

A Guide to the Employment Standards Act

The *Employment Standards Act* sets out the minimum standards that apply in most workplaces in British Columbia. The Employment Standards Branch administers the Act.

This Act applies to all non-union employees who fall under provincial jurisdiction, including temporary foreign workers.

This guide contains general information about Employment Standards in British Columbia. Alternate provisions apply to certain sectors including high technology, agriculture, taxis, trucking, log harvesting, silviculture and oil and gas. Individual factsheets are available to explain the differences that apply in these sectors.



**Ministry of Jobs, Tourism and Skills Training and
Minister Responsible for Labour**
Employment Standards Branch

www.labour.gov.bc.ca/esb/

Minimum Wage

The minimum wage in British Columbia is as follows:
May 1, 2011 – \$8.75 per hour;
November 1, 2011 – \$9.50 per hour;
May 1, 2012 – \$10.25 per hour.

Minimum wage applies to all employees regardless of how they are paid - hourly, salary, commission or other incentive basis. Salespersons on straight commission must be paid at least minimum wage for all hours worked in a pay period.

Minimum wage rates for live-in home support workers, resident caretakers and farm workers who hand harvest certain fruit and vegetable crops are set out in the Employment Standards Regulation.

Employees who serve liquor are entitled to the liquor server minimum wage. Tips or gratuities are not wages. Employees must be paid at least minimum wage in addition to any tips or gratuities they receive. The liquor server minimum wage is as follows:
May 1, 2011 – \$8.50 per hour;
November 1, 2011 – \$8.75 per hour;
May 1, 2012 – \$9.00 per hour.

Minimum Daily Pay

An employee who reports for work must be paid for at least two hours, even if the employee works less than two hours.

If an employee who is scheduled for more than eight hours reports for work, he or she must be paid for at least four hours.

If work stops for a reason completely beyond the employer's control, the employee must still be paid for two hours or the actual time worked, whichever is the greater.

An employee who reports to work but is unfit for work only has to be paid for time actually worked.

An employee who is not in compliance with WorkSafe BC occupational health and safety regulations only has to be paid for the time actually worked.

Meal Breaks

An employee must not work more than five hours in a row without a 30-minute unpaid meal break. An employee who is required to work or be available for work during a meal break must be paid for the meal break.

Employers are not required to provide coffee breaks.

Paydays and Payroll Records

All employees must be paid at least twice a month.

A pay period cannot be longer than 16 days.

All wages earned in a pay period must be paid within eight days after the end of the pay period.

Employees must receive a written or electronic pay statement (pay stub) each pay day that gives all details about hours worked, rate(s) of pay, earnings and deductions. Employers must keep payroll records for each employee for two years after employment ends.

An employee must be paid in full within 48 hours after the employer ends the employment, or within six days if the employee quits. This time is by the clock and the calendar – not business hours or business days.

Overtime

Daily overtime pay is time-and-a-half after eight hours worked in a day and double time after 12 hours worked in a day.

Weekly overtime is time-and-a-half after 40 hours worked in a week. Only the first eight hours worked in a day count towards weekly overtime.

Averaging Agreements

An employer and an employee can agree to average scheduled work hours over a period of one, two, three, four weeks. Averaging agreements must be in writing, and have a start date and an end date.

Overtime is payable:

- After eight hours in a day if extra hours have been added to an employee's schedule, **or**
- If the employee works more than an average of 40 hours in a week over the averaging period (e.g., 80 hours over two weeks, 120 hours over three weeks.)

Uniforms and Special Clothing

If an employer requires an employee to wear a uniform or special clothing, the employer must provide, clean and maintain it at no cost to the employee.

Special clothing is clothing that is easily identified with the employer; for example, clothing with a company logo or unique company colours.

Special clothing includes a requirement to wear the garments that the business is currently selling. A dress code (no jeans, no cut-offs, dark clothing, business casual) is not a uniform.

Employers and employees can agree that the employer will reimburse employees for cleaning and maintaining the special clothing.

Personal safety equipment required by the Workers' Compensation Board is not considered special clothing unless the equipment also associates the wearer with the image or identity of the employer.

Deductions

An employer must make deductions from wages required by law (e.g., income tax, EI, CPP). Other deductions may be made if the employee agrees in writing.

An employer cannot deduct any of the employer's business costs from wages. This includes cash shortages, breakage, damage to company property or loss resulting from a customer leaving without paying.

Statutory Holidays

The ten statutory holidays in British Columbia are:

New Year's Day	B.C. Day
Family Day	Labour Day
Good Friday	Thanksgiving Day
Victoria Day	Remembrance Day
Canada Day	Christmas Day

Easter Sunday, Easter Monday and Boxing Day are not statutory holidays.

To qualify for statutory holiday pay employees must:

- Have been employed for at least 30 calendar days,

And

- Have worked on at least 15 of the 30 days before the statutory holiday.*

*Employees who worked under an averaging agreement any time in the 30 days before the statutory holiday do not have to meet the 15-day minimum.

Qualified employees who are given a day off on a statutory holiday must be paid an average day's pay.

Qualified employees who work on a statutory holiday must be paid:

- Time-and-a-half for the first 12 hours worked and double-time after 12 hours

Plus

- An average day's pay.

