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EMPLOYMENT RIGHTS IN B.C.

DISCLAIMER



The contents of this booklet is compiled by Amanpreet Singh, Herleen Cheema, Arisha Shory, and Geomar Lo from Thompson Rivers University Faculty of Law, in conjunction with Pro Bono Students of Canada.

The legal information about certain employment rights in the Province of British Columbia is not intended to be legal advice and is not considered to be a comprehensive guide to all the rights that impact both employers and employees. There may be other employment rights that are not discussed in this booklet.

Should you require additional information or legal advice regarding an employment law matter, we recommend contacting a lawyer.

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TERMS

ESA: Employment Standards Act

ESB: Employment Standards Branch

In lieu: in place of

Terminate: fire someone or end employment

Entitled to: have the right to receive

Enforceable: can be legally put into effect

Complaint: reporting an issue

Discrimination: treating someone badly based on a personal characteristic like race

Alleged: said to have happened but not yet confirmed

Applicable: relevant to the situation

Reasonable notice: amount of time an employer must give before termination

Compensation: payment or benefits in exchange for something (work)

1. EMPLOYMENT AGREEMENTS

If you are working, you have an employment agreement that gives you certain rights under employment law, even if it is not written.

AGREEMENT :

One party makes an offer of employment and the other party freely accepts the offer:

- Employment agreements can either be in writing or verbal (spoken).
- If you have a work permit, your employer may be required to have a written employment agreement with you.
- Written agreements give more certainty as it serves as a record of the agreement in the event of a dispute.

CONSIDERATION :

Both parties give up something of value to accept the employment agreement.

e.g. employer pays an employee for work done and in exchange, the employee promises to perform his or her job duties honestly.

INTENTION :

Both parties intend for the employment agreement to be legally enforceable:

- Intention may not always be clear or specifically expressed in an employment agreement.

NO WRITTEN AGREEMENT

The absence of a written employment agreement does not reduce the rights and protections given to an employee.

Applicable law protects the rights of employees in British Columbia when there is no written agreement.

**AM I
PROTECTED?**

I am an employee, but I do not have a written employment agreement.

Note: It is better to have a written contract as it provides greater certainty and serves as a record of the verbal agreement in the event of a dispute. You can request your employer to provide a written copy of the employment agreement.



UNWRITTEN EMPLOYMENT AGREEMENTS

Oral (spoken) agreements are legally enforceable. Employment agreements **are not required to be in writing**

EXAMPLE

- John and Jane are having dinner.
- John asks Jane to work for him as a secretary in his law firm.
- Jane agrees, as long as John pays her \$30 per hour and gives her four weeks of vacation every year.
- John replies, “we have a deal!”
- Jane begins working for John at his law firm.

A valid verbal employment agreement is created.



EMPLOYMENT STANDARDS ACT

The Employment Standards Act (“ESA”) is a law to protect workers in British Columbia. The ESA applies **even without a written employment agreement.**

The ESA applies to most full-time, part-time, and casual workers, with a few exceptions. For example, it does not apply to workers in self-regulated professions (i.e. doctors, lawyers, accountants), or independent contractors.

WHAT IS WORK

The time an employee spends performing labour or service for their employer is time worked and time for which wages are payable.

Labour or service can be performed in the employee’s residence (i.e. if you work from home) or elsewhere.

WHAT DOES WORK MEAN

Work is defined under the ESA as:

- The labour or services performed by an employee, and
- Being on call for an employer at a location chosen by the employer.

2. PAID TRAINING

EXAMPLES

- Training that happens before starting regular work, even if it happens off the worksite.
- Job shadowing or training during work hours
- Trial period for prospective employees
- Training how to use tools and equipment
- Internships: if an intern's duties fall within the definition of 'work' in the ESA they must be paid wages
- Apprentices being trained while working for an employer

Any training done at the request of the employer, that is for the benefit of the employer or their business, is work done by an employee.

Employers are required to pay for the training an employee needs to learn how to do their job at the employer's business.

If you have been terminated from your position during training, the employer must pay you all the wages owed within 48 hours of the employer terminating your employment. If you have decided to quit your job during training, the employer must pay you all wages owed within six days after you have terminated the employment.



UNPAID TRAINING

EXAMPLES

- Getting a driver's license
- Obtaining a food handling certificate
- Earning a security guard license
- Practicums are not considered to be 'work' for the purpose of the ESA

There are some instances where an employer is not typically required to pay an employee for training.

Training you do on your own **before applying for or getting employment** is typically unpaid. However, whether your employer is required to pay for your training depends on the circumstances.

If you are unsure if your employer should be paying for training, you should contact the British Columbia Employment Standards Branch.



