

# Employment Rights in BC

*A resource for non-unionized employees*

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**HEU**  
HOSPITAL EMPLOYEES' UNION

[www.heu.org](http://www.heu.org)

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## PART 1: INTRODUCTORY PROVISIONS

### ARTICLE 1 – PURPOSE AND LIMITATIONS

#### 1.01 Purpose of this document

This document provides a simplified statement of the employment rights of non-unionized employees in British Columbia.<sup>1</sup>

This document is produced for educational purposes. It cannot and does not cover all possible situations. It should not be relied on as a substitute for legal advice.

If you have a legal problem you should consult with an advocate or lawyer.

#### 1.02 What is covered by this document

This document covers the rights of employees in British Columbia set out in the *Employment Standards Act*, *Human Rights Code*, *Labour Relations Code*, *Workers Compensation Act* and *Personal Information Protection Act*.

This document does not cover the benefit schemes that employees are entitled to access, including those established by the *Employment Insurance Act*<sup>2</sup>, *Employment and Assistance Act*<sup>3</sup>, *Workers Compensation Act*<sup>4</sup> and *Canada Pension Plan*<sup>5</sup>.

#### 1.03 Liability warning

The law, including statutes, regulations and case precedents, can change without warning and those changes may not be reflected in this document. As a result, this document may contain inaccurate or misleading information.

Together Against Poverty Society, the Hospital Employees' Union and the authors, contributors, editors and distributors of this document are not responsible for:

- a) ensuring this document is up-to-date;
- b) ensuring the completeness or accuracy of the information contained in this document;  
or
- c) any form of damages or monetary loss caused by or attributed to the use of this document, including but not limited to claims based on negligence or breach of contract.

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<sup>1</sup> This document will also apply to unionized employees in British Columbia who do not have a first collective agreement.

<sup>2</sup> For more information about Employment Insurance, visit the following website:  
<http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml>

<sup>3</sup> For more information about income assistance, visit the following website:  
<http://www.eia.gov.bc.ca/bcea.htm>

<sup>4</sup> For more information about workers' compensation benefits, visit the following website:  
[http://www.worksafebc.com/claims/report\\_injury/worker\\_incident\\_injury\\_report/default.asp](http://www.worksafebc.com/claims/report_injury/worker_incident_injury_report/default.asp)

<sup>5</sup> For more information about the Canada Pension Plan, visit the following website:  
<https://www.canada.ca/en/services/benefits/publicpensions/cpp.html>

## ARTICLE 2 – DEFINITIONS

### 2.01 Definition of employee

An employee is a person who performs work for another person or business for compensation. An employee includes a person being trained by an employer for the employer's business, a person on leave from an employer, a person directed or allowed by an employer to do work normally done by an employee, and a person who has a right of recall.<sup>6</sup>

### 2.02 Definition of employer

An employer is a person or business who has or had control or direction of an employee or who is or was responsible, directly or indirectly, for the employment of an employee.

When an employer sells its business, the new employer must treat the employees as though their employment continues undisturbed by the sale, unless the employees were provided with proper notice or wages in lieu of notice (see Article 9). The new employer assumes all of the old employer's liabilities and obligations towards the employees, and the new employer must honour the employee's past service with the old employer.

## PART 2: MINIMUM EMPLOYMENT STANDARDS<sup>7</sup>

### ARTICLE 3 – HIRING EMPLOYEES

#### 3.01 No Contracting Out

An employer cannot waive or contract out of the minimum requirements of the *Employment Standards Act*. If an employer and an employee agree to conditions of employment that are less than the minimum standards set out in the *Employment Standards Act*, they are deemed to be without effect.

#### 3.02 No false representations

An employer cannot influence a person to accept work by misrepresenting the availability, type of work, wages or conditions of employment.<sup>8</sup>

#### 3.03 No recruitment fees

An employer, employment agency, or any other person cannot ask or require a person seeking employment to pay for any services associated with finding a job including: giving them a job, helping them to get a job with another employer, and providing them with information about possible job opportunities.<sup>9</sup>

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<sup>6</sup> *Employment Standards Act*, R.S.B.C. 1996 c. 113 ["ESA"] at s. 1.

<sup>7</sup> Not all employees in British Columbia are entitled to the minimum employment standards set out in this Part. To find out if you are excluded from the protections set out in this Part see ss.31-45 of the *Employment Standards Regulation*.

<sup>8</sup> *ESA* at s. 8.

<sup>10</sup> *ESA* at s. 14.

### **3.04 Written contracts for domestic workers**

An employer must provide a written employment contract to their domestic workers. The contract must clearly state the conditions of employment, including: the duties to be performed, the hours of work, the wages, and the charges for room and board.<sup>10</sup>

### **3.05 Hiring children**

An employer must not hire a child under 12 years of age without the permission of the director of the Employment Standards Branch. Permission to employ a child under 12 years of age will only be granted if the director is satisfied that the health, welfare, and safety of the child will not be compromised.

An employer must not hire a child under 15 years of age unless the employer has obtained the written consent of the child's parent.<sup>11</sup>

An employer must not require a child between the ages of 12 and 15 to work when the child is scheduled to attend school.<sup>12</sup>

An employer must not allow a child between the ages of 12 and 15 to work:

- a) more than 4 hours on a school day;
- b) more than 7 hours on a day that is not a school day, unless the employer receives written approval from the director;
- c) more than 20 hours in a week that has 5 school days; and
- d) in any case, more than 35 hours in a week.<sup>13</sup>

An employer must ensure that a child between the ages of 12 and 15 works only under the direct supervision of an adult.<sup>14</sup>

## **ARTICLE 4 – WAGES, RECORDS AND SPECIAL CLOTHING**

### **4.01 Minimum wage**

An employer must pay an employee at least the minimum wage.<sup>15</sup> The current minimum wage is \$13.85 an hour. Subject to the following exceptions, minimum wage will increase to \$14.60 an hour as of June 1, 2020 (\$0.75 increase), and to \$15.20 (a \$0.60 increase) from June 1, 2021.<sup>16</sup>

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<sup>10</sup> *ESA* at s. 14.

<sup>11</sup> *ESA* at s. 9.

<sup>12</sup> Different rules apply to children in the entertainment industry.

<sup>13</sup> *Employment Standards Regulation*, B.C. Reg. 396/95 (“*ESR*”) at s. 45.3.

<sup>14</sup> *ESR* at s. 45.4.

<sup>15</sup> *ESA* at s. 16.

<sup>16</sup> *ESA*, s. 16 establishes the obligation of employers to pay a statutory minimum wage. *ESR*, s. 15 sets the first increased rate, \$12.65. The further increases were announced by the NDP provincial government in February 2018 and will be enacted by regulation in the *ESR*.

