



EMPLOYMENT RIGHTS IN BC

A resource for
non-unionized employees
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PART 1: INTRODUCTORY PROVISIONS

ARTICLE 1 – PURPOSE AND LIMITATIONS

1.01 Purpose of this document

This document provides a simplified statement of the employment rights of non-unionized employees in British Columbia.¹

This document is produced for educational purposes. It cannot and does not cover all possible situations. It should not be relied on as a substitute for legal advice.

If you have a legal problem you should consult with an advocate or lawyer.

1.02 What is covered by this document

This document covers the rights of employees in British Columbia set out in the *Employment Standards Act*, *Human Rights Code*, *Labour Relations Code*, *Workers Compensation Act* and *Personal Information Protection Act*.

This document does not cover the benefit schemes that employees are entitled to access, including those established by the *Employment Insurance Act*², *Employment and Assistance Act*³, *Workers Compensation Act*⁴ and *Canada Pension Plan*⁵.

1.03 Liability warning

The law, including statutes, regulations and case precedents, can change without warning and those changes may not be reflected in this document. As a result, this document may contain inaccurate or misleading information.

Together Against Poverty Society, the Hospital Employees' Union and the authors, contributors, editors and distributors of this document are not responsible for:

- a) ensuring this document is up-to-date;
- b) ensuring the completeness or accuracy of the information contained in this document;
or
- c) any form of damages or monetary loss caused by or attributed to the use of this document, including but not limited to claims based on negligence or breach of contract.

¹ This document will also apply to unionized employees in British Columbia who do not have a first collective agreement.

² For more information about Employment Insurance, visit the following website:

<http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml>

³ For more information about income assistance, visit the following website:

<http://www.eia.gov.bc.ca/bcea.htm>

⁴ For more information about workers' compensation benefits, visit the following website:

http://www.worksafebc.com/claims/report_injury/worker_incident_injury_report/default.asp

⁵ For more information about the Canada Pension Plan, visit the following website:

http://www.servicecanada.gc.ca/eng/services/pensions/cpp/index.shtml?utm_source=vanity+URL&utm_medium=print+publication,+ISPB-185,+ISPB-341&utm_term=/CPP&utm_content=Mar+2013,+eng&utm_campaign=OAS+Pension+2013,+Benefits+for+Low+Income+Seniors

ARTICLE 2 – DEFINITIONS

2.01 Definition of employee

An employee is a person who performs work for another person or business for compensation. An employee includes a person being trained by an employer for the employer's business, a person on leave from an employer and a person directed or allowed by an employer to do work normally done by an employee.⁶

2.02 Definition of employer

An employer is a person or business who has or had control or direction of an employee or who is or was responsible, directly or indirectly, for the employment of an employee.

When an employer sells its business, the new employer must treat the employees as though their employment continues undisturbed by the sale, unless the employees were provided with proper notice or wages in lieu of notice (see Article 9). The new employer assumes all of the old employer's liabilities and obligations towards the employees.

PART 2: MINIMUM EMPLOYMENT STANDARDS⁷

ARTICLE 3 – HIRING EMPLOYEES

3.01 No false representations

An employer cannot influence a person to accept work by misrepresenting the type of work, wages or conditions of employment.⁸

3.02 No recruitment fees

A person cannot charge a fee from a person seeking employment for obtaining employment for that person or providing information about employers seeking employees.⁹

3.03 Written contracts for domestic workers

An employer must provide a written employment contract to their domestic workers. The contract must clearly state the conditions of employment, including: the hours of work, the wages and the charges for room and board.¹⁰

3.04 Hiring children

An employer must not hire a child under 12 years of age.

An employer must not hire a child under 15 years of age unless the employer has obtained the written consent of the child's parent.¹¹

⁶ *Employment Standards Act*, R.S.B.C. 1996 c. 113 ["ESA"] at s. 1.

⁷ Not all employees in British Columbia are entitled to the minimum employment standards set out in this Part. To find out if you are excluded from the protections set out in this Part see ss.31-45 of the *Employment Standards Regulation*.

⁸ *ESA* at s. 8.

⁹ *ESA* at s. 10.

¹⁰ *ESA* at s. 14.

¹¹ *ESA* at s. 9.

An employer must not require a child between the ages of 12 and 15 to work when the child is scheduled to attend school.

An employer must not allow a child between the ages of 12 and 15 to work:

- a) more than 4 hours on a school day;
- b) more than 7 hours on a day that is not a school day;
- c) more than 20 hours in a week that has 5 school days; and
- d) in any case, more than 35 hours in a week.¹²

An employer must ensure that a child between the ages of 12 and 15 works only under the direct supervision of an adult.¹³

ARTICLE 4 – WAGES, RECORDS AND SPECIAL CLOTHING

4.01 Minimum wage

An employer must pay an employee at least the minimum wage.

Subject to the following exceptions, minimum wage is \$10.25 an hour.¹⁴ The minimum wage will increase to \$10.45 an hour on September 15, 2015.

The minimum wage for workers whose primary duties are to serve food or drink and who regularly serve liquor to customers is \$9 an hour. The minimum wage will increase to \$9.20 an hour on September 15, 2015.

The minimum daily wage for a live-in home support worker is \$102.50 for each day or part day worked.

The minimum daily wage for a live-in camp leader is \$82 for each day or part day worked.