3. TYPES OF LEAVE AND TIME OFF WORK

The ESA sets out various situations in which an employee is entitled to time off from work and whether they will be paid by their employer for the time taken off from work. The ESA also sets out an employer's duty to give their employees vacation time and pay after an employee starts earning vacation time.

PAID VACATION

After one year of work, employees are entitled both to vacation time and vacation pay. Your employer cannot just pay you more money but not allow you to take time off.

The ESA requires employers to:

- Give employees at least 2 weeks of vacation after 12 continuous months of employment and at least 3 weeks of vacation after 5 continuous years of service.
- Ensure employees take a vacation within 12 months after completing their first year of employment.
- Permit employees to take their annual vacation in one or more week-long periods.
- Issue vacation pay:
 - At least 7 days before vacation begins ;or.
 - On scheduled paydays if agreed upon in writing or by collective agreement.

PAID LEAVE FOR EMPLOYEES UNDER THE ESA

ILLNESS OR INJURY LEAVE

After 90 days of employment, an employee is entitled to leave for personal illness or injury:

- paid leave for up to 5 days, and
- unpaid leave for up to 3 days.

DOMESTIC OR SEXUAL VIOLENCE

Employees facing sexual or domestic violence can take up to 5 days of paid leave annually for medical care, counseling, legal assistance, or housing relocation.

- Additionally, an employee can take up to 15 weeks of unpaid leave from work, if necessary.
- The leave does not have to be taken all at once and can be taken in hours, or partial or full days.



LEAVES OF ABSENCE - UNPAID BY EMPLOYER

Pay for the following types of leaves are not required under the ESA but you have a right to take time off work under these job-protected situations.

MATERNITY LEAVE

The ESA allows pregnant employees 17 weeks of maternity leave, starting no earlier than 13 weeks before the expected birth date and no later than the actual birth date.

- This leave is available to all pregnant employees, regardless of their length of employment.
- An additional 6 weeks off is provided if the employee cannot return after pregnancy.
- Written notice to the employer is required at least 4 weeks before the leave begins.

PARENTAL LEAVE

The ESA allows new parents to take leave within 78 weeks of a baby's birth or placement. Those who took maternity leave can take up to 61 weeks of parental leave, while those who didn't can take up to 62 weeks. Adoptive parents are also eligible for parental leave.

Eligible employees can receive benefits from Service Canada during maternity or parental leave. The birth parent is entitled to both types of leave.

COMPASSIONATE CARE LEAVE

The ESA requires employers to grant employees time off to care for critically ill, injured, or dying immediate family members, including spouses, children, parents, siblings, and others living with the employee as family. This includes common-law spouses, step-family members, same-sex partners, and their children if living with the employee.

Employees are entitled to up to 27 weeks of unpaid leave within a 52-week period for this purpose, extendable in certain cases. A medical certificate confirming the family member's critical condition is required, with the possibility of additional leave. Leave must be taken in one-week periods.

BEREAVEMENT LEAVE

The ESA allows employees 3 days of unpaid leave for the death of an immediate family member. Immediate family, as defined by the ESA, includes the spouse, child, parent, guardian, sibling, grandchild, or grandparent of the employee, as well as the child or parent of the employee's spouse, and anyone living with the employee as part of their family.



JURY DUTY

The ESA requires employers to give an employee time off work if they are required to attend court to serve as a juror. **This is unpaid leave.**

FAMILY RESPONSIBILITY LEAVE

The ESA gives an employee the right to up to 5 days off per year, of unpaid leave, to meet responsibilities related to:

1. the care, health or education of a child under the age of 19 in the employee's care, or
2. the care or health of any other member of the employee's immediate family.

CRITICAL ILLNESS OR INJURY LEAVE

Employees are entitled to unpaid leave to care for a family member whose health has gotten much worse, putting their life at risk.

The leave entitlement is 36 weeks within 52 weeks to care for a family member under the age of 19, and 16 weeks within 52 weeks for a family member who is 19 years of age or older.



IS YOUR EMPLOYER DENYING YOUR RIGHTS UNDER THE EMPLOYMENT STANDARDS ACT?

If your employer is not obeying these laws, talk to them about the issue or your concern. If the problem is not solved, contact your union about the issue if you are a unionized worker. If you are not a unionized worker, you may be able to make a complaint.

You can contact the Employment Standards Branch by calling Toll-free : 1 833 236-3700

You can also ask your Employment Counsellor about other possible resources.



