

Employment Standards Branch

How to Use Good Communication to Avoid Employment Standards Complaints

Fortify Conference

November 19, 2019



Navy & Sage
B E N E F I T S

Purposes of the Act – Part 1, Section 2 of the Act

The purposes of the Employment Standards Act are to:

- (a) Ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment,
- (b) Promote the fair treatment of employees and employers,
- (c) *Promote open communication between employers and employees,***
- (d) Provide fair and efficient procedures for resolving disputes over the interpretation of this Act,
- (e) Foster the development of a productive and efficient labour force that can contribute fully to the prosperity of British Columbia, and
- (f) Contribute in assisting employees to meet work and family responsibilities.



Overview

We will discuss how the Employment Standards Act promotes open communication in the following areas:

- Hiring
- Record Keeping
- Discipline
- Termination

We will also review Best Practices & Tools for Conflict Management



Opportunities for Conflict

- Chronic lateness or no-show
- Employee shows up for shift unable to work (medical or intoxication)
- Employees in conflict or fighting
- Misconduct – safety, theft, etc.
- Harassment or bullying
- Leaves of Absence
- Wages/Pay Structure
- Performance Management
- Terminations



Hiring Employees

No False Representations

An employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting:

- the availability of a position, or
- the type of work, or
- the wages, or
- the conditions of employment



Informing Employees of Their Rights

Informing Employees of Their Rights Section 6

Employers are required to provide information about the Act to their employees

This can be done by posting information in the workplace, and providing it directly to employees when they are hired

Poster and information sheet are available for download on the government website



Verbal & Written Agreements

- Any agreement entered into by an employer and an employee must comply with the Act
- The requirements of the Act and Regulation are minimum requirements and any agreement to waive those requirements has no effect



Verbal & Written Agreements

- Employer should communicate the specific terms and conditions of employment in writing.
- The Director of Employment Standards can enforce employment contracts, including terms that exceed minimum standards.



Regular Wages

Regular wage means the following in the Act:

- If an employee is paid by the hour, hourly wage
- If an employee is paid on a flat rate, piece rate, commission or other incentive basis, the employee's wages in a pay period divided by the employee's total hours of work during that pay period



Regular Wages

- If an employee is paid a weekly wage, the weekly wage divided by the lesser of the employee's normal or average weekly hours of work,
- If the employee is paid a monthly wage, the monthly wage multiplied by 12 and divided by the product of 52 times the lesser of the employee's normal or average weekly hours of work, and
- If an employee is paid a yearly wage, the yearly wage divided by the product of 52 times the lesser of the employee's normal or average weekly hours of work.



Regular Wages

The Act breaks down all methods of payment to the regular wage (hourly rate)

Example: Flat Rate/Daily Rate

Daily Rate of Pay: \$275 per day

Employee works 12 hour shifts

Regular wage: $\$275 / 12 \text{ hours} = \22.92 per hour



Regular Wages

Employee is entitled to be paid:

$\$22.92 \times 8 \text{ hours} = \183.36

$\$34.38 \times 4 \text{ hours} = \137.52

Total: $\$320.88$ per 12 hour shift



Regular Wages

Example Salary/Monthly Wage:

Employee works in the wine shop for a monthly salary of \$3,000.00 per month. The schedule is M-F 8 hours per day (40 hours per week). Pay periods are every two weeks. Regular wage is calculated as follows:

$$\$3,000 \times 12 \text{ months} = \$36,000$$

$$\$36,000 / 2080 (52 \text{ weeks} \times 40 \text{ hours}) = \$17.31 \text{ per hour}$$

EE picks up an additional 8 hour shift on Saturdays for the last two weeks.

The ER must pay the additional overtime wages for the additional hours.



Regular Wages

Example Salary/Monthly Wage:

Employer is normally paying \$1,500.00 every pay period.

Employer must still pay the overtime on the hours over 40 per week

Accordingly, wages for the pay period is as follows:

Regular wages: 80 hrs x \$17.31 = \$1,384.80

Overtime wages: 16 hrs x \$25.97/hr = \$415.52

Total wages: \$1,800.32



Regular Wages

Example Salary/Monthly Wage:

Senior employee works in the wine shop for a monthly salary of \$3,750.00. The regular schedule is 55 hours per week. Pay periods are every two weeks. Regular wage is calculated as follows:

$$\$3,750.00 \times 12 \text{ months} = \$45,000.00$$

$$\$45,000.00 / 2860 (52 \text{ weeks} \times 55 \text{ hours}) = \$15.73/\text{hr}$$



Regular Wages

Example Salary/Monthly wage:

Employer is normally paying \$1,875.00 per pay period.

