

Get To Know B.C.'s Employment Standards Act

British Columbia's *Employment Standards Act* is the baseline of all employers' obligations (unless your business falls in the federal realm – more on that below) towards employees and is mandatory knowledge for new employers.

Jurisdiction – Sometimes A Thorny Issue

Some employers, by virtue of what they do, fall within the federal jurisdiction and so their obligations are set out in the Canada Labour Code. Generally speaking, it is relatively rare for an employer to fall in the federal realm as the list of such businesses is fairly short – banks, railways, airlines, interprovincial trucking, etc.

What Does The Act Say?

There is far too much content in the Act to summarize it all here. Suffice to say that the Act (and Regulations) form a comprehensive structure for how employees must be hired, paid, scheduled, given time off, compensated for “extras” such as overtime and statutory holidays, provided various leaves of absence, and terminated.

What Are Some Key Aspects of The Act?

If I had to boil the Act down to 5 key aspects, I'd say they are as follows.

- **Wages** – There are many rules surrounding payment of wages. Employers must always pay at least the minimum wage for all hours worked. They must pay employees at least semi-monthly. They must pay in real money (most “in kind” arrangements will be rejected). They must provide a pay summary containing specific information. They must not take deductions except for specific items permitted by the Act. They must not download costs of doing business onto the employees.
- **Hours Of Work and Overtime** – The Act regulates how many hours an employee may work in a day, required meal breaks, minimum daily pay, agreements for averaging overtime, thresholds at which overtime pay (either time and a half or double time) become applicable, and banking of overtime wages. There are special rules relating to topics such as overtime, overtime averaging, and banking of overtime.
- **Vacation and Statutory Holidays** – Paid leave from work for employees, while on vacation and on statutory holidays, is laid out in the Act. The Act also specifies the amounts which must be paid and the circumstances in which those payments are required.
- **Leaves of Absence** – The Act also provides for a range of unpaid leaves, including so-called pregnancy leave, parental leave, family responsibility leave, compassionate care leave, reservists' leave, bereavement leave, and jury duty. There are specific rules regarding each of these forms of unpaid leave.
- **Termination** – Rules regarding working notice of termination or pay in lieu thereof are set out in the Act. Employers should note that the amount of notice not only increases with the duration of the employment relationship, but that differing entitlements to notice are provided

depending on whether the termination is an “individual” or a “group” one. Employers should carefully note, however, that the Act’s termination provisions are typically only a small part of their legal obligation to provide working notice of termination or pay in lieu, and that the common law of employment is equally applicable (and usually much more expensive) – specific legal advice should be obtained from your lawyer on this topic.

A Word About Employment Policies

Employers have a tendency to try to duplicate provisions of the Act in their policy manual. My advice to employers on that topic is, “don’t bother”.

A lengthy policy manual created in an attempt to mimic the local employment standards rules is bound to be a disaster. These attempts routinely misstate the legislative content, resulting in confusion and possible statutory liability.

Duplicating legislative content also creates more work for human resources staff as they must constantly update the manual to keep up with legislative changes. The employment standards rules seem to change significantly as time passes and so, as a result, policy manuals setting out legislative rules become obsolete very quickly.

If you must refer to a statute in your policies, simply state that the particular topic will be administered in accordance with the applicable statute as it may be amended from time to time.

Remember The “Golden Rule”

As I call it, the “Golden Rule” of employment standards legislation is that employees cannot “contract out” of their statutory rights.

This means that asking an employee to agree, verbally or in writing or in any other format, to accept something less than what the Act says he/she is entitled to is futile. Common examples I’ve seen include asking the employee to agree that his/her hourly wage includes vacation pay, asking him/her to forego statutory holiday pay, and asking him/her to agree to pay costs of the business (such as reimbursing the employer for costs of theft).

These maneuvers will not fly with the Employment Standards Branch or Tribunal so my advice to you is, don’t bother trying. If your business is unionized, however, different rules apply.

There is much, much more about the Act which employers must know and comply with, and your employment lawyer will happily assist with advising you on those topics. But, a great starting point is the B.C. Employment Standards Branch website located at:
www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards

On the website, look for “Fact Sheets” and “Guide To The Employment Standards Act”. Those items will provide you with just about everything you could possibly want to know.

This item is provided for general information purposes only and is not intended to be relied upon as legal advice. Informed legal advice should always be obtained about your specific circumstances.

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