4. DISCRIMINATION AND HARASSMENT

PROTECTED PERSONAL CHARACTERISTICS

- Indigenous identity
- Race, colour, ancestry, place of origin
- Political beliefs
- Religion
- Marital status
- Family status
- Physical or mental disability
- Sex (including pregnancy, transgender)
- Sexual orientation
- Gender identity or expression
- Age
- Conviction of a criminal or summary offence not related to the employment or to the intended employment of that person

You are protected by the British Columbia Human Rights Code (the “Code”) from discrimination in employment based on one or more of the protected personal characteristics.

Workplace discrimination may include:

- **not accommodating religious practices reasonably**
- **job advertisements showing preferences based on protected personal characteristics, unless justified by job requirements**
- **termination due to pregnancy**
- **unequal pay for equally qualified individuals based on gender**

There is a test for discrimination. You need to prove:

- You have a characteristic protected by the Code (see list above).
- You have experienced an adverse (negative or harmful) impact concerning an area protected by the Code.
- The protected characteristic was a factor in the adverse impact.

WHAT IS BULLYING AND HARASSMENT IN THE WORKPLACE?

WorkSafeBC defines bullying and harassment as follows:

“Bullying and harassment is any inappropriate conduct or comment by a person towards an employee that the person knew or reasonably should have known would cause that employee to be humiliated or intimidated. Any reasonable action taken by an employer or supervisor relating to the management and direction of employees is excluded from being considered bullying and harassment.”

Employers must prevent bullying and harassment, even from non-workplace participants, through policies and programs. Harassment based on protected characteristics is discriminatory. Employers cannot retaliate (respond in a negative way) against employees who report such incidents.

EXAMPLE: SEXUAL HARASSMENT

Sexual harassment is discrimination based on the protected characteristic of “sex” and is not allowed in the workplace.

Sexual harassment can occur if an employer or colleague makes unwelcome sexual advances towards you such as repeatedly asking you for a date, telling unwelcome jokes, or touching you.

The Government of British Columbia website states bullying and harassment can include:

- Incidents that harm an employee’s mental or physical well-being;
- Repeated humiliation or intimidation that harms an employee’s mental or physical well-being;
- A single serious incident with lasting effects.



DIFFERENT WAYS BULLYING AND HARASSMENT CAN OCCUR

Bullying and harassment may occur in the following forms: written, verbal, physical, online, electronic, a gesture or display, or any combination of these.

Examples of behaviors that may amount to bullying and harassment:

- Verbal aggression or insults;
- Calling someone insulting names;
- Harmful hazing (embarrassing actions) or initiation practices;
- Vandalizing (damaging) personal belongings;
- Spreading intentionally harmful rumors;
- Inappropriate displays of material (e.g. an insulting comic, pornographic or other sexual materials);
and
- Unwelcome comments, questions, jokes or suggestions of a sexual nature.



WHAT IS NOT CONSIDERED BULLYING AND HARASSMENT?

WorkSafeBC states the following does not amount to bullying and harassment:

“Any reasonable action taken by an employer or supervisor relating to the management and direction of workers or the place of employment.”

Sometimes when people do things that aren't the right way to behave, it doesn't always mean they're bullying or harassing someone. It's important to know that even though something might not be right, it doesn't always fall into the category of bullying or harassment.

The Government of British Columbia website lists the following examples:

- Filing a complaint about an employee's behavior, if done the right way.
- Minor, isolated incidents, like a single inappropriate remark.
- Constructive feedback is given without personal opinion.
- Consistent application of inflexible rules by a supervisor.
- Tough work conditions or organizational changes.

5. MAKING A COMPLAINT

If you feel like you are being or have been discriminated against in the workplace you can always file a complaint with the company's Human Resource department. If you would like to remain anonymous you may ask for confidentiality.

You can also file a complaint with the British Columbia Human Rights Tribunal. If you are filing a complaint with the Human Rights Tribunal, **you must do so within 1 year of the alleged discrimination.**

To do so, you have to prove the following:

- You have a characteristic protected by the Code.
- You have experienced a negative impact concerning an area protected by the Code.
- The protected characteristic was a factor in the negative impact.



THE BC HUMAN RIGHTS TRIBUNAL

The human rights complaint process is public. This means that information about the complaint may become public.

With limited exceptions:

- If the parties agree to settle the complaint before the Tribunal makes any decisions about the complaint
- If you ask the Tribunal to keep your identity private and the Tribunal agrees to do so

If you are filing a complaint with the Human Rights Tribunal, **you must do so within 1 year of the incident occurring.**

OPTIONS FOR BOTH SIDES

1. Both sides can agree to settle the complaint
2. The respondent can respond to the complaint and can apply to have the complaint dismissed
3. If the complaint is not resolved or dismissed, the Tribunal holds a hearing to decide if there was discrimination

AFTER MAKING A COMPLAINT:

Under the Code you are protected against retaliation by your employer if:

- you make a complaint,
- you are part of a complaint, or
- if you assist someone in making a complaint.

