

## TABLE OF CONTENTS

<i>Acknowledgements</i> . . . . .	iii
<i>What's New in the 2019 Edition</i> . . . . .	v
<i>Historical Background</i> . . . . .	vii
<i>Summary Table of Contents</i> . . . . .	ix

### OVERVIEW OF THE BRITISH COLUMBIA EMPLOYMENT STANDARDS ACT

I. Who is Covered by the Employment Standards Act? . . . . .	3
A. Important Definitions . . . . .	3
i. <i>Who is an Employee?</i> . . . . .	3
1. A person, including a deceased person, receiving or entitled to wages for work performed for another . . . . .	3
2. A person who an employer allows, directly or indirectly to perform work normally performed by an employee. . . . .	3
3. A person being trained by an employer for the employer's business . . . . .	3
4. A person on leave from an employer . . . . .	4
5. A person who has a right of recall . . . . .	4
ii. <i>Interns</i> . . . . .	4
iii. <i>Foreign Workers</i> . . . . .	6
iv. <i>Employees vs. Independent Contractors</i> . . . . .	7
1. The Control Test . . . . .	8
2. The Economic Reality Test. . . . .	8
3. Organizational or Integration Test . . . . .	8
4. Four-fold Test . . . . .	9
5. Permanency Test. . . . .	9
v. <i>Employee vs. Manager</i> . . . . .	9
vi. <i>Employee vs. Partner</i> . . . . .	10
vii. <i>Who is an Employer?</i> . . . . .	12
B. Unionized Workplaces and the <i>ESA</i> . . . . .	12
C. Employees Excluded via the Regulations . . . . .	15
II. Hiring Employees . . . . .	21
A. Misrepresentations in Employment . . . . .	21
B. Payments for Employment Information . . . . .	21

British Columbia Employment Standards Act: Quick Reference

C.	Hiring Children . . . . .	22
D.	Domestic Employees . . . . .	23
III.	Wages . . . . .	24
A.	Minimum Wages . . . . .	24
B.	Payment of Wages . . . . .	26
i.	<i>Method of Payment</i> . . . . .	26
ii.	<i>Paydays</i> . . . . .	27
iii.	<i>Payment if an Employee is Terminated</i> . . . . .	28
iv.	<i>Payment of Wages where an Employee Cannot be Located</i> . . . . .	29
C.	Deductions from Wages . . . . .	30
D.	Assignment of Wages . . . . .	31
E.	Special Clothing . . . . .	32
F.	Wage Statements . . . . .	34
G.	Payroll Records . . . . .	35
IV.	Scheduling—Breaks, Shifts, and Overtime . . . . .	36
A.	Meal Breaks . . . . .	36
B.	Split Shifts . . . . .	37
C.	Minimum Daily Hours . . . . .	37
D.	Hours Free From Work . . . . .	38
E.	Averaging Agreements . . . . .	39
F.	Overtime Hours . . . . .	42
i.	<i>Overtime Generally</i> . . . . .	42
ii.	<i>Banking Overtime Wages</i> . . . . .	44
V.	Statutory Holidays . . . . .	46
A.	Prescribed Statutory Holidays . . . . .	46
B.	Entitlement to Statutory Holidays . . . . .	46
C.	Statutory Holiday Pay . . . . .	47
D.	Where an Employee is Required to Work on a Statutory Holiday . . . . .	48
E.	Where the Statutory Holiday Falls on the Employee’s Day Off . . . . .	49
F.	Substituting Another Day for a Statutory Holiday . . . . .	49
VI.	Leaves and Jury Duty . . . . .	49
A.	Pregnancy Leave . . . . .	49
B.	Parental Leave . . . . .	51