The minimum wage for workers whose primary duties are to serve food or drink and who regularly serve liquor to customers is \$12.70 an hour.<sup>17</sup>

The minimum daily wage for a live-in home support worker is \$113.50 for each day or part day worked.<sup>18</sup>

The minimum daily wage for a live-in camp leader is \$110.87 for each day or part day worked.<sup>19</sup>

Farm workers may be employed on either an hourly or a piece work basis depending on the crops they are harvesting if they are hand harvesters. The minimum wage rate for farm workers is set out in s. 18 of the *Employment Standards Regulation*.

#### **4.02 Gratuities**

An employer must not do the following: withhold gratuities or tips from an employee, make a deduction from an employee's gratuities, or require the employee to return or give the employee's gratuities to the employer.<sup>20</sup> However, the employer can require employees to pool their gratuities and redistribute them among some or all of the employer's employees. An employer may not share in gratuities that are redistributed unless they regularly do the same type of work as the employees who are given tips.<sup>21</sup>

#### **4.03 Deductions**

An employer cannot make deductions from an employee's wages for any purpose except as permitted by the *Employment Standards Act* or any other law of British Columbia or Canada.<sup>22</sup>

Permitted deductions include income tax, Canada Pension Plan contributions, Employment Insurance premiums, a court order to garnish an employee's wages, and union dues.

With the employee's permission, an employer may deduct for medical premiums, extended health or dental coverage and pension plan contributions.

With a written agreement, an employer may deduct room and board and money borrowed from the employer.

Deductions that are not permitted include expenses arising from theft, damage, breakage, poor quality of work or a customer's failure to pay.

#### **4.04 Paydays**

An employer must pay an employee all wages earned in a pay period at least twice a month and within 8 days after the end of the pay period.<sup>23</sup>

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<sup>17</sup> *ESR* at s. 18.1.

<sup>18</sup> *ESR* at s. 16(1).

<sup>19</sup> *ESR* at s. 16(2).

<sup>20</sup> *ESA* at s. 30.3.

<sup>21</sup> *ESA* at s. 30.4.

<sup>22</sup> *ESA* at s. 21.

<sup>23</sup> *ESA* at s. 17.

#### **4.05 How wages are paid**

An employer must pay all wages in Canadian currency, by cheque, draft or money order, or by direct deposit to the employee's bank account, if authorized by the employee in writing.<sup>24</sup>

#### **4.06 Wage statements**

On every payday, an employer must give each employee a written wage statement for the pay period stating:

- a) the employer's name and address;
- b) the hours worked by the employee;
- c) the employee's wage rate;
- d) the employee's overtime wage rate;
- e) the hours worked by the employee at the overtime rate;
- f) any other payment the employee is entitled to;
- g) the amount and purpose of each deduction from wages; and
- h) the employee's gross and net wages.<sup>25</sup>

#### **4.07 If employment is terminated**

An employer must pay all wages owing to an employee within 48 hours after the employer terminates the employee's employment.

An employer must pay all wages owing to an employee within 6 days after the employee terminates their employment.<sup>26</sup>

#### **4.08 Special clothing**

An employer who requires an employee to wear special clothing must, without charge to the employee, provide the special clothing and maintain it, unless there is a workplace agreement that employees will clean and maintain the clothing themselves.

If there is a workplace agreement that employees will clean and maintain the special clothing, the employer must reimburse each employee the cost of cleaning and maintaining the special clothing.<sup>27</sup>

### **ARTICLE 5 – HOURS OF WORK AND OVERTIME**

#### **5.01 Meal breaks**

An employee is entitled to a meal break that lasts at least 30 minutes after 5 consecutive hours of work.<sup>28</sup>

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<sup>24</sup> *ESA* at s. 20.

<sup>25</sup> *ESA* at s. 27.

<sup>26</sup> *ESA* at s. 18.

<sup>27</sup> *ESA* at s. 25.

<sup>28</sup> *ESA* at s. 32.

If an employee is required to be available for work during a meal break, the break must be paid.

## **5.02 Split shifts**

An employee working a split shift must complete the shift within 12 hours of starting work.<sup>29</sup>

If an employer requires an employee to travel during the split shift from one job site to another, the travel time must be paid.<sup>30</sup>

## **5.03 Minimum daily hours**

An employee who is required to report to work must be paid for at least 2 hours of work, whether or not the employee starts work, unless the employee is unfit to work.

If the employee was scheduled to work for more than 8 hours that day, the employee must be paid for at least 4 hours of work, unless the employee is unfit to work or the work is suspended for reasons completely beyond the employer's control including unsuitable weather conditions. If the work is suspended for reasons beyond the employer's control, then the employer must pay the employee for at least 2 hours of work.<sup>31</sup>

## **5.04 Maximum hours of work before overtime applies**

An employer must pay an employee overtime wages if the employee is required to work more than 8 hours a day or 40 hours a week, unless the employee is working under an averaging agreement.<sup>32</sup>

## **5.05 Overtime wages for employees not working under an averaging agreement**

An employer must pay an employee who works over 8 hours a day, and is not working under an averaging agreement, 1.5 times the employee's regular wage for the time over 8 hours, and double the employee's regular wage for any time over 12 hours.

An employer must pay an employee who works over 40 hours a week, and is not working under an averaging agreement, 1.5 times the employee's regular wage for the time worked over 40 hours. For the purposes of calculating entitlement to weekly overtime, only the first 8 hours worked by an employee in each day are counted.<sup>33</sup>

## **5.06 Agreements to average hours of work**

An employer and employee may agree in writing to average the employee's hours of work over a period of 1, 2, 3 or 4 weeks for the purposes of calculating an employee's entitlement to overtime.<sup>34</sup>

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<sup>29</sup> *ESA* at s. 33.

<sup>30</sup> Interpretation Guidelines Manual: British Columbia *Employment Standards Act* and Regulations, *ESA* Section 1 – Definitions- Work.

<sup>31</sup> *ESA* at s. 34.

<sup>32</sup> *ESA* at s. 35.

<sup>33</sup> *ESA* at s. 40.

<sup>34</sup> *ESA* at s. 37.

### 5.07 Hours free from work

Except in an emergency, an employee must have at least 8 consecutive hours free from work between each shift.

An employee must have at least 32 consecutive hours free from work each week. If not, the employer must pay the employee 1.5 times the regular wage for the time worked during the 32 hour period the employee should have had free from work.<sup>35</sup>

For example, an employee works 7 days a week starting at 9am each day as follows:

Days	S	M	T	W	T	F	S	Total
Hours	5	5	4	5	5	5	5	34 hours

The employee has not had a 32-hour break from work. The employer must pay 1.5 times the regular wage for the 4 hours worked on Tuesday.

