Global Employer Handbook Chapter
British Columbia

Introduction

British Columbia is the westernmost province of Canada located between the Pacific Ocean and the Rocky Mountains. The Pacific Coast of British Columbia is a strategic business location providing the shortest route from Asia to North America. Businesses utilizing British Columbia sea ports can seamlessly connect to all major Canadian and U.S. economic centres by secure, reliable road and rail networks.

The political climate of British Columbia is stable. Elections are held every four years. The next election is scheduled to take place on or before October 19, 2024.

Employers in most Canadian provinces are governed by both legislation and the common law. "Legislation" refers to laws written by government. The three main pieces of legislation governing employment in British Columbia are the Employment Standards Act, the Labour Relations Code and the Human Rights Code. The common law is "judge-made"; it continuously evolves, based on past case law or "precedent." Quebec is unique in that its employers are subject to the civil law system, based on a comprehensive written code of rules.

The Constitution of Canada divides legislative authority between the federal and provincial branches of government. Provinces have jurisdiction over education, municipal institutions, local works, etc., as well as "generally all matters of a merely local or private nature in the province." The majority of companies in Canada are provincially regulated. The Federal Parliament governs banking, the postal service, and shipping, as well as other employers whose core activities are cross-provincial. Airlines, railways, and telecommunication companies generally fall within the federal sphere. Both federally regulated and provincially regulated companies must abide by the common law and governing statutes in their jurisdiction.

This chapter addresses employment and labour laws relevant to employers governed by British Columbia provincial law.

Free copies of British Columbia court decisions, statutes and regulations referenced throughout this chapter can be obtained here: https://www.canlii.org/ .

I. Hiring

A. Basics of Entering an Employment Relationship

- At Will vs. Just Cause (US & other appropriate jurisdictions)

The terminology "at-will," as it is used in British Columbia, usually refers to a right to dismiss an employee without notice and without cause. At-will or "at pleasure" employment relationships, as they are sometimes called, are now very rare in Canada but may still exist for certain types of public employees, especially those employed by the Crown. The right to terminate "at-will" is an unusual area of the law and is not covered in this chapter.

The employment relationship is contractual whether the contract terms are written, oral or implied by common law. The parties may negotiate whatever terms they choose to govern their employment relationship provided their agreement is consistent with applicable minimum statutory requirements: see Sections II. to VI. and VIII. below for a discussion of the minimum statutory requirements.

The basic principles of contract law: offer, acceptance, consideration, will govern the formation of the contract of employment. In practice very few employees sign detailed written contracts governing every aspect of the employment relationship. When called upon to issue rulings in these matters, the courts often imply terms into employment contracts. Some of these are standard and have arisen over the years through decided case law; others may arise from dealings between the parties and, therefore, form part of the unwritten agreement between employer and employee.

If a workplace is unionized, and employees are members of a bargaining unit, the collective agreement will govern their terms and conditions of employment.

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- Common Law Claims

Common law claims in respect of the hiring process are relatively rare. When they arise they are usually based on contractual torts such as fraudulent or negligent misrepresentation. In those cases the remedy may be rescission of the contract or damages where the plaintiff can establish that they suffered monetary loss as a result of the misrepresentation.

- Statutory Claims

The Employment Standards Act (the Act) prohibits employers from inducing applicants to become employees, or inducing employees to work, by misrepresenting the availability of a position, the type of work, the wages, or the conditions of employment. The Act prohibits an individual from receiving a payment from another individual seeking employment, for obtaining employment for that person, or for providing information about employers seeking employees.

Employment agencies, talent agencies, and farm labour contractors must be licensed under the Act.

The terms and conditions of employment established at the time of hire must provide at least the minimum standards established in the Act. These minimum standards cover wages and wage statements, special clothing, hours of work, overtime, vacation, unpaid leaves, and termination of employment. Special rules apply to hiring of young people. These standards are discussed in more detail under Sections II. to VI. and VIII. below.

Statutory claims at the time of entering an employment relationship may also arise under the Human Rights Code. Please see Section I. B. below.

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B. Discrimination (in the Hiring Process)*

**Discrimination will be discussed in more detail in Heading IV below.*

The Human Rights Code (the "Code") prohibits discrimination in employment because of a person's Indigenous identity, 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 or to the intended employment of that person. The Code defines "age" as: "an age of 19 years or more".

Employers may not recruit employees through written or oral processes or advertise employment opportunities in a manner that discourages applications from individuals based on one or more of the protected grounds under the Code.

Exceptions may be made if the limitation or preference is based on a *bona fide* occupational requirement. The term "*bona fide* occupational requirement" is not defined in the legislation. It will depend on the facts of each individual case.

The prohibition against discrimination applies equally to the hiring process and the post hiring relationship. Please see Section IV. below for more information about discrimination in employment.

