees, doctors, lawyers, real estate agents, and persons who do not meet the Act's definition of employee.

Some employees, such as fish farm workers and resident caretakers, are covered by the Act but have different minimum standards.

People who belong to unions are covered by **collective agreements** made between their union and their employer. You should talk with your union representative if you have any questions about your agreement.

Some employers, with the agreement of their employees, ask the Branch to vary or change how parts of the Act apply to them. This is called a **variance**. If your employer receives permission from the Branch, a copy of the variance will be posted in the workplace. A variance is time limited.

GETTING HIRED: What Do I Need To Know? How Can I Prepare?

Writing my resumé

Your resumé is a tool to sell yourself to employers. Emphasize your good qualities, your skills, interests, and perhaps your employment goals.

When you write about your past employment, include volunteer jobs and work experience as well as paid jobs. You don't have to list every single employer you have ever had. You might list only experiences that are relevant to the job you are applying for.

Maybe you've had problems with a past employer and you don't want to mention that company. You don't have to.

Fill in gaps in your resumé by listing activities you took part in as a volunteer or for personal interest (hobby, sports). Highlight the skills and knowledge you have gained that make you a desirable employee.

When giving names for references, only give people you have asked beforehand and who are willing to give you a good reference.

It is a bad idea to lie on your resumé. If your employer finds out you have been dishonest, it may be grounds for termination.

Getting a Social Insurance Number (SIN)

You must have a Social Insurance Number (SIN) before you can get hired. By law, the employer must ask for it.

If you don't have a SIN, you can apply for one at a local Employment Centre. Look in the blue pages of the telephone book under Government of

Canada, Human Resources. There is no fee for a first time SIN.

How old do I have to be before I can be hired?

If you are under 12 years old, employers who want to hire you must get written permission from the Employment Standards Branch first. Your parents or legal guardian must also agree. The Branch may also contact your school.

Children ages 12 through 14 years may work restricted hours, but their parent or legal guardian must give written consent to their employer for the child to work. Once a child reaches 15 years, there are no restrictions in the Act regarding the child's hours, nor is there a requirement for a parent's or legal guardian's consent to work.

Please contact the Employment Standards Branch for more details on the age and hours restrictions for children.

Can an employment agency charge a fee for finding me work?

Employment agencies cannot charge you for finding you a job. If an employment agency finds you a job, they charge the employer a fee.

Employers cannot ask you for payment in return for hiring you as an employee, nor can they take payment from anyone else for hiring you.

What if my employer is not honest about my conditions of employment?

Employers cannot lead you to believe that a position is available if there isn't one. They cannot mislead you about how much you will be paid, or the type of work you will do, or about any other conditions of your employment. If an employer has done any of these things, you can make a complaint to the Employment Standards Branch.

I'M HIRED: WHAT NOW?

This section discusses the basic or minimum rights of non-union employees in BC. Often employers provide more. Sometimes employees and employers make informal arrangements that benefit both. However, be careful about agreeing to standards that are less than the minimum. If you have problems or are injured, you may not be protected.

Sometimes employees decide not to speak up for their rights because they fear losing their jobs. However, if you lose your job, you can still make a complaint for violations of the Act. **You must make your complaint within six months of the violation.**

The following rights are covered in the *Employment Standards Act*. If you have any questions about these rights, contact the Employment Standards Branch.

Wages & Benefits

The minimum wage is the lowest amount of money employers can pay. Currently, the minimum wage is \$8.00 per hour except for the First Job Minimum Wage (please see below). For up-to-date minimum wage information please call Employment Standards at 1-800-663-3316.

Can my employer ask me to take less than what the Act says I should get?

It is illegal for an employer to pay less than the minimum wage. Wages and working conditions must be at least what the Act says is your basic or minimum right. If you are being paid less, your employer may not be reporting your hours or wages correctly to the government. Or perhaps your employer is not telling the government that you are an employee. This is called working "under the table" and it is illegal. Working illegally means you may not be protected. This could have serious consequences if you are injured on the job.

If I go to work and am sent home, what is the minimum I should be paid?

If you come to work as requested by your employer, you must be paid for at least two hours even if there is no work for you to do. If you were scheduled for more than eight hours work, you must be paid at least four hours' wages. This is called **minimum daily pay**.

Sometimes work is stopped for a reason your employer cannot control, such as bad weather. In that case, your employer has to pay you for at least two hours or for the actual number of hours you work, whichever is more.

There are exceptions to minimum daily pay where the employee is unfit to work. Examples of being unfit to work include: being intoxicated, or being in violation of workplace safety requirements (e.g., steel-toed boots requirement).