Farm workers may be employed on either an hourly or a piece work basis depending on the crops they are harvesting if they are hand harvesters. The minimum wage rate for farm workers is set out in s. 18 of the *Employment Standards Regulation*.

The minimum wage for live-in home support workers, live-in camp leaders and farm workers will increase proportionally to the 20-cent increase in the general minimum hourly wage on September 15, 2015.

4.02 Yearly increase in minimum wage

The minimum wage rate will increase each year based on BC's consumer price index.

The Government will announce the yearly increase to the minimum wage in March to take effect September 15 each year.

¹² *Employment Standards Regulation*, B.C. Reg. 396/95 (“*ESR*”) at s. 45.3.

¹³ *ESR* at s. 45.4.

¹⁴ *ESA* at s. 16; *ESR* at ss. 15-18.1.

4.03 Deductions

An employer cannot make deductions from an employee's wages for any purpose except as permitted by the *Employment Standards Act* or any other law of British Columbia or Canada.¹⁵

Permitted deductions include income tax, Canada Pension Plan contributions, Employment Insurance premiums and union dues.

With the employee's permission, an employer may deduct for medical premiums, extended health or dental coverage and pension plan contributions.

With a written agreement, an employer may deduct room and board and money borrowed from the employer.

Deductions that are not permitted include expenses arising from theft, damage, breakage, poor quality of work or a customer's failure to pay.

4.04 Paydays

An employer must pay an employee all wages earned in a pay period at least twice a month and within 8 days after the end of the pay period.¹⁶

4.05 How wages are paid

An employer must pay all wages in Canadian currency, by cheque, draft or money order, or by direct deposit to the employee's bank account, if authorized by the employee in writing.¹⁷

4.06 Wage statements

On every payday, an employer must give each employee a written wage statement for the pay period stating:

- a) the employer's name and address;
- b) the hours worked by the employee;
- c) the employee's wage rate;
- d) the employee's overtime wage rate;
- e) the hours worked by the employee at the overtime rate;
- f) any other payment the employee is entitled to;
- g) the amount and purpose of each deduction from wages; and
- h) the employee's gross and net wages.¹⁸

4.07 If employment is terminated

An employer must pay all wages owing to an employee within 48 hours after the employer terminates the employee's employment.

¹⁵ *ESA* at s. 21.

¹⁶ *ESA* at s. 17.

¹⁷ *ESA* at s. 20.

¹⁸ *ESA* at s. 27.

An employer must pay all wages owing to an employee within 6 days after the employee terminates their employment.¹⁹

4.08 Special clothing

An employer who requires an employee to wear special clothing must, without charge to the employee, provide the special clothing and maintain it, unless there is a workplace agreement that employees will clean and maintain the clothing themselves.

If there is a workplace agreement that employees will clean and maintain the special clothing, the employer must reimburse each employee the cost of cleaning and maintaining the special clothing.²⁰

ARTICLE 5 – HOURS OF WORK AND OVERTIME

5.01 Meal breaks

An employee is entitled to a meal break that lasts at least 30 minutes after 5 consecutive hours of work.²¹

If an employee is required to be available for work during a meal break, the break must be paid.

5.02 Split shifts

An employee working a split shift must complete the shift within 12 hours of starting work.²²

If an employer requires an employee to travel during the split shift from one job site to another, the travel time must be paid.²³

5.03 Minimum daily hours

An employee who is required to report to work must be paid for at least 2 hours of work.

If the employee was scheduled to work for more than 8 hours that day, the employee must be paid for at least 4 hours of work.²⁴

5.04 Maximum hours of work before overtime applies

An employer must pay an employee overtime wages if the employee is required to work more than 8 hours a day or 40 hours a week, unless the employee is working under an averaging agreement.²⁵

¹⁹ ESA at s. 18.

²⁰ ESA at s. 25.

²¹ ESA at s. 32.

²² ESA at s. 33.

²³ Interpretation Guidelines Manual: British Columbia *Employment Standards Act* and Regulations, ESA Section 1 – Definitions- Work.

²⁴ ESA at s. 34.

²⁵ ESA at s. 35.

5.05 Overtime wages for employees not working under an averaging agreement

An employer must pay an employee who works over 8 hours a day, and is not working under an averaging agreement, 1.5 times the employee's regular wage for the time over 8 hours, and double the employee's regular wage for any time over 12 hours.

An employer must pay an employee who works over 40 hours a week, and is not working under an averaging agreement, 1.5 times the employee's regular wage for the time worked over 40 hours. For the purposes of calculating entitlement to weekly overtime, only the first 8 hours worked by an employee in each day are counted.²⁶

5.06 Agreements to average hours of work

An employer and employee may agree in writing to average the employee's hours of work over a period of 1, 2, 3 or 4 weeks for the purposes of calculating an employee's entitlement to overtime.²⁷

5.07 Hours free from work

Except in an emergency, an employee must have at least 8 consecutive hours free from work between each shift.

An employee must have at least 32 consecutive hours free from work each week. If not, the employer must pay the employee 1.5 times the regular wage for the time worked during the 32 hour period the employee should have had free from work.²⁸

For example, an employee works 7 days a week starting at 9am each day as follows:

Days	S	M	T	W	T	F	S	Total
Hours	5	5	4	5	5	5	5	34 hours

The employee has not had a 32-hour break from work. The employer must pay 1.5 times the regular wage for the 4 hours worked on Tuesday.

