

Essentials of Work & the Law



Learn about your rights and responsibilities as a worker. This publication explains what to expect once you're hired, and what happens if you're fired or you leave your job. It also includes guidance on how to deal with a problem at work.

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Work out life's legal problems

www.peopleslawschool.ca

About this Publication

Acknowledgements

Contributors to this publication:

- Legal review: Ashley Syer, Mary Thibodeau, and Leanne M. Walsh
- Writing and editing: Spencer Keene, Drew Jackson, and Bruce Grierson
- Layout: Elena Renderos

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About People's Law School

People's Law School is a non-profit society in British Columbia, dedicated to making the law accessible to everyone. We provide free education and information to help people effectively deal with the legal problems of daily life.



150 – 900 Howe Street
Vancouver, BC V6Z 2M4
604-331-5400
info@peopleslawschool.ca
www.peopleslawschool.ca

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Introduction

Your job is a big part of your life. So making sure you're treated fairly in your work — as well as when you're looking for a job or leaving one — is important. Knowing your legal rights provides strong protection. This publication explains your rights as a worker in BC, and the steps you can take to resolve problems at work.

At People's Law School, we believe accurate, plain English information can help people take action to work out their legal problems. This publication explains in a general way the law that applies in British Columbia, Canada.

It is not intended as legal advice. For help with a specific legal problem, contact a legal professional. Some sources of legal help are highlighted in the "Where to Get Help" section.

We have tried to use clear language throughout. See the "Glossary" section for definitions of key legal terms, which are also bolded in the text.

The information is current to March 2019.



For more in-depth coverage of your rights as a worker and how to solve legal problems, visit the People's Law School website at peopleslawschool.ca.



Worker Rights and Responsibilities

The provincial law that protects workers in British Columbia is called the *Employment Standards Act*. It gives you rights as a worker, and sets minimum standards that employers must meet. In addition to your rights, you have obligations to your employer.

Your employment contract

When you accept a job, you enter into a **contract** with your employer. You're agreeing to the kind of work you'll be doing, the hours you'll put in, and other conditions of the job.

Tip For an in-depth discussion of how employment contracts work, visit the People's Law School website at peopleslawschool.ca.

Your responsibilities as a worker

In addition to your rights, you have responsibilities as a worker. Generally, these include:

- doing the work you were hired to do,
- performing your duties to the best of your ability, and
- following any reasonable instructions from your employer.

If you don't live up to your part of the bargain, your employer may decide to fire you. But there are rules they must follow if they take that step. These are explained below, under "Leaving or Losing a Job."

The *Employment Standards Act*

The *Employment Standards Act* applies equally to all workers who have the same job. The law is generally the same for people who work full-time as it is for those who work part-time. It doesn't matter how many hours you work or if your job is permanent or temporary.

The Employment Standards Branch is the government office that enforces the *Employment Standards Act*. To contact the Branch call 1-800-663-3316 or visit gov.bc.ca/employmentstandards.

Not all workers are covered by this law

People who work in certain jobs are not covered by the Act. The legislation **doesn't apply** to people who are:

- in licensed professions, such as doctors, dentists, lawyers, accountants, architects, engineers and realtors
- in industries regulated by the federal government — for example, banks and airlines
- in certain government incentive programs while receiving income assistance, disability benefits, or Employment Insurance
- secondary school students working at their school or in work-study programs
- primary- or secondary-school students working 15 hours or less a week as newspaper carriers
- babysitters

If you're on that list, ask your employer about your rights and benefits. The Employment Standards Branch may also provide information.

As well, many of the rights in the Act aren't given to **independent contractors**. The law defines an "independent contractor" as someone who's self-employed. We explain this further in the "Other Working Arrangements" section.

Some workers, such as high-tech professionals, farm workers and resident caretakers, are only covered by parts of the Act, so different minimum standards apply.

People who belong to unions are covered by **collective agreements** made between their union and their employer. Speak to your union representative if you have any questions about your agreement.

Some employers ask the Employment Standards Branch if they can do something slightly different from what the Act says is required. This is called a **variance**. An employer must have the agreement of their workers to apply for a variance. An employer can only apply to vary certain sections of the Act, such as in relation to paydays, special clothing, split shifts, and minimum daily hours. If your employer receives permission from the Branch for a variance, a copy of the variance will be posted in the workplace.



Getting Hired

Here are key steps you can take to prepare yourself for getting a job.

Step 1. Prepare your résumé

Your résumé is a brief account of your personal details, your education, and the jobs you've had (including any volunteer work). It should be brief and specific to the work you are applying for. Your résumé is a tool to market yourself to employers, so let yourself shine. Emphasize your good qualities, skills, interests, and perhaps your employment goals. If you need help writing your résumé, contact a career counsellor or employment centre in your community.

Step 2. Prepare for interviews

A job interview gives an employer the chance to meet you in person, and helps you decide if the position is a good fit for you. Here are some tips to prepare you for an interview:

- Find out as much as you can about the organization. Learn about its products, services and key people.
- Read the job description carefully, and practice how you'll answer questions you think the interviewer might ask.
- Think of questions to ask the interviewer about the organization or position.