Once you make a complaint, the Tribunal will decide if the complaint was filed within the time limit and set out possible discrimination.

If the complaint is accepted, the Tribunal notifies the person being complained against (i.e. the respondent).

IF YOU HAVE EXPERIENCED DISCRIMINATION:

- You can contact the Community Legal Clinic in Kamloops by calling 778-471-8490.
- You can also contact the British Columbia Human Rights Tribunal (Vancouver) by calling 1-888-440-8844 (Toll-free in British Columbia) or by email at BCHumanRightsTribunal@gov.bc.ca



6. TERMINATION RIGHTS

Legislation

The ESA says your employer has to give you basic notice if they let you go for no reason. Employers must provide terminated employees with working notice, payment in lieu of notice, or a combination of both.

What about the common law?

In some circumstances, employees may be entitled to reasonable notice in the common law as a result of their termination of employment.

VOLUNTARY RESIGNATION

An employee, who chooses to quit a job, is not entitled to a notice or payment in place of notice. Upon quitting, the employer must pay all outstanding wages to the departing employee within 6 days after the employment ends.

WAGES INCLUDE:

- Regular wages
- Overtime
- Statutory holiday pay
- Vacation pay
- Compensation for length of service
- Commissions
- Incentives
- Overtime banked hours.

DISMISSAL FOR JUST CAUSE

WHAT IS CONSIDERED JUST CAUSE?

- Theft
- Assault or sexual assault
- Insubordination (refusing to follow orders or do the work)
- Incompetence (not able to complete job duties and meeting company standards)
- Violating company policy

An employee who is terminated for just cause is not entitled to reasonable notice or payment in place of notice. If the employer ends the employment agreement for just cause, the employer must still pay all outstanding wages to the fired employee within 48 hours following the termination.

Employment agreements may include a definition of “cause” that may differ from applicable law.

RIGHT OF EMPLOYERS TO DISMISS

Despite what many people believe, an employer in British Columbia does not have to give a reason for ending employment. However, they cannot terminate an employee for reasons protected by the ESA or the Code.

An employee terminated without cause is entitled to written notice, calculated according to how long they have worked there. In cases where an employer fails to provide notice, the employer is obligated to pay the employee payment in place of notice.

CALCULATING WRITTEN NOTICE OR PAY IN LIEU OF NOTICE

The Employment Standards Act requires the following statutory (required) notice to be provided upon termination of employment without cause, as follows:

- For 3(+) consecutive months of service, the employee is entitled to 1 week notice or 1 weeks' wages in lieu of notice.
- For 1(+) year(s) of service, the employee is entitled to 2 weeks' notice or 2 weeks' wages in lieu of notice.
- If the employee was employed for 3 (+) years, the employee is entitled to 3 weeks' notice or 3 weeks' wages in lieu of notice.
- After the 3 year mark, the amount of written notice or pay in lieu of notice increases with each year the employee is employed with a maximum of 8 weeks' of notice or wages.



REASONABLE NOTICE

BARDAL FACTORS

1. The character of the employment
2. The length of service of the employee
3. The age of the employee
4. The availability of similar employment, that matches the experience, training and qualifications of the employee

The statutory right to notice or payment in place of notice does not take away the common law right to reasonable notice. A terminated employee may also be entitled to reasonable notice upon termination without cause. Reasonable notice is much higher than the statutory termination notice provided by the ESA. The highest reasonable notice award made by a Court in British Columbia is 24 months.

The leading case law in calculating reasonable notice is from an Ontario Supreme Court case called **Bardal v. Globe & Mail (1960 ONHC)**. Bardal sets out four guiding factors that assist the courts in assessing the appropriate amount of notice for an employee fired without cause.

7. WRONGFUL DISMISSAL

When an employer terminates an employee without cause and does not give enough notice in advance, it could be wrongful dismissal (firing).

The following pages will explain how you can identify if you have been wrongfully dismissed and will outline the different options available to you.

LACK OF JUST CAUSE DISMISSAL

In British Columbia, employers can end employment for just cause without giving notice or payment in place of notice. However, a just cause dismissal will only exist in the case of serious misconduct (behaving badly or breaking rules).

Some examples of serious misconduct that could be just cause include:

- Theft
- Insubordination (refusing to follow orders or do the work)
- Violence
- Sexual Misconduct (behaving inappropriately or harmfully towards someone else)
- Fraud

When an employee is terminated for a reason that is not considered a just cause and is not given the proper notice requirements, then the terminated employee may have a case for wrongful dismissal.