## Table of Contents

C.	Family Responsibility Leave . . . . .	53
D.	Compassionate Care Leave . . . . .	53
E.	Bereavement Leave . . . . .	54
F.	Leave Respecting Disappearance of a Child . . . . .	54
G.	Leave Respecting Death of a Child . . . . .	55
H.	Reservists' Leave . . . . .	56
I.	Employer's Obligations to Employees on Leave and on Jury Duty . . . . .	57
J.	Employment Deemed Continuous . . . . .	58
VII.	Annual Vacations . . . . .	59
A.	Vacation Entitlement . . . . .	60
B.	Vacation Pay . . . . .	61
VIII.	Termination and Lay-off . . . . .	63
A.	Termination of Employment . . . . .	63
i.	<i>ESA Provisions</i> . . . . .	63
ii.	<i>ESA v. Common Law</i> . . . . .	68
B.	Temporary Lay-offs . . . . .	69
C.	Group Terminations . . . . .	70
D.	Exceptions to the Termination Requirements . . . . .	71
E.	"Substantial Alterations" of the Employment Relationship . . . . .	74
IX.	Variances . . . . .	75
X.	Complaint, Investigation and Determination Procedures . . . . .	78
A.	Complaints . . . . .	79
i.	<i>General Principles</i> . . . . .	79
ii.	<i>Expediting Complaints</i> . . . . .	82
iii.	<i>Ongoing Non-Compliance</i> . . . . .	82
B.	Investigations . . . . .	83
C.	Settlement Agreements . . . . .	87
D.	Determinations and Consequences . . . . .	87
E.	Wage Repayment . . . . .	90
F.	Notification of a Determination . . . . .	91
G.	Pursuing a Civil Action for <i>ESA</i> Rights . . . . .	91
XI.	Enforcement . . . . .	92
A.	Liens . . . . .	92

## British Columbia Employment Standards Act: Quick Reference

B.	Payment of Interest . . . . .	93
C.	Demands on Third Parties . . . . .	94
D.	Filing of a Determination, Settlement Agreement or Order . . . .	94
E.	Seizure of Assets . . . . .	95
F.	Liability of Associated Corporations and Corporate Officers . . .	96
i.	<i>Associated Corporations, Partnerships, Societies, etc.</i> . . . . .	96
ii.	<i>Corporate Officers and Directors</i> . . . . .	97
G.	Sale of Business or Assets . . . . .	98
H.	Monetary Penalties . . . . .	98
I.	Publication of Violators' Names . . . . .	100
J.	Offences . . . . .	100
K.	Appeals . . . . .	101

## **EMPLOYMENT STANDARDS ACT**

### **PART 1 — INTRODUCTORY PROVISIONS**

1	Definitions . . . . .	107
2	Purposes of this Act . . . . .	113
3	Scope of this Act . . . . .	113
4	Requirements of this Act cannot be waived . . . . .	116
5	Promoting awareness of employment standards . . . . .	116
6	[Repealed 2002, c. 42, s. 3.] . . . . .	116
7	[Repealed 2003, c. 65, s. 2.] . . . . .	116

### **PART 2 — HIRING EMPLOYEES**

8	No false representations . . . . .	116
9	Hiring children . . . . .	116
10	No charge for hiring or providing information . . . . .	117
11	No fees to other persons . . . . .	117
12	Employment agencies must be licensed . . . . .	117
12.1	[Proposed] Silviculture contractors must be licensed . . . . .	118
13	Farm labour contractors must be licensed . . . . .	118
14	Written employment contract required for domestics . . . . .	118
15	Register of employees working in residences . . . . .	119

## Table of Contents

### **PART 3 — WAGES, SPECIAL CLOTHING AND RECORDS**

16	Employers required to pay minimum wage . . . . .	119
17	Paydays . . . . .	119
18	If employment is terminated . . . . .	119
19	If employee cannot be located . . . . .	119
20	How wages are paid . . . . .	120
21	Deductions . . . . .	120
22	Assignments. . . . .	121
23	Employer's duty to make assigned payments . . . . .	121
24	How an assignment is cancelled . . . . .	121
25	Special clothing . . . . .	122
26	Payments by employer to funds, insurers or others . . . . .	122
27	Wage statements . . . . .	122
28	Payroll records . . . . .	123
29	[Repealed 2002, c. 42, s. 10.] . . . . .	124
30	Producer and farm labour contractor are liable for unpaid wages. . . . .	124
30.1	Liability of farm labour contractor for transportation costs . . .	125
30.2	Enforcement of administrative fee . . . . .	126

### **PART 4 — HOURS OF WORK AND OVERTIME**

31	[Repealed 2002, c. 42, s. 12.] . . . . .	126
32	Meal breaks. . . . .	126
33	Split shifts . . . . .	127
34	Minimum daily hours . . . . .	127
35	Maximum hours of work before overtime applies . . . . .	128
36	Hours free from work . . . . .	128
37	Agreements to average hours of work . . . . .	128
38	[Repealed 2002, c. 42, s. 18.] . . . . .	131
39	No excessive hours . . . . .	131
40	Overtime wages for employees not on a flexible work schedule. . . . .	131
41	[Repealed 2002, c. 42, s. 20.] . . . . .	132
42	Banking of overtime wages . . . . .	132
43	[Repealed 2002, c. 42, s. 22.] . . . . .	133

