



EMPLOYMENT STANDARDS ACT REVIEW

Submission to the B.C. Ministry of Labour

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The Hospital Employees' Union
www.heu.org

HEU submission on Employment Standards Review 2019

Introduction

The Hospital Employees' Union (HEU) is the oldest and largest health care union in British Columbia (BC). We are proud to represent almost 50,000 members who perform vital frontline care and support work in health care sectors across BC. Our members work in long-term care, acute care, community health and community social services, for both public and private employers.

In 2001, the BC Liberal government eroded employment standards and cut the budget for enforcement. Today, while precarious work is increasing, BC's employment standards fail to protect workers. BC's *Employment Standards Act* (ESA), and its regulations and enforcement, need improvement and modernization to better reflect the changing nature of workplaces and experiences of work. We believe the ESA should be a universal floor that provides fair working conditions, equitable access to rights and remedies, and strong protection for all workers in all industries. We urge the government to act quickly to undertake comprehensive, progressive reforms to the ESA and the Employment Standards Branch (ESB).

To this end, we welcome the opportunity to provide our input on the six thematic areas identified for potential amendments to the ESA. This submission is made on behalf of our members and for all workers, particularly those in precarious work situations and without the benefits of unionization, who experience first-hand the shortfalls of our current employment standards. As a member organization, our submission echoes the recommendations made by the BC Federation of Labour (BCFED) and the BC Employment Standards Coalition (BCESC).

Theme 1: Increasing protection of child workers

HEU strongly supports the implementation of Canada's commitment under ILO Convention 138, which is upheld in the recommendations related to child and youth employment made by First Call, the BC Child and Youth Advocacy Coalition. This includes moving the minimum age for formal employment to 16 (with exceptions for 'light work' as defined by the regulations, and with a permit obtained by the ESB), and developing age-appropriate limits on the length of work time and time of day for work.

Theme 2: Transforming the Employment Standards Branch

Under the Liberal government, funding for the ESB was slashed, leaving it chronically under-resourced and incapacitated. Legislative and administrative changes introduced in 2002 stripped the ESB of its ability to effectively enforce basic employment standards. The ESB now functions on an individualized complaints-based and self-help model. Without proactive and robust enforcement, employment rights exist only on paper and workers are not able to exercise their rights.

Without union representation or the help of an advocate, the self-help kit is ineffective in supporting and resolving workers' complaints. The self-help kit is onerous and leaves workers to fend for themselves as they have to confront their employer alone before gaining access to the complaint process. It fails to consider the immense power imbalances that exist between workers and employers and the myriad obstacles that workers face in coming forward to lodge a complaint. These barriers include a lack of awareness of employment rights, language barriers, financial constraints, fear of reprisal, and the 6 month limitation period for filing a complaint. The obstacles are most pronounced for

HEU submission on Employment Standards Review 2019

precarious workers, including new workers to Canada and for temporary foreign workers whose ability to remain living and working in BC is tied to their employer.

Effectively, the self-help kit makes it more difficult for workers to obtain remedy for workplace issues and access justice. For non-unionized workers, complaints, if they are filed at all, are typically only made after they have left their employment.

To ensure systemic compliance with the ESA, the self-help kit must be scrapped, and the ESB fully resourced so it can carry out proactive and effective investigations and enforcement. Only then will workers be supported through the complaint process, and better protected from employer retaliation.

To this end, we strongly support the BCESC and BCFED's recommendations that include:

- Further funding and staffing to counteract 16 years of funding cuts, and an overhaul of the policies and procedures of the ESB so it can carry out proactive investigations and enforcement.
- Ensure expanded and ongoing inspections targeted towards sectors and workplaces with a high concentration of vulnerable workers, and where non-compliance is known or likely.
- Extend the limitation period for filing a complaint from 6 months to 2 years.
- Eliminate the self-help kit and ensure protection for workers whose rights have been violated.
- Create a formal anonymous or third-party complaint system to better resolve workplace issues.

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

Paid sick leave

BC is the only province that does not provide job-protected sick leave. Many high-income countries are trending towards requiring employers to provide paid sick leave. Ten US states, including Washington, Oregon and California, guarantee paid sick days. In Washington State, as of January 2018, employers are required to provide paid sick leave at a minimum of 1 hour for every 40 hours worked, including for part-time and temporary workers, from the first day of work.¹

Paid sick days are crucial for all workers, particularly for those who work in industries with a higher risk of acquiring illness or injury and who work alongside vulnerable populations. For our members who work in a variety of health care settings, paid sick days prevent the spread of contagious illnesses to co-workers and the elderly, frail, and immunocompromised patients and residents they care for.

One unfortunate consequence of health care privatization is that it fragmented the sector. This led to a proliferation of independent collective agreements which lack the mature protections of the master collective agreement and typically provide minimal sick leave provisions. While the majority of our members still have access to strong sick leave provisions, there are a handful of members with collective agreements that provide less than 7 days of sick leave. While health care workers are more exposed to illness, once they have used up their few paid sick days, they are often compelled to come to work sick so they do not lose out on pay.