### 5.08 No excessive hours

An employer must not require an employee to work hours that are detrimental to the employee's health or safety.<sup>36</sup>

### 5.09 Time off to vote

An employer must give employees who are entitled to vote in a provincial or federal election time free from work during voting hours to vote. Employees are entitled to 4 consecutive hours free from work during voting hours in provincial elections<sup>37</sup> and 3 consecutive hours free from work during voting hours in federal elections<sup>38</sup>.

It is up to the employer to decide when their employees can take time off work to vote. Employees are entitled to their regular compensation for those hours not worked while voting.<sup>39</sup>

## ARTICLE 6 – STATUTORY HOLIDAYS

### 6.01 Entitlement to a statutory holiday

An employee is entitled to a statutory holiday if they have been employed by the employer for at least 30 days before the statutory holiday, and they have worked 15 of the last 30 days.<sup>40</sup>

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<sup>35</sup> *ESA* at s. 36.

<sup>36</sup> *ESA* at s. 39.

<sup>37</sup> *Election Act*, R.S.B.C. 1996 c. 106 at s. 74.

<sup>38</sup> *Canada Elections Act*, S.C. 2000 c. 9 at s. 132.

<sup>39</sup> *Election Act* at s. 74; *Canada Election Act* at s. 133.

<sup>40</sup> *ESA* at s. 44.

With an employee's consent, an employer may give the employee another day off instead of the statutory holiday.<sup>41</sup>

## **6.02 Statutory holidays**

The following 10 statutory holidays are recognized in British Columbia:

New Year's Day	Family Day
Good Friday	Victoria Day
Canada Day	BC Day
Labour Day	Thanksgiving Day
Remembrance Day	Christmas Day

## **6.03 Statutory holiday pay**

An employee who is given a day off on a statutory holiday must be paid at least an average day's pay. An employee who is required to work on a statutory holiday must be paid an average day's pay plus 1.5 times the employee's regular wage for time worked up to 12 hours and double the employee's regular wage for time worked over 12 hours.<sup>42</sup>

An average day's pay is determined by taking the amount earned by the employee within the last 30 days before the statutory holiday, without overtime, and dividing it by the number of days worked in the last 30 days.<sup>43</sup>

An employee who is not entitled to a statutory holiday may be required to work the statutory holiday at their regular wage.

## **ARTICLE 7 – LEAVES**

### **7.01 Pregnancy leave**

A pregnant employee is entitled to up to 17 consecutive weeks of unpaid leave. The leave must begin no earlier than 13 weeks before the expected birth date, and no later than the actual birth date. The leave must end no later than 17 weeks after the actual birth date.<sup>44</sup>

An employee is entitled to up to 6 consecutive weeks of unpaid leave after the termination of a pregnancy.

An employee is entitled to up to 6 additional consecutive weeks of unpaid leave if, for reasons related to the birth or the termination of the pregnancy, she is unable to return to work when her leave ends.

An employee requesting pregnancy leave must make her request to her employer in writing at least 4 weeks before the day she proposes to begin leave.

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<sup>41</sup> *ESA* at s. 48.

<sup>42</sup> *ESA* at s. 46.

<sup>43</sup> *ESA* at s. 45.

<sup>44</sup> *ESA* at s. 50.

## 7.02 Parental leave

An employee who takes pregnancy leave is entitled to up to 61 additional consecutive weeks of unpaid leave beginning immediately after the end of the pregnancy leave, unless the employee and employer agree otherwise.<sup>45</sup>

A parent, other than an adopting parent, who does not take pregnancy leave is entitled to up to 62 consecutive weeks of unpaid leave beginning within 78 weeks after the birth of the child.

An adopting parent is entitled to up to 62 consecutive weeks of unpaid leave beginning within 78 weeks of the child being placed with the parent.

If the child has a physical, psychological or emotional condition requiring an additional period of parental care, the employee is entitled to up to an additional 5 consecutive weeks of unpaid leave beginning immediately after the end of the parental leave.

A parent requesting parental leave must make the request to their employer in writing at least 4 weeks before the employee proposes to begin leave.

## 7.03 Family responsibility leave

An employee is entitled to up to 5 days of unpaid leave during each employment year to meet responsibilities related to the care, health or education of a child in the employee's care or to the care or health of any other member of the employee's immediate family.<sup>46</sup> "A child in the employee's care" is defined as a child under 19 years of age.<sup>47</sup> "Immediate family" means the spouse (including common-law spouse and same sex partners), child, step-child, parent, step-parent, guardian, grandchild or grandparent of an employee, and any person who lives with an employee as a member of the employee's family.<sup>48</sup>

## 7.04 Compassionate care leave

An employee is entitled to up to 27 weeks of unpaid leave to provide care or support to a family member if a medical practitioner or nurse practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks.

Compassionate care leave must be taken in units of one or more weeks at a time.

Compassionate care leave ends when the family member dies or at the end of 52 weeks from the date the leave began, whichever is earlier.<sup>49</sup>

If an employee takes compassionate care leave and the family member does not die within 52 weeks, the employee may take a further leave after obtaining a new certificate.

"Family member" means a member of the employee's immediate family (see s. 7.03 above) or a member of a prescribed class including: a step-sibling, aunt or uncle, niece or nephew,

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<sup>45</sup> ESA at s. 51.

<sup>46</sup> ESA at s. 52.

<sup>47</sup> Interpretation Guidelines Manual: British Columbia *Employment Standards Act* and Regulations, ESA Section 52 – Family Responsibility Leave

<sup>48</sup> Interpretation Guidelines Manual: British Columbia *Employment Standards Act* and Regulations, ESA Section 1 – Definitions - Immediate Family.

<sup>49</sup> ESA at s. 52.1.

current or former foster parent or child, a current or former guardian or ward, the spouse of a family member, and the employee's spouse's family member. It also includes an individual with a serious medical condition who is like a close relative to the employee, whether they are related by blood, adoption, marriage or common law relationship.<sup>50</sup>

#### **7.05 Disappearance of child leave**

An employee is entitled to up to 52 weeks of unpaid leave if their child disappears and it is likely the disappearance is a result of a crime.<sup>51</sup> This leave does not apply if the employee is charged with a crime that resulted in the child's disappearance.

Leave respecting the disappearance of a child must be taken between the date the child disappears and 53 weeks after the child disappears. The leave may be taken in one unit of time, or in more than one unit if the employer consents.

Leave respecting the disappearance of a child may end earlier than 52 weeks on the following dates, if any apply: the date on which circumstances indicate it is no longer probable that the child's disappearance is a result of a crime; the date that is 14 days after the date on which the child is found alive; and the date on which the child is found dead.

#### **7.06 Death of child leave**

An employee is entitled to up to 104 weeks of unpaid leave for the death of a child of the employee.<sup>52</sup> Child means a person under 19 years of age. This leave does not apply if the employee is charged with a crime that resulted in the child's death.