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C. Employment Applications

- Permissible Inquiries

The protections described in the Human Rights Code apply to employment applications as well as the ongoing employment relationship. Therefore, questions related to a person's Indigenous

identity, 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 or to the intended employment of that person; should be avoided at the pre-employment stage if possible. They could lead to a complaint of discrimination from a prospective employee who is not awarded the job. These questions may, however, be asked at the post-hiring stage if the employer has a legitimate need for the information, such as for insurance, benefit plans, or taxation. Discrimination in employment is discussed in more detail under Section IV. below.

Employers may not recruit employees through written or oral processes or advertise employment opportunities in a manner that discourages applications from individuals based on one or more of the protected grounds. Exceptions may be made if the limitation or preference is based on a *bona fide* occupational requirement. The term "*bona fide* occupational requirement" is not defined in the legislation. It will depend on the facts of each individual case.

The Employment Standards Act (the Act) prohibits employers from inducing applicants to become employees, or inducing employees to work, by misrepresenting the availability of a position, the type of work, the wages, or the conditions of employment. The Act further prohibits an individual from receiving a payment from another individual seeking employment, for obtaining employment for that person, or for providing information about employers seeking employees.

The Pay Transparency Act came into force May 11, 2023. The Act places new requirements on employers in an effort to address systemic gender discrimination in the workplace as it relates to wages. Unless exempted by regulation an employer must specify the expected salary or wage range for publicly advertised jobs. The Act prohibits employers from seeking pay history information from a job applicant. It also prohibits employers from disciplining employees who ask about their pay; share their pay information with others; or provide information to the Director of Pay Transparency about their employer.

The Act requires pay transparency reports to be posted on the company website by November 1 of each year. This applies to employers that have the following number of employees on January 1 of the applicable year as follows:

(a) for 2024, 1 000 or more;

(b) for 2025, 300 or more;

(c) for 2026, 50 or more;

(d) for a year after 2026, more than the lesser of 49 and any prescribed number.

The Regulation to the Act sets out what information employers are required to provide in their pay transparency reports and the calculations for determining the differences in mean and median pay, including bonuses, and overtime hours. The Regulation requires the calculations to reference hourly rates of pay for employees, and sets out the appropriate calculation to use to determine hourly rates of pay for salaried employees.

Employers will be required to provide differences in pay and overtime information by gender. The Regulation sets out four gender categories: male, female, non-binary and unknown. "Unknown" is

for employees who do not identify with one of the other gender categories, or who do not wish to specify their gender category. It is also the category that employers will use for employees who do not wish to provide their information. Gender disclosure is voluntary for employees.

Employers will be required to report on the difference between the median and mean pay, overtime pay, overtime hours worked and bonus pay in each gender category. The Regulation also requires employers to provide the percentage of employees working in four specified segments (essentially divided equally based on hourly pay). Bonuses are defined broadly in the Regulation and include holiday and year-end bonuses, money related to profit sharing, securities, commission, money that is an incentive related to hours of work, production or efficiency, and money that is discretionary and not related to hours of work, production or efficiency.

However, employers will not be required to report percentages of employees in each gender category who receive overtime pay or bonus pay in the reporting period if there are fewer than 10 employees in the specific gender category, or if there is only one gender category with 10 or more employees. Similarly, if there are fewer than 10 employees in the specific gender category, employers are not required to provide differences in the mean and median pay or overtime hours worked.

The BC Government has developed a Pay Transparency Reporting Tool and Guidance materials to help employers meet their reporting obligations. To use the Reporting Tool employers must have a Business BCeID account. The Reporting Tool and Guidance materials can be accessed at this link: https://www2.gov.bc.ca/gov/content/gender-equity/pay-transparency-in-bc

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D. Use of Employment Contracts

At common law, the relationship between an employer and its employees is governed by contract. The terms of the contract may be written or oral. Some essential terms, such as reasonable notice of termination, will be implied by the courts.
The parties may negotiate whatever terms they choose provided the agreement is consistent with statutes applicable to employment such as the Employment Standards Act and the Human Rights Code. These requirements are discussed in more detail under Sections II. to VI. and VIII. below.

In practice very few employees sign detailed written contracts governing every aspect of the employment relationship. When called upon to issue rulings in these matters, courts often imply terms into employment contracts. Some of these are standard and have arisen over the years through decided case law; others may arise from dealings between the parties.

In unionized environments, the collective agreement negotiated between the union and management is the employment contract that governs the terms and conditions of employment for employees covered by the union bargaining unit.
See also Section VII. A., B., C., D. below.

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- Non-Disclosure Agreements/Non-Competes

The obligations of employees with respect to non-disclosure or competing with their former employer are determined by the type of relationship that was formed in the employment contract. The extent of the obligation could also depend on whether the employee owes a fiduciary duty to the employer.

A contractual duty not to compete imposed on a non-fiduciary employee will receive close scrutiny from a court to ensure that it minimally impairs the right of the employee to earn a living while protecting only the core business interest of the employer. Subject to contractual obligations, there are few restrictions on the right of an employee in a non-fiduciary position to compete with a former employer since the law favours free competition.

A more exacting duty will be imposed on a fiduciary employee. The scope of such duty is similar to that owed to a corporate employer by its directors.

Non-disclosure and non-solicitation clauses are generally less restrictive than non-competition clauses. For that reason they are more readily enforced by the courts.