Employer must still pay the overtime on the hours over 40 per week

Accordingly, wages for each pay period is as follows:

Regular wages: 80 hrs x \$15.73 = \$1,258.40

Overtime wages: 30 hrs x \$23.60/hr = \$708.00

Total wages: \$1,966.40



Regular Wages

- If the employment contract is silent about the number of hours are included in the salary, the Director will deem it to be for all hours worked.
- Employer must ensure that overtime is being paid on hours worked over 8 per day and 40 in a week.
- Employer must ensure that at least minimum wage is being paid for each hour worked and if not, the Employer must top up the wages to meet minimum wage.



Regular Wages

- ER should clearly communicate the hours of work to the EE
- ER should develop a clear and reliable way of recording the hours of work for each employee



Record Keeping- Wage Statements

Wage Statements - Section 27 of the Act

The employer is required to provide a wage statement (pay stub) for each pay period:

- Employee's name, birth date, occupation, telephone number, address;
- Wage rate, whether paid hourly, commission, piece work, flat rate;
- Hours worked by the employee;
- Overtime hours worked by the employee;
- Hours worked by the employee at overtime wage rate;
- any money, allowance or other payment the employee is entitled to;
- the amount of each deduction from the employee's wages and the purpose of each deduction;
- if the employee is paid other than by the hour or by salary, how the wages were calculated for the work the employee is paid for;
- the employee's gross and net wages;
- how much money the employee has taken from the employee's time bank and how much remains.



Record Keeping

Record Keeping - Section 28 of the Act

The employer is required to keep the following records for each employee:

- Employee's name, birth date, occupation, telephone number, address;
- Wage rate, whether paid hourly, commission, piece work, flat rate;
- Daily record of hours worked whether paid hourly or not;
- Benefits paid to the employee;
- Employee's gross and net wages for each pay period;
- Each deduction made and the reason for it;
- Dates of statutory holiday taken by the employee and the amounts paid by the employer;
- Dates of annual vacation taken, the amounts paid by the employer and days and amounts owing;
- How much money the employee has taken from the employee's time bank, how much remains, the amount paid and the dates taken



Record Keeping

Record Keeping Extended- Section 28 of the Act

- The requirement to keep employee records has been extended from 2 years to 4 years
- Must be in English
- Must be kept at the employer's place of business in BC



Best Practices for Conflict Management

Establish guidelines for acceptable Behaviours

- Code of Conduct
- Mutual Respect Policy

Set Clear Expectations

Address Unacceptable Behaviour

- Unacceptable Behaviour Form
- Written Warning Letter



Speaking Persuasively

The Problem: During crucial conversations, we say things in exactly the wrong way.

The Solution: Learn five skills for saying risky things in a way that minimizes defensiveness.



STATE

Share your facts

Tell your story

Ask for others' paths

Talk tentatively

Encourage testing



STATE

Share your facts

- Begin with what you see and hear and then move to stories and feelings
- Facts are more persuasive
- Facts are the least insulting



STATE

Tell your story

- Explain the conclusions and judgements you've drawn from the facts you've just shared
- Why tell your story? Facts alone don't always provide a sense of proportion or severity; they don't always paint the whole picture. They can even be misunderstood



STATE

Ask for others' paths

- Invite others to share their views, share new ideas and challenge your facts
- Encourage them to express their observations, opinions, and feelings
- Ask them to tell their story



STATE

Talk tentatively

- It's possible to express confidence in our conclusions without overstating them

Too Forceful	More Tentative
The fact of the matter is ...	In my opinion ...
That's a dumb idea ...	Maybe it would make more sense to ...
The only reasonable option is to ...	I believe that what we should do is ...
If I agreed with you, then we'd both be wrong.	I'm wondering if that example applies to our company ...



STATE

Encourage testing

- Testing our humility
- How we ask others for their views is a test of humility
- Remember your purpose; if the goal is to convince, compel, or control, we'll do a great job of speaking our minds and a poor one of encouraging others to share their views.



Constructive Feedback Model

- Identify **problem area**; *“I have observed that your behaviour is...”*
- Seek **reaction**; *“Are you aware of this?”*
- Identify **impact of problem**; *“This resulted in...”*
- Identify **preferred behaviour**; *“How might this have been handled?”*
- If **disagreement or denial**, listen, then determine action or re-state position if still an issue
- Express **confidence** in employee’s ability to maintain a higher level of performance
- Thank the employee



Additional Tips

- Discuss the issues and behaviours, not the person
- Be aware of your reactions and approach, be open to feedback from them without being defensive
- Be specific; have back-up for any issues you are addressing
- Be clear about what is required and how to achieve it
- Listen – allow for ventilation; share the blame if necessary
- Focus on the future; ask for input from employee
- Summarize what has been said; put serious discussions into writing
- Express confidence in the person's ability to address the situation
- Document the discussion (informally in your own records)



Termination

Part 8 of the Act – Employer’s Right to Terminate

- An Employer has the legal right to terminate an employee
- The Act requires an employer to give the employee written working notice, wages for compensation for length of service (Termination Pay) , or a combination of the two
- The amount of notice or Termination Pay is determined by the employees length of service
- Termination is any end of the employment relationship – quitting, retirement, firing, layoff other than a temporary layoff, may be deemed the by Director in specified circumstances



Compensation for Length of Service/Written Notice - How much?