Leave respecting the death of a child must be taken between the date the child dies or is found dead and 105 weeks after this date. The leave may be taken in one unit of time, or in more than one unit if the employer consents.

#### **7.07 Bereavement leave**

An employee is entitled to up to 3 days of unpaid leave on the death of a member of the employee's immediate family.<sup>53</sup>

#### **7.08 Jury duty**

An employee who is required to attend court as a juror is considered to be on unpaid leave for the period of the jury duty.

#### **7.09 Domestic or sexual violence leave**

If an employee or an eligible person with respect to an employee experiences domestic or sexual violence, the employee may request up to 10 days of unpaid leave taken in units of one or more days at a time. The employee is also entitled to an additional 15 weeks of unpaid leave to be taken by the employee in one unit of time, or in more than one unit if the employer consents.<sup>54</sup>

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<sup>50</sup> For full list of individuals who are part of the prescribed class, see *Family Member Regulation*, BC Reg 137/2019 at s. 2.

<sup>51</sup> *ESA* at s. 52.3.

<sup>52</sup> *ESA* at s. 52.4.

<sup>53</sup> *ESA* at s. 53.

<sup>54</sup> *ESA* at s. 52.5.

“Domestic or sexual violence” is defined as the following:

- physical abuse by an intimate partner or by a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm;
- sexual abuse by any person;
- attempts to commit physical abuse by an intimate partner or family member or sexual abuse by any person; and
- psychological or emotional abuse by an intimate partner or by a family member including intimidation, harassment, coercion or threats, unreasonable restrictions or prevention of financial or personal autonomy, stalking or following, and intentional damage to property.

“Eligible person” with respect to an employee means a child under the care of the employee, a person who is 19 years of age or older who is under the day-to-day care and control of the employee, or a prescribed person.

### **7.10 Critical illness or injury leave**

An employee is entitled to up to 36 weeks of unpaid leave to provide care or support to a family member who is under 19 years of age at the start of the leave, and up to 16 weeks of unpaid leave to provide care or support to a family member who is 19 years of age or older.<sup>55</sup> The critical illness or injury leave must be taken in units of one or more weeks.

To request a critical illness or injury leave, the employee must provide the employer with a certificate issued by a medical practitioner or nurse practitioner that indicates the period for which the family member of the employee requires care or support. If the certificate indicates a period less than the maximum number of weeks the employee is entitled to take, the employee is only entitled to take leave up to the number of weeks as indicated on the certificate.

The critical illness or injury leave ends on the last day of the week of when the family member dies or the expiration of 52 weeks from the date the leave began, whichever is earlier. If after 52 weeks from the date the leave began the family member remains at risk as result of the illness or injury, the employee may take a further unpaid leave after obtaining a new certificate from a medical practitioner or nurse practitioner.

### **7.11 Duties of employer with respect to leave**

An employer must not terminate an employee’s employment or change a condition of their employment without consent because of an employee’s pregnancy, jury duty or a leave allowed by this Article.<sup>56</sup> Conditions of employment include pay, benefits, hours and job duties.

As soon as the leave ends, the employer must place the employee in their earlier position or in a comparable position.

### **7.12 Employment deemed continuous while employee on leave**

An employee’s employment is deemed to be continuous while on leave for the purposes of calculating annual vacation entitlement and compensation for length of service, and any pension, medical or other benefit.<sup>57</sup>

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<sup>55</sup> *ESA* at s. 52.11

<sup>56</sup> *ESA* at s. 54; *Brooks v. Canada Safeway Ltd.*, [1989] 1 SCR 1219.

<sup>57</sup> *ESA* at s. 56.

An employer must continue to make payments to a pension, medical or other benefit plan as though the employee were not on leave if the employer pays the total cost of the plan. If the employer and the employee both pay the cost of the plan, the employer must continue to make payments if the employee chooses to continue to pay their share of the cost.

The employee is entitled to all increases in wages and benefits the employee would have been entitled to had the leave not been taken or jury duty was not required.

## **ARTICLE 8 – ANNUAL VACATION**

### **8.01 Entitlement to annual vacation**

An employee is entitled to an annual vacation of at least 2 weeks after 12 consecutive months of employment.

An employee is entitled to an annual vacation of at least 3 weeks after 5 consecutive years of employment.

An employee is entitled to take their annual vacation in periods of one or more weeks.

An employee must take their annual vacation within 12 months of earning it.<sup>58</sup>

### **8.02 Vacation pay**

After 5 calendar days of employment, an employee is entitled to vacation pay of at least 4% of their total wages.

After 5 consecutive years of employment, an employee is entitled to vacation pay of at least 6% of their total wages.

“Total wages” includes regular wages, overtime, commissions, statutory holiday pay, and bonuses.

An employer must pay an employee vacation pay at least 7 days before the beginning of the employee’s annual vacation or on the employee’s scheduled paydays.<sup>59</sup>

Any vacation pay an employee is entitled to when the employment terminates must be paid to the employee following the termination.

## **ARTICLE 9 – TERMINATION OF EMPLOYMENT**

### **9.01 Termination by an employee**

An employee may leave their job at any time.

If, after 3 consecutive months of employment, an employee gives notice of termination to the employer and the employer terminates the employment during that notice period, the employer must pay the employee the lesser of an amount equal to the wages the employee would have

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<sup>58</sup> ESA at s. 57.

<sup>59</sup> ESA at s. 58.

earned for the remainder of the notice period or an amount equal to the amount the employer is liable to pay on termination.<sup>60</sup>

## **9.02 Termination by an employer**

An employer may terminate the employment of an employee at any time if they have just cause to do so, or if they do not have just cause, they give the employee a reasonable period of notice or wages in lieu of notice.<sup>61</sup>

An employer cannot terminate an employee for a discriminatory reason or for exercising their legal rights.

## **9.03 Definition of just cause**

Just cause includes, but is not limited to, serious misconduct, frequent neglect of duty, significant breach of the employer's rules and policies, theft, fraud, gross incompetence, conflict of interest, action that puts the employee's or others' personal safety at risk, or serious conduct that harms the employer's business.<sup>62</sup>

## **9.04 Reasonable notice or wages in lieu of notice**

After 3 consecutive months of employment, an employee whose employment has been terminated is entitled to one week's notice of termination or one week's wages in lieu of notice.

After 12 consecutive months of employment, an employee whose employment has been terminated is entitled to 2 weeks' notice of termination or two weeks' wages in lieu of notice.

After 3 consecutive years of employment, an employee whose employment has been terminated is entitled to 3 weeks' notice of termination or 3 weeks' wages in lieu of notice, plus one additional week's notice or wages in lieu of notice for each additional year of employment, to a maximum of 8 weeks' wages.<sup>63</sup>

The above rules do not apply where an employee terminates the employment, retires from employment or is dismissed for just cause.