Step 3. Ensure your online presence is professional

If you have an online presence, such as social media accounts, it is wise to make sure your profiles are professional, and don't include anything that could reflect poorly on you.

It's also a good idea to have a LinkedIn account. Include your experience and education details, along with a good quality photo of yourself. As the basic LinkedIn account is free, this is a good way to market yourself as long as you make sure both your content and connections reflect

a professional image. A strong LinkedIn profile is one of the best things you can do to improve your chances of finding work.

Step 4. Get a Social Insurance Number (SIN)

You must have a **Social Insurance Number (SIN)** before you can get hired. By law, the employer must ask you for it. However, you're not required to provide it on a job application, before you get the job. If you don't have a SIN, you can apply for one — there's no charge — at a Service Canada office. Visit the federal government's website at servicecanada.gc.ca to find an office near you.

Common questions

How old do I have to be before I can be hired?

If you're at least 15 years old, you don't need to get your parent's or legal guardian's consent to work. And there are no restrictions in the Act regarding your hours of work.

If you're between 12 and 14 years old, you may work restricted hours, but employers must get written permission from your parent or guardian.

If you're under 12, employers must first get written permission from the Employment Standards Branch. Your parent or legal guardian must also agree. The Branch may also contact your school.

Can an employment agency charge a fee for finding me work?

By law, employment agencies can't charge you for finding you a job. (They make money by charging the *employer* a fee if they find you a job.) Employers can't ask you for payment in return for hiring you as a worker, nor can they take payment from anyone else for hiring you.

What if my employer isn't honest with the conditions of my employment?

Employers can't lead you to believe that a position is available if one isn't. They can't mislead

you about how much you'll be paid, the type of work you'll do, or about any other conditions of your employment. If an employer has done any of these things, you can make a complaint to the Employment Standards Branch. See the section "If You Have a Problem at Work" for details.



I'm Hired: What Now?

As an "employee," you have certain basic rights under the *Employment Standards Act*, regardless of what your employment contract says.

Sometimes, workers decide not to speak up for their rights because they fear losing their jobs. But the law prohibits your employer from firing you for making a complaint. Note that you must make your complaint within **six months** of the violation.

Getting paid



"Last summer I started my first job as a dishwasher. My starting wage was \$11 an hour. I thought that seemed pretty low, but it was my first job so I didn't question it. Then I discovered it was below minimum wage. I gathered my courage and raised the issue with my boss. He agreed to bump my wage to the legal minimum."

– Fred, Langley

The **minimum wage** is the lowest wage an employer can legally pay a worker. As of June 1, 2018 the general minimum wage was **\$12.65 per hour**. Special minimum-wage rates apply

to certain jobs, like liquor servers and live-in camp leaders.

For up-to-date minimum wage information visit the Employment Standards Branch website at gov.bc.ca/employmentstandards, or call 1-800-663-3316.



For more on minimum wage, including how it applies to different types of workers, see the People's Law School website at peopleslawschool.ca.

Can my employer pay me less than minimum wage?

No. Even if your employment contract says you're earning less, you're still entitled to at least the minimum wage. If your employment contract says you're earning more than the minimum wage, you're entitled to that higher wage.

If you're being paid less than minimum wage, something's wrong. Your employer may not be reporting your hours or wages correctly to the government. Or maybe they aren't telling the government that you're an employee. This is called working **under the table**, and it's illegal. Be careful: working illegally means you may not be protected by workers' compensation laws. This could have serious consequences if you're injured on the job.

If I go to work and am sent home, what's the minimum I should be paid?

If your employer schedules you to work, you must be paid for at least two hours even if you work less than that. If you were scheduled to work for more than eight hours, your employer must pay you for at least four hours. This is called **minimum daily pay**.

Sometimes work stops for a reason your employer can't control, such as bad weather. In that case, your employer must pay you for at least two hours or for the actual number of hours you work, whichever is more.

You're only entitled to be paid for time actually worked, even if it was less than two hours, if:

- you're unfit to work (for example, if you're intoxicated), or
- you violate the general health and safety rules of the workplace.

Does my employer have to pay for job orientation, training or meetings?

Yes, if you are **required** to attend an orientation, training or meeting before or after your shift, you must be paid. If attending the meeting plus working your shift adds up to more than eight hours that day, you're entitled to overtime pay. The law does not apply to interviews or meetings that are part of the hiring process.

If you're required to attend a meeting on your regular day off, you must be paid the minimum daily pay or wages for the number of hours you attend, whichever is greater. For example, if your employer calls you in for a staff meeting on your day off, you must be paid for a minimum of two hours. You must also be available to work. If the meeting lasts one hour, your employer has the right to require that you work the remaining hour. However, if you volunteer to go home after the meeting, the employer only has to pay you for the meeting time.

What information does my employer have to include with my pay cheque?

You should get a written or electronic wage statement with your pay. This statement covers a single pay period, and must include:

- your employer's name and address,
- the hours you worked,
- your regular wage rate,
- your overtime rate,
- the overtime hours you worked,
- any money, payment or allowance you're entitled to (for example, statutory holiday pay),
- the amount and reason for each deduction,
- how your wages were calculated (if you aren't paid hourly or by salary),

- your gross and net wages, and
- any amounts withdrawn from your time bank, and how much time remains.