Does my employer have to pay for job orientation, training or meetings?

Yes, **if you are required** to attend an orientation, training or meeting before or after your shift, you

First Job Minimum Wage

In November 2001, the government created a "first job" minimum wage of \$6.00 per hour for people with little or no paid work experience. This is intended to encourage employers to hire young people and others with little or no paid work experience.

When you have accumulated 500 hours of paid work experience with one or more employers, you will be entitled to the regular BC minimum wage of \$8.00 per hour.

All paid employment counts towards your 500 hours, including work you have done in BC, other parts of Canada or another country.

To prove your previous work experience, you should show your new employer records of employment, pay stubs or written confirmation from your old employer.

must be paid. If attending a meeting plus your shift adds up to more than eight hours that day, the Act says you are entitled to overtime pay. (The law does not apply to interviews or meetings that are part of the hiring process.)

If you are required to attend a meeting on your regular day off, you must be paid the minimum daily pay or wages for the number of hours you attend, whichever is greater. For example, if your employer calls you in for a staff meeting on your day off, you must be paid for a minimum of two hours. You must also be available to work. If the meeting lasts one hour, your employer has the right to require that you work the remaining hour. However, if you volunteer to go home after the meeting, the employer only has to pay you for the meeting time.

What information does my employer have to include with my pay cheque?

You should get a written or electronic statement with your pay. This statement should include:

- your wage rate (flat or piece rate, commission etc.);
- the number of hours you worked;
- your overtime;
- your deductions;
- your gross pay (your pay before deductions);
- your net pay (take home pay);
- how many hours you have banked (if applicable); and
- the employer's name and address.

If the items listed above do not change from one pay cheque to the next, then your statement of wages only has to show your net (take home) pay.

Your employer must pay your wages at least two times a month.

What can my employer deduct, or take away, from my wages?

Your employer is required by law to make

deductions from your wages for:

- Canada Pension Plan;
- Employment Insurance Plan;
- Income tax (in most cases); and
- Court-ordered garnishees (for example, family maintenance orders).

Your employer is also required by law to remit, or send, these deductions to the appropriate government department.

Your employer must have your written permission to make any other deductions, such as dental coverage, medical coverage, or for meals.

Your employer cannot deduct any money from your wages if you damage or destroy the employer's property by accident. However, if you deliberately cause damage, the employer can fire you, and lay charges against you.

Can my employer deduct money or demand payment for special clothing he or she requires?

No. The Act defines special clothing. If you are required to wear a company shirt, uniform, or specific brand-name clothes, your employer has to provide it to you at no cost or deposit. Special clothing as defined by the Act is different from a dress code. A dress code is at the employee's own expense. For example, Thanh works as a waiter and his employer requires him to wear a white shirt and black pants. His employer does not have to pay for this. However, if his employer tells Thanh to wear a Chanel white shirt, then the employer must pay for the shirt because the employer has specified a brand name or required Thanh to purchase a shirt from a specific store.

The employer also has to pay for special clothing to be cleaned or mended unless a majority of workers agree to reimbursement by the employer. If your employer does not reimburse you or deducts money from your pay, keep your receipt. These records will help if you decide to file a formal complaint.



Employers are **not** required to pay for safety equipment (such as a hard hat, steel-toed work boots, or a reflective vest) that is required by WorkSafe BC.

Work Breaks

Every five hours, your employer must allow you at least a 30-minute period to eat. This does not count as paid work time, unless you are expected to be available for work (for example to serve a customer) during your break.

The law does not require your employer to give you a coffee break but most employers do. Ask your employer if you get a coffee break and how long you can take off.

Your employer may only allow you to make or take personal calls, to smoke, or to eat or drink while you are on a scheduled break, so you should ask what the policy is.

How many hours can I get off between shifts at work?

You must be given at least eight hours off between your shifts. You also must have at least 32 hours off in a row each week.

Employers must pay you time-and-a-half if they ask you to work during this 32-hour period.

What are split shifts?

A split shift is when you work some hours, then have an unpaid break and go back to work on that same day. If you work a split shift, you must finish your regular hours of work within 12 hours after you started your shift. Your employer is allowed to ask you to work overtime after your regular shift.

If you have to travel to different job sites (for the same employer) during your regular shift, this is not a split shift. Your employer must pay you for your travel time.



Daily Overtime

You must be paid overtime after eight hours of work in one day. Your employer must pay you one and one half (1 1/2) times your regular pay for each hour worked after eight hours. Your employer must pay you two times your regular wage for each hour worked after 12 hours. This is known as *double-time*.