Having a universal floor of paid sick leave in the ESA ensures all workers have the time and space outside of work to tend to their illness and recover quicker. To this end, we strongly support the BCESC's call to:

¹ Washington State Department of Labor & Industries. *Paid Sick Leave*. Retrieved from: <https://www.lni.wa.gov/WorkplaceRights/LeaveBenefits/VacaySick/PaidSickLeave.asp>

HEU submission on Employment Standards Review 2019

- Guarantee paid sick leave accrual of up to 52 hours (approx. 7 work days) per year, with the benefit accruing at the rate of one hour for every 35 hours worked.
- Remove exclusions (such as for casual, temporary, or unionized workers) and qualifying periods.

Further to this, we strongly disagree with the BC Law Institute Committee's recommendation of combining sick leave and family responsibility leave, as this would discriminate against and penalize workers with dependents and family caregiving responsibilities, who are overwhelmingly women.

Domestic and sexual violence leave

Domestic violence leave is fundamentally a gender equity issue in the workplace. Income security and job protection are critical factors that determine whether a victim is able to leave an unsafe relationship and seek support and safety. Unfortunately, BC lags behind other provinces on domestic violence leave. Ontario, Manitoba, Newfoundland and Labrador, Prince Edward Island, and New Brunswick all provide between 3 and 5 days of paid leave, plus an additional period of unpaid leave. Similarly, HEU members in the Facilities Bargaining Association's master collective agreement recently won domestic and sexual violence leave provisions of up to 3 days of paid special leave, as well as 17 weeks of unpaid leave for reasons related to domestic or sexual violence experienced by the employee or their dependent.

We endorse the BCFED's call for a minimum of 10 days of paid leave with a total of 17 weeks of leave for domestic and sexual violence, without any exclusions or qualifying periods.

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

Wage theft is a rampant problem experienced by workers in BC, particularly for precarious workers but even for workers who are unionized. In our members' experience, wage theft takes on the form of unpaid wages owed for time worked; unpaid or underpaid overtime, vacation, statutory holidays, or training time; no access to breaks; or being charged for breakage or loss in the workplace. HEU has been required to advocate for newly unionized workers who have experienced significant employer wage theft, in some cases going back a decade or more. While there is a process for workers to recover wages under the ESA, it is limited to the 6 month period prior to the date of the complaint or termination of employment. In this regard, our members have only been able to obtain compensation going back 6 months even if they are owed wages from years prior. Even when workers are awarded compensation, a lack of enforcement means that employers hardly ever pay up. In the end, workers rarely recover the wages they worked hard for and are entitled to.

It is important to note that the wage recovery period prior to 2002 was 2 years. Workers deserve full compensation for wage theft, and unscrupulous employers must face substantial penalties for their egregious actions.

Along these lines, we support the BCFED's recommendations to:

- Extend the wage recovery period to 3 years, and abolish exemptions.

We also support the BCESC's recommendations to:

- Increase penalties when multiple employees are affected by a violation; for violations that occur more than once within 3 years and in conjunction with any other contravention of the ESA; when employers do not surrender required documents; and to correspond with the rate of inflation.

HEU submission on Employment Standards Review 2019

Theme 5 - Clarifying hours of work and overtime standards

Under the current hours of work and overtime provisions in the ESA, workers struggle to balance their personal, family, community, and employment obligations, and they are left with little protection or redress in the face of scheduling uncertainty and change. To address this, the BCFED and BCESC make a number of recommendations that we support, including:

- Eliminate exemptions so that all workers are covered by the same minimum standards.
- Ensure the voluntary ability to refuse more than 4 hours of overtime (unless in an emergency).
- Require more certainty and notice in scheduling, including posting schedules a minimum of 2 weeks in advance.
- Replace the current overtime averaging provisions with pre-2002 flexible work schedule provisions; or alternatively, develop a higher standard for maximum hours of work and overtime pay based on 7 hours per day and 35 hours per week.

Theme 6 - Improving fairness for terminated workers

The termination provisions in the ESA are greatly lacking. Employers are not required to provide just cause for termination. And workers with less than 3 months continuous employment are excluded from notice or pay in lieu for termination. Unlike the provinces of Quebec and Nova Scotia, the Federal Labour Code, and for unionized workers who have access to the grievance procedure, non-unionized workers in BC remain unprotected from unjust dismissal and have no access to an appeal process to challenge and seek recourse for termination decisions. Civil court is the only form of recourse, but it is a costly endeavour which very few workers can afford.

Because a job is a crucial source of personal and family security, and losing a job can be devastating to workers, termination protections must be enhanced in the ESA. To this end, we fully support the BCESC and BCFED's recommendations, including those that:

- Require employers to have "just cause" for terminating an employee's employment.
- Create an expedited adjudication process for workers who have been unjustly terminated.
- Remove the 3 month eligibility period for notice of termination or pay in lieu.
- Base notice and pay in lieu on the total length of employment, incl. seasonal/recurring breaks.

Conclusion

As it stands, BC's outdated and weak employment standards contribute to the precarity that many workers endure. Workers in BC deserve strong, accessible, and equitable employment rights and protections. We thank the BC government for the opportunity to share our recommendations, and we support their interest and intent in levelling the playing field between employers and workers, and enhancing the work experience for all workers in BC, particularly the most vulnerable. While these six themes lay the groundwork to begin the much-needed reform to our employment standards, we call on the BC government to broaden the provisions under reform, including adding dependent contractors in the definition of an employee, and expanding the consultation process to engage directly with workers and stakeholder communities.