The *ESA* provides only for the minimum statutory entitlements, and the employee may be entitled to additional notice or wages in lieu of notice under the common law. Please see Article 9.08 below.

## **9.05 Group terminations**

If the employment of 50 or more employees at a single location is to be terminated within any 2-month period, the employer must give written notice of group termination to each employee affected.

If 50 to 100 employees will be affected, the notice of group termination must be given at least 8 weeks before the effective date of the first termination.

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<sup>60</sup> *ESA* at s. 63.

<sup>61</sup> *ESA* at s. 63.

<sup>62</sup> Interpretation Guidelines Manual: British Columbia *Employment Standards Act* and Regulations, *ESA* Section 63 – Liability Resulting from Length of Service.

<sup>63</sup> *ESA* at s. 63.

If 101 to 300 employees will be affected, the notice of group termination must be given at least 12 weeks before the effective date of the first termination.

If 301 or more employees will be affected, the notice of group termination must be given at least 16 weeks before the effective date of the first termination.

If an employee is not given notice as required, the employer must give the employee termination pay instead of the required notice or a combination of notice and termination pay.<sup>64</sup>

#### **9.06 Exceptions to notice requirements**

This Article does not apply to an employee who:

- a) is employed for a fixed term;
- b) is employed for specific work to be completed in a period of up to 12 months;
- c) is employed under an arrangement by which the employee has the option of accepting or rejecting temporary periods of employment offered by the employer;
- d) is employed at one or more construction sites by an employer whose principal business is construction; or
- e) has been offered and has refused reasonable alternative employment by the employer.<sup>65</sup>

Section 9.05 does not apply to an employee who is laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation.

#### **9.07 Constructive dismissal**

If a condition of employment is substantially altered or fundamentally changed by the employer without providing the employee with reasonable notice of the change, the employee may apply to the director of the Employment Standards Branch for a determination that the employee's employment has been terminated and the employee is entitled to wages in lieu of notice.<sup>66</sup> It must be shown that the change made by the employer places the employee in a position of having to accept, as a condition of continued employment, which is unreasonable, unfair, and unacceptable.<sup>67</sup>

#### **9.08 Wrongful dismissal**

An employee who is terminated without just cause may be entitled to more notice or wages in lieu of notice than set out above. To pursue the additional notice or wages in lieu of notice, the employee must bring a wrongful dismissal action.

For claims of \$35,000 or less, the action will be in Small Claims Court. For claims of greater than \$35,000, the action will be in BC Supreme Court.

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<sup>64</sup> *ESA* at s. 64.

<sup>65</sup> *ESA* at s. 65.

<sup>66</sup> *ESA* at s. 66.

<sup>67</sup> Interpretation Guidelines Manual: British Columbia *Employment Standards Act* and Regulations, *ESA* Section 66 – Director May Determine Employment Has Been Terminated.

## **9.09 Record of Employment**

An employer must provide an employee with a Record of Employment:

- a) within 5 days of a layoff or termination of employment, if completed in paper form; or
- b) within 5 days of the final pay period, if completed in electronic form.<sup>68</sup>

## **ARTICLE 10 – COMPLAINTS AND DETERMINATIONS**

### **10.01 Complaint and time limit**

An employee may make a complaint to the Employment Standards Branch if their employer has violated any of the provisions in this Part.

A complaint must be in writing.

A complaint relating to an employee whose employment has terminated must be delivered within 6 months after the last day of employment.

A complaint that a person has made false representations or charged recruitment fees must be delivered within 6 months after the date of the action complained of.<sup>69</sup>

### **10.02 Limit on the recovery of wages**

An employee who files a complaint with the Employment Standards Branch is only able to recover wages that became payable in the period beginning 12 months before the date of the complaint or the termination of the employment, whichever is earlier, plus interest.<sup>70</sup> In prescribed circumstances, the director of the Employment Standards Branch may extend the 12 months' time limit to 24 months.

Wages includes salaries, commissions, vacation pay, statutory holiday pay, recruitment fees and reasonable and out of pocket expenses incurred by an employee because of an employer's false representation.

Employees who are owed wages outside of the 6 month window may be able to recover these wages through a breach of contract claim in Small Claims Court, if \$35,000 or less, or BC Supreme Court, if more than \$35,000.

### **10.03 Confidentiality**

An employee may make a written request to the Employment Standards Branch to not disclose any identifying information about them unless disclosure is necessary or it is in the public interest.<sup>71</sup>

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<sup>68</sup> *Employment Insurance Regulations*, SOR/96-332 at s. 19.

<sup>69</sup> *ESA* at s. 74.

<sup>70</sup> *ESA* at s. 80.

<sup>71</sup> *ESA* at s. 75.

#### **10.04 No retaliation**

An employer must not retaliate against a person for making an employment standards complaint.

Retaliation includes refusing to employ or continue to employ a person, threatening to dismiss a person, discriminating against a person with respect to employment or intimidating, coercing or imposing a monetary or other penalty on a person.<sup>72</sup>

### **ARTICLE 11 – EMPLOYMENT STANDARDS BRANCH CONTACT INFORMATION**

#### **11.01 Contact information**

For more information, employees can access the Employment Standards Branch website at: <http://www.labour.gov.bc.ca/esb/>

Employees may contact the Employment Standards Branch for general enquiries at the following number: Toll-free: 1-833-236-3700.

## **PART 3: HUMAN RIGHTS**

### **ARTICLE 12 - NO DISCRIMINATION**

#### **12.01 No discrimination in employment advertisements**

An employer cannot publish an employment advertisement that expresses a preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression or age unless the preference is based on a legitimate work requirement.<sup>73</sup>

#### **12.02 No discrimination in hiring**

An employer cannot require an employee to disclose their race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation gender identity or expression or age as a condition of employment unless the request is based on a legitimate work requirement.

#### **12.03 No discrimination in wages**

An employer cannot pay an employee of one sex less than an employee of the other sex for similar or substantially similar work.<sup>74</sup>

#### **12.04 No discrimination in employment**

An employer cannot refuse to employ a person or discriminate against a person regarding employment or any term or condition of employment because of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment

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<sup>72</sup> *ESA* at s. 83.

<sup>73</sup> *Human Rights Code*, R.S.B.C. 1996, c. 210 ["HRC"] at s. 11.

<sup>74</sup> *HRC* at s. 12.

or to the intended employment of that person, unless it is based on a legitimate work requirement.<sup>75</sup>

An employer has a duty to accommodate its employees to the point of undue hardship. The duty to accommodate involves making the workplace and the work accessible to employees so that they do not face barriers based on the above grounds.<sup>76</sup> For example, an employer may be required to provide an ergonomic workstation, specialized equipment, flexible work hours or periodic breaks to accommodate a disability.