See also Section VII. A., B., C., D. below.

Please note that amendments to the Competition Act came into force June 23, 2023. It is now a criminal offence for non-affiliated employers to agree:

- To fix, maintain, decrease or control wages or other terms of employment; or
- To refrain from hiring or trying to hire one another's employees

This applies only to agreements to not solicit or hire "each other's" employees. When a restraint contained in an agreement only applies to one employer it will be viewed as a one-way agreement and not applicable to "each other's" employees. However, if there are reciprocating promises enforcement action may be taken. Employers who violate the Competition Act may face possible imprisonment up to 14 years, or fines in amounts determined at the court's discretion. Prior to these amendments fines had been capped at a maximum of $25 million.

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E. Advertising/Recruitment

The protections described in the Human Rights Code apply to the advertising and recruitment process. Job requirements that relate to a person's Indigenous identity, 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 or to the intended employment of that person; should be avoided. They could lead to a complaint of discrimination from a prospective employee who is not awarded the job. These

questions may be asked at the post-hiring stage if the employer has a legitimate need for the information, such as for insurance, benefit plans, or taxation. Discrimination in employment is discussed in more detail under Section IV. below.

Employers may not recruit employees through written or oral processes or advertise employment opportunities in a manner that discourages applications from individuals based on one or more of the protected grounds. Exceptions may be made if the limitation or preference is based on a *bona fide* occupational requirement. The term "*bona fide* occupational requirement" is not defined in the legislation. It will depend on the facts of each individual case.

The Employment Standards Act (the Act) prohibits employers from inducing applicants to become employees, or inducing employees to work, by misrepresenting the availability of a position, the type of work, the wages, or the conditions of employment. The Act further prohibits an individual from receiving a payment from another individual seeking employment, for obtaining employment for that person, or for providing information about employers seeking employees.

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The Pay Transparency Act came into force May 11, 2023. The Act places new requirements on employers in an effort to address systemic gender discrimination in the workplace as it relates to wages. Unless exempted by regulation an employer must specify the expected salary or wage range for publicly advertised jobs. The Act prohibits employers from seeking pay history information from a job applicant. It also prohibits employers from disciplining employees who ask about their pay; share their pay information with others; or provide information to the Director of Pay Transparency about their employer.

The Act requires pay transparency reports to be posted on the company website by November 1 of each year. This applies to employers that have the following number of employees on January 1 of the applicable year as follows:

(a) for 2024, 1 000 or more;

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Employers will be required to provide differences in pay and overtime information by gender. The Regulation sets out four gender categories: male, female, non-binary and unknown. "Unknown" is for employees who do not identify with one of the other gender categories, or who do not wish to specify their gender category. It is also the category that employers will use for employees who do not wish to provide their information. Gender disclosure is voluntary for employees.

Employers will be required to report on the difference between the median and mean pay, overtime pay, overtime hours worked and bonus pay in each gender category. The Regulation also requires employers to provide the percentage of employees working in four specified segments (essentially divided equally based on hourly pay). Bonuses are defined broadly in the Regulation and include holiday and year-end bonuses, money related to profit sharing, securities, commission, money that is an incentive related to hours of work, production or efficiency, and money that is discretionary and not related to hours of work, production or efficiency.

However, employers will not be required to report percentages of employees in each gender category who receive overtime pay or bonus pay in the reporting period if there are fewer than 10 employees in the specific gender category, or if there is only one gender category with 10 or more employees. Similarly, if there are fewer than 10 employees in the specific gender category, employers are not required to provide differences in the mean and median pay or overtime hours worked.

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F. Background Checks/ Employment References

The Criminal Records Review Act requires that people who work with or may have potential for unsupervised access to children or vulnerable adults must undergo a criminal record check by the Criminal Records Review Program. This applies to paid employees and volunteers.

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II. Compensation

A. Minimum Wage

The standards established in the Employment Standards Act (the "Act") are minimum requirements. Any agreement to waive the requirements of the Act will be void unless the matter is addressed under a collective agreement as permitted by the Act. However, any condition of employment under a contract providing a greater benefit than provided by the Act will prevail.

The Act and the Employment Standards Regulations establish a minimum wage for all employees. The general minimum wage, as of June 1, 2024 was $17.40 an hour. The minimum wage is adjusted on June 1st each year based on the Consumer Price Index. Minimum wage applies

regardless of how employees are paid – hourly, salary, commission or on an incentive basis. Some types of employees may have different minimum wage rates.

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B. Wage Payments & Deductions

The Employment Standards Act requires that paydays be at least semi-monthly and within eight days after the end of the pay period. Each payday, an employer must pay an employee all wages that they earned in the preceding pay period.

Employers must not withhold or deduct wages other than as permitted by law. In particular, the employer must not require an employee to pay any part of the employer's business costs, except as permitted by the Employment Standards Act Regulations.

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C. Minimum Age/Child Labour

The Employment Standards Act and Regulations require written permission from a parent or guardian ("a permit") to allow children under 16 years of age to work. The employer must keep a record of the written consent. There are different requirements for hiring young people depending on the age of the child.