The document must be separate from your pay cheque, so you can keep it. Your employer doesn't need to give you a wage statement if nothing has changed since the last pay period.

What can my employer deduct from my wages?

Your employer is required by law to make deductions from your wages for:

- Canada Pension Plan contributions,
- Employment Insurance contributions,
- income tax (in most cases), and
- any court order deducting amounts from your wages (called “garnishing orders”).

Your employer is also required by law to **remit**, or send, these deductions to the appropriate government department.

Your employer must have your written permission to make any other deductions, such as for dental coverage, medical coverage, or meals.

Your employer can't deduct any money from your wages if you damage or destroy their property by accident. However, if you deliberately cause damage, your employer can fire you and seek to have criminal charges laid against you.

Can my employer deduct money or demand payment for special clothing they require?

No. The *Employment Standards Act* defines **special clothing**. If you're required to wear a company shirt, uniform or specific brand-name clothes, your employer must provide these items at no cost or deposit. Special clothing as defined by the Act is different from a dress code.

A **dress code** is a standard set by an employer that specifies a certain style of dress. Meeting the dress code is at the worker's own expense.

For example, Thanh works as a waiter and his employer requires him to wear a white shirt and black pants. His employer doesn't have to pay for this. However, if his employer tells Thanh to wear a Chanel white shirt, then the employer must pay for the shirt because the employer has specified a brand name or directed him to a particular store.

The employer also has to pay for special clothing to be cleaned or mended unless a majority of workers agree to pay for it individually and get paid back by the employer instead.

If your employer fails to pay you back or deducts money from your paycheck, keep your receipt. These records will help if you decide to file a formal complaint.

Work breaks

Your employer must make sure you don't work more than five consecutive hours without a **meal break**. Each meal break must be at least half an hour long. Your employer needn't pay you for a meal break. However, if you're asked to work — or to be available to work — during a meal break, this counts as time worked and your employer must pay you for it.

You're not owed a coffee break by law, but most employers will give you one.

How many hours can I get off between shifts at work?

Your employer must give you at least 32 consecutive hours free from work each week. If you work during this period, you must be paid **time-and-a-half** (one-and-a-half times your regular wage) for the hours worked.

If you work seven days a week, your employer must likewise pay you time-and-a-half for one of those days. This is true even if you work fewer than 40 hours throughout the week. Your employer can choose to pay you time-and-a-half on the day you worked the fewest hours.

You're also entitled to have eight hours off between shifts, unless there's an emergency.

What are split shifts?

A **split shift** is when you work some hours, and then have an unpaid break and return to work on that same day. If you work a split shift, your employer must ensure you complete the second part of the shift within 12 hours of starting work.

For example, if you work 9 am to 1 pm for the first part of your shift, and the second part starts at 5 pm, it must finish by 9 pm (12 hours from when you started work). Your employer can ask you to work overtime after your regular shift.

Travel to different job sites for the same employer during a regular shift is not a split shift. Your employer must pay you for your travel time.

Daily overtime



"I was routinely working 10-, sometimes 11-hour days. My boss continued paying me at my regular wage. Then I spoke with a colleague

who told me I should be getting overtime. I brought it up with my boss. He agreed to pay me the overtime wages I'd earned. Now I have more of an incentive to work later hours if I need to."

– Georgia, Kelowna

After you've worked **eight hours in a day**, your employer must pay you **time-and-a-half** for the next four hours worked. For example, say your wage is \$16 per hour and you work 10 hours in one day. You receive your regular wage for the first eight hours. But for the additional two hours, you're paid \$24 per hour.

After working **12 hours in a day**, your employer must pay you **double time** (twice your regular wage) for any additional hours worked. Continuing the example above, say you work 14 hours in one day. You receive your regular wage of \$16 for the first eight hours. For the next four hours, you're owed

\$24 per hour. For the two hours after that, it's \$32 per hour.

The rules for daily overtime apply even if you work less than 40 hours during the week.

Weekly overtime

If you work more than **40 hours in a week**, your employer must pay you **time-and-a-half** after 40 hours. However, only the first eight hours you work each day is counted towards the weekly total (daily overtime is calculated separately). For the purposes of calculating overtime, the week begins on Sunday.

For example, say you work eight hours each day, Monday to Friday. On Saturday, you work three more hours. Your weekly total is 43 hours. You receive your regular wage (let's say, \$16 per hour) for the first 40 hours. For the extra three hours, you earn \$24 per hour.

Weekly overtime rules apply even if you work less than eight hours each day.

Do I have to work overtime?

Your employer has the right to ask you to work extra hours as long as you're paid the proper overtime wage and your health and safety aren't compromised. If you feel you're being asked to work too much overtime, talk to your employer. You can also ask the Employment Standards Branch for help.

Do I get overtime pay if I work extra hours and am paid a salary?

People who are paid a salary receive a flat rate. If that rate is calculated on a 40-hour work week, if you work more than that you're entitled to overtime pay.