5.08 No excessive hours

An employer must not require an employee to work hours that are detrimental to the employee's health or safety.²⁹

5.09 Time off to vote

An employer must give employees who are entitled to vote in a provincial or federal election time free from work during voting hours to vote. Employees are entitled to 4 consecutive hours

²⁶ ESA at s. 40.

²⁷ ESA at s. 37.

²⁸ ESA at s. 36.

²⁹ ESA at s. 39.

free from work during voting hours in provincial elections³⁰ and 3 consecutive hours free from work during voting hours in federal elections³¹.

It is up to the employer to decide when their employees can take time off work to vote. Employees are entitled to their regular compensation for those hours not worked while voting.

ARTICLE 6 – STATUTORY HOLIDAYS

6.01 Entitlement to a statutory holiday

An employee is entitled to a statutory holiday if they have been employed by the employer for at least 30 days before the statutory holiday, and they have worked 15 of the last 30 days.³²

With an employee's consent, an employer may give the employee another day off instead of the statutory holiday.³³

6.02 Statutory holidays

The following 10 statutory holidays are recognized in British Columbia:

New Year's Day	Family Day
Good Friday	Victoria Day
Canada Day	BC Day
Labour Day	Thanksgiving Day
Remembrance Day	Christmas Day

6.03 Statutory holiday pay

An employee who is given a day off on a statutory holiday they are entitled to must be paid at least an average day's pay. An employee who is required to work on a statutory holiday they are entitled to must be paid an average day's pay plus 1.5 times the employee's regular wage for time worked up to 12 hours and double the employee's regular wage for time worked over 12 hours.³⁴

An average day's pay is determined by taking the amount earned by the employee within the last 30 days before the statutory holiday, without overtime, and dividing it by the number of days worked in the last 30 days.³⁵

An employee who is not entitled to a statutory holiday may be required to work the statutory holiday at their regular wage.

ARTICLE 7 – LEAVES

7.01 Pregnancy leave

A pregnant employee is entitled to up to 17 consecutive weeks of unpaid leave. The leave must begin no earlier than 11 weeks before the expected birth date, and no later than the actual

³⁰ *Election Act*, R.S.B.C. 1996 c. 106 at s. 74.

³¹ *Canada Elections Act*, S.C. 2000 c. 9 at s. 132.

³² *ESA* at s. 44.

³³ *ESA* at s. 48.

³⁴ *ESA* at s. 46.

³⁵ *ESA* at s. 45.

birth date. The leave must end no earlier than 6 weeks after the birth date, unless the employee requests a shorter period, and no later than 17 weeks after the actual birth date.³⁶

An employee is entitled to up to 6 consecutive weeks of unpaid leave after the termination of a pregnancy.

An employee is entitled to up to 6 additional consecutive weeks of unpaid leave if, for reasons related to the birth or the termination of the pregnancy, she is unable to return to work when her leave ends.

An employee requesting pregnancy leave must make her request to her employer in writing at least 4 weeks before the day she proposes to begin leave.

7.02 Parental leave

An employee who takes pregnancy leave is entitled to up to 35 additional consecutive weeks of unpaid leave beginning immediately after the end of the pregnancy leave.³⁷

A parent, other than an adopting parent, who does not take pregnancy leave is entitled to up to 37 consecutive weeks of unpaid leave beginning sometime between the child's birth and when the child turns one.

An adopting parent is entitled to up to 37 consecutive weeks of unpaid leave beginning within 52 weeks of the child being placed with the parent.

If the child has a physical, psychological or emotional condition requiring an additional period of parental care, the employee is entitled to up to an additional 5 consecutive weeks of unpaid leave beginning immediately after the end of the parental leave.

A parent requesting parental leave must make the request to their employer in writing at least 4 weeks before the employee proposes to begin leave.

7.03 Family responsibility leave

An employee is entitled to up to 5 days of unpaid leave during each employment year to meet responsibilities related to the care, health or education of a child in the employee's care or to the care or health of any other member of the employee's immediate family.³⁸

7.04 Compassionate care leave

An employee is entitled to up to 8 weeks of unpaid leave to provide care or support to a family member if a medical practitioner or nurse practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks.

Compassionate care leave must be taken in units of one or more weeks at a time.

Compassionate care leave ends when the family member dies or at the end of 26 weeks from the date the leave began, whichever is earlier.³⁹

³⁶ *ESA* at s. 50.

³⁷ *ESA* at s. 51.

³⁸ *ESA* at s. 52.

³⁹ *ESA* at s. 52.1.

If an employee takes compassionate care leave and the family member does not die within 26 weeks, the employee may take a further leave after obtaining a new certificate.

7.05 Bereavement leave

An employee is entitled to up to 3 days of unpaid leave on the death of a member of the employee's immediate family.⁴⁰

7.06 Jury duty

An employee who is required to attend court as a juror is considered to be on unpaid leave for the period of the jury duty.

7.07 Duties of employer with respect to leave

An employer must not terminate an employee's employment or change a condition of their employment without consent because of an employee's pregnancy, jury duty or a leave allowed by this Article.⁴¹ Conditions of employment include pay, benefits, hours and job duties.

As soon as the leave ends, the employer must place the employee in their earlier position or in a comparable position.

