



EMPLOYMENT LAWS AND REGULATIONS

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Disclaimer

This document should **not** be used for legal guidance. It is simply presented as information to help you determine if your employer may have violated employment regulations, and to help you decide if you should file a complaint. It is highly recommended that you read this document **carefully** and take some time to consider your situation **before** deciding whether or not you file a complaint.

Introduction

Sometimes, workers or work-seekers encounter problems with an employer's hiring or management practices. These situations can cause individuals to feel angry, impatient, or unappreciated, or may even cause financial hardship (such as not being paid for the work done).

As you are likely aware, there are laws and regulations in Canada which enforce minimum working standards on employers. The question is, what exactly are these laws and regulations, and how do they apply to your specific situation?

This handout has been developed to provide you with general information, to help you better understand these laws and how they work, and to help you make informed decisions around whether or not you decide to challenge an employer's management practices. In making such a determination, it is imperative that you think **logically**, and do your best to leave emotions out of the process.



Should an Employer's Actions be Challenged?

There are two questions you should keep in the back of your mind:

1. Has the employer actually violated any laws or regulations?
2. If the employer is in violation, should I take action?

Has the Employer Actually Violated Any Laws or Regulations?

One question you must keep in mind as you read through this document and consider your own situation, is whether or not your “rights” as a worker or work-seeker have actually been violated by the employer. There are many situations where workers may not ‘like’ what has happened to them, but this does not always mean that the employer has violated any particular law or regulation. For example, your employer may require you to start taking your coffee breaks 15 minutes earlier than you had before due to internal changes in his/her operations. You may not be happy about the decision, but you would be hard-pressed to make a case that your rights have been violated. This is a simple example but it does point out that when employers make changes to their operation, it does not automatically mean a worker’s rights have been violated.

Below is a sample list of workplace issues **covered** by labour laws:

- Discrimination and personal / sexual harassment
- Minimum wage
- Hours of work and overtime
- Termination of employment
- Statutory holidays
- Vacation time and pay
- Dress codes (cost and safety-related)
- Workplace health and safety
- Unpaid time off allowances (minimum standards only)

The following are issues that are typically **not covered** by labour laws:

- **Extended benefits coverage** – This is usually an employer’s option (unionized companies will often have these coverages negotiated in their contracts)
- **Dress codes** (style, colours, etc.) – Employers have the right to enforce workplace dress codes; however, such dress codes must not infringe upon employee health and safety (and in some cases, cannot be deemed inappropriate, such as being too “skimpy”).

- **Use of company property** – This is generally an employer’s decision.
- **Hours of operation** – Subject to community acceptance and local by-laws, an employer can operate his/her business any hours s/he desires, which may mean scheduling employee shifts during any days/hours as well. The employer must still follow overtime rules and not work employees so excessively that personal health and safety become a problem, but beyond this, an employer does have the right to schedule employees to work in accordance with the needs of his/her business.
- **Heavy monitoring of employee performance** – Although this may create for an uncomfortable or undesirable work environment, employers have the right to monitor employee job performance to any degree necessary to ensure satisfactory job performance, so long as such monitoring is focused on actual job tasks. Casinos and call centres are examples of workplaces that may involve heavy monitoring of employee performance due to the nature of those workplaces.
- **Customer service procedures** – Employers have the right to train and enforce specific customer service procedures and ensure employees follow such procedures.

The above lists are not all-inclusive, but they do provide a sample of various workplace issues that may or may not be covered under various labour laws in Canada.



If the Employer is in Violation, Should I Take Action?

If you determine that your rights actually have been violated, the next question to consider is whether or not you should take action against the employer. For many people, the answer is an instant “Yes!”. However, there are additional important considerations that individuals should think about before taking such action, including:

Seriousness of the Employer’s Offence

Was the employer’s conduct significant and intentional, or was it relatively insignificant or unintentional?

Examples of **significant** violations may include:

- blatant and obvious discrimination or harassment based on your gender, age, race, etc.;
- requiring you to work a significant amount of overtime for an extended period and not paying you properly for such time.

Examples of **insignificant** offences may include:

- making you work through your lunch break on one day because the workplace was really busy;
- getting your paycheque to you a couple of days late because of an internal change in the payroll system.