Employers don't have to pay **managers** overtime or statutory holiday pay. (That's "manager" as defined in the *Employment Standards Act*. Check the definition if you aren't sure if you really are a manager.) Although managers aren't entitled to overtime pay, they're still entitled to be paid for all hours worked. So

if they work more hours than scheduled they're still owed pay for those extra hours.

Banking your overtime wages

Your employer can — if you ask in writing — create a **time bank** for your overtime wages. But you can't be forced to bank your overtime. Nor is your employer required to create a time bank. They can turn down your request to bank your hours, and opt to pay your overtime wages in the usual way.

Tip For more information about why you might want to set up a time bank, visit the People's Law School website at peopleslawschool.ca.

How does a time bank work?

With a time bank, you can choose to store the overtime wages you earn, and "withdraw" that money when you need it later. Or you can use your stored wages to take time off with pay.

Averaging agreements

To allow for some flexibility in the workplace, the law permits an employer to make an **averaging agreement**. Averaging agreements must be in writing. Under it, a worker's hours can be averaged over a period of one to four weeks. Within that period, the worker might have to put in more than a 40-hour week or an 8-hour day without earning overtime. But the total hours scheduled can't be more than 40 per week on average.

The key word is "average." Using the simplest example, if you normally work an average of 40 hours in a week, under a one-week averaging agreement your employer could schedule you to work for 10 hours a day for the four busiest days of work. In this case, your normal 40-hour, five-day work week has been "averaged" to fit into four days of 10 hours each. No overtime is paid for the 10-hour days.

Tip Check out peopleslawschool.ca for more information on averaging agreements, including the requirements for a valid agreement.

Sick benefits

The law doesn't require your employer to pay you if you're sick and can't work. But many employers provide sick pay anyway. You may be required to get a doctor's letter saying you can't work. You can't be fired for getting sick, but, if you're ill too often to do the job for which you were hired, you may be let go.

You may be able to get Employment Insurance benefits if you can't work for an extended period because you're sick or injured. To learn more, visit the federal government website at canada.ca/ei.

Vacations

After you've worked at your job for **one consecutive year**, you're entitled to at least **two weeks of annual vacation**. After working five consecutive years, you're entitled to at least three weeks of annual vacation.

Your employer must allow you to take the vacation time in blocks of one or more weeks, unless you've agreed in writing to receive it in smaller increments. Your employer has the right to schedule when you take your vacation time, according to their business requirements. Most employers try to schedule vacation at a time that works well for the worker too.

Your employer must make sure you take your vacation within 12 months of earning it. Employers expect requests for vacation time to be made in advance.

How much vacation pay do I get each year?

Most workers in BC are entitled to **vacation pay**. This is an extra percentage of a worker's earnings, to provide them with pay while absent during vacation. After five calendar days

of work, your employer must pay you vacation pay of at least 4% of your gross earnings. After five consecutive years of employment, you're entitled to at least 6% of your gross earnings.

If you and your employer agree in writing, you can get a portion of your vacation pay on each pay cheque. You can also ask your employer, in writing, for annual vacation time before you're entitled to it. This reduces the amount of vacation time you receive when you do become entitled to it.

Can my employer give me less time off or pay me less vacation pay if I took time off as sick leave?

Your employer can't reduce your vacation time or vacation pay just because you've been given sick pay during the year. Nor can money or time be deducted because you were paid a bonus or were given a vacation longer than the legal minimum.

Statutory holidays



"This past Thanksgiving, my employer gave me the day off but didn't pay me for it. I was told only full-time employees get paid for stat holidays — I was working part-time. Then I found out part-timers who work at least 15 days in the month before the holiday are entitled to stat holiday pay. I told my employer. They agreed to pay me for Thanksgiving.

– Omar, Vancouver

Statutory holidays are days when most people receive the day off with pay. A worker must be employed for at least 30 calendar days to qualify for the day off with pay on a statutory holiday. If a worker has been employed for less than 30 calendar days and works on a statutory holiday, they are compensated the same as any other working day.

The *Employment Standards Act* grants 10 statutory holidays, which occur at approximately the same time each year.

These are:

- New Year's Day
- Family Day
- Good Friday
- Victoria Day
- Canada Day
- British Columbia Day
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day

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

How is statutory holiday pay calculated?

An eligible worker who's given the day off on a stat holiday is entitled to an average day's pay. If the holiday falls on a regular day off, the worker is still entitled to be paid.

An **average day's pay** is calculated by dividing total wages earned in the 30 days before the statutory holiday by the number of days worked. Total wages includes wages, commissions, statutory holiday pay and vacation pay. Overtime pay doesn't count.

For example, say you earned \$2,000 in the 30 days before Canada Day. During that period, you worked 20 days. Your average day's pay is \$100 (\$2,000 divided by 20 days).



For information on statutory holiday pay and who is eligible, see the People's Law School website at peopleslawschool.ca.

Unpaid leaves

Your employer can't fire you for taking an **unpaid leave** that's covered by the *Employment Standards Act*. When you return from an unpaid leave, you must be given your old job, or a job with similar duties and salary.