Upon termination of employment, an employee is entitled to the following amounts of **written working notice or pay in lieu**, based on years of service:

- 3 months' employment– 1 week
- 12 months' employment – 2 weeks
- 3 years' employment– 3 weeks
- 1 extra week per extra year of employment to a maximum of 8 weeks



Part 8 of the Act – Compensation for Length of Service

How to Calculate Compensation for Length of Service

- Compensation for length of service is calculated by totalling the employee's regular wages over the eight week period prior to termination, dividing the total by eight, and multiplying by the number of weeks payable
- The Act limits wages for compensation for length of service to the statutory entitlement only



Compensation for length of service

- Compensation for length of service is wages and an earned statutory benefit conferred upon employees
- It is a statutory obligation of the employer and the onus is on the employer to show it has met its liability to discharge that onus
- Compensation for length of service is different than damages in a claim for wrongful dismissal



Part 8 of the Act – Notice of Termination

- Notice of termination must be given in writing – verbal notice is of no effect
- Notice must be working notice – it is of no effect where the employee is on vacation, a temporary layoff, or medically unavailable for work
- If the employee works beyond the notice period, the notice is of no effect
- Conditions of employment may not be changed during a notice period except with the employee's written authorization



Part 8 of the Act – Termination

Compensation for length of service and/or written notice are not required if an employer can prove:

- Employee has not completed three consecutive months of employment
- Employee retires
- Employee quits
- Employer has just cause



Part 8 of the Act – Employee Quits

- No obligation under the Act for an employee to provide notice of resignation
- Liability to pay compensation for length of service or provide written notice is discharged where an employee quits their employment
- Decision to quit must be voluntarily made by the employee – the employer cannot decide that an employee has quit their employment



Bill 8 – Compensation for Length of Service

Liability resulting from length of service- Section 63

Section 63(6) has been added which states:

If, after 3 consecutive months of employment, an employee gives notice of termination to the employer and the employer terminates the employment during that notice period, the employer is liable to pay the employee an amount equal to the lesser of

- a) an amount in money equal to the wages the employee would have earned for the remainder of the notice period, or
- b) an amount in money equal to the amount the employer is liable to pay on termination.



Part 8 of the Act – Just Cause

- The liability to pay compensation for length of service or provide notice is discharged where an employer has **just cause** to terminate the employee



Part 8 of the Act – Just Cause

Just Cause – Serious Misconduct

- A single serious act may justify summary dismissal where the act is inconsistent with continued employment
- Serious infractions such as:
 - Theft
 - Violence
 - Serious breaches of policy or safety rules
 - Insubordination
 - Conflict of Interest
 - Wilful misconduct



Part 8 of the Act – Just Cause

Just Cause – Minor Misconduct

Minor misconduct can include:

- Unsatisfactory performance
- Lateness
- Absenteeism
- Minor policy violations
- If an employer wants to rely on minor misconduct to prove just cause it must meet the test for progressive discipline (aka corrective discipline)



Part 8 of the Act – Just Cause

Progressive Discipline

- Employers will generally be required to attempt to correct an employee's behaviour before establishing just cause for minor misconduct

Employers must show the following:

- Establish a reasonable standard of performance for the employee to meet
- Clearly warn the employee that failing to meet the standard will result in termination
- Provide a reasonable period of time for the employee to meet the standard
- Demonstrate that the employee ultimately failed to meet the standard



Part 8 of the Act – Section 66

- The Director may deem that an employee has been terminated under section 66 of the Act where an employer has made a substantial and unilateral change to the conditions of employment
- “Conditions of employment” includes anything affecting the employment relationship, and can include the wage rate, geographic location, duties, reporting relationships, job title, or just about anything else



More Information

- Web site: www.gov.bc.ca/employmentstandards
- Toll Free Info-line: 1-800-663-3316
- Branch offices (8 locations)



More Information & HR Support

- Website: www.navyandsagebenefits.ca
- Terri Eriksen: 1.250.469.3738
- Support with and coaching for challenging HR situations and proactive solutions for conflict management.



Thank you



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