Many people work under flexible work schedules. It is possible to work under an **averaging agreement** that arranges your schedule differently over a single week or even a longer period. For example, four ten-hour days a week of work followed by three days off, would be possible under such an agreement. No daily overtime would have to be paid. See the section on **Averaging Agreements** for more details (page 6).

Weekly Overtime

You must also be paid for working more than 40 regular hours in one week. If you work over 40 hours, your employer must pay you one and a half (1 1/2) times your regular wage for each hour after you have worked 40 hours.

Weekly overtime is counted by adding up the regular hours (eight or less in a day) worked each day. When it adds up to more than 40 hours in one week, you must be paid weekly overtime. Daily overtime is counted separately.

Do I have to work overtime?

Your employer has the right to ask you to work extra hours as long as he or she pays you the proper overtime wage rates and the hours worked are not excessive or harmful to your health or safety. If you think you are being asked to work too much overtime, talk to your employer. You can also ask the Branch for help.

Do I get overtime pay if I work extra hours and am paid a salary?

People who are paid a salary receive a flat rate. If

the flat rate is calculated on the basis of working a 40-hour week, this means that if you work more than 40 hours, you are entitled to overtime pay.

Employers do not have to pay managers overtime or statutory holiday pay. However, this applies to managers as defined in the *Employment Standards Act*. The title alone may not disqualify you from these rights. Check with the Employment Standards Branch. Managers are entitled to straight time pay for the hours worked.

Banking Overtime Hours

An employee and employer can jointly agree **in writing** to have an overtime **time bank**.

Agreements that are not in writing may not be considered a time bank. Since time banks must be mutually agreed to, an employer or employee can choose to cancel the time bank at any time, and have it paid out rather than taking the time off.

What is a time bank?

A time bank allows you to take time off instead of being paid for your overtime. For example, if you work 100 hours of overtime at time-and-a-half, you would bank 150 straight time hours. With a time bank, instead of being paid for 150 hours you would be able to take 150 hours in paid time off. The amount you have banked should show on your pay statement.

If your employment is terminated, the employer must pay out all banked hours. If your employer has financial problems or goes bankrupt, you may have trouble getting paid for the time you have banked.

Averaging Agreements

In BC, the standard workday is eight hours long, and the standard work week is 40 hours (this may differ from workplace to workplace). Usually, when you work longer than the standard number of hours per day or per week, your employer must pay you overtime.

Under an averaging agreement, you and your employer can enter into a mutual **written** agreement which defines and sets a schedule with no overtime pay. The schedule should identify the start and finish times of the daily hours to be worked including any scheduled unpaid breaks to be taken. The daily hours of work contained in this schedule must not exceed 12 hours per day. The work schedule cycle can be a minimum of one and a maximum of four weeks and must average to 40 hours per week over the schedule cycle.

Averaging agreements can be complicated. If you find them difficult to understand, it's best to contact the Employment Standards Branch before creating or signing one of these schedules.

In this booklet, we can only give you a basic explanation. The key word is "average". Using the simplest example, if you normally work an average of 40 hours in a week, under a one-week averaging agreement your employer could schedule you to work for 10 hours a day for the four busiest days of work. In this case, your normal 40-hour, five-day work week has been "averaged" to fit into four days of 10 hours each. No overtime is paid for the 10-hour days.

A more complicated example of an averaging agreement would be one that covers a two-week period. Normally, you might work eight hours a day for 10 days in a two-week period. This would total 80 hours. Under an averaging agreement, you might be expected to work for 50 hours in the first week, and only 30 hours in the second week.

In the two-week period, you would still work the same 80 hours, but you would work more in the first week (with no overtime being paid) than you would in the second week. In other words, your regular work schedule of 80 hours over a two-week period has been "averaged" in a way that allows your employer to schedule more of your work time during busy periods without having to pay you overtime.

Under the law, there are rules which govern averaging agreements. These are:

- the averaging agreement must be in writing;
- the agreement must specify a start date and an end date for the work schedule;
- you and your employer must sign the agreement before the start date;
- you must receive a written copy of the agreement before it takes effect;
- the agreement must specify the number of weeks in the schedule (1- 4);
- the agreement specifies the hours scheduled for each day covered by the agreement;
- the agreement specifies the number of times the agreement may be repeated;
- the hours scheduled may not average more than 40 per week over the period of the agreement; and
- your work schedule must provide you with rest periods for sleep and relaxation. The rules about rest periods are set out in the Employment Standards Act.

Averaging agreements **DO NOT** have to be filed with the Employment Standards Branch.

Overtime under Averaging Agreements

In an emergency you may be required to work overtime beyond the agreement. If your averaging agreement required you to work 10 hours on a particular day and an emergency arose and your employer required you to work an extra two hours, then the employer must pay those two hours at overtime rates of time-and-a-half. If the employer required more than 12 hours, the overtime rate would increase to double-time for the hours beyond 12 in a work day.