You're entitled to any wage increases or benefits you would have received if you hadn't taken leave. If you belong to a medical or dental plan at work, your employer must keep you on these plans. The following types of leave are covered by the Act.

Pregnancy (maternity) leave

An expectant mother is entitled to 17 consecutive weeks of unpaid **pregnancy leave**. You can begin your pregnancy leave up to 13 weeks before you expect to have your baby. After the 17 weeks, you may be able to extend the leave for six more weeks for reasons related to the pregnancy.

As a birth mother, you also have the right to take parental leave as described below. However, you must begin it immediately after your pregnancy leave ends unless your employer agrees otherwise.

If your pregnancy is terminated and you request a leave, your employer must give you an unpaid leave of up to six weeks. You may have to give your employer a doctor's letter stating that your pregnancy was terminated.

Parental leave

As a worker, you are entitled to unpaid leave from work when your child is born or adopted. This is called **parental leave**.

Parents can take their leave together, share leave, or take it at separate times. If the birth mother has taken pregnancy leave, she's entitled to up to an additional 61 consecutive weeks of parental leave. If she hasn't taken pregnancy leave, she may take 62 consecutive weeks of parental leave. Parents who have not taken pregnancy leave are entitled to 62 consecutive weeks of parental leave.

Adoptive parents are entitled to 62 consecutive weeks of parental leave beginning within 78 weeks of the child being placed with the parents.

Parental or pregnancy leave pay

Your employer doesn't have to pay you any regular wages while you are on pregnancy or parental leave.

If your employer has been paying your medical or dental benefits, then they must continue to pay them while you're on leave. If they've been paying a portion and you've been paying the remainder, you need to provide them with payments/post-dated cheques to cover your portion of the benefits.

Since your years of service continue while you're away on pregnancy or parental leave, you're still entitled to time off for vacation. And while you are on pregnancy or parental leave, you still earn your vacation just like you were at work. But you may receive little or no vacation pay, as it's calculated based on a percentage of the gross wages paid to you by your employer.

When you're on pregnancy or parental leave you may be entitled to collect Employment Insurance benefits. Visit the federal government website at canada.ca/ei.

Pregnancy or parental leave notice

You must tell your employer in writing at least **four weeks** before you expect to go on pregnancy or parental leave. A mother who plans to take both pregnancy and parental leave must give separate notices for both, but can give them at the same time.

Family responsibility leave

You're entitled to up to **five days of unpaid leave** per year to meet your responsibilities to your immediate family. Your reason for taking leave must be related to the care, health or education of an immediate family member.

Bereavement leave

You're entitled to up to **three days of unpaid leave** when someone in your immediate family dies.

Compassionate care leave

You're entitled to up to **27 weeks of unpaid leave** to care for a family member whom a medical doctor has stated in writing is at risk of dying within 26 weeks.

Jury duty

If you're required to go to court as a juror, your employer must give you **unpaid leave** for the time you spend on jury duty.

Safety in the workplace

Workers' rights to safe working conditions and protection from discrimination come from laws other than the *Employment Standards Act*.

Employers have a duty to make sure your working conditions are safe. They must follow safety standards set out by the *Workers' Compensation Act*. Your employer must tell you of any risks that may be involved in doing the job. If your work involves some risk to yourself or others, your employer must make sure you're properly trained and have all the necessary information to keep the risk low.

Your employer is responsible for making sure you wear your safety gear at the job site. Also, your employer must ensure you don't work so much overtime that your health or safety is at risk.

Unsafe working conditions

Identify unsafe conditions and report them immediately to your supervisor or employer. Contact WorkSafeBC to learn the steps your employer is required to take to keep you safe. WorkSafeBC can also tell you how to file a complaint. Visit their website at worksafebc.com.



Human Rights in the Workplace

There are laws in BC that protect workers from human rights abuse in the workplace. Your employer may need to change the conditions where you work to respect these laws.

Discrimination



"I'd been in the same position for three years, and was ready for a step up. I decided to approach my boss to discuss a promotion. He told me that more responsibility would be 'too much for a woman to handle.' I was hurt, and began preparing a human rights claim for discrimination."

– Jasmine, Richmond

Employers aren't allowed to **discriminate** against workers in the hiring process or in the workplace. You can't be denied employment or promotion, or fired or forced to work under different conditions than another person doing the same job.

An employer must not discriminate against a worker based on these personal characteristics:

- race, colour, ancestry, or place of origin
- age
- sex, sexual orientation, or gender identity or expression

- marital or family status
- political belief or religion
- any physical or mental disability
- any criminal convictions that are unrelated to the job

Tip Check out the People’s Law School website at peopleslawschool.ca to learn about the different types of discrimination in the workplace.

Accommodation

The requirements and rules of your workplace might pose more problems for you than for other workers because of your unique circumstances. If you suffer from insomnia, for example, you may have trouble getting to work on time.

Where a “protected ground” against discrimination is involved (see the previous section for a list of protected grounds), employers must do what they can to adjust. This “**duty to accommodate**” helps ensure everyone is treated equally.