7.08 Employment deemed continuous while employee on leave

An employee's employment is deemed to be continuous while on leave for the purposes of calculating annual vacation entitlement and any pension, medical or other benefit.⁴²

An employer must continue to make payments to a pension, medical or other benefit plan as though the employee were not on leave if the employer pays the total cost of the plan. If the employer and the employee both pay the cost of the plan, the employer must continue to make payments if the employee chooses to continue to pay their share of the cost.

ARTICLE 8 – ANNUAL VACATION

8.01 Entitlement to annual vacation

An employee is entitled to an annual vacation of at least 2 weeks after 12 consecutive months of employment.

An employee is entitled to an annual vacation of at least 3 weeks after 5 consecutive years of employment.

An employee is entitled to take their annual vacation in periods of one or more weeks.

An employee must take their annual vacation within 12 months of earning it.⁴³

⁴⁰ *ESA* at s. 53.

⁴¹ *ESA* at s. 54; *Brooks v. Canada Safeway Ltd.*, [1989] 1 SCR 1219.

⁴² *ESA* at s. 56.

⁴³ *ESA* at s. 57.

8.02 Vacation pay

After 5 calendar days of employment, an employee is entitled to vacation pay of at least 4% of their total wages.

After 5 consecutive years of employment, an employee is entitled to vacation pay of at least 6% of their total wages.

An employer must pay an employee vacation pay at least 7 days before the beginning of the employee's annual vacation or on the employee's scheduled paydays.⁴⁴

ARTICLE 9 – TERMINATION OF EMPLOYMENT

9.01 Termination by an employee

An employee may leave their job at any time.

9.02 Termination by an employer

An employer may terminate the employment of an employee at any time if they have just cause to do so, or if they do not have just cause, they give the employee a reasonable period of notice or wages in lieu of notice.⁴⁵

An employer cannot terminate an employee for a discriminatory reason or for exercising their legal rights.

9.03 Definition of just cause

Just cause includes, but is not limited to, serious misconduct, frequent neglect of duty, significant breach of rules, incompetence or conduct that harms the employer's business.

9.04 Reasonable notice or wages in lieu of notice

After 3 consecutive months of employment, an employee whose employment has been terminated is entitled to one week's notice of termination or one week's wages in lieu of notice.

After 12 consecutive months of employment, an employee whose employment has been terminated is entitled to 2 weeks' notice of termination or two weeks' wages in lieu of notice.

After 3 consecutive years of employment, an employee whose employment has been terminated is entitled to 3 weeks' notice of termination or 3 weeks' wages in lieu of notice, plus one additional week's notice or wages in lieu of notice for each additional year of employment, to a maximum of 8 weeks' wages.⁴⁶

The above rules do not apply where an employee terminates the employment, retires from employment or is dismissed for just cause.

⁴⁴ *ESA* at s. 58.

⁴⁵ *ESA* at s. 63.

⁴⁶ *ESA* at s. 63.

9.05 Group terminations

If the employment of 50 or more employees at a single location is to be terminated within any 2 month period, the employer must give written notice of group termination to each employee affected.

If 50 to 100 employees will be affected, the notice of group termination must be given at least 8 weeks before the effective date of the first termination.

If 101 to 300 employees will be affected, the notice of group termination must be given at least 12 weeks before the effective date of the first termination.

If 301 or more employees will be affected, the notice of group termination must be given at least 16 weeks before the effective date of the first termination.

If an employee is not given notice as required, the employer must give the employee wages instead of the required notice.⁴⁷

9.06 Exceptions to notice requirements

This Article does not apply to an employee who:

- a) is employed for a fixed term;
- b) is employed for specific work to be completed in a period of up to 12 months;
- c) is employed under an arrangement by which the employee has the option of accepting or rejecting temporary periods of employment offered by the employer;
- d) is employed at one or more construction sites by an employer whose principal business is construction; or
- e) has been offered and has refused reasonable alternative employment by the employer.⁴⁸

Section 9.05 does not apply to an employee who is laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation.

9.07 Constructive dismissal

If a condition of employment is substantially altered, an employee may apply to the director of the Employment Standards Branch for a determination that the employee's employment has been terminated and the employee is entitled to wages in lieu of notice.⁴⁹

9.08 Wrongful dismissal

An employee who is terminated without just cause may be entitled to more notice or wages in lieu of notice than set out above. To pursue the additional notice or wages in lieu of notice, the employee must bring a wrongful dismissal action.

For claims of \$25,000 or less, the action will be in Small Claims Court. For claims of greater than \$25,000, the action will be in BC Supreme Court.

⁴⁷ *ESA* at s. 64.

⁴⁸ *ESA* at s. 65.

⁴⁹ *ESA* at s. 66.

9.09 Record of Employment

An employer must provide an employee with a Record of Employment:

- a) within 5 days of a layoff or termination of employment, if completed in paper form; or
- b) within 5 days of the final pay period, if completed in electronic form.⁵⁰

ARTICLE 10 – COMPLAINTS AND DETERMINATIONS

10.01 Complaint and time limit

An employee may make a complaint to the Employment Standards Branch if their employer has violated any of the provisions in this Part.

A complaint must be in writing.

A complaint relating to an employee whose employment has terminated must be delivered within 6 months after the last day of employment.