CONSTRUCTIVE DISMISSAL

An employer may effectively dismiss (fire) an employee (whether or not the employer intends to) by independently changing a basic term or condition of the employee's employment agreement. This can be considered a termination of employment, known as a constructive dismissal.

Constructive dismissal may include:

- Large change in wages and benefits.
- Changing the method of pay (ex: from salary to wage).
- Employer behavior makes it too hard to continue employment.
- Demoting employee (ex: going from supervisor to associate).
- Transferring an employee to another location.

If an employee believes that they have been constructively dismissed, they may have a case for wrongful dismissal.



WHAT TO DO AFTER A WRONGFUL DISMISSAL

1. Ask Your Employer for a reason for your dismissal

You are allowed to ask your employer for a reason for your dismissal, although employers do not have to provide one.

2. Apply for benefits

If you are eligible, you can apply for Employment Insurance Benefits so that you do not have further losses. Before applying for benefits, you will need a Record of Employment (ROE) from your employer.

3. Start gathering documents

No matter what you plan to do, start gathering termination-related documents like the employer's letter, your employment agreement, and any communication from your employer that relates to your termination.

4. Reduce losses

It is crucial to actively seek a new job because not doing so may impact your compensation. Be sure to put in your best effort to lower any potential impact on your compensation by finding a new job.

5. Consider the options available to you

- a. Make a Complaint with the Employment Standards Branch
- b. Start taking legal action

MAKING A COMPLAINT WITH THE EMPLOYMENT STANDARDS BRANCH

If you feel like you have been wrongfully dismissed, you can make a complaint with the Employment Standards Branch (ESB).

This is an overview of the Complaint Process with the ESB:

1. File a Complaint with the Employment Standards Branch

You can do this yourself or have a representative do this for you. Along with the complaint, submit evidence such as the termination letter and employment agreement. Filing a complaint can be done online, by mail, or at the ESB office.

2. Wait for a response

After a complaint is submitted, it will be investigated by the ESB. Both parties (the employer and the terminated employee) will be contacted to schedule a mediation or complaint hearing.



MAKING A COMPLAINT WITH THE EMPLOYMENT STANDARDS BRANCH CONTINUED...

3. Resolution of the claim

The complaint can be resolved through mediation, education, or adjudication based on the discretion used by the investigator.

- **Mediation:** A mediator will try to help the employer and terminated employee reach a solution. If the mediation does not settle the dispute and an agreement is not reached, then the matter will be resolved through a complaint hearing
- **Complaint Hearing:** An adjudicator will be appointed by the ESB. The adjudicator will hear both sides, consider evidence, and then issue a written decision which is legally binding on both parties (what is written has to be followed by employee and employer).
- **Outcome:** This process can force the employer to comply with (follow) ESA's employment laws or give a solution to the terminated employee.

4. Appeal if needed

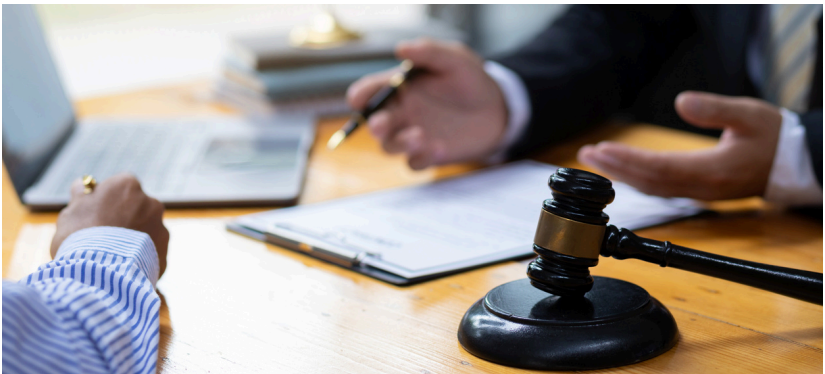
If you are unhappy with the outcome of the complaint hearing, you have 21 days to appeal the decision.

START LEGAL ACTION

You can also take legal action if you believe you have been wrongfully dismissed. Some legal options available include:

- **Civil Resolution Tribunal (CRT):** The CRT handles claims below \$5,001 and is online, making it easier for terminated employees to pursue legal action on their own. Employees can represent themselves at their CRT hearings.
- **Small Claims Court B.C.:** This court deals with claims between \$5,001 and \$35,000.
- **Supreme Court:** The Supreme Court deals with claims over \$35,000.

To find the best option for you, you can talk to an employment lawyer who can assess the best legal path based on your situation.





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