Your employer’s duty to accommodate you isn’t limitless. It extends only to the point where the accommodation starts causing them “undue hardship.” The “perfect solution” isn’t required, if that solution would be hugely costly or would seriously hinder other workers.

Tip For more on what your employer may be required to do to accommodate you, see the People’s Law School website at peopleslawschool.ca.



Leaving or Losing a Job

As a worker, you have certain legal rights when you quit or are fired from your job.

If you quit

You have no legal obligation to tell your employer ahead of time if you quit your job. But it’s usually a good idea to tell them you’re planning to leave, so someone else can be found to replace you. Two weeks’ notice is considered customary.

Giving your employer plenty of notice is wise if you want to continue to have a good relationship with them. This could help you get a new job since you might need them to talk to future employers about your work. This is called giving you a “reference.”

Whether you give advance notice or not, your employer has six days from the time you quit to pay you all your wages.

Looking for another job

You can look for another job before you quit. If you don’t want your current employer to be contacted, indicate on your résumé and application that you’re applying “in confidence.” This way you can still list your current job as part of your employment history.

Before making a final decision, an employer may ask for a current job reference. You can give the name of a co-worker if you don’t want your supervisor or employer to know.

If you are laid off

An employer might lay you off when there's no work for you or not enough money to pay you. Employers don't have to tell you in advance if they're going to lay you off. Being laid off isn't the same as being fired. A **layoff** is temporary. The employer doesn't have to pay you compensation, but they do have to call you back to work once the layoff is over.

Temporary layoffs are only legal if one of the following applies:

- You have a written employment contract that allows for a layoff.
- You work in an industry where layoffs are standard practice (for example, the logging industry).
- You consent to the layoff.

Your employer must prove they had the right to lay you off for one of these reasons.

Outside of the above circumstances, if your employer lets you go temporarily, you have the same rights as someone who gets fired "without just cause" (see below). That means your employer must give you notice or severance pay.



For an explanation of when a layoff is considered a termination under the law, see the People's Law School website at peopleslawschool.ca.

If you are fired

Generally, your employer can fire you whenever they want as long as they give you notice in advance, or pay you instead. There are some exceptions, such as if you've done something seriously wrong.

Getting fired for "just cause"



"While working in marketing at a fast food company, I sometimes had to perform as a mascot. One day I was dressed as a chicken, giving away chicken nuggets on a street corner. A car roared through a curbside puddle and soaked me. I lost my cool, and threw my bucket of chicken at the car. The car swerved and almost hit a pedestrian. It wasn't the first time I'd lost my temper on the job. The driver reported me to my manager and I was fired."

– Jaime, Maple Ridge

Your employer has the right to fire you if you do something seriously wrong. This is called being fired for "**just cause**." If you're fired for just cause, your employer doesn't need to give you any notice or severance pay.

"Just cause" behaviour is where you do something that seriously damages trust — to the point that the employer can't be expected to give you another chance.

Your employer might have just cause to fire you if you:

- are dishonest about something important,
- steal from your employer, or
- repeatedly breach a clear workplace policy or rule.

It's up to your employer to prove just cause. In all but the most serious cases of misconduct, you're entitled to receive warnings and opportunities to improve before you can be dismissed for just cause.

If you're fired for just cause, your employer must tell you what the reason is.

Getting fired "without just cause"

Your employer doesn't need a reason to fire you. But if you've done nothing wrong and are let go — which is called being fired "**without just cause**" — you have certain rights you don't have if you're fired with just cause.

In this case, your employer must give you **“notice of termination.”** There are two ways this can be done:

- Your employer can warn you in advance that they plan to let you go. How much advance warning you’re entitled to depends on many things, including how long you’ve been in the job. This advance warning is called the **“notice period.”**
- They can let you go right away. But then they have to pay you the money you would have earned during the notice period. This money is called **“severance pay.”**

Severance pay and the notice period

Under the *Employment Standards Act*, there’s a minimum amount of notice (or pay) your employer must give you, depending on how long you’ve been in the job. You may be entitled to more than the minimum, because the notice you get must be “reasonable.” Whether you are entitled to the minimum or a larger amount will depend on your employment contract.

The minimum notice period (or severance pay) is as follows:

- If you’ve worked **less than three months in a row**, your employer does not need to give you any notice or severance at all.
- If you’ve worked for **at least three months in a row**, you’re owed at least one weeks’ notice (or one weeks’ severance pay).
- If you’ve worked for **at least 12 months in a row**, you’re owed at least two weeks’ notice or pay.
- If you’ve worked for **at least three years in a row**, you’re owed at least three weeks’ notice or pay.
- **Beyond three years**, the rule is: three weeks’ notice or pay plus a week for each additional full year of service. The minimum notice period maxes out at eight weeks.

These are the minimums. Under the **“reasonable notice”** rule, you may be entitled to more. What’s considered reasonable depends on several factors, including the type of job and how long you’ve been in the position.



For an in-depth explanation of the “reasonable notice” rule, visit the People’s Law School website at peopleslawschool.ca.