The averaging agreement may become void if regular overtime beyond the scheduled hours in the agreement starts to occur.

Averaging agreements must be mutually agreed upon. An employer or employee can choose to cancel the averaging agreement and revert to regular hours and overtime.

Sick Benefits

The law does not require employers to pay you if you are sick and cannot work. However, many employers do provide their employees with sick pay. Ask your employer about the policy for sick benefits. You may be required to get a letter from your doctor saying you cannot work. You cannot be terminated while you are ill but, if you are ill too often to do the job for which you were hired, you may be terminated.

You may be able to get Employment Insurance benefits if you cannot work because you are sick or injured. Contact the EI office near you. Look in the blue pages of your phone book under Government of Canada, Human Resources. You may also wish to contact the Human Rights Commission to determine if your employer has contravened the Human Rights Code of BC. The Human Rights Code requires employers to accommodate illness and disability in the workplace.

If you have a medical problem that makes it dangerous for you to do a job, the *Workers' Compensation Act* says you should not be assigned to that job. If the employer does not have an alternate job, you may need to seek other employment.

Vacations

After you have worked at your job for one year, you must get at least two weeks time off for vacation annually. After working five years in a row with the same employer, you must get at least three weeks of time off for vacation annually.

Your employer must allow you to take the vacation time in blocks of one or more weeks, unless you have given written consent to receive it in smaller increments of time.

The employer must make sure that you take your vacation within 12 months of earning it. Your employer has the right to choose what time of year the vacation time is taken at. Employers expect requests for vacation time to be made in advance.

How much vacation pay do I get each year?

Your vacation pay is a percentage of the total earnings you received in a year. You must get at least 4% of your gross earnings (total earnings before deductions). After you work five years in a row with the same employer, you must get at least 6% of your gross earnings. If you and your employer agree in writing, you can receive vacation pay as an advance or a percentage with each payroll. However, the vacation time off would still need to be scheduled with reduced or no pay off during the vacation.

Can my employer give me less time off or pay me less vacation pay if I took time off as Sick Leave?

Your employer cannot reduce your vacation time or vacation pay because you have been given sick pay during the year; nor can they deduct money or time because you were paid a bonus or were given a vacation longer than the minimum required by law.

Statutory Holidays (Stats)

Statutory holidays are days when most people receive the day off with pay. The *Employment Standards Act* grants nine statutory holidays which occur approximately the same time each year. These are:

- New Year's Day (January 1);
- Good Friday (March or April);
- Victoria Day (Third Monday in May);
- Canada Day (July 1);
- British Columbia Day (First Monday in August);
- Labour Day (First Monday in September);
- Thanksgiving Day (Second Monday in October);
- Remembrance Day (November 11); and
- Christmas Day (December 25)

Easter Sunday, Easter Monday and Boxing Day are not statutory holidays. To be eligible for "stat holiday" pay, you must have:

1. Been employed for at least 30 calendar days before the "stat holiday";

2. Worked 15 of 30 days before the "stat holiday"; or
3. Worked under an averaging agreement any time in the 30 days before the "stat holiday".

If you work on a statutory holiday, in addition to an average day's pay for the holiday, you must be paid at time-and-a-half for the first 12 hours worked, and at double time for any time over 12 hours.

If the "stat holiday" falls on a day you would not have been working, or if you are given another day off in compensation, then you must be paid an average day's pay. The average is calculated on the earnings (including any vacation pay received) in the 30-day period prior to the statutory holiday, not including overtime wages paid.

If you are unsure how to calculate statutory holidays, contact the Employment Standards Branch for assistance.

Statutory Holidays under Averaging Agreements

If you have been employed for at least 30 calendar days, and you have worked under an averaging agreement at any time within that 30-day period, then you automatically qualify for statutory holiday benefits. This can be either paid time off from your normal working hours or holiday pay instead of paid time off.

Unpaid Leaves

Your employer is not allowed to terminate you for taking an unpaid leave that is covered by the *Employment Standards Act*. When you return from an unpaid leave, you must be given your old job, or a similar job, as far as duties and salary are concerned. You must be given any wage increases or benefits that you would have received if you had not taken this leave. If you are a member of a medical or dental plan at work, your employer must keep you on these plans. The following unpaid leaves are covered by the Act.

Pregnancy Leave

An expectant mother has a right to 17 consecutive weeks of unpaid pregnancy leave. You can begin your pregnancy leave any time within the 11 weeks before you expect to have your baby and you can return as early as six weeks after your baby is born. If you are unable to return to work after 17 weeks of pregnancy leave, you can get six more weeks of unpaid pregnancy leave if you have a doctor's letter.