Under 12: A permit is required for children under 12 to work unless they are performing in the entertainment industry.

Ages 12 and 13: Children aged 12 and 13 cannot work without a permit from their parent/guardian unless they are performing in the entertainment industry, or are working at a camp or family owned business and will not be performing any tasks listed as "not light work".

Ages 14 and 15: A permit is required for children aged 14 and 15 to work unless they are performing in the entertainment industry, or are working at a camp or family owned business and will not be performing any tasks listed as "not light work", or if they are performing "light work" only.

Ages 16 and older: No permit is required. Employers must follow employment standards. Employers must meet WorkSafeBC requirements for young workers under 25 years old.

The Employment Standards Regulations define "not light work". Some examples include, but are not limited to, the following:

- Repairing, maintaining or operating machinery, tools or other equipment that could harm the child
- Entering or working at a place where a minor cannot legally enter or work

- Entering or working at a site of construction, heavy manufacturing, or heavy industrial work or other work that could harm the child
- Entering or working in a place designed to retain a low oxygen or toxic environment
- Entering a walk-in freezer or cooler except to retrieve an item
- Working with goods or providing services that a minor cannot legally distribute, purchase, use or consume
- Lifting, carrying or moving an item or animal that puts the child at risk of injury

- Working with or exposure to hazardous chemicals or materials as defined in section 13 of the Workers Compensation Act

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D. Overtime Requirements

The Employment Standards Act (the "Act") provides that employers and employees may agree to an "averaging agreement," where overtime is averaged over a period of one, two, three, or four weeks in accordance with certain parameters. If there is no averaging agreement overtime is payable after more than eight hours worked in one day or more than 40 hours worked in one week. The daily rate for overtime is time and one-half of the employee's regular wages after eight hours and double time after 12 hours. The weekly rate for overtime is time and one-half times the employee's regular wages after 40 hours.

Overtime must be paid at the same time as regular wages unless the employee has requested in writing that their overtime be "banked." Where a "time bank" is established, overtime may be banked at the overtime rates, and may then be taken as time off with pay at a time mutually agreed to by the employee and employer. The employee is entitled to request pay out of all credits in the time bank at any time. Similarly, the employer may close an employee's time bank with one month's notice as long as the employer allows the employee to use the banked time, or pays out the banked time, within six months of closing the bank.

Different standards may apply to unionized employees covered by a collective agreement as long as the provisions of the collective agreement related to hours of work or overtime meet or exceed the hours of work and overtime requirements of the Act.

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E. Workday/Workweek/Work hours

The Employment Standards Act (the "Act") provides that employers and employees may agree to an "averaging agreement," where overtime is averaged over a period of one, two, three, or four weeks in accordance with certain parameters. If there is no averaging agreement overtime is payable after more than eight hours worked in one day or more than 40 hours worked in one week. The daily rate for overtime is time and one-half of the employee's regular wages after eight hours

and double time after 12 hours. The weekly rate for overtime is time and one-half times the employee's regular wages after 40 hours.

The Act provides that employees must not work more than 5 consecutive hours without a meal break. Each meal break must last at least 30 minutes. If employees are required to be available for work during the meal break the meal break must be counted as time worked.

The Act requires employers to ensure that employees have at least eight consecutive hours free from work between each shift except in an emergency. Employees are also entitled to have at least 32 consecutive hours free from work each week. If employees are required to work during that 32-hour period, they must be paid at time and one-half their regular wages.

Employers are generally obliged to ensure that employees are not required or allowed to work excessive hours, or hours detrimental to the employee's health or safety.

Managers are specifically excluded from the hours of work provisions of the *Act*. "Manager" is defined in the Employment Standards Regulations as:

- A person whose principal employment responsibilities consist of supervising or directing, or both supervising and directing, human or other resources; or
- A person employed in an executive capacity.

Some other types of workers and professions are also excluded from the hours of work and overtime provisions of the Act. There are also special rules relating to hours of work and overtime applicable to certain industries.

Different standards may apply to unionized employees covered by a collective agreement as long as the provisions of the collective agreement related to hours of work or overtime meet or exceed the hours of work and overtime requirements of the Act.

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F. Benefits/Health Insurance

The Medical Services Plan (MSP) is administered by Health Insurance BC under the auspices of the Ministry of Health. MSP provides British Columbians with coverage for medically required services, laboratory services and diagnostic procedures. MSP is a prepaid plan and account holders are billed for premiums one month in advance. All residents of British Columbia must enroll with MSP.

As of January 1, 2020 an Employer Health Tax on employers with payrolls greater than $500,000 replaced the MSP premiums that were previously paid by individuals. Employers with a BC Payroll of greater than $500,000 must register. Employers with a BC Payroll of less than $500,000 may be required to register if they are part of an associated group of employers whose total BC Payroll is greater than $500,000.

Employers who are not required to register may choose to administer the payment of MSP premiums on behalf of their employees, but this is not required by law.

Employers may also choose to arrange group insurance plans for the benefit of their employees, but this is not required by law.