## **12.05 Complaints procedure**

An employee who experiences discrimination may file a complaint with the British Columbia Human Rights Tribunal.<sup>77</sup>

A complaint must be filed within one year of the alleged discrimination. If a continuing contravention is alleged in a complaint, the complaint must be filed within one year of the last alleged instance of discrimination.<sup>78</sup>

## **ARTICLE 13 - NO HARASSMENT**

### **13.01 Definition of bullying and harassment**

Bullying and harassment is any inappropriate conduct or comment by a person towards an employee that the person knew or should have known would cause that employee to be humiliated or intimidated.

Bullying and harassment does not include any reasonable action taken by an employer or supervisor relating to the management and direction of employees or the place of employment.

### **13.02 Employee right to be free from harassment**

Employees have the right to work in an environment free from harassment and bullying.

### **13.03 Employer's obligation to minimize workplace harassment**

An employer must take reasonable steps to prevent or minimize bullying and harassment in the workplace. These steps include:

- a) developing a policy statement with respect to workplace bullying and harassment that clearly states bullying and harassment will not be tolerated;
- b) taking steps to prevent where possible, or otherwise minimize, workplace bullying and harassment;
- c) developing and implementing reporting procedures for incidents or complaints of workplace bullying and harassment including how, when and to whom an employee should report incidents or make complaints and procedures for a worker to report if

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<sup>75</sup> HRC at s. 13.

<sup>76</sup> *British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union*, [1999] 3 S.C.R. 3.

<sup>77</sup> HRC at s. 21.

<sup>78</sup> HRC at s. 22.

- the employer, supervisor or person acting on the employer's behalf is the alleged bully or harasser;
- d) developing and implementing procedures on how to deal with incidents and complaints including how and when investigations will be conducted, what will be included in the investigation, roles and responsibilities of employers, supervisors, workers, and others, follow-up to the investigation such as any corrective actions that were taken, and record keeping requirements;;
  - e) informing workers of the employer's policies and procedures on workplace bullying and harassment;
  - f) training supervisors and workers on recognizing the potential for bullying and harassment, responding to bullying and harassment, procedures for reporting and how the employer will deal with incidents or complaints of bullying and harassment;
  - g) annually reviewing the employer's policies and procedures on workplace bullying and harassment; and
  - h) applying and complying with the employer's policies and procedures on bullying and harassment.<sup>79</sup>

#### **13.04 Complaints procedure**

An employee who experiences or observes bullying and harassment in the workplace should report it to their employer.

If the employer fails to take reasonable steps to address the bullying and harassment in the workplace, the employee may file a bullying and harassment complaint with WorkSafeBC.<sup>80</sup>

### **ARTICLE 14 – CONTACT INFORMATION**

#### **14.01 Human Rights Tribunal contact information**

For more information about discrimination, employees can access the Human Rights Tribunal website at: <http://www.bchrt.bc.ca/>

Employees may contact the Human Rights Tribunal at the following numbers:

Vancouver: 604-775-2000

Elsewhere in BC: 1-888-440-8844

For advice or assistance with filing a complaint, employees can access more information from the BC Human Rights Clinic at <https://bchrc.net/>.

#### **14.02 WorkSafeBC contact information**

For more information about bullying and harassment, employees can access the WorkSafeBC bullying and harassment website at:

<http://www2.worksafebc.com/Topics/BullyingAndHarassment/Home.asp>

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<sup>79</sup> WorkSafeBC Policy Item D3-115-2 Employer Duties – Workplace Bullying and Harassment.

<sup>80</sup> The online bullying and harassment resources including where to file a complaint may be found here: <https://www.worksafebc.com/en/health-safety/hazards-exposures/bullying-harassment?reportID=37280>

Employees may contact WorkSafeBC at: 1-888-621-7233

## **PART 4: LABOUR RIGHTS**

### **ARTICLE 15 – RIGHT TO JOIN A TRADE UNION**

#### **15.01 Right to join a trade union**

Every employee has the right to join a trade union and to participate in its lawful activities.<sup>81</sup>

#### **15.02 Process to join a trade union**

To join a trade union, 45% of employees at a workplace must sign membership cards with the union of their choice. The British Columbia Labour Relations Board (“the Board”) will then order a secret ballot vote to be conducted within 5 business days from the date the Board receives the application for certification. The workplace will become unionized if the majority of employees who cast ballots vote for representation by the union.<sup>82</sup>

#### **15.03 No intimidation**

An employer must not use coercion or intimidation of any kind to compel a person to refrain from becoming a member of a trade union.<sup>83</sup>

#### **15.04 No inducements**

An employer must not induce an employee to refrain from becoming or continuing to be a member of a trade union by promise, wage increase or by altering any other term or condition of employment.<sup>84</sup>

#### **15.05 Right to communicate**

Employers and employees are free to communicate to an employee a statement of fact or opinion reasonably held with respect to the employer’s business. <sup>85</sup>

#### **15.06 No retaliation**

An employer must not retaliate against a person for exercising their rights to join a trade union, encourage others to join a trade union or participate in the union’s lawful activities.

Retaliation includes refusing to employ or continue to employ a person, disciplining a person, threatening to dismiss a person, discriminating against a person with respect to employment or intimidating or coercing a person.<sup>86</sup>

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<sup>81</sup> *Labour Relations Code*, R.S.B.C. 1996 c. 244 [“LRC”] at s. 4.

<sup>82</sup> *LRC* at ss. 24-25.

<sup>83</sup> *LRC* at s. 9.

<sup>84</sup> *LRC* at s. 6.

<sup>85</sup> *LRC* at s. 8.

<sup>86</sup> *LRC* at ss. 5-6.

After the Board certifies a trade union as a bargaining agent for the employees, the employer cannot change the employees' conditions of employments including their rates of pay for a period of 12 months or until a collective agreement is executed, whichever occurs first.<sup>87</sup>

### **15.07 Complaints procedure**

An employee whose rights under this Part have been violated may file a complaint with the Labour Relations Board.<sup>88</sup>

## **ARTICLE 16 – LABOUR RELATIONS BOARD CONTACT INFORMATION**

### **16.01 Contact information**

For more information, employees can access the Labour Relations Board website at: <http://www.lrb.bc.ca/>

Employees may contact the Labour Relations Board for general information about the Board's procedures at 604-660-1300 or by email to [Information@lrb.bc.ca](mailto:Information@lrb.bc.ca)

## **PART 5: OCCUPATIONAL HEALTH AND SAFETY**

### **ARTICLE 17 – EMPLOYEE RIGHTS**

#### **17.01 Right to know all health and safety hazards**

An employee has the right to know all health and safety hazards which they may be exposed to at work.<sup>89</sup>

#### **17.02 Right to a safe workplace**

An employee is entitled to the information, instruction, training and supervision necessary to ensure their health and safety in carrying out their work.<sup>90</sup>

An employee is entitled to have workplace conditions that are hazardous to their health or safety remedied by the employer.<sup>91</sup>

An employee is entitled to appropriate protective equipment, devices and clothing provided and maintained by the employer.<sup>92</sup>

#### **17.03 Right to refuse unsafe work**

An employee has an obligation to refuse to carry out any work that the employee believes to be unsafe.