As a birth mother, you also have the right to take parental leave as discussed below. However, you must begin your parental leave immediately after your pregnancy leave ends.

If your pregnancy is terminated and you request a leave, your employer must give you an unpaid leave of up to six weeks. You may have to give



your employer a doctor's letter stating that your pregnancy was terminated.

Parental Leave

If you are a new father or mother, you have the right to unpaid leave from work when a child is born or adopted. This is called "parental leave." You can both take your leave together or at separate times.

If the birth mother has taken pregnancy leave, she is entitled to an additional 35 weeks of parental leave. If she has not taken pregnancy leave, she may take 37 consecutive weeks of parental leave. The birth or adoptive father is entitled to 37 consecutive weeks of parental leave beginning after the birth and within 52 weeks of the birth or placement of the child with the adoptive parents. You can take an additional five weeks of unpaid leave if your child requires special care.

Do I receive any pay from my job when I am on parental or pregnancy leave?

Your employer does not have to pay you any regular wages while you are on pregnancy or parental leave.

If your employer has been paying your medical or dental benefits, then they would have to continue to pay these. If they are just paying a portion, and you pay the remainder, you need to provide them with payments/post-dated cheques to cover your portion of these benefits.

Since your years of service continue while you are away on pregnancy or parental leave, you are still entitled to time off for vacation. However, you may receive little or no vacation pay as it is calculated based on a percentage of the gross wages paid to you by your employer.

When you are on pregnancy or parental leave you may be entitled to collect Employment Insurance benefits. To find out, contact or visit your nearest Federal Government Employment Insurance office.

These are listed in the blue pages of your phone book under Government of Canada.

How much notice or warning must I give my employer before going on pregnancy or parental leave?

You must tell your employer in writing at least four weeks before you expect to go on pregnancy or parental leave. A mother who plans to take both pregnancy and parental leave must give separate notices of both leaves, but can give them at the same time.

Family Responsibility Leave

You have the right to up to five days of unpaid leave per year to meet your responsibilities to your immediate family. Your reason for taking leave must be related to the care, health or education of this person.

Bereavement Leave

You are allowed up to three days of unpaid leave when someone in your immediate family dies.

Your immediate family is your spouse, including a same sex partner, child, parent or guardian, brother or sister, grandchild or grandparent or any person who lives with you as a member of your family.

Compassionate Care Leave

You are allowed up to eight weeks of unpaid leave to care for a family member whom a medical doctor has stated in writing to be at risk of death within 26 weeks. Please contact the Employment Standards Branch if you have any questions about how this leave works and who is defined as a family member. You may also be entitled to Employment Insurance benefits while on this leave.

Jury Duty

If you are required to go to court as a juror, your employer must give you unpaid leave for the time you spend on jury duty.

Safety in the Workplace

Employees' rights to safe working conditions and protection from discrimination come from laws other than the *Employment Standards Act*.

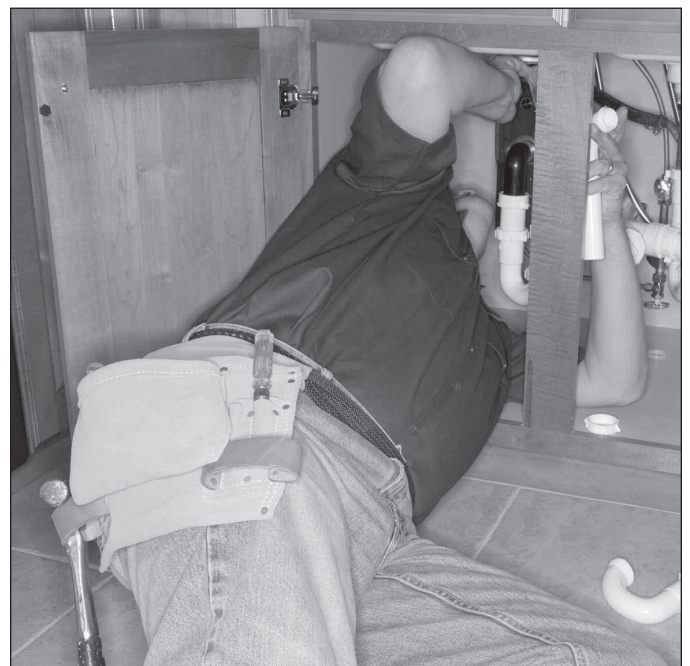
Employers have a duty to make sure that your working conditions are safe. They must follow safety standards set out by the *Workers' Compensation Act*.