Your employer doesn’t have to pay you compensation if they give you written notice of termination. The notice must be equal in weeks to the number of weeks’ pay for which you are eligible. For example, if you’ve worked for them for more than a year, your employer must give you written notice at least two weeks in advance of termination. Otherwise, they must pay you at least two weeks’ wages. Your employer can also give you a combination of notice and compensation.

Once you get your notice, your employer is not allowed to change your pay or any other conditions of your job, unless you agree.

If you think you weren’t given proper notice, contact the Employment Standards Branch for advice.

Wrongful dismissal

If you don’t think your employer had just cause to fire you, you may have a claim for **“wrongful dismissal.”** Some workers who are fired sue in court for wrongful dismissal. This is different than making a complaint to the Employment Standards Branch under the Act. If you are considering a legal action for wrongful dismissal, it’s best to contact a lawyer for advice.

Sale of business

Usually, you don’t have to worry if your employer sells the business. The new owner can’t act as if you started a new job. But you should be prepared for some changes.

If the new employer lets you go without notice, they are responsible for compensating you according to the time you were employed for the previous owner. If you're terminated prior to the business being sold, the employer who fired you is responsible for the notice or compensation.

Payment on termination

If you're let go, your employer must pay all the wages you have already earned, within 48 hours. If you're paid a salary and you quit or are let go in the middle of your pay period, your employer must pay your wages for the time you worked. If you're paid by commission, your employer must pay you as soon as the payment comes due under your contract.

Changes to your job (constructive dismissal)



"My employer told me I was being transferred to our company's branch in a community 400 kms away. There's no way I could commute. My kids love their school here, and my husband has a good job that he would have to leave. I brought a claim against my employer, and won compensation as if I had been fired from my job."
– Sharon, Coquitlam

Under the law, it's possible to be fired indirectly. If your employer changes your work situation in a fundamental way, and you don't accept that change, you may have the same legal rights as someone who is fired. What has happened to you is the legal equivalent of being dismissed. This is called "**constructive dismissal**."

This applies when your employer does something that:

- changes a key aspect of your employment in a major way, **and**
- is not something you should have expected, **and**
- you don't agree to or accept.

If you've been constructively dismissed, you have the same rights as someone who was fired without cause. That includes the right to notice or severance pay from your employer.

Tip

For some examples of changes serious enough to be constructive dismissal, visit the People's Law School website at peopleslawschool.ca.

Record of Employment

After your job is over, your employer has five calendar days to give you a **Record of Employment (ROE)**. This is a summary of the time you worked and the money you were paid. You need an ROE to get Employment Insurance benefits.

Your employer can issue your ROE in electronic or paper form. If they submit electronically, you don't need a copy; your employer will send it directly to Service Canada. If it's a paper ROE, ask for a copy as soon as your job ends. You should apply for EI as soon as possible after your last day of work, even if you don't have your ROE yet.

T4 form

You need a T4 form to do your income tax. Contact the Canada Revenue Agency for help in obtaining a T4 form if you don't receive one from your employer on or before the last day of February following the calendar year to which the T4 applies.

If You Have a Problem at Work

If you have a problem at work, there are ways you can try to solve it.

Step 1. Discuss the situation with your employer

Try to talk with your employer. Write down what your employer has done that you're unhappy about — that will help you remember

everything you want to say. Think about what you want your employer to do about it.

You might find it helpful to talk to friends, colleagues or your union representative (if you're in a union). They might be able to tell you how a similar problem was dealt with.

Tip

It's a good idea to talk with someone you trust about any problems on the job. This might be a family member, friend, or a co-worker. You may want their support if you decide to make a formal complaint to a government agency.

Step 2. Write to your employer

If talking doesn't solve the problem, you can send a letter or email to your manager or the human resources department at your work.

Another option is to use the **self-help kit** from the Employment Standards Branch. If you aren't able to resolve a work problem with your employer, you can complain to the Branch. Generally, workers must try to solve the problem using the Branch's self-help kit *before* filing a complaint with the Branch. The kit includes a letter from the Branch for you to give to your employer. You can access the self-help kit at gov.bc.ca/employmentstandards.

Step 3. File a complaint with the Branch

If you aren't able to resolve the problem using the Branch's self-help kit, you can **file a complaint** with the Employment Standards Branch. You have six months to file a complaint from the time the problem took place or your employment ended.

You can submit your complaint using an online form, by mailing in a complaint form, or in person at a Branch office. For details, visit gov.bc.ca/employmentstandards or call the Branch at 1-800-663-3316.



For a detailed explanation of how to file a complaint with the Employment Standards Branch, see the People's Law School website at peopleslawschool.ca.

Other Working Arrangements

Working “under the table”

If your employer doesn't ask for your Social Insurance Number, you are working illegally. You and your employer are breaking employment and income tax laws. This is commonly called working “**under the table**.”

Some disadvantages of working under the table include being ineligible for Employment Insurance benefits, and the possibility of not being covered by the *Workers' Compensation Act*. If you have an accident at your job site, you may have no legal recourse, even if you were working in unsafe conditions.