In all of these cases, your rights under various employment laws have no doubt been violated. As you can see, however, there are some offences which are obviously more serious than others, and this is something you may want to consider in making your decision to proceed or not proceed with action.

Nature of Overall Work Situation

Somewhat related to the actual conduct of the employer is the overall working situation you are in. Is the work environment generally positive, motivational, and flexible? Do your immediate supervisors and/or the managers and owners generally treat employees (including yourself) with respect? Is the workplace itself kept relatively clean and safe? While it is true that some employers will (occasionally or even frequently) violate certain laws and regulations, there are times when these violations are offset by other positive workplace situations. This may be something you will want to look at and think about if you know your rights have been violated.

Do You Want or Need a Reference?

Whether we like it or not, whether we believe it or not, and whether it is “legal” or not, employers talk to other employers about employees they have had issues with, and this may include employees who have filed complaints against them. This may be something to again think about before rushing into action against an employer, especially if you plan on finding work in the same industry in the future. In some cases, the employer may already have a poor reputation within the industry, in which case taking action may not be so detrimental to your employment future (in fact, others in the industry may actually applaud your decision to do so!).

On the other hand, if the employer has a very favourable reputation in the industry and you do want a reference from that employer, you may want to think twice about whether or not you should take action against the employer, even though your rights have been violated. To put things in ‘big-picture’ perspective, keep in mind that if you become a constant ‘complainer’, it may actually hurt your chances for finding good employment opportunities in the future, especially if you live in a smaller community or you work in a relatively close-knit industry.

Taking Action

For the most part, labour laws in Canada are enforced through a **complaint-based** process. This means that it is up to the employee (or group of employees) to actually take action against the employer in an attempt to satisfy the situation. Employees often wonder how employers get away with “breaking the law”. The answer is simple - if nobody complains, then it is likely that no action is taken. Although government agencies who are responsible for enforcing labour laws will conduct planned or random audits (“check-ins”) on employers from time to time, they generally rely more on individual workers (or groups of workers) to bring their concerns about certain employers forward before they will do anything.

If you decide that taking action against an employer is warranted, there are generally two courses of action you can pursue:

1. File a complaint against the employer through the relevant government agency or ministry responsible for regulating that employer. If you work in a unionized environment, you would file a grievance with your union.
2. Pursue independent legal action through the courts.

Pursuing Action Through Relevant Government Agencies / Ministries

The remainder of this document focuses primarily on the first option – pursuing action through the relevant government agency or ministry. If you decide to pursue independent legal action through the courts, you must first discuss your situation with a lawyer or with a local Legal Aid office (if your community has one). It is important to remember that pursuit of independent legal action can be costly and should be considered carefully!

Government Agencies and Ministries

There are three primary areas of labour law that the government enforces:

- **Employment Standards** – These are the minimum working standards that employees are entitled to, such as minimum wage, statutory holidays, vacation time and pay, overtime, and basic rights when employment is terminated.
- **Human Rights** – These regulations cover issues involved with discrimination and harassment in hiring and management practices when they are directly related to a person's age, gender, race, religion, etc.
- **Workplace Health and Safety** – These regulations are designed to ensure employers practice minimum standards of workplace safety and maintain a healthy work environment for employees.

If you plan on filing a complaint against an employer through the government, you must not only have a basic understanding of the nature of your complaint (ie. is it an employment standards complaint or a health and safety complaint), you must also know which government agency to go to. This determination will depend on whether your employer is covered under Provincial or Federal Legislation.



Federal Legislation

The **Canada Labour Code** covers all three areas of labour law (employment standards, human rights, and workplace health and safety) for employees who work for federally-regulated employers. The list of industries and occupations covered under federal regulations is actually quite small, but the number of people employed in them is large, and includes:

- federal government employees
- armed forces
- banks
- shipping
- inter-provincial transportation (railways, air transport etc.)
- radio and television broadcasting
- some larger-scale agricultural companies

Provincial Legislation

Each province in Canada has its own unique agency to deal with the various labour laws. In BC, we have the Employment Standards Branch, the Human Rights Tribunal, and WorkSafeBC (formerly the Workers' Compensation Board). Each of these agencies regulate and enforce minimum working conditions for provincially-covered employers and employees. For the most part, industries and occupations that are **not** covered under the Canada Labour Code are covered by provincial legislation. This would include most privately-owned companies that operate within the province, regardless of their size and the number of people they employ.