Your employer must tell you of any risks that may be involved in doing the job. If your work involves some risk to yourself or others, the employer must make sure you are properly trained and have all the necessary information to keep the risk low.

Your employer is responsible for making sure that you wear your safety gear at the job site. Also, your employer must make sure you do not work so much overtime that your health or safety is at risk.

What can I do if I don't think my working conditions are safe?

First identify the unsafe condition and report it immediately to your supervisor or employer. You can also contact WorkSafeBC to find out what your employer must do to keep you safe. WorkSafeBC can also tell you how to make a complaint. Their



website is: www.worksafebc.com. If you have reported health and safety concerns, WorkSafe BC has some protections from retaliatory actions from your employer.

You can also contact the Employment Standards Branch to determine if there is any termination pay under the Act that may be owed to you.

If you are concerned about excessive work hours putting your health or safety at risk, the Branch may also be able to assist you. The *Employment Standards Act* requires that an employer provide an employee at least eight hours of rest between shifts worked, and at least 32 consecutive hours free from work in a week.

Discrimination in the Workplace

The *BC Human Rights Code* says employers are not allowed to discriminate against employees. You cannot be denied a promotion, be fired or be forced to work under different conditions than another person doing the same job for the same period, on grounds protected by the *BC Human Rights Code*. For prohibited grounds, see the BC Human Rights Code at www.bchrt.gov.bc.ca/

As an employee, you also have a responsibility to treat others with respect.

Disabilities and the Employer's Obligations

The BC Human Rights Code recognizes the additional barriers people with disabilities may face in the workplace. The Code says an employer cannot refuse to hire you and cannot fire you simply because you have a disability.

The employer has a "duty to accommodate" your disability. For example, your employer may have to build an entrance ramp to make it wheelchair accessible.

Your employer also has to make sure that the workplace is accessible. Your employer can argue for an exemption to the duty to accommodate, by proving it will cause "undue hardship" (for example, great expense).

LEAVING OR LOSING MY JOB

Quitting My Job

If you quit your job, you have no legal obligation to tell your employer ahead of time. However, it is usually a good idea to let your employer know in advance so that they have time to find someone to replace you. This may also be important if you want to use this employer as a reference or include the job in your resumé.

Sometimes, though, you may have a good reason for not telling your employer in advance. You may be afraid your employer will fire you, give you fewer hours, abuse, or harass you. In these cases, it may be more important to protect yourself than to tell the employer you are quitting.

Regardless of whether you notify your employer ahead of time, the employer has six days from the time you quit to pay you all your wages.

Can I apply for another job while I am still employed?

Yes. You can look for another job before you quit. If you don't want your current employer to be contacted, indicate on your resumé and application that you are applying *in confidence*. This way you can still list your current job as part of your employment history.

Before making a final decision, an employer may ask for a current job reference. You can give the name of a co-worker if you don't want your supervisor or employer to know.

Layoffs

A layoff is when an employer tells employees that they must take an unpaid leave from work. An employer might lay you off because there is no work for you to do or not enough money to pay you. Employers don't have to tell you in advance if they are going to lay you off. If the layoff is temporary, they do not have to pay you compensation.

A layoff is temporary. During the time you are laid off, you are still considered employed but you may be able to apply for Employment Insurance benefits.

If you are laid off for more than 13 weeks of a 20 week period, it becomes a termination. When this happens, your termination date is the first day you were laid off. You then have the right to compensation if you have been employed for three months or more.

When Can My Employer Fire Me?

You have no legal right to your job. Your employer can fire you for any number of reasons, including poor work performance, chronic lateness, not showing up for work, or a bad attitude. If you value your job, do it well.

If your employer does decide to fire you, he or she must follow some legal requirements under the *Employment Standards Act*. In most cases, your employer must give you either Notice of Termination (advance warning) or payment instead of notice. (The payment is sometimes called compensation. It is also commonly called severance pay.)

Minimum Notice and/or Compensation

The amount of compensation or notice you qualify for under the *Employment Standards Act* depends on how long you have worked for your employer.

If your job is terminated without notice, you have a minimum right to:

- One week's pay after you have been employed three months in a row;
- Two weeks' pay if you have been employed for one year; and
- Three weeks' pay after three years of work, plus one week's pay for every additional year of employment to a maximum of eight years.

This is the minimum. Under **common law**, you may be able to get more. See the section on common law.

Your employer does not have to pay you compensation if he or she gives you written notice of termination. The notice must be equal in weeks to the number of weeks' pay for which you are eligible. For example, if you have worked for your employer for more than a year, he or she must give you written notice at least two weeks in advance of termination. Otherwise, he or she must pay you two weeks' wages. Your employer can also give you a combination of notice and compensation.