A complaint that a person has made false representations or charged recruitment fees must be delivered within 6 months after the date of the action complained of.⁵¹

10.02 Before filing a complaint

Before filing a complaint, an employee must first use the Employment Standards Self-Help Kit unless:

- a) the employee is under the age of 19;
- b) the complaint is related to a leave provision;
- c) the employer's business has closed;
- d) the employee is a farm worker, textile or garment worker, or domestic;
- e) the employee has significant language or comprehension difficulties or requires some other form of accommodation;
- f) the employee is filing within one month of the complaint deadline; or
- g) the employee has already sought resolution of the issue from their employer in writing.

10.03 Limit on the recovery of wages

An employee who files a complaint with the Employment Standards Branch is only able to recover wages that became payable in the period beginning 6 months before the date of the complaint or the termination of the employment, whichever is earlier, plus interest.

Wages includes salaries, commissions, vacation pay, statutory holiday pay, recruitment fees and reasonable and out of pocket expenses incurred by an employee because of an employer's false representation.

⁵⁰ *Employment Insurance Regulations*, SOR/96-332 at s. 19.

⁵¹ *ESA* at s. 74.

Depending on the timing of the complaint, an employee may recover up to 30 months less a day in unpaid vacation entitlement.⁵²

Employees who are owed wages outside of the 6 month window may be able to recover these wages through a breach of contract claim in Small Claims Court, if \$25,000 or less, or BC Supreme Court, if more than \$25,000.

10.04 Confidentiality

An employee may make a written request to the Employment Standards Branch to not disclose any identifying information about them unless disclosure is necessary or it is in the public interest.⁵³

10.05 No retaliation

An employer must not retaliate against a person for making an employment standards complaint.

Retaliation includes refusing to employ or continue to employ a person, threatening to dismiss a person, discriminating against a person with respect to employment or intimidating, coercing or imposing a monetary or other penalty on a person.⁵⁴

ARTICLE 11 – EMPLOYMENT STANDARDS BRANCH CONTACT INFORMATION

11.01 Contact information

For more information, employees can access the Employment Standards Branch website at: <http://www.labour.gov.bc.ca/esb/>

Employees may contact the Employment Standards Branch for general enquiries at the following numbers:

Victoria: 250-387-6121

Vancouver: 604-660-2421

Elsewhere in BC: 1-800-663-7867

Outside BC: 604-660-2421

PART 3: HUMAN RIGHTS

ARTICLE 12 - NO DISCRIMINATION

12.01 No discrimination in employment advertisements

An employer cannot publish an employment advertisement that expresses a preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age unless the preference is based on a legitimate work requirement.⁵⁵

⁵² *ESA* at s. 80.

⁵³ *ESA* at s. 75.

⁵⁴ *ESA* at s. 83.

⁵⁵ *Human Rights Code*, R.S.B.C. 1996, c. 210 ["HRC"] at s. 11.

12.02 No discrimination in hiring

An employer cannot require an employee to disclose their race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age as a condition of employment unless the request is based on a legitimate work requirement.

12.03 No discrimination in wages

An employer cannot pay an employee of one sex less than an employee of the other sex for similar or substantially similar work.⁵⁶

12.04 No discrimination in employment

An employer cannot refuse to employ a person or discriminate against a person regarding employment or any term or condition of employment because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person unless it is based on a legitimate work requirement.⁵⁷

An employer has a duty to accommodate its employees to the point of undue hardship. The duty to accommodate involves making the workplace and the work accessible to employees so that they do not face barriers based on the above grounds.⁵⁸ For example, an employer may be required to provide an ergonomic workstation, specialized equipment, flexible work hours or periodic breaks to accommodate a disability.

12.05 Complaints procedure

An employee who experiences discrimination may file a complaint with the British Columbia Human Rights Tribunal.⁵⁹

A complaint must be filed within 6 months of the alleged discrimination.⁶⁰

ARTICLE 13 - NO HARASSMENT

13.01 Definition of bullying and harassment

Bullying and harassment is any inappropriate conduct or comment by a person towards an employee that the person knew or should have known would cause that employee to be humiliated or intimidated.

Bullying and harassment does not include any reasonable action taken by an employer or supervisor relating to the management and direction of employees or the place of employment.

13.02 Employee right to be free from harassment

Employees have the right to work in an environment free from harassment and bullying.

⁵⁶ HRC at s. 12.

⁵⁷ HRC at s. 13.

⁵⁸ *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*, [1999] 3 S.C.R. 3.

⁵⁹ HRC at s. 21.

⁶⁰ HRC at s. 22.

13.03 Employer’s obligation to minimize workplace harassment

An employer must take reasonable steps to prevent or minimize bullying and harassment in the workplace. These steps include:

- a) developing a policy statement with respect to bullying and harassment that clearly states bullying and harassment will not be tolerated;
- b) developing and implementing reporting procedures including how, when and to whom an employee should report incidents or make complaints; and
- c) developing and implementing procedures on how to deal with incidents and complaints including procedures to ensure a reasonable response to the complaint or incident and to ensure that bullying and harassment is prevented or minimized in the future.⁶¹

13.04 Complaints procedure

An employee who experiences or observes bullying and harassment in the workplace should report it to their employer.

