



HEALTH SCIENCES ASSOCIATION

The union delivering modern health care

*Submission to the Minister of Labour on the
Modernization of the Employment Standards Act*

March, 2019

Via Email: ESAReview@gov.bc.ca

Health Sciences Association of BC
180 East Columbia Street, New Westminster, BC V3L 0G7
www.hsabc.org

Introduction

Thank you for the opportunity to share our insights on needed reforms to the *Employment Standards Act*. For the last 16 years we have watched as the rights and protections of working people were eroded, and it is a welcome opportunity to discuss how to restore needed safeguards for British Columbians.

The Health Sciences Association is a union representing over 18,000 highly skilled professionals working in health care and community social services at hundreds of facilities around BC. While our members are protected by robust Collective Agreements that provides them good wages, benefits and protection – many of the clients and patients we serve are not. As health care and community service professionals, our members know well the social determinants of health, and see first-hand the impact of poverty, economic insecurity and exploitation.

The *Employment Standards Act* is critical to ensuring that the rights of all workers – especially those most vulnerable – are protected from abuse. It must be a universal floor that provides a fair and just set of rules that governs the relationship between employees and their employers. And beyond the rules, we need assurances that laws are enforceable and that the Employment Standards Branch is proactive and responsive.

Further, there should be no exceptions to the Act. This means eliminating the current exemptions – tech workers and farm workers, for example – and prohibiting differential treatment of casual, term or temporary employees.

Thank you for the opportunity to provide our thoughts on the 6 proposed themes. Improvements in these areas are long overdue, and we look forward to an ongoing conversation on how to best protect the rights of working people in BC.

Theme One: Increasing protection of child workers

Currently children as young as 12 years old can work legally in BC. We believe that is too young, especially with weak laws that put children and youth at risk of injury and exploitation.

The minimum age for formal employment should be raised to 16 years old, with any exceptions to be defined in regulations and with assurance that safety concerns have been addressed.

HSA supports the recommendations of First Call and the BC Federation of Labour:

- The minimum age for formal employment of children be 16 (with exceptions for light work), consistent with the Government of Canada's ratification of International Labour Organization Convention 138 on the minimum age for employment, and Canada's commitment to a work age of 16 years and prohibition of hazardous work for those under the age of 18;

- A permit from the Director of Employment Standards be required for the employment of children under age 16;
- Prohibit the employment of children under the age of 12 with the exception of the entertainment industry and its current permit system;
- With respect to the employment of children and adolescents 12 to 15 years, the government must:
 - Develop lists of acceptable “light work” including tasks and workplaces that do not threaten the health and safety or hinder the education of children (12-13) or younger adolescents (14-15);
 - Place limits on the time-of-day for work, appropriate to age groups, e.g., prohibit late night and over-night work; and
 - Place limits on the length of worktime on a daily and weekly basis appropriate to age groups, e.g., no more than four hours per day on a school day for children;
- Ensure hazardous tasks and worksites are entirely off-limits to workers aged 16- 17; and
- Mandate adequately-resourced, government-led enforcement to ensure employer compliance and inform government’s policy monitoring.

Theme Two: Transforming the Employment Standards Branch

The BC Liberal government slashed funding to the ESB and created the ‘Self Help Kit’ leaving workers to navigate a complicated system without support or protection. Simply put, we need to eliminate the Self Help Kit and return to a model where workers can receive guidance when making a complaint against their employer. Workers must be supported and protected through any complaint process, and employers found to have violated the law must face significant penalties.

But more than just respond to complaints, the ESB should also be proactive in investigating problematic industries and alive to changing work trends. This may also include conducting research that informs its work and helps identify any gaps.

HSA supports the recommendations of the BC Federation of Labour:

- Get rid of the self-help kit immediately and provide direct support for workers who have a complaint;
- Allow anonymous third-party complaints or “tips” and investigate these complaints;

- Ensure that workers get full compensation for wage theft and other violations of the Act;
- Develop mandatory statutory timelines to ensure the expeditious resolve of complaints;
- Engage in proactive enforcement;
- Increase penalties to deter employers from breaking the law, and have escalating penalties for repeat and frequent offenders;
- Increase funding to the Branch significantly so that it can perform its function; and
- Conduct research on employment trends and compliance with the law.

Theme Three: Supporting families with job-protected leaves of absence

Job-protected leaves of absences should be expanded in BC, and we would strongly encourage the government to consider paid leave in a variety of circumstances.

All category of leaves should be stand-alone entitlements, not a combined number of days that may cover a variety of leave scenarios. This kind of lump sum option discriminates against the primary caregiver of a family, often the woman, who may face more caretaking responsibilities and need time away from work to fulfill those obligations.

HSA supports the recommendations of the BC Federation of Labour:

- Ensure that new leave entitlements stand alone and are not combined with any other leave; and
- Expand the definition of immediate family to include, “a person in a close, family-like relationship with an employee”.

In addition to the list of potential leaves noted in the consultation paper, sick leave and leave for victims of intimate/personal and relationship violence should be included. We strongly encourage the government to provide paid leave in these areas.

BC is currently the only province in Canada that does not protect a worker when they are too sick to work. There are many good reasons why workers should not go to work when they are sick – yet, if the loss of their job is a factor, many will ignore public and personal health concerns. Paid sick leave should be available to all workers in BC.

HSA supports the recommendations of the BC Federation of Labour:

- Include sick leave as a job-protected leave;
- Include attending medical appointments as job-protected sick leave; and
- Restrict employer requirements for medical notes for short absences, as requiring unnecessary notes puts a burden on our health care system and results in prohibitive fees for workers.

We also know that intimate, personal and relationship violence follows workers into the workplace. In many cases, these are critical concerns about safety, family security, or recovery. No one facing these challenges should also be worried about losing their job. Economic security is a critical factor for a worker fleeing violence.

HSA supports the recommendations of the BC Federation of Labour:

- Provide protected leave for individuals facing intimate, personal, and relationship violence;
- Include leave provisions for survivors of sexual assault;
- Ensure no less than ten days paid leave per year should be provided, with at least 17 weeks total leave time; and
- Ensure leave is available to all employees

Theme Four: Strengthening workers ability to recover wages owed

Wage theft is a major problem and it can take many forms: not paying overtime or holidays, paying less than minimum wage, failing to provide breaks, taking tips, not paying for training, and more.

The ESB needs to do more to educate workers about their rights, so they can identify when wage theft is happening. Unscrupulous employers can take advantage of workers who don't know the law. In addition, the limitation period for the filing of a complaint at the ESB should be extended to ensure that workers have an adequate opportunity to pursue their rights.

Further, the current 6-month window for the recovery of wages is too short and should be extended to 3 years.

Finally, the topic of tips must also be addressed. The Act should confirm that tips/gratuities belong to the employee to which they were given. Managers and owners should not be able to take tips intended for their employees.

HSA supports the recommendations of the BC Federation of Labour:

- Extend the limitation period for filing a complaint at the ESB to two years;
- Re-extend the wage recovery period to three years; and
- Clarify that tips and gratuities belong to the worker to whom they were given.

Theme Five: Clarifying hours of work and overtime standards

Simply put, all workers should be covered by the same minimum standards with respect to hours of work and overtime, including farmworkers and tech workers.

Workers deserve more certainty of schedules and shifts in order to effectively manage family and other responsibilities, and should be able to request changes to their schedule without fear of reprisal.

Many people working in BC are holding down two or more jobs, caring for children or aging parents, and striving to be active members of their community. Last minutes call-ins and unexpected overtime creates unmanageable situations that disadvantages working people.

HSA supports the recommendations of the BC Federation of Labour:

- Ensure work schedules are given to employees with reasonable notice, and that shifts are not changed without 24 hours notice;
- Restore Section 34 (Minimum Daily Hours), which required a minimum of four hours pay to an employee if work had been started, and two hours pay if work had not been started;
- Restore Section 35 (Maximum Hours of Work) requiring overtime wages to be paid after eight hours per day or 40 hours per week, and implement the recommendation of the BC Employment Standards Coalition that a new higher standard based on seven hours per day and 35 hours per week be adopted;
- Implement a voluntary right to refuse overtime;
- Restore Section 36 (Hours Free from Work) requiring double time pay to be paid if an employee is required to work during the weekly 32-hour, free-from-work period; and
- Restore pre-2002 flexible work schedule provisions and repeal current overtime averaging provisions (Section 37).

Theme Six: Improving fairness for terminated workers

Employment is critical to a person's economic security, and so it is important that the relationship between an employee and their employer be guided by a substantive set of rules. Currently, an employer does not need cause to terminate an employee, making it difficult for a worker to seek recourse if unfairly terminated.

HSA supports the recommendations of the BC Federation of Labour:

- Eliminate the three-month eligibility requirement for termination notice or pay-in-lieu of notice;
- Require employers to have "just cause" for terminating an employee's employment to protect workers from unjust dismissal;
- Require employers to provide notice of termination, or pay-in-lieu of notice, where an employee is laid off, based on the total length of employment, including seasonal employees who have recurring periods of layoff beyond the 13-week layoff period; and
- Implement an expedited adjudication process for workers who have been unjustly dismissed.

Conclusion

As a union that advocates for the rights and protections of our members, we also believe it is our responsibility to advance the rights of all working people in BC. A strong economy – one that truly serves all people - must be built from a place of fairness and respect. That is why we are encouraged by the efforts of your government to restore balance to the *Employment Standards Act* and ensure that all workers contributing to our communities, our province and our economy are provided the rights they deserve.

Thank you for receiving our submission.

Sincerely,

A handwritten signature in black ink that reads "Val Avery". The signature is written in a cursive, flowing style.

Val Avery
President, Health Sciences Association