Once you get your notice, your employer is not allowed to change your pay or any other conditions of your job, unless you agree.

Can I get more under common law?

Possibly. In this booklet, we have focused on your minimum rights to notice or compensation under the *Employment Standards Act*, when your employer decides to fire you. You should know that under **common law** (judge-made law), through the courts, you may be entitled to more notice or compensation than the minimum.

This can depend on how long you have worked at the same job, your level of responsibility, your ability to get another job, and other factors. You should speak to a lawyer about your rights under common law.

What if my employer sells the business?

Usually, you don't have to worry if your employer sells the business. The new owner cannot act as if you started a new job. However, you should be prepared for some changes.

When must I get paid if I am terminated?

If you are terminated, your employer must pay all your wages within 48 hours. If you are paid a salary and you quit or are let go in the middle of

your pay period, your employer must pay you wages for the time you worked.

What if my employer is trying to make me quit my job?

Sometimes your employer may suggest that you quit your job instead of being terminated. For example, an employer may tell you that he or she is going to have to terminate you because you are not working hard enough.

Your employer might also suggest that he or she will give you a bad reference if you don't quit. Keep in mind that if you quit, your employer does not have to pay you any compensation. Also, an employer who suggests this is probably going to be a poor reference no matter what you decide. If you quit you often cannot receive EI benefits. Contact EI for more information about benefits.

If you are being forced to quit or if you are quitting because of a significant change in your terms and conditions of employment, you should contact the Employment Standards Branch, as you may be entitled to compensation in certain situations. You may also consider consulting a lawyer.

Can my employer terminate me without any warning?

Yes. There are a number of reasons why your employer can fire you without giving you notice or compensation. Some reasons are not related to your job performance. These include:

- Your job has ended and the employer offers you a similar job and you do not take it; and
- The workplace is destroyed by something the employer cannot control.

Your employer can also terminate you without written notice or compensation after three months of employment, if he or she has established **just cause** for letting you go. Generally this requires warnings or discipline to have taken place prior to the termination for just cause. However, some

incidents are serious enough to merit immediate dismissal for just cause. Examples include stealing from the employer or physically assaulting a co-worker.

If you think you were not given proper notice, contact the Employment Standards Branch for advice. If you think you were terminated unfairly you may be able to take your employer to court for **wrongful dismissal**. Contact a lawyer for advice.

What about my Record of Employment?

After your job is over, your employer has five days to give you a Record of Employment (ROE). This is a record of the amount of time you worked and the money you were paid. You need a ROE to get Employment Insurance (EI) benefits.

Apply for EI as soon after your last day of work as you can, even if you do not have your ROE. The EI office can make your employer give them your ROE. The location of the EI office nearest you is in the blue pages of your phone book under Government of Canada, Human Resources.

The federal government frequently makes changes to EI that affects who qualifies and what benefits you will receive. Be sure to get up-to-date information.

What about getting my T4 form?

You need a T4 form to do your income tax. Contact the Canada Revenue Agency for help in obtaining a T4 form if you don't receive one from your employer.

It is a good idea to keep your own records. Your employer may make a mistake or you may be unable to get a T4 slip.

OTHER WORKING ARRANGEMENTS

Temporary Workers

The *Employment Standards Act* says that a temporary worker has the same rights as a permanent worker.

However, some rights depend on how much time you have spent on the job.

Three areas which might be affected are:

1. Annual Vacation Pay: to qualify you must be employed at least five days;
2. Paid Statutory Holiday: in order to be eligible you must be employed at least 30 calendar days; and
3. Notice or Compensation: in order to receive any notice or compensation you must be employed at least three months.

Working “Under the Table”

If your employer does not ask for your Social Insurance Number, you are working illegally. You and your employer are breaking employment and income tax laws. This is commonly called working “under the table”.

Some disadvantages of working “under the table” include being ineligible for employment insurance benefits, and the possibility of not being covered by the *Workers' Compensation Act*. If you have an accident at the job site, you may not have any legal recourse, even if you were working in unsafe conditions.

If you have any concerns that your employer is not keeping accurate records, keep evidence (proof) that you actually worked there, including your own daily record of the hours you worked. When keeping a daily record, include the start and finish times of your shift and the times of any breaks taken. If you decide to pursue a claim with Employment Standards, co-workers or clients of



the business may be a source of information, or a witness, to confirm when you worked at a business.

People who are Self-Employed or Independent Contractors

If you are self-employed or an independent contractor, this means that you make your own agreements (or contracts) with the people for whom you work, and usually for a specific project or a set period of time. You don't fall under the *Employment Standards Act*.