For more information about Federal and Provincial jurisdiction, please refer to the Useful Websites section of this handout.

Special Situations

You may be involved in special or unique working situations where laws and regulations that normally would have applied may not apply (or may apply differently) than if you were simply employed in a regular “job”. Such situations may include:

1. volunteer work
2. working as a practicum student or an intern
3. working under a government-funded job placement program or job creation project
4. working in an industry that is regulated by an independent body or association, which is usually the case for professionals such as doctors, architects, lawyers, etc. (however, it is the professionals themselves that are covered by special regulations; their employees, such as their receptionists, would still be covered under regular employment laws)
5. working on contract (instead of an employee)

In these cases, you can still consult with the government agencies noted previously, but they may not be able to provide direct assistance to help with your situation.

In situations 1 through 4 above (volunteer, practicum, job creation worker, professional), you should consult with the relevant coordinating organization regarding your working situation. In situation 5 above (working on contract), please refer to our handout titled “**Contract Work**”, available at both of the Kamloops Work Search Centres.

Where Should I Go to Inquire About My Concern or File a Complaint?

If you are employed in a **unionized** organization, you should discuss your situation with the appropriate union representative. This may be the shop steward in your workplace, or an actual union liaison.

If you are employed in a **federally-regulated** organization, your inquiry or complaint should be brought forward to Human Resources and Social Development Canada (HRSDC), who are responsible for administering the Canada Labour Code.

If you are employed in a **provincially-regulated** organization (in BC), your inquiry or complaint should be brought forward to:

- BC Employment Standards Branch (if it is an employment standards issue), or
- BC Human Rights Tribunal (if it is a human rights issue), or
- WorkSafeBC (if it is a workplace health and safety issue).

Frequently Asked Questions

Q. I was offered a job by an employer, but when I reported to the employer's place of business, s/he advised me that I am not needed - is this illegal, and can I take any action against this employer?

A. Maybe. It depends on whether the employer actually had a signed employment contract with you, or whether it was just a 'verbal' promise. Even in the case of a verbal promise, the employer may be wrong, but from your perspective, this will be hard to prove and you will likely spend a lot of time, energy, and (maybe) money if you decide to challenge the employer. This is something you will need to think about, but if you decide to pursue action, you will want to contact either the Employment Standards Branch, or discuss your situation with a labour lawyer or community Legal Aid office.

Q. Are all labour laws "black and white", or is there flexibility for employers to legally operate outside of the labour laws?

A. This is a complicated question and cannot be fully answered in this handout. However, the quick answer is that there are allowances in various labour laws which permit employers to hire or manage employees in ways which sometimes might seem "illegal" but which are actually allowed. For example, the BC Employment Standards Act allows employers to negotiate flexible work schedules with employees when certain conditions are met. In such situations, the employees may find themselves working 10 or 12 hour shifts and not being paid overtime for the excess hours.

Q. Are all complaints filed by workers or work-seekers investigated by the government?

A. No. The government agency responsible for the nature of the complaint (ex. Employment Standards complaint or WCB complaint) will take into account several factors, including the complainant, the employer being complained against, and most importantly, the seriousness of the supposed offence. If the agency decides that the complaint is not well-documented, or is 'trivial', they will probably not pursue action against the employer. As an example, if you file a complaint with Employment Standards for non-payment of 20 minutes of overtime you worked and didn't get paid for, it is unlikely that any action will be taken against your employer because the offence will be considered 'trivial'.

Useful Websites

These websites will provide you with all of the information you need regarding relevant employment laws and regulations, and also provide contact information (telephone numbers, e-mail addresses, mailing addresses, office locations) you need should you decide to further explore your situation.

www.hrsdc.gc.ca

Human Resources and Social Development Canada

<http://laws.justice.gc.ca/en/showtdm/cs/L-2>

Canada Labour Code

<http://www.worksafebc.com/>

BC Workers' Compensation Board

<http://www.labour.gov.bc.ca/esb/>

BC Employment Standards Branch

<http://www.labour.gov.bc.ca/wab/>

BC Workers' Advisors Branch

<http://www.bchrt.bc.ca/>

BC Human Rights Tribunal

The Kamloops Law Library (located in the Kamloops Law Courts, 455 Columbia Street) also has numerous resources to assist you in your research on labour laws in Canada.