British Columbia Employment Standards Act: Quick Reference

**PART 5 — STATUTORY HOLIDAYS**

44	Entitlement to statutory holiday . . . . .	133
45	Statutory holiday pay . . . . .	133
46	If employee is required to work on statutory holiday . . . . .	134
47	[Repealed 2002, c. 42, s. 23.] . . . . .	134
48	Substituting another day for a statutory holiday . . . . .	134
49	[Repealed 2002, c. 42, s. 25.] . . . . .	135

**PART 6 — LEAVES AND JURY DUTY**

50	Pregnancy leave . . . . .	135
51	Parental leave . . . . .	136
52	Family responsibility leave . . . . .	137
52.1	Compassionate care leave . . . . .	137
52.2	Reservists' leave . . . . .	138
52.3	Leave respecting disappearance of child . . . . .	140
52.4	Leave respecting death of child . . . . .	142
53	Bereavement leave . . . . .	142
54	Duties of employer . . . . .	143
55	Jury duty . . . . .	143
56	Employment deemed continuous while employee on leave or jury duty . . . . .	143

**PART 7 — ANNUAL VACATION**

57	Entitlement to annual vacation . . . . .	144
58	Vacation pay . . . . .	144
59	Other payments or benefits do not affect vacation rights . . . . .	145
60	Common date for calculating vacation entitlement . . . . .	145
61	[Repealed 2002, c. 42, s. 29.] . . . . .	145

**PART 8 — TERMINATION OF EMPLOYMENT**

62	Definition . . . . .	146
63	Liability resulting from length of service . . . . .	146
64	Group terminations . . . . .	147
65	Exceptions . . . . .	148
66	Director may determine employment has been terminated . . . . .	149

## Table of Contents

67	Rules about notice . . . . .	149
68	Rules about payments . . . . .	150
69	[Repealed 2002, c. 42, s. 34.] . . . . .	150
70	[Repealed 2002, c. 42, s. 35.] . . . . .	150
71	Adjustment committee . . . . .	150

### **PART 9 — VARIANCES**

72	Application for variance . . . . .	151
73	Power to grant variance . . . . .	152

### **PART 10 — COMPLAINTS, INVESTIGATIONS AND DETERMINATIONS**

74	Complaint and time limit . . . . .	153
75	If complainant requests identity be kept confidential . . . . .	153
76	Investigations . . . . .	154
77	Opportunity to respond . . . . .	154
78	Settlement agreements . . . . .	154
79	Determinations and consequences . . . . .	155
80	Limit on amount of wages required to be paid . . . . .	157
81	Notifying others of determination . . . . .	158
82	No other proceedings . . . . .	159
83	Employee not to be mistreated because of complaint or investigation . . . . .	159
84	Power to compel persons to answer questions and order disclosure . . . . .	160
84.1	Maintenance of order at hearings . . . . .	160
84.2	Contempt proceeding for uncooperative person . . . . .	161
84.3	Immunity protection . . . . .	161
85	Entry and inspection powers . . . . .	162
86	Power to reconsider . . . . .	162
86.1	No jurisdiction to determine constitutional question . . . . .	163
86.2	Director without jurisdiction to apply the <i>Human Rights Code</i> . . . . .	163

### **PART 11 — ENFORCEMENT**

87	Lien for unpaid wages . . . . .	163
88	Payment of interest . . . . .	165

## British Columbia Employment Standards Act: Quick Reference

89	Demand on third party . . . . .	166
90	Failure to comply with demand . . . . .	167
91	Determination or order may be filed and enforced as judgment . . . . .	167
92	Seizure of assets . . . . .	168
93	Release of assets . . . . .	168
94	Wrongful removal of seized assets . . . . .	169
95	Associated corporations . . . . .	169
96	Corporate officer's liability for unpaid wages . . . . .	169
97	Sale of business or assets . . . . .	170
98	Monetary penalties . . . . .	170
99	If money is paid to director . . . . .	171
100	Security to ensure compliance . . . . .	173
101	Publication of violators' names . . . . .	173
101.1	Searching of records . . . . .	173

### **PART 12 — EMPLOYMENT STANDARDS TRIBUNAL**

102	Employment Standards Tribunal continued . . . . .	174
103	Application of <i>Administrative Tribunals Act</i> . . . . .	174
104	Chair may delegate authority . . . . .	175
105	Employees . . . . .	176
106	Organization of tribunal . . . . .	176
107	[Repealed 2004, c. 45, s. 91.] . . . . .	176
108	[Repealed 2004, c. 45, s. 91.] . . . . .	177
109	Other powers of tribunal . . . . .	177
110	Exclusive jurisdiction of tribunal . . . . .	178
111	[Repealed 2004, c. 45, s. 91.] . . . . .	178