If the employer fails to take reasonable steps to address the bullying and harassment in the workplace, the employee may file a bullying and harassment complaint with WorkSafeBC.⁶²

ARTICLE 14 – CONTACT INFORMATION

14.01 Human Rights Tribunal contact information

For more information about discrimination, employees can access the Human Rights Tribunal website at: <http://www.bchrt.bc.ca/>

Employees may contact the Human Rights Tribunal at the following numbers:

Vancouver: 604-775-2000

Elsewhere in BC: 1-888-440-8844

14.02 WorkSafeBC contact information

For more information about bullying and harassment, employees can access the WorkSafeBC bullying and harassment website at:

<http://www2.worksafebc.com/Topics/BullyingAndHarassment/Home.asp>

PART 4: LABOUR RIGHTS

ARTICLE 15 – RIGHT TO JOIN A TRADE UNION

15.01 Right to join a trade union

Every employee has the right to join a trade union and to participate in its lawful activities.⁶³

⁶¹ Work Safe BC G-D3-115(1)-3 Bullying and harassment.

⁶² The online bullying and harassment complaint form may be found here:

https://online.worksafebc.com/anonymous/wcb.BullyingAndHarassment.web/Default.aspx?_ga=1.198044207.1026023705.1424114046

⁶³ *Labour Relations Code*, R.S.B.C. 1996 c. 244 [“LRC”] at s. 4.

15.02 Process to join a trade union

To join a trade union, 45% of employees at a workplace must sign membership cards with the union of their choice. The British Columbia Labour Relations Board will then order a secret ballot vote. The workplace will become unionized if the majority of employees who cast ballots vote for representation by the union.⁶⁴

15.03 No intimidation

An employer must not use coercion or intimidation of any kind to compel a person to refrain from becoming a member of a trade union.⁶⁵

15.04 No inducements

An employer must not induce an employee to refrain from becoming or continuing to be a member of a trade union by promise, wage increase or by altering any other term or condition of employment.⁶⁶

15.05 Right to communicate

Employers and employees are free to express their views on any matter, including matters relating to an employer, a trade union or the representation of employees by a trade union, as long as they do not use intimidation or coercion.⁶⁷

15.06 No retaliation

An employer must not retaliate against a person for exercising their rights to join a trade union, encourage others to join a trade union or participate in the union's lawful activities.

Retaliation includes refusing to employ or continue to employ a person, disciplining a person, threatening to dismiss a person, discriminating against a person with respect to employment or intimidating or coercing a person.⁶⁸

15.07 Complaints procedure

An employee whose rights under this Part have been violated may file a complaint with the Labour Relations Board.⁶⁹

ARTICLE 16 – LABOUR RELATIONS BOARD CONTACT INFORMATION

16.01 Contact information

For more information, employees can access the Labour Relations Board website at: <http://www.lrb.bc.ca/>

⁶⁴ *Labour Relations Code*, R.S.B.C. 1996 c. 244 ["LRC"] at ss. 24-25.

⁶⁵ *LRC* at s. 9.

⁶⁶ *LRC* at s. 6.

⁶⁷ *LRC* at s. 8.

⁶⁸ *LRC* at ss. 5-6.

⁶⁹ *LRC* at s. 5.

Employees may contact the Labour Relations Board for general information about the Board's procedures at 604-660-1304 or by email to Information@lrb.bc.ca

PART 5: OCCUPATIONAL HEALTH AND SAFETY

ARTICLE 17 – EMPLOYEE RIGHTS

17.01 Right to know all health and safety hazards

An employee has the right to know all health and safety hazards which they may be exposed to at work.⁷⁰

17.02 Right to a safe workplace

An employee is entitled to the information, instruction, training and supervision necessary to ensure their health and safety in carrying out their work.⁷¹

An employee is entitled to have workplace conditions that are hazardous to their health or safety remedied by the employer.⁷²

An employee is entitled to appropriate protective equipment, devices and clothing provided and maintained by the employer.⁷³

17.03 Right to refuse unsafe work

An employee has an obligation to refuse to carry out any work that the employee believes to be unsafe.

An employee who refuses to carry out work thought to be unsafe must immediately report the unsafe condition to their supervisor or employer.

A supervisor or employer receiving a report of unsafe work must immediately investigate the matter and ensure any unsafe condition is remedied without delay.⁷⁴

If the supervisor or employer does not agree that the work is unsafe, the employee may contact a WorkSafeBC officer to investigate the matter.

ARTICLE 18 – EMPLOYER AND EMPLOYEE OBLIGATIONS

18.01 Obligation to inform employees of health and safety hazards

An employer must inform employees of all known or reasonably foreseeable health or safety hazards which they may be exposed to at work.⁷⁵

⁷⁰ *Workers Compensation Act*, R.S.B.C. 1996 c. 492 ["WCA"] at s. 115.

⁷¹ *WCA* at s. 115.

⁷² *WCA* at s. 115.

⁷³ *WCA* at s. 115.

⁷⁴ *Occupational Health and Safety Regulation*, B.C. Reg. 296/97 at s. 3.12.

⁷⁵ *WCA* at s. 115.

18.02 Obligation to remedy hazardous conditions

An employer must remedy any workplace conditions that are hazardous to the health or safety of employees.⁷⁶

An employee must report to their supervisor any hazard that the employee considers is likely to endanger the employee or any other person.⁷⁷

18.03 Obligation to provide safety equipment

An employee must provide their own clothing needed for protection against the natural elements, general purpose work gloves, appropriate footwear including safety footwear and safety headgear.