The Employment Standards Act (the "Act") requires the continuation of benefits during unpaid leaves under the Act. The employer must continue to make payments to a pension, medical or other plan beneficial to the employee as though the employee were not on leave, if the employer would ordinarily pay the total cost of the plan, or in cases where both the employer and the employee ordinarily pay the cost of the plan and the employee chooses to continue to pay their share of the cost.All employers in British Columbia are required to participate in the workers' compensation insurance scheme, established in the Workers' Compensation Act, and described more fully in Section XII. Health and Safety below.

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III. Time Off/Leaves of Absence

A. Paid Time Off

- Vacation Pay

The Employment Standards Act (the "Act") provides that employees are entitled to two weeks of vacation after one year of employment and to vacation pay pro-rated accordingly. After five consecutive years of employment, employees are entitled to three weeks of vacation and to vacation pay pro-rated accordingly. If a statutory holiday falls on an employee's scheduled vacation day the employee may qualify for statutory holiday pay but they do not get an additional day off. The Act does not address scheduling of vacation, except to say that employees must be allowed to take it in periods of one or more weeks unless they request a shorter time. Employers may schedule vacations according to business needs as long as employees are able to take their vacation within 12 months of it being earned. Vacation entitlement under the Act cannot be carried over from year to year it must be taken within 12 months of being earned. Employees cannot elect to receive pay rather than vacation time. Employers must ensure that an employee takes the vacation time to which the employee is entitled.

Different standards may apply to unionized employees covered by a collective agreement as long as the vacation and vacation pay provisions of the collective agreement meet or exceed the annual vacation and vacation pay requirements of the Act.

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- Sick Leave Pay

The Employment Standards Act (the "Act") provides that employees are entitled to five paid sick days each calendar year after 90 consecutive days of employment. Employees are also entitled to additional three unpaid sick days each calendar year. An employer may request that an employee provide proof that the employee is entitled to leave under this section of the Act; an employee must provide this proof as soon as practicable. A calendar year means the 12 month period beginning January 1. Employees who start work part way through the year are entitled to the full 5 paid days and 3 unpaid days despite not working for the entire year.

The following formula is used to calculate what the employer must pay an employee who takes sick leave:

amount paid ÷ days worked

where	
amount paid	is the amount paid or payable to the employee for work that is done during and wages that are earned within the 30 calendar day period preceding the leave, including vacation pay that is paid or payable for any days of vacation taken within that period, less any amounts paid or payable for overtime, and
days worked	is the number of days the employee worked or earned wages within that 30 calendar day period.

This formula provides an "average day's pay" to employees who cannot attend work due to illness.

Please see Section II. F. Benefits/Health Insurance above, and Section XII. Health and Safety below.

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- Holiday Pay

The Employment Standards Act (the "Act") establishes that employees in British Columbia are entitled to time off or pay in lieu of time off for each of the following statutory holidays: New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, British Columbia Day, Labour Day, National Day for Truth and Reconciliation, Thanksgiving Day, Remembrance Day, Christmas Day, and any other holiday prescribed by regulation.

For each statutory holiday, employers must give all qualifying employees (including part-time and casual employees) the day off with an average day's pay. Employees who are required to work must be paid time and one-half of their regular wages for all hours worked on the statutory holiday up to 12 hours (and then double time after 12 hours), plus one additional average day's pay.

Statutory holiday pay is available to all employees who have been employed for more than 30 calendar days, and who have worked or earned wages for 15 of the 30 calendar days preceding the statutory holiday, or who have worked under an averaging agreement at any time within the 30-day period.

Different standards may apply to unionized employees covered by a collective agreement as long as the statutory holiday provisions of the collective agreement meet or exceed the statutory holiday requirements of the Act. The National Day for Truth and Reconciliation (NDTR) is exempt from the "meet or exceed" test. The NDTR must be honoured and cannot be replaced by other provisions of a collective agreement.

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B. Family and Other Medical Leaves

The Employment Standards Act (the "Act") provides that employees are entitled to take up to five days of unpaid family leave each employment year to meet responsibilities related to the care, health, or education of a child in the employee's care or any other member of the employee's immediate family.

The Act provides that employees are entitled to up to 3 hours paid leave, at their average hourly wage, for the purpose of being vaccinated against COVID-19.

The Act provides that employees are entitled to up to 27 weeks of unpaid compassionate care leave within a 52 week period to provide care or support to a family member if the family member has a serious medical condition with a significant risk of death within 26 weeks. The leave must be supported by a medical certificate.

The Act provides that employees are entitled to critical illness or injury leave to care for a member of their family. If the family member is under 19 years of age the employee is entitled to up to 36 weeks of unpaid leave within a 52 week period. If the family member is over 19 years of age the employee is entitled to up to 16 weeks of unpaid leave within a 52 week period. The leave must be supported by a medical certificate.

All employees are entitled to take unpaid, job-protected leave if they are unable to work because of illness, quarantine, providing care to an eligible person, or due to a school closure, for reasons related to COVID-19.

