



March 2019

Submission to the Ministry of Labour regarding modernizing the Employment Standards Act

Public Service Alliance of Canada, BC Region

Who We Are

The Public Service Alliance of Canada BC Region represents 18,000 workers employed in large and small communities throughout British Columbia. PSAC BC members work for the federal government, agencies, and crown corporations and in the transportation, security, and community service sector.

Nationally, the Public Service Alliance of Canada is one of the country's largest unions, representing over 180,000 workers in every province and territory in Canada and in locations around the world.

Overview

In 2001, the BC Liberal government stripped employment standards protections and cut the budget for enforcement. Temporary, gig and precarious work is on the rise, but the laws are not protecting these workers.

Temporary foreign workers and undocumented workers also face a lack of protection due to limited enforcement of employment standards laws and workers have been left to essentially fend for themselves with a self-help kit that forces them to confront their employer on their own.

PSAC BC believes that improvements to the Act are long-overdue, and the government should act quickly to protect workers. The Employment Standards Act should be a universal floor that provides a fair and just level of protection to all workers in BC. Change is going to take more than new laws - it also requires a rethink on how the Employment Standards Branch operates.

Theme 1: Increasing protection of child workers

Currently, children as young as 12 can legally work in BC, in almost every industry including food service, accommodation, farming, construction and manufacturing. Due to these weak laws, children and youth are at risk of injury or event death. Since 2003, over 2000 children under the age of 15 have claimed work-related health care costs due to injuries – the government must do more to protect children.

PSAC BC recommends that the Employment Standards Act be modified such that the minimum age for formal employment be raised to 16 with limited exceptions for appropriate light work as defined in regulations and; that work performed by children under the age of 16 should require a permit issued by the employment standards branch to ensure the work conforms with regulations.

Theme 2: Transforming the Employment Standards Branch

The current model is not working – workers are often left to fend for themselves. The BC Liberal government slashed supports and left workers with a self-help kit, which does not provide sufficient assistance to workers.



Workers must be supported and protected through the complaint process. They also deserve full compensation for any loss and there must be significant penalties for employers who break the law.

PSAC BC recommends that the Employment Standards Act be modified such that a formal anonymous and third-party complaint system be established.

Because of the fear of reprisal, most complaints are only filed after a worker has severed employment. An anonymous or third-party complaints system would help to ensure a timely resolve of workplace issues.

PSAC BC recommends that the Employment Standards Branch be proactive in responding to problematic industries and changing work trends and that, rather than allowing practices that break the law to become established and harder to reverse, the Employment Standards Branch should clearly set out how the rules apply to these industries.

Lastly, PSAC BC recommends that the Employment Standards Branch receive significantly more funding so that it can meet its legislative requirements.

Theme 3: Supporting families through difficult times with job-protected leaves of absence

PSAC BC believes that job-protected leaves in BC need to be expanded and there should be no qualification threshold required to access leaves of absence. Leaves should be standalone entitlements instead of being combined with other family leaves so primary child care providers, usually women, are not discriminated against. Finally, paid leave should be considered.

For the reasons outlined below, PSAC BC recommends that the Employment Standards Act be modified to include intimate, personal and relationship violence leave.

Intimate, personal and relationship violence (domestic violence) have an impact on the workplace. Workers should have access to leave for intimate, personal and relationship violence so that victims can keep themselves and their children safe. Survivors may need leave for many reasons including seeking support, counselling, legal advice and finding a safe place to live. Economic security provides critical stability for workers who need to leave a violent relationship.

Other provinces are taking the lead – Manitoba, Newfoundland and Labrador, Prince Edward Island, New Brunswick and Ontario all provide between three and five days of paid leave in addition to a period of unpaid leave.

For the reasons outlined below, PSAC BC recommends that the Employment Standards Act be modified to include sick leave.

BC is the only province that does not protect workers when they are too sick to work. Currently under BC's Employment Standards, workers are entitled to a day off work to attend to a sick child but not for their own illness. This doesn't make sense.

There are many good reasons why people shouldn't go to work sick. It stops the spread of contagious viruses to customers and colleagues especially for those working with vulnerable populations (children, seniors, disabled) or in food services, it improves recovery time, and it reduces the inequity faced by low wage workers who are least likely to have access to sick days.



Lastly, PSAC BC recommends that the Employment Standards Act be modified such that vacation entitlement be expanded, so that all workers have access to a minimum of three weeks paid vacation.

Theme 4: Recommendations: Strengthening workers' ability to recover wages/monies owed

PSAC BC believes that the Employment Standards Act must be a universal set of standards that establishes the minimum set of rights every worker can count on - there should be no exemptions to the Act, this includes eliminating current exemptions for tech workers, farm workers and workers who have a collective agreement. Differential treatment should also be prohibited for casual, term, temporary and part time workers.

Wage theft is a rampant problem that takes many forms including not paying wages owed for time worked, overtime and holidays; paying less than minimum wage; failing to provide breaks; stealing tips; refusing to pay for training and making improper deductions such as charging for breakage.

PSAC BC recommends that the Employment Standards Act be modified such that the wage recovery be extended to 3 years. The current period is only six months.

PSAC BC recommends that the Employment Standards Act be modified such that the Act confirms that tips or gratuities are the property of the employee to who or for who they were given. Managers and owners should not be entitled to take tips intended for their employees.

Theme 5: Recommendations: Clarifying hours of work and overtime standards

Workers need more certainty and notice about their work schedules. Many employers use on demand scheduling systems that result in last minute call outs and cancellations. Workers should be able to request changes to their schedule without fear of reprisal.

PSAC BC recommends that in order to allow workers to effectively balance their personal and work life, employers be required to post shift schedules in advance and all changes should require at least 24 hours' notice.

PSAC BC recommends that minimum shift length provisions be restored to four hours for work that has started and two hours if work has not started.

PSAC BC recommends that overtime work be voluntary except in emergency situations and double time pay should be required if workers are required to work during the 32-hour free from work period

PSAC BC recommends the restoration of double time pay after 12 hours per day and 48 hours per week as well as the pre-2002 flexible work schedule provisions, replacing the current overtime averaging provisions in the Employment Standards Act.

Theme 6: Recommendations: Improving fairness for terminated workers

A job is critical to a person's personal and family security. The Employment Standards Act must protect the employment relationship through a substantive set of rules, not the current protections which are insufficient and only require notice, not cause for termination.



PSAC BC recommends that the 3-month eligibility requirement for termination notice or pay in lieu should be eliminated from the Act.

PSAC BC recommends that employers must show “just cause” for terminating an employment relationship and that employers should be required to provide notice of termination or pay in lieu of notice based on the total length of employment, including seasonal or other recurring breaks.

Lastly, PSAC BC recommends that an expedited adjudication process be implemented for workers who have been unjustly dismissed.

Thank you for the opportunity to contribute to this important process.