An employer must provide and maintain in good condition all other items of protective equipment, devices and clothing at no cost to the employee.⁷⁸ For example, an employer would be responsible for providing respirators, lifejackets and eye protection where necessary.

An employer must ensure that the protective equipment, devices and clothing are used by their employees.⁷⁹

An employee must report to their supervisor any absence or defect in protective equipment, devices or clothing.⁸⁰

18.04 Obligation to train

An employer must provide its employees with the information, instruction, training and supervision necessary to ensure the health and safety of those employees in carrying out their work.⁸¹

18.05 No horseplay

An employee must not engage in horseplay or similar conduct that may endanger the employee or any other person.⁸²

18.06 No impairment

An employee must ensure their ability to work safely is not impaired by alcohol or drugs or other causes.⁸³

⁷⁶ WCA at s. 115.

⁷⁷ WCA at s. 116.

⁷⁸ OHSR at s. 8.2.

⁷⁹ WCA at s. 115.

⁸⁰ WCA at s. 116.

⁸¹ WCA at s. 115.

⁸² WCA at s. 116.

⁸³ WCA at s. 116.

ARTICLE 19 – HEALTH AND SAFETY COMMITTEES

19.01 When a joint health and safety committee is required

An employer must establish and maintain a joint health and safety committee where they have 20 or more employees.⁸⁴

19.02 Membership of joint health and safety committee

A health and safety committee must have at least 4 members and at least half of the members must be employee representatives.⁸⁵

19.03 Selection of employee representatives

The employee representatives must be selected by secret ballot by the employees at the workplace who do not exercise managerial functions.⁸⁶

19.04 Duties and functions of joint health and safety committee

A joint health and safety committee must meet at least once each month.

A joint health and safety committee must identify situations that may be unhealthy or unsafe for employees and advise on effective systems for responding to those situations.

A joint health and safety committee must consider and deal with complaints relating to the health and safety of employees.

A joint health and safety committee must consult with employees and the employer on issues related to health and safety and make recommendations for the improvement of occupational health and safety.⁸⁷

19.05 When employee health and safety representative is required

An employee health and safety representative is required in each workplace where there is more than 9 but fewer than 20 employees.⁸⁸

An employee health and safety representative has the same duties and functions as a joint health and safety committee.

ARTICLE 20 – PROHIBITION AGAINST DISCRIMINATORY ACTION

20.01 Actions that are considered discriminatory

Discriminatory actions include any act or omission by an employer that negatively affects an employee with respect to any term or condition of employment.

⁸⁴ WCA at s. 125.

⁸⁵ WCA at s. 127.

⁸⁶ WCA at s. 128.

⁸⁷ WCA at ss. 130-131.

⁸⁸ WCA at s. 139.

Discriminatory actions include suspension, lay-off or dismissal, demotion, transfer of duties, change of workplace, reduction in wages or change in working hours, coercion or intimidation, imposition of any discipline or other penalty and the elimination of the job of the employee.⁸⁹

20.02 Discrimination against employees prohibited

An employer must not take or threaten to take discriminatory action against an employee for exercising any occupational health and safety right or duty, for refusing unsafe work or for reporting health and safety conditions to the employer, another employee or another person concerned with health and safety.⁹⁰

20.03 Complaints procedure

An employee who considers that an employer has taken or threatened to take discriminatory action against the employee may make a complaint in writing to the Workers' Compensation Board.⁹¹

A complaint must be made within 1 year of the action considered to be discriminatory.

ARTICLE 21 – WORKSAFEBC CONTACT INFORMATION

21.01 Contact information

For more information, employees can access the WorkSafeBC website at: <http://www.worksafebc.com/>

Employees may contact a WorkSafeBC officer for workplace health and safety enquiries at the following numbers:

Vancouver: 604-276-3100

Elsewhere in BC: 1-888-621-7233

PART 6: PRIVACY

ARTICLE 22 – GENERAL PROVISIONS

22.01 Definition of personal information

Personal information means information that can identify an individual, for example a person's name, home address, home phone number or ID number. Personal information also means information about an identifiable individual, for example physical description, educational qualifications or blood type.

Personal information does not include work contact information or work product information.

Work contact information means information used to contact an individual at their workplace, including the individual's name, position or title and their work telephone number, address, email and fax number.

⁸⁹ WCA at s. 150.

⁹⁰ WCA at s. 151.

⁹¹ WCA at s. 152. The complaint form may be found at:

http://www.worksafebc.com/forms/assets/pdf/57w1.pdf?_ga=1.193981869.1026023705.1424114046

Work product information means information prepared by an employee in the context of their work. For example, a work report prepared and signed by an employee would be that employee's work product information. Work product information does not include personal information about another person. For example, if the work report contained information about other employees, it would be the personal information of the other employees.⁹²

22.02 Consent

Unless permitted by this Part, an employer must not collect, use or disclose personal information about an employee without their consent.⁹³

ARTICLE 23 – COLLECTION OF EMPLOYEE PERSONAL INFORMATION

23.01 Collection of employee personal information

An employer is entitled to collect employee personal information only for purposes that a reasonable person would consider appropriate in the circumstances.