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<sup>87</sup> LRC at s. 45.

<sup>88</sup> LRC at s. 5.

<sup>89</sup> *Workers Compensation Act*, R.S.B.C. 1996 c. 492 ["WCA"] at s. 115.

<sup>90</sup> WCA at s. 115.

<sup>91</sup> WCA at s. 115.

<sup>92</sup> WCA at s. 115.

An employee who refuses to carry out work thought to be unsafe must immediately report the unsafe condition to their supervisor or employer.

A supervisor or employer receiving a report of unsafe work must immediately investigate the matter and ensure any unsafe condition is remedied without delay.<sup>93</sup>

If the supervisor or employer does not agree that the work is unsafe, the employee may contact a WorkSafeBC officer to investigate the matter.

## **ARTICLE 18 – EMPLOYER AND EMPLOYEE OBLIGATIONS**

### **18.01 Obligation to inform employees of health and safety hazards**

An employer must inform employees of all known or reasonably foreseeable health or safety hazards which they may be exposed to at work.<sup>94</sup>

### **18.02 Obligation to remedy hazardous conditions**

An employer must remedy any workplace conditions that are hazardous to the health or safety of employees.<sup>95</sup>

An employee must report to their supervisor any hazard that the employee considers is likely to endanger the employee or any other person.<sup>96</sup>

### **18.03 Obligation to provide safety equipment**

An employee must provide their own clothing needed for protection against the natural elements, general purpose work gloves, appropriate footwear including safety footwear and safety headgear.

An employer must provide and maintain in good condition all other items of protective equipment, devices and clothing at no cost to the employee.<sup>97</sup> For example, an employer would be responsible for providing respirators, lifejackets and eye protection where necessary.

An employer must ensure that the protective equipment, devices and clothing are used by their employees.<sup>98</sup>

An employee must report to their supervisor any absence or defect in protective equipment, devices or clothing.<sup>99</sup>

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<sup>93</sup> *Occupational Health and Safety Regulation*, B.C. Reg. 296/97 at s. 3.12.

<sup>94</sup> *WCA* at s. 115.

<sup>95</sup> *WCA* at s. 115.

<sup>96</sup> *WCA* at s. 116.

<sup>97</sup> *OHSR* at s. 8.2.

<sup>98</sup> *WCA* at s. 115.

<sup>99</sup> *WCA* at s. 116.

#### **18.04 Obligation to train**

An employer must provide its employees with the information, instruction, training and supervision necessary to ensure the health and safety of those employees in carrying out their work.<sup>100</sup>

#### **18.05 No horseplay**

An employee must not engage in horseplay or similar conduct that may endanger the employee or any other person.<sup>101</sup>

#### **18.06 No impairment**

An employee must ensure their ability to work safely is not impaired by alcohol or drugs or other causes.<sup>102</sup>

### **ARTICLE 19 – HEALTH AND SAFETY COMMITTEES**

#### **19.01 When a joint health and safety committee is required**

An employer must establish and maintain a joint health and safety committee where they have 20 or more employees.<sup>103</sup>

#### **19.02 Membership of joint health and safety committee**

A health and safety committee must have at least 4 members and at least half of the members must be employee representatives.<sup>104</sup>

#### **19.03 Selection of employee representatives**

The employee representatives must be selected by secret ballot by the employees at the workplace who do not exercise managerial functions.<sup>105</sup>

#### **19.04 Duties and functions of joint health and safety committee**

A joint health and safety committee must meet at least once each month.<sup>106</sup>

A joint health and safety committee must identify situations that may be unhealthy or unsafe for employees and advise on effective systems for responding to those situations.

A joint health and safety committee must consider and deal with complaints relating to the health and safety of employees.

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<sup>100</sup> WCA at s. 115.

<sup>101</sup> WCA at s. 116.

<sup>102</sup> WCA at s. 116.

<sup>103</sup> WCA at s. 125.

<sup>104</sup> WCA at s. 127.

<sup>105</sup> WCA at s. 128.

<sup>106</sup> WCA at s. 131.

A joint health and safety committee must consult with employees and the employer on issues related to health and safety and make recommendations for the improvement of occupational health and safety.<sup>107</sup>

### **19.05 When employee health and safety representative is required**

An employee health and safety representative is required in each workplace where there is more than 9 but fewer than 20 employees.<sup>108</sup>

An employee health and safety representative has the same duties and functions as a joint health and safety committee.

## **ARTICLE 20 – PROHIBITION AGAINST DISCRIMINATORY ACTION**

### **20.01 Actions that are considered discriminatory**

Discriminatory actions include any act or omission by an employer that negatively affects an employee with respect to any term or condition of employment.

Discriminatory actions include suspension, lay-off or dismissal, demotion, transfer of duties, change of workplace, reduction in wages or change in working hours, coercion or intimidation, imposition of any discipline or other penalty and the elimination of the job of the employee.<sup>109</sup>

### **20.02 Discrimination against employees prohibited**

An employer must not take or threaten to take discriminatory action against an employee for exercising any occupational health and safety right or duty, for refusing unsafe work or for reporting health and safety conditions to the employer, another employee or another person concerned with health and safety.<sup>110</sup>

### **20.03 Complaints procedure**

An employee who considers that an employer has taken or threatened to take discriminatory action against the employee may make a complaint in writing to the Workers' Compensation Board.<sup>111</sup>

A complaint must be made within 1 year of the action considered to be discriminatory.

## **ARTICLE 21 – WORKSAFEBC CONTACT INFORMATION**

### **21.01 Contact information**

For more information, employees can access the WorkSafeBC website at: <http://www.worksafebc.com/>

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<sup>107</sup> WCA at s. 130.

<sup>108</sup> WCA at s. 139.

<sup>109</sup> WCA at s. 150.

<sup>110</sup> WCA at s. 151.

<sup>111</sup> WCA at s. 152. The complaint form may be found at:

<https://www.worksafebc.com/en/resources/about-us/forms/worker-complaint-of-discriminatory-action-form-57w1?lang=en>

Employees may contact a WorkSafeBC officer for workplace health and safety enquiries at: 1-888-621-7233.

## **PART 6: PRIVACY**

### **ARTICLE 22 – GENERAL PROVISIONS**

#### **22.01 Definition of personal information**

Personal information means information that can identify an individual, for example a person's home address, home phone number or ID number. Personal information also means information about an identifiable individual, for example physical description, educational qualifications or blood type.

Personal information does not include work contact information or work product information.