### **PART 13 — APPEALS**

112	Appeal of director's determination . . . . .	178
113	Director's determination may be suspended . . . . .	179
114	After an appeal is requested . . . . .	180
115	Tribunal's orders . . . . .	181
116	Reconsideration of orders and decisions . . . . .	181



## Table of Contents

### **PART 14 — GENERAL PROVISIONS**

117	Director's power to delegate . . . . .	182
118	Right to sue preserved . . . . .	182
119	Extrajurisdictional certificates . . . . .	182
120	Warrant to carry out inspection powers . . . . .	184
121	Director cannot be required to give evidence in other proceedings . . . . .	184
122	Service of determinations and demands . . . . .	184
123	Irregularities . . . . .	185
124	Limitation period . . . . .	185
125	Offences . . . . .	185
126	Evidence and burden of proof . . . . .	185
127	Power to make regulations . . . . .	186

### **PART 15 — TRANSITIONAL AND CONSEQUENTIAL PROVISIONS**

128	Transition from former Act . . . . .	190
129	Transitional regulations . . . . .	191

### **396/95 — EMPLOYMENT STANDARDS REGULATION**

#### **PART 1 — INTERPRETATION**

1	Definitions . . . . .	197
---	-----------------------	-----

#### **PART 2 — EMPLOYMENT AGENCIES AND FARM LABOUR CONTRACTORS**

2	Licensing of employment agencies . . . . .	203
3	Employment agency records . . . . .	203
4	Cancellation or suspension of employment agency licence . . . . .	204
5	Licensing of farm labour contractors . . . . .	204
5.1	Calculation of security . . . . .	205
6	Duties of farm labour contractors . . . . .	206
6.1	Additional duties of farm labour contractors—posting safety notices in vehicles . . . . .	208
6.2	Administrative fee—transportation costs . . . . .	209
7	Cancellation or suspension of farm labour contractor's licence . . . . .	209
8	If there is a change of directors or officers . . . . .	210
9	Rules about licences . . . . .	210

## British Columbia Employment Standards Act: Quick Reference

10	If a licence is refused, cancelled or suspended . . . . .	211
11	Surrender of licence . . . . .	211
12	Appeals from the refusal, cancellation and suspension of a licence . . . . .	211

### **PART 3 — EMPLOYEES WORKING IN RESIDENCES**

13	Registry information . . . . .	212
14	Maximum room and board rates for domestics . . . . .	212

### **PART 4 — MINIMUM WAGES**

15	Minimum hourly wage . . . . .	213
16	Minimum daily wage . . . . .	213
17	Minimum wage—resident caretakers . . . . .	214
18	Minimum wage—farm workers . . . . .	215
18.1	Minimum wage—liquor servers . . . . .	217

### **PART 5 — HOURS OF WORK AND STATUTORY HOLIDAY PAY**

19-21	[Repealed B.C. Reg. 307/2002, s. 5.] . . . . .	218
22	Rest periods for residential care workers . . . . .	218
23	[Repealed B.C. Reg. 196/2003, Sched., s. 2.] . . . . .	218
24	[Repealed B.C. Reg. 307/2002, s. 7.] . . . . .	218

### **PART 6 — INTEREST AND PENALTIES**

25	Interest on money owing by employer . . . . .	218
26	Investigation without a complaint . . . . .	219
27	Interest on money received by the director . . . . .	219
28	[Repealed B.C. Reg. 307/2002, s. 10.] . . . . .	219
29	Administrative penalties . . . . .	219

### **PART 7 — VARIANCES AND EXCLUSIONS**

30	How to apply for a variance . . . . .	221
30.1	[Repealed March 1, 1996.] . . . . .	221
31	Professions and occupations excluded from the Act . . . . .	221
32	Employees excluded from the Act . . . . .	223
33	Exclusions from Parts of the Act and this regulation . . . . .	224
34	Exclusions from hours of work and overtime requirements . . . . .	224