If you're worried that your employer isn't keeping accurate records, collect evidence of your employment, including your own daily record of the hours you worked. Your daily record should show the start and end times of your shifts, as well as any breaks you take. If you decide to pursue a claim with the Employment Standards Branch, co-workers or clients of the business may be a source of information, or a witness, to confirm that you worked there.

Independent contractors



“When I was hired, my employer asked me to sign an agreement saying I was an independent contractor. I didn't realize it at the time but they did this to avoid paying me overtime. Turns out I wasn't an independent contractor, despite what our agreement said. I was able to enforce my rights as an employee.”
– Lucca, Vancouver

If you are an **independent contractor**, you make your own agreements or contracts with the people you work for. These agreements are usually for a specific project or a set period of time. Generally, independent contractors aren't covered by the *Employment Standards Act*.

To determine if someone is an employee or an independent contractor under the Act, several factors are considered. For example, does the worker have a lot of control over the work they do? Does the worker own their own tools? Does the worker hire their own helpers? "Yes" answers suggest the worker is more of an independent contractor than an employee.

Tip Visit peopleslawschool.ca for more information on how to determine if you're an employee or an independent contractor.

Unpaid work

Unpaid workers include volunteers at non-profit organizations and secondary school students on work-experience placements. These types of unpaid workers are generally not covered by the *Employment Standards Act*.

Non-profit organizations that have volunteers usually develop their own policies that restrict volunteer job duties to those that are not employee job duties. If you volunteer for a non-profit organization or for your school, ask about your legal rights and responsibilities. Also ask what type of insurance they carry and whether it covers you as a volunteer.

Getting Informed

It's a good idea to learn as much as possible about your rights and responsibilities as a worker. Here are some simple steps you can take to inform yourself and help you protect your rights.

When you get a job

- Ask for a job description. When you're on the job, you may find you're doing tasks that weren't mentioned. Note them. At a performance evaluation you may want to ask if these tasks can be added to your job description. In this way your work and abilities will be officially recognized.
- Find out to whom you report. Ask for an organizational chart showing the responsibilities and authority of workers.
- Ask about policies and procedures related to hours of work, breaks, safety, benefits, evaluation and discipline, and whether there's a policy manual or handbook.

Once you are on the job

- If you're asked to do a task outside your job description, be sure it's approved by your supervisor.
- Study any safety procedures and guidelines. Ask questions if you're unclear. If you're concerned about any potential hazards, speak to your supervisor or employer.
- Co-workers are often a good source of practical information about the job. If you're in a work experience or employment program, talk to your coordinator and, if possible, to last year's students about their experiences.



Where to Get Help

BC Human Rights Clinic

A clinic that provides assistance and representation to workers who need help dealing with a provincial human rights complaint.

Toll-free: 1-855-685-6222

Email: infobchrc@clasbc.net

Web: bchrc.net

BC Human Rights Tribunal

A tribunal that deals with human rights complaints against employers in the province.

Toll-free: 1-888-440-8844

Email: bchumanrightstribunal@gov.bc.ca

Web: bchrt.bc.ca

Employment Standards Branch

The government office that enforces the provincial *Employment Standards Act*. The Branch deals with complaints against employers.

Toll-free: 1-800-663-3316

Web: gov.bc.ca/employmentstandards

Service Canada

The federal agency that administers the Employment Insurance program. They can help with any questions or concerns you have about EI benefits.

Toll-free: 1-800-206-7218

Web: servicecanada.gc.ca

WorkBC

An organization that operates Employment Service Centres across the province to support you in getting a job and keeping it.

Toll-free: 1-877-952-6914

Web: workbc.ca

WorkSafeBC

A government agency that deals with work-related injuries or diseases.

Toll-free: 1-888-967-5377

Web: worksafebc.com

Glossary

Averaging agreement: An agreement between an employer and a worker that deals with hours of work and overtime. It allows a worker's hours to be averaged over a period of one to four weeks. A worker may agree to work up to 12 hours in a day, averaging 40 hours in a week, without being paid overtime.

Collective agreement: A written contract of employment covering a group of workers who are represented by a trade union. This agreement regulates the terms and conditions of the workers in their workplace.

Constructive dismissal: When an employer makes a fundamental change to a worker's job situation and the worker doesn't agree or accept it. Being "constructively dismissed" is the legal equivalent of being fired for no reason.

Double time: Twice the amount of your regular wage.

Gross pay: Your pay before deductions.

Independent contractor: A person who runs their own business. An "independent contractor" is considered to be self-employed, and doesn't have the same rights as an employee.

Net pay: "Take home" income after taxes and other deductions are accounted for.

Social Insurance Number (SIN): A nine-digit number that everyone needs to work in Canada, to use government programs, or get government benefits.

Special clothing: Clothing that's easily identified with a company logo or unique company colours.

Time-and-a-half: One-and-a-half times your regular wage.

Under the table: Employment not reported to the government.

Variance: When employers, with the agreement of their workers, ask the Employment Standards Branch to vary or change how parts of the *Employment Standards Act* apply to them.

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Please send your feedback to:

People's Law School
150 – 900 Howe Street
Vancouver, BC V6Z 2M4
Fax: 604-331-5401
info@peopleslawschool.ca

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