An average day's pay is the total regular earnings divided by the number of *days worked* in the previous 30 calendar days.

Regular earnings include wages and vacation pay received for vacations taken, but does not include overtime pay.

Days worked includes all days where wages were earned as well as any days of annual vacation taken in the 30 calendar days before the statutory holiday.

Employers and a majority of employees can agree to substitute another day for a statutory holiday. The substitute day must be treated the same as a statutory holiday.

Employing Young People Under 15

Before employing anyone under 15 years of age, an employer must have written consent from the employee's parent or guardian. See the factsheet *Employment of Young People – A Resource Guide for Parents*.

If the employee is under 12, the employer must also have permission from the Director of Employment Standards.

See the factsheets *General Employment of Young People* and *Employment of Young People in the B.C. Entertainment Industry* for information on additional employment conditions for young employees. The Director of Employment Standards does not issue child employment permits for children employed in the entertainment industry.

Compensation for Length of Service (if no written notice of termination)

After three months of consecutive employment an employee may be eligible for compensation, written working notice, or a combination of the two as follows:

- After three months – one week;
- After 12 months – two weeks;
- After three years – one week for each completed year of employment, to a maximum of eight weeks.

No compensation is required when an employee quits, retires or is terminated for just cause. It is up to the employer to show termination was for just cause.

Additional notice or pay is required if 50 or more employees are terminated within a two-month period at a single location.

Annual Vacation

After completing one year of employment an employee is entitled to two weeks vacation. After five years, an employee is entitled to three weeks vacation.

Vacation must be scheduled in periods of one or more weeks, unless the employee requests otherwise.

Vacation must be taken within 12 months of being earned.

Vacation Pay

When an employee takes a vacation after completing one year of employment, vacation pay must be at least four per cent of the employee's total earnings from the previous year.

After five consecutive years of employment, vacation pay increases to six per cent.

A person who is employed for less than one year is not entitled to take a vacation, but must be paid four per cent vacation pay on termination of employment.

Vacation pay is not payable if a person is employed for five calendar days or less.

Leave From Work

Employers are required to provide the following unpaid leaves:

Pregnancy Leave: A pregnant employee can take up to 17 consecutive weeks of unpaid leave. This leave may be extended by up to six weeks if she is unable to return to

work for reasons related to the birth or termination of the pregnancy.

Parental Leave: A birth mother who has taken pregnancy leave is entitled to take up to 35 consecutive weeks of unpaid leave. A birth mother who has not taken pregnancy leave is entitled to take up to 37 weeks of unpaid leave.

A birth father or an adopting parent is entitled to take up to 37 consecutive weeks of unpaid leave. This leave may be extended by up to five weeks if the child requires an additional period of parental care.

Birth parents should try to give their employers at least four weeks written notice of their intention to take parental leave.

Family responsibility Leave: An employee can take up to five days of unpaid leave in each employment year to attend 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.

Compassionate Care Leave: An employee can take up to eight weeks of unpaid leave within a 26 week period to care for a gravely ill family member. The employee must obtain a medical certificate which states that the family member is gravely ill with a significant risk of death within 26 weeks.

Bereavement Leave: An employee is entitled to take up to three days of unpaid leave on the death of a member of the employee's immediate family. This leave may be for purposes other than to attend a funeral.

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.

Reservists' Leave: An employee who is a reservist is entitled to take unpaid leave while deployed to a Canadian Forces operation, including pre-deployment and post-deployment activities, or while deployed to assist with an emergency.

Employees are expected to give their employers as much notice as possible and provide sufficient information for their employers to understand the reason for the leave. Employees are not required to give notice in writing or disclose personal or private information.

An employer may not terminate an employee or change a condition of employment, without the employee's written consent, because of a leave or pregnancy.

Temporary Foreign Workers

Temporary foreign workers are covered by the provisions of the Act. They cannot be charged a fee for job placement. Employers cannot require them to stay for a

set period of time, nor can they charge business or recruitment costs or deduct these costs from their employees' pay cheques.

Collective Agreements

Collective agreements must meet certain minimum standards set out under the Act. This includes minimum wage, termination notice, leaves and group termination.

Some areas, such as overtime rates and statutory holidays can be negotiated outside the Act; however, if there is no provision in a collective agreement, the Act applies in these areas.

Any disputes about minimum standards under a collective agreement must be resolved through the grievance procedure.

Resolving Disputes

Employers and employees are encouraged to resolve disputes themselves. The Director of Employment Standards can refuse to investigate a complaint if an employee has not taken steps to resolve the problem with the employer. This includes using a Self-Help kit that is available online and at all Employment Standards offices.

If a dispute cannot be resolved using the Self-Help Kit, a complaint may be filed using complaint forms available at Employment Standards offices and online.

The Employment Standards Branch helps many employers and employees to resolve complaints informally. If that is not possible a decision is issued which includes mandatory administrative penalties.

Contacting the Employment Standards Branch

For general inquiries, contact the Employment Standards Branch Information Line at 1 800 663-3316 (toll-free in British Columbia), or 250 612-4100 from out of province or within the Prince George area.

Forms, factsheets and additional information are available online at: www.labour.gov.bc.ca/esb/ .