23.02 Collection of employee personal information without consent

An employer is only entitled to collect employee personal information without consent in the following circumstances:

- a) If the collection is clearly in the interests of the employee and consent cannot be obtained in a timely way;
- b) If the collection is necessary for the medical treatment of the employee and the employee is unable to give consent;
- c) It is reasonable to expect that the collection with the consent of the employee would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding;
- d) If the personal information is available to the public;
- e) If the collection is required or authorized by law; or
- f) If the collection is reasonable for the purposes of establishing, managing or terminating the employment relationship.⁹⁴

23.03 Obligation to notify employee

Before an employer collects employee personal information for the purposes of establishing, managing or terminating the employment relationship, the employer must notify the employee that it will be collecting information and the purposes for the collection.

Information collected for the purposes of establishing, managing or terminating the employment relationship may include personnel records such as letters of application, results of

⁹² *Personal Information Protection Act*, S.B.C. 2003 c. 63 [“PIPA”] at s. 1.

⁹³ *PIPA* at s. 6.

⁹⁴ *PIPA* at ss. 11-13.

interviews, personal references, performance evaluations and letters of resignation or termination.⁹⁵

ARTICLE 24 – USE OF EMPLOYEE PERSONAL INFORMATION

24.01 Use of employee personal information

An employer is entitled to use employee personal information only for purposes that a reasonable person would consider appropriate in the circumstances.

24.02 Use of personal information without consent

An employer is only entitled to use employee personal information without consent in the following circumstances:

- a) If the use is clearly in the interests of the employee and consent cannot be obtained in a timely way;
- b) If the use is necessary for the medical treatment of the employee and the employee is unable to give consent;
- c) It is reasonable to expect that the use with the consent of the employee would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding;
- d) If the personal information is available to the public;
- e) If the use is required or authorized by law;
- f) If the use is necessary to respond to an emergency that threatens the life, health or security of an individual; or
- g) If the use is reasonable for the purposes of establishing, managing or terminating the employment relationship.⁹⁶

24.03 Obligation to notify employee

Before an employer uses employee personal information for the purposes of establishing, managing or terminating the employment relationship, the employer must notify the employee that it will be using information and the purposes for the use.⁹⁷

ARTICLE 25 – DISCLOSURE OF EMPLOYEE PERSONAL INFORMATION

25.01 Disclosure of employee personal information

An employer is entitled to disclose employee personal information only for purposes that a reasonable person would consider appropriate in the circumstances.

⁹⁵ *PIPA* at s. 13.

⁹⁶ *PIPA* at ss. 14-16.

⁹⁷ *PIPA* at s. 16.

25.02 Disclosure of personal information without consent

An employer is entitled to disclose employee personal information without consent in the following circumstances:

- a) If the disclosure is clearly in the interests of the employee and consent cannot be obtained in a timely way;
- b) If the disclosure is necessary for the medical treatment of the employee and the employee is unable to give consent;
- c) It is reasonable to expect that the disclosure with the consent of the individual would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding;
- d) If the personal information is available to the public;
- e) If the disclosure is required or authorized by law;
- f) If the disclosure is for the purposes of contacting next of kin or a friend of an injured, ill or deceased person;
- g) If the disclosure is to a lawyer who is representing the organization; or
- h) If the disclosure is reasonable for the purposes of establishing, managing or terminating the employment relationship.⁹⁸

25.03 Obligation to notify employee

Before an employer discloses employee personal information for the purposes of establishing, managing or terminating the employment relationship, the employer must notify the employee that it will be disclosing information and the purposes for the disclosure.⁹⁹

ARTICLE 26 – ACCESS TO EMPLOYEE PERSONAL INFORMATION

26.01 Access to personal information

An employee is entitled to request an employer to provide them with:

- a) their personal information under the control of the employer;
- b) information about the ways in which the personal information has been and is being used by the employer; and
- c) the names of the individuals and organizations to whom the personal information has been disclosed.¹⁰⁰

⁹⁸ *PIPA* at ss. 17-19.

⁹⁹ *PIPA* at s. 19.

¹⁰⁰ *PIPA* at s. 23.

26.02 Right to request correction of personal information

An employee is entitled to request an employer to correct an error or omission in the personal information about the employee that is under the control of the employer.¹⁰¹

ARTICLE 27 – COMPLAINTS AND DETERMINATIONS

27.01 Complaints procedure

An employee who believes their employer has violated this Part may make a complaint in writing to their employer.

If the employer does not respond in 30 business days, or if the employee is not satisfied with how the employer has addressed the complaint, the employee may make a complaint in writing to the Information and Privacy Commissioner.¹⁰²

27.02 Retaliation prohibited

An employer must not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee or deny that employee a benefit because the employee has made a disclosure or a complaint to the Information and Privacy Commissioner.¹⁰³

27.03 Damages for breach of privacy

If the Information and Privacy Commissioner has made an order against an employer, the employee affected by the order can bring a lawsuit against their employer for damages for actual harm the employee has suffered as a result of the breach by the employer.¹⁰⁴

ARTICLE 28 – INFORMATION AND PRIVACY COMMISSIONER CONTACT INFORMATION

28.01 Contact information

For more information, employees can access the Office of the Information and Privacy Commissioner for BC website at: <https://www.oipc.bc.ca/>

Employees may contact the Office of the Information and Privacy Commissioner for BC at 250-387-5629 or by email at info@oipc.bc.ca

¹⁰¹ *PIPA* at s. 24.

¹⁰² *PIPA* at ss. 46-47.

¹⁰³ *PIPA* at ss. 54-55.

¹⁰⁴ *PIPA* at s. 57.



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