However, if you are treated as an employee and do work similar to regular employees, you may be able to argue that you should be considered as an employee. This would mean you are protected under the *Employment Standards Act*.

Unpaid Work

Unpaid workers include volunteers at non-profit organizations and secondary school students on work experience placements. These types of unpaid workers are generally not covered by the *Employment Standards Act*.

Non-profit organizations that have volunteers usually develop their own policies that restrict volunteer job duties to those that are not employee job duties. If you volunteer for a non-profit organization or at your school, ask about your legal rights and responsibilities. Also ask what type of insurance they carry and whether it covers you as a volunteer.

School districts who offer their students a work experience as credit towards graduation may have their own policies about the work experience. Generally the work experience is time limited, unpaid, and organized with the permission of your school. Make sure your school district is covering you under WorkSafeBC guidelines. If there are problems during an unpaid work experience, check with your school about your rights. After the work experience time period ends, you would have to be paid for any further hours if you continue working with the employer.

GETTING INFORMED

How Can I Protect my Rights?

It is up to you to learn as much information as possible about your rights and your responsibilities as an employee. This section highlights some ways you can gather the information you need in order to protect your rights and resolve problems if they arise. These are suggestions only.

When You Get a Job

1. Ask for a job description. When you are on the job, you may find you are doing additional tasks. Note them. At a performance evaluation you may want to ask if these tasks can be added to your job description. This gives recognition to your work and your abilities.
2. Ask to whom you report. Ask for an organizational chart showing the responsibilities and authority of employees.
3. Ask about policies and procedures related to hours of work, breaks, safety, benefits, evaluation and discipline, and whether there is a policy manual or employee handbook.

Once You Are on the Job

1. If you are asked to do tasks outside your job description, be sure it is approved by your supervisor.
2. Study any safety procedures and guidelines. Ask questions if you are unclear. If you are concerned about any potential hazards, speak to your supervisor or employer.
3. Co-workers are often a good source of practical information about the job. If you are in a work experience or employment program, talk to your coordinator and, if possible, to last year's students about their experiences.

If You Have a Problem at Work:

1. Report any incidents of loss or injury to yourself, your clients/customers, or your organization. Make and keep your own record of the incident. Mark down the date and time, who was present,

and a description of where and how the incident took place.

2. It is also a good idea to have someone you trust that you can talk with about any problems on the job. This might be a family member, a friend, a co-worker, or your work experience coordinator. They may be able to help you get more information. You may want them to go with you if you decide to make a formal complaint to a government agency.
3. Try to talk to your employer to solve any problems. If your employer will not listen to you and you think he or she has broken the law, talk it over with someone you trust. You can also contact the Employment Standards Branch for information before deciding to make a complaint.

Going to the Employment Standards Branch

The Employment Standards Branch provides information as well as enforces the *Employment Standards Act*, which is legislation (law) applying to BC.

It publishes materials free of charge, most of which are available for you to print off their website in English and other languages. Staff can answer specific questions about your rights. You can also invite Branch staff to speak to your group for large group events.

Look in the blue pages of your phone book under the Government of British Columbia, Employment Standards Branch, to locate your local office. You can contact the Branch at:

- 1-800-663-3316; or
- Visit their web site at www.labour.gov.bc.ca/esb/ ; or
- Call Enquiry BC's 24-hour phone line: 604-660-2421 in the Lower Mainland, or 1-800-663-7867 outside Greater Vancouver.

Making a Complaint with the Employment Standards Branch

The Employment Standards Branch deals with complaints related to the *Employment Standards Act*. They have an Employment Standards Self-help



Kit to assist employees and employers to resolve problems among themselves.

If this does not work, the Branch may try to mediate between the employer and employee. If this works, the Branch will help write a settlement agreement for the employee and employer. If both follow this agreement, there is no further need for the Branch to be involved.

If no agreement is reached between the employer and employee, the Branch will adjudicate the dispute. If the Branch decides against the employer, it can impose a \$500 fine against the employer for the first violation of the *Employment Standards Act*. Subsequent violations may lead to higher fines for the employer.

For Copies of Legislation

For copies of the *Employment Standards Act* or any of the Acts discussed in this booklet, ask to see a copy at your public library, or local law library.

The *Employment Standards Act* can be viewed on the Branch website: www.labour.gov.bc.ca/esb/

The *BC Human Rights Code* can be viewed at: www.bchrt.gov.bc.ca/

The People's Law School

The People's Law School is a non-profit Society whose purpose is to provide British Columbians with reliable information about their rights and responsibilities under the law.



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