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C. Disability Leave

Please see Section II. F. Benefits/Health Insurance above, and Section IV. Discrimination & Harassment, and Section XII. Health and Safety below.

D. Pregnancy Leave/Parental Leave

The Employment Standards Act provides that pregnant employees are entitled to take up to 17 consecutive weeks of unpaid maternity leave for the birth of their child. If, for reasons related to the birth or the termination of the pregnancy, the employee is unable to return to work when her leave ends, she is entitled to take up to six additional consecutive weeks of unpaid leave.

An employee who takes maternity leave is entitled to take up to 61 weeks of unpaid parental leave. Parental leave must begin immediately after the end of the maternity leave.

A parent who does not take maternity leave is entitled to up to 62 consecutive weeks of unpaid parental leave which must begin within 78 weeks after the birth of the child. Adopting parents are entitled to up to 62 consecutive weeks of unpaid parental leave which must begin within 78 weeks after the child is placed with the parent. Parental leave can be extended by up to 5 weeks if the child needs more care.

An employee's combined entitlement to maternity leave and parental leave is limited to 78 weeks.

Employers must not terminate employment, or change a condition of employment, without the employee's written consent because the employee has taken a leave that they are entitled to under the Act. The employer must place the employee in the same or a comparable position as the one they occupied prior to the leave as soon as the leave ends.

The service of an employee who is on maternity or parental leave under the Act is deemed to be continuous for the purposes of calculating annual vacation or termination entitlement under the *Act*, as well as any pension, medical, or "other plan beneficial to the employee." An employee is also entitled to all increases in wages and benefits to which the employee would otherwise have been entitled had the employee not been on maternity or parental leave.

While the employee is on maternity or parental leave under the Act, the employer must continue to make payments to any pension, medical, or other plan beneficial to the employee if it ordinarily paid the total cost of the plan, or if the cost of the plan is shared and the employee continues to pay their share.

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E. Reservists' Leave

The Employment Standards Act provides that members of the reserve force as defined in the National Defence Act are entitled to unpaid leave for a period of deployment, including pre- and post-deployment, or other prescribed circumstances.Free copies of British Columbia statutes and regulations can be obtained here: https://www.canlii.org/

F. Leave respecting disappearance of child

The Employment Standards Act provides that if a child of an employee disappears as a result of a crime the employee is entitled to unpaid leave for a period of up to 52 weeks. The leave must be taken during the 53 week period from the date the child disappears.

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G. Leave respecting death of child

The Employment Standards Act provides that if a child of an employee dies the employee is entitled to unpaid leave for a period of up to 104 weeks. Leave begins on the date of the child's death or the date the child is found dead in the case of disappearance

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H. Leave respecting domestic or sexual violence

The Employment Standards Act provides that where an employee or their child or dependent is impacted by domestic or sexual violence the employee is entitled to take up to 5 days of paid leave, 5 days of unpaid leave, and 15 weeks of additional unpaid leave per calendar year. While on paid leave the employee earns an average day's pay for each day of the leave. .

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I. Bereavement

The Employment Standards Act entitles employees to take up to three days of unpaid bereavement leave following the death of a member of their immediate family.

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J. Jury Duty

The Employment Standards Act provides that if an employee is required by law to attend court as a juror, the employer must allow them to return to work when their period of jury duty ends. The employee must be returned to their former position, or a comparable position. Their employment will be deemed to be continuous for the period of absence on jury duty.

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During any of the leaves referenced under section III.B. to J. above, an employee's employment is deemed continuous for the purpose of calculating vacation entitlement, severance entitlement and any pension, medical or other plan beneficial to the employee. And the employer must continue to make payments to any pension, medical, or other plan beneficial to the employee as though the

employee were not on leave, if it ordinarily paid the total cost of the plan, or if the cost of the plan is shared and the employee continues to pay their share.

IV. Discrimination & Harassment

A. Discrimination

- Protected Classes

The Human Rights Code (the "Code") prohibits discrimination in employment on the basis of Indigenous Identity, 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 or to the intended employment of that person. The Code defines "age" as: "an age of 19 years or more".

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- Protected Activities

The Human Rights Code (the "Code") protects individuals from discriminatory publications; discrimination in accommodation, services and facilities customarily available to the public; discrimination in purchase of property; discrimination in tenancy premises; discrimination in employment advertisements; discrimination in wages; discrimination in employment; discrimination by unions and associations.

The protected activities most relevant to employment are: discrimination in employment advertisements; discrimination in wages; discrimination in employment; and discrimination by unions and associations.

The Code may exempt discriminatory conduct if it is based on a "*bona fide* occupational requirement." This means that an employer that imposes a discriminatory workplace rule or qualification may defend that rule or qualification if it can show that the rule or qualification is reasonable and *bona fide*.

To meet these criteria, the qualification must be: imposed honestly and with the good faith belief that it is necessary to adequately perform the work; adopted for a purpose that is rationally connected to the performance of the job; and reasonably necessary to accomplish the legitimate work-related purpose. To prove that the qualification is reasonably necessary, the employer must demonstrate that it is impossible to accommodate an individual employee who lacks that qualification without the employer experiencing undue hardship.