Work contact information means information used to contact an individual at their workplace, including the individual's name, position or title and their work telephone number, address, email and fax number.

Work product information means information prepared by an employee in the context of their work. For example, a work report prepared and signed by an employee would be that employee's work product information. Work product information does not include personal information about another person. For example, if the work report contained information about other employees, it would be the personal information of the other employees.<sup>112</sup>

#### **22.02 Consent**

Unless permitted by this Part, an employer must not collect, use or disclose personal information about an employee without their consent.<sup>113</sup>

### **ARTICLE 23 – COLLECTION OF EMPLOYEE PERSONAL INFORMATION**

#### **23.01 Collection of employee personal information**

An employer is entitled to collect employee personal information only for purposes that a reasonable person would consider appropriate in the circumstances.

#### **23.02 Collection of employee personal information without consent**

An employer is only entitled to collect employee personal information without consent in the following circumstances:

- a) If the collection is clearly in the interests of the employee and consent cannot be obtained in a timely way;
- b) If the collection is necessary for the medical treatment of the employee and the employee is unable to give consent;

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<sup>112</sup> *Personal Information Protection Act*, S.B.C. 2003 c. 63 ["PIPA"] at s. 1.

<sup>113</sup> *PIPA* at s. 6.

- c) It is reasonable to expect that the collection with the consent of the employee would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding;
- d) If the personal information is available to the public;
- e) If the collection is required or authorized by law; or
- f) If the collection is reasonable for the purposes of establishing, managing or terminating the employment relationship.<sup>114</sup>

### **23.03 Obligation to notify employee**

Before an employer collects employee personal information for the purposes of establishing, managing or terminating the employment relationship, the employer must notify the employee that it will be collecting information and the purposes for the collection.

Information collected for the purposes of establishing, managing or terminating the employment relationship may include personnel records such as letters of application, results of interviews, personal references, performance evaluations and letters of resignation or termination.<sup>115</sup>

## **ARTICLE 24 – USE OF EMPLOYEE PERSONAL INFORMATION**

### **24.01 Use of employee personal information**

An employer is entitled to use employee personal information only for purposes that a reasonable person would consider appropriate in the circumstances.

### **24.02 Use of personal information without consent**

An employer is only entitled to use employee personal information without consent in the following circumstances:

- a) If the use is clearly in the interests of the employee and consent cannot be obtained in a timely way;
- b) If the use is necessary for the medical treatment of the employee and the employee is unable to give consent;
- c) It is reasonable to expect that the use with the consent of the employee would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding;
- d) If the personal information is available to the public;
- e) If the use is required or authorized by law;

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<sup>114</sup> *PIPA* at ss. 11-13.

<sup>115</sup> *PIPA* at s. 13.

- f) If the use is necessary to respond to an emergency that threatens the life, health or security of an individual; or
- g) If the use is reasonable for the purposes of establishing, managing or terminating the employment relationship.<sup>116</sup>

### **24.03 Obligation to notify employee**

Before an employer uses employee personal information for the purposes of establishing, managing or terminating the employment relationship, the employer must notify the employee that it will be using information and the purposes for the use.<sup>117</sup>

## **ARTICLE 25 – DISCLOSURE OF EMPLOYEE PERSONAL INFORMATION**

### **25.01 Disclosure of employee personal information**

An employer is entitled to disclose employee personal information only for purposes that a reasonable person would consider appropriate in the circumstances.

### **25.02 Disclosure of personal information without consent**

An employer is entitled to disclose employee personal information without consent in the following circumstances:

- a) If the disclosure is clearly in the interests of the employee and consent cannot be obtained in a timely way;
- b) If the disclosure is necessary for the medical treatment of the employee and the employee is unable to give consent;
- c) It is reasonable to expect that the disclosure with the consent of the individual would compromise the availability or the accuracy of the personal information and the collection is reasonable for an investigation or a proceeding;
- d) If the personal information is available to the public;
- e) If the disclosure is required or authorized by law;
- f) If the disclosure is for the purposes of contacting next of kin or a friend of an injured, ill or deceased person;
- g) If the disclosure is to a lawyer who is representing the organization; or
- h) If the disclosure is reasonable for the purposes of establishing, managing or terminating the employment relationship.<sup>118</sup>

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<sup>116</sup> *PIPA* at ss. 14-16.

<sup>117</sup> *PIPA* at s. 16.

<sup>118</sup> *PIPA* at ss. 17-19.

### **25.03 Obligation to notify employee**

Before an employer discloses employee personal information for the purposes of establishing, managing or terminating the employment relationship, the employer must notify the employee that it will be disclosing information and the purposes for the disclosure.<sup>119</sup>

## **ARTICLE 26 – ACCESS TO EMPLOYEE PERSONAL INFORMATION**

### **26.01 Access to personal information**

An employee is entitled to request an employer to provide them with:

- a) their personal information under the control of the employer;
- b) information about the ways in which the personal information has been and is being used by the employer; and
- c) the names of the individuals and organizations to whom the personal information has been disclosed.<sup>120</sup>

### **26.02 Right to request correction of personal information**

An employee is entitled to request an employer to correct an error or omission in the personal information about the employee that is under the control of the employer.<sup>121</sup>

## **ARTICLE 27 – COMPLAINTS AND DETERMINATIONS**

### **27.01 Complaints procedure**

An employee who believes their employer has violated this Part may make a complaint in writing to their employer.

If the employer does not respond in 30 business days, or if the employee is not satisfied with how the employer has addressed the complaint, the employee may make a complaint in writing to the Information and Privacy Commissioner.<sup>122</sup>

### **27.02 Retaliation prohibited**

An employer must not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee or deny that employee a benefit because the employee has made a disclosure or a complaint to the Information and Privacy Commissioner.<sup>123</sup>

### **27.03 Damages for breach of privacy**

If the Information and Privacy Commissioner has made an order against an employer, the employee affected by the order can bring a lawsuit against their employer for damages for actual harm the employee has suffered as a result of the breach by the employer.<sup>124</sup>

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<sup>119</sup> *PIPA* at s. 19.

<sup>120</sup> *PIPA* at s. 23.

<sup>121</sup> *PIPA* at s. 24.

<sup>122</sup> *PIPA* at ss. 27-28, 46-47.

<sup>123</sup> *PIPA* at ss. 54-55.

<sup>124</sup> *PIPA* at s. 57.

## **ARTICLE 28 – INFORMATION AND PRIVACY COMMISSIONER CONTACT INFORMATION**

### **28.01 Contact information**

For more information, employees can access the Office of the Information and Privacy Commissioner for BC website at: <https://www.oipc.bc.ca/>

Employees may contact the Office of the Information and Privacy Commissioner for BC at 250-387-5629 or by email at [info@oipc.bc.ca](mailto:info@oipc.bc.ca)