## Table of Contents

34.1	Farm workers . . . . .	227
34.2	Hours of work and overtime for livestock brand inspectors . . .	227
35	Resident caretakers . . . . .	227
35.1	Election workers . . . . .	228
36	Exclusion from statutory holiday pay requirements . . . . .	228
36.1	[Repealed B.C. Reg. 196/2003, Sched., s. 4.] . . . . .	228
37	Fishers. . . . .	228
37.1	Taxi drivers . . . . .	228
37.2	Logging truck drivers. . . . .	229
37.3	Truck drivers. . . . .	229
37.31	Container truckers. . . . .	230
37.4	Newspaper carriers . . . . .	230
37.5	Oil and gas field workers paid by an hourly rate—exclusion from section 36(1) of the Act . . . . .	230
37.51	Specific oil and gas field workers paid by an hourly rate—rest periods and pay for interruption in rest periods. . . . .	231
37.6	Oil and gas field workers who are paid other than by an hourly rate . . . . .	232
37.61	Oil and gas field workers under section 37.6— exclusion from section 36(1) of the Act . . . . .	232
37.62	Oil and gas field workers under section 37.6— “regular salary”. . . . .	232
37.63	Oil and gas field workers under section 37.6— paydays and bonus pay . . . . .	233
37.64	Oil and gas field workers under section 37.6— overtime wages. . . . .	234
37.65	Oil and gas field vacuum workers under section 37.6—rest periods and periods and pay for interruption in rest periods . .	235
37.7	Loggers working in Interior. . . . .	236
37.8	Exclusions—high technology companies. . . . .	237
37.9	Silviculture workers . . . . .	239
37.10	Construction workers. . . . .	241
37.11	Municipal police recruits . . . . .	242
37.12	Aquaculture—fin fish workers . . . . .	242
37.13	Mining. . . . .	243
37.14	Commission sales. . . . .	244

## British Columbia Employment Standards Act: Quick Reference

37.15	Foster care . . . . .	245
37.16	Ice hockey players . . . . .	245
38	Licensing of talent agencies . . . . .	246
38.1	Compliance requirements—talent agencies . . . . .	247
39	Exclusions from farm labour contractor licensing requirements . . . . .	249
40	Exclusions from payday requirements . . . . .	249
40.1	Exclusions from payday requirements for certain farm workers . . . . .	250
40.2	Exclusion from payment options for farm labour contractors . . . . .	250
41	[Repealed B.C. Reg. 307/2002, s. 25.] . . . . .	250
42	Exclusions from hours-of-work requirements . . . . .	250
43	Exclusions from minimum hours requirements . . . . .	251
44	Exclusions from overtime pay requirements . . . . .	251
45	Exclusion from liability provisions . . . . .	252

### **PART 7.1 — CONDITIONS OF EMPLOYMENT FOR CHILDREN**

#### **DIVISION 1 — CHILDREN GENERALLY**

45.1	Application . . . . .	252
45.2	Exclusions from the Act . . . . .	252
45.3	Limits on working hours . . . . .	252
45.4	Adult supervision required . . . . .	253

#### **DIVISION 2 — CHILDREN IN RECORDED ENTERTAINMENT INDUSTRY**

45.5	Definitions and application . . . . .	253
45.6	Exclusions from the Act . . . . .	253
45.7	Minimum age . . . . .	254
45.8	Limits on daily hours . . . . .	254
45.9	No split shifts and maximum limit on breaks . . . . .	254
45.10	Time before recording device and breaks . . . . .	255
45.11	Hours free from work . . . . .	255
45.12	Work week . . . . .	256
45.13	Chaperones . . . . .	256
45.14	Income protection . . . . .	257

## Table of Contents

### **DIVISION 3 — CHILDREN IN LIVE ENTERTAINMENT INDUSTRY**

45.15	Definition and application . . . . .	257
45.16	Exclusions from the Act . . . . .	258
45.17	Limits on daily hours. . . . .	258
45.18	Hours free from work . . . . .	258
45.19	Chaperones . . . . .	258
45.20	Income protection . . . . .	259

### **PART 8 — MISCELLANEOUS**

46	Production of Records. . . . .	260
47	Complaints of contraventions of this regulation. . . . .	260
48	Definition . . . . .	260
49	Appeals in cases where the tribunal is the employer. . . . .	260
50	Enforcement of orders of associate chair . . . . .	261
51	Fee to search director’s records . . . . .	261
	Appendix 1 [Repealed B.C. Reg. 307/2002, s. 29.] . . . . .	262
	Appendix 2 [Repealed B.C. Reg. 307/2002, s. 29.] . . . . .	262
	Appendix 3 Oil and Gas Well Drilling and Servicing Occupations — Hourly Rate of Pay . . . . .	262
	Appendix 4 [Repealed B.C. Reg. 29/2005, Sched., s. 2.] . . . . .	263

### **281/2006 — COMPASSIONATE CARE LEAVE REGULATION**

1	Definition . . . . .	263
2	Prescribed classes of individuals—“family member”. . . . .	263

### **254/2016 — RESERVISTS’ LEAVE REGULATION**

1	Definition . . . . .	265
2	Leave in relation to training activities . . . . .	265
<i>Index</i>	. . . . .	267