Where a workplace rule results in discrimination the employer has a duty to accommodate the affected employees to the point of undue hardship, even though the Code does not expressly set out such a duty. This duty to accommodate has been incorporated into the statutory prohibition against discrimination in the workplace by the Supreme Court of Canada's interpretation of

the Code. The onus will be on the employer to establish that it has met its duty to accommodate to the point of undue hardship. The following factors are among those that should be considered in determining whether an accommodation will in fact result in undue hardship:

- Disruption of the collective agreement, if any;
- Morale problems among other employees;
- Effect on the rights of other employees;
- Interchangeability of work force and facilities;
- Size of the employer's operation;
- Safety concerns (the magnitude of risk and the identity of those who would bear it); and
- Costs to the employer, including the impact on efficiency, wage increases, and other direct financial costs.

It should be noted that no factor will be determinative in all cases. Each situation must be assessed in the context of all the facts.

The right to equal treatment in employment will be infringed where a condition of employment requires enrollment in a benefit plan that discriminates based on one or more of the protected grounds described in the Code. There are exceptions. For example, the prohibition against discrimination based on marital status, physical or mental disability, sex, or age does not apply to the operation of a *bona fide* retirement, superannuation, or pension plan, or to a *bona fide* group or employee insurance plan. Nor does the prohibition of discrimination based on age apply to a *bona fide* scheme based on seniority. In this context *"bona fide"* means a plan that is legitimate and adopted in good faith not for the purpose of defeating protected rights. It is the plan itself that will be evaluated to determine its *bona fides*, not the actuarial details or mechanics of the terms and conditions of the plan.

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B. Harassment and Bullying

Workplace harassment on the basis of any of the protected grounds under the Human Rights Code: Indigenous identity, 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 or to the intended employment of that person; (the Code defines "age" as: "an age of 19 years or more"); will constitute discrimination. All employers are obliged to prevent harassment from occurring in the workplace, and are liable under the Code for all discriminatory acts of their employees undertaken "in the course of employment." The phrase, "in the course of employment," has been interpreted broadly

as referring to activities in some way related to or associated with the employment. This statutory liability is similar to, but broader than, vicarious liability. Employers may also be liable for harassment caused by supervisors, co-workers, volunteers, clients, and customers.

Under the Workers Compensation Act employees who develop a mental disorder requiring time off work where the mental disorder was caused by a work-related stressor will be entitled to wage replacement compensation. A work-related stressor may include bullying or harassment. To be entitled to compensation the worker must be diagnosed with a condition described in the most recent American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. A work-related stressor in this context would not include a decision made by the employer to change terms or conditions of employment or discipline the worker or terminate the worker's employment.

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V. Termination/Dismissal Issues

A. Overview

The law presumes that employers and employees intend the employment contract to remain in force indefinitely. The Employment Standards Act requires employers to provide a minimum period of notice of termination to most workers. Employees also may have common law rights with respect to notice of termination of their employment which can be in excess of their statutory rights. The right to notice will be implied in most employment relationships with or without a written contract. Notice may be in the form of working notice or pay in lieu of working notice. If an employer can prove that it had "just cause" to terminate the employment relationship, no notice will be necessary.

Unionized employees, unlike non-union workers, cannot be dismissed simply by providing notice of termination. Unionized workers are entitled to continued employment unless there is cause for their dismissal.

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B. Justification for Dismissal

The dismissal of employees who are covered by a collective agreement will be governed by the terms of the collective agreement and the Labour Relations Code. The information in this section applies only to non-union work relationships.

In order to prove that it had just cause for termination the employer may have a duty to warn the employee that their performance problems may result in dismissal. However, even with a warning it can be very difficult to prove just cause for performance problems. For example, if the employer fails to act on an employee's inappropriate behaviour or has treated similar behaviour more leniently in the past, the employer may not be able to justify a termination for poor performance.

Despite these difficulties there are certain acts, such as assault on a supervisor or co-worker, theft of significant amounts of company property, or other significant acts of dishonesty, which are so serious that just cause to dismiss without notice may exist without a duty to warn the employee.

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C. Mandatory Severance Pay

- Common Law Claims

The common law requirement of reasonable notice of termination is implied into every non-union employment relationship. Notice of termination is required except in cases where the employee has given “just cause” for summary termination.

The parties may agree on the appropriate length of notice in their written contract of employment. This agreement will be upheld by the courts unless it provides less than the statutory minimums established by the Employment Standards Act (the “Act”), or if it is unreasonable in light of changes to the employment relationship.

There is no fixed rule or formula to determine the length of common law notice. In setting the notice period, courts look to the following factors: length of service; character of employment; age of the employee; possible difficulty in finding alternate employment; and the circumstances of hiring/termination.

If adequate working notice of termination is not given the employee may seek common law damages through the courts. If the employee is successful the court will award damages designed to put the employee in the same monetary position they would have been in if working notice had been given. In most cases, therefore, the employee is entitled to payment for the loss of salary and certain benefits over the notice period.

If an employee is successful in a court action for damages in lieu of notice the employee will be entitled to a monetary amount equal to what the employee would have received by way of salary during the notice period. In most cases this will also include any raises or bonuses that would have been paid to the employee if the employee had continued to work during the notice period. Depending on the wording of the contract, stock options may be treated in the same manner and may give rise to significant damage issues. The court may also award damages for costs incurred by the employee that were incidental to finding a new job.

Employees on fixed-term contracts are typically entitled to an amount representing salary in lieu of notice equal to the amount of time remaining in the contract and may not be subject to the duty to mitigate.

Although there is substantial variability in decisions on this issue, judges have tended to award greater damages to employees who held senior level positions or who had seniority with the company.

The following is a rough summary of "reasonable notice" periods that courts have awarded in recent years.

Please note that there is no formula for accurately determining notice periods and each case depends upon its unique facts.

Position	Length of service	Estimated Common Law Notice period*
Senior management	0-5 years	6-12 months
	6-10 years	10-12 months
	11 years or more	13-30 months
Middle management	0-5 years	4-9 months
	6-10 years	6-12 months
	11 years or more	12-24 months
Lower management	0-5 years	3-6 months
	6-10 years	7-9 months
	11 years or more	10-21 months
Non-management	0-5 years	1-6 months
	5-10 years	5-12 months
	11 years or more	9-18 months

**** These notice periods include the minimum statutory notice required under the Act.***

The value of monies earned and benefits obtained from alternate employment during the notice period will be deducted from any monies paid in lieu of notice. The employee has a duty to mitigate their losses by engaging in an effective job search in the weeks and months following termination.

At the time of termination, it is often not possible to determine when the employee will obtain alternate work. Many employers, therefore, offer settlement amounts that take into account both the potential common law damages and the possibility of re-employment. If the employee accepts the severance package and finds alternate work quickly, they may well benefit financially as a result of the termination. However, settlement packages can be structured to reduce such a windfall.

If the employer does not offer an acceptable severance package, the employee may obtain damages through a court action.

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- Statutory Claims

The Employment Standards Act (the "Act") provides that employees become entitled to a written notice of termination after working for three consecutive months for the same employer. The employer may either give the employee the required working notice or pay the employee an amount equal to the compensation the employee would have received during the notice period. An employer's liability for compensation or notice is based on the length of an employee's continuous service as follows:

- After three consecutive months of employment – one week's pay;
- After 12 consecutive months of employment – two weeks' pay;
- After three consecutive years – three weeks' pay, plus one week's pay for each additional year of employment to a maximum of eight weeks.

The Act provides that no notice of termination is required if the employee retires or quits, or is terminated for just cause.

Different standards for individual termination notice may apply to unionized employees covered by a collective agreement as long as the provisions of the collective agreement related to seniority, recall, termination and layoff meet or exceed the individual termination notice requirements of the Act.

Some other types of employees and professions are excluded from the individual termination notice provisions of the Act.

If an employer intends to terminate the employment of 50 or more employees at a single location within any two-month period, special group termination notice is required. Group termination notice is in addition to the employer's liability for individual termination notice or for notice in accordance with collective agreement provisions.

The notice of group termination is based on the number of affected employees:

- eight weeks for 50-100 employees
- 12 weeks for 101-300 employees
- 16 weeks for more than 300 employees.

The Act requires the employer to give notice of group termination to the affected employees, the union (where applicable), and the Minister. Notice may be by way of working notice or compensation in lieu of working notice. The notice must include the number of employees affected, the effective date or dates of the termination, and the reasons for the termination.

Certain types of employees such as temporary employees or seasonal employees may be excluded from the group termination notice provisions of the Act.

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D. Use of Severance Agreements and Releases
   - Releases/Waivers

Where the parties agree on the amount of notice or pay in lieu of notice that is appropriate it is standard practice to have the former employee execute a release of all claims arising from the termination of their employment. The language of the release is left to the agreement of the parties.

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E. Legal Challenges to Dismissal
   - Constructive Discharge

If an employer changes a fundamental term or condition of an employee's contract of employment without the employee's consent, or without adequate notice, the employee may be deemed to have been "constructively dismissed". In that case, the employee is free to treat the matter as a dismissal, and sue the employer for damages in lieu of notice.

If an employee does not object to a fundamental change to their contract of employment within a reasonable period of time, the employee may be deemed to have condoned the change, and could lose the opportunity to claim damages.

If an employee is successful in a court action for damages in lieu of notice the employee will be entitled to a monetary amount equal to what the employee would have received by way of salary during the notice period. In most cases this will also include any raises or bonuses that would have been paid to the employee if the employee had continued to work during the notice period. Depending on the wording of the contract, stock options may be treated in the same manner and may give rise to significant damage issues. The court may also award the dismissed employee damages for costs incidental to finding a new job.

Employees on fixed-term contracts are typically entitled to an amount representing salary in lieu of notice equal to the amount of time remaining in the contract and may not be subject to the duty to mitigate.

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- Dispute Resolution Process /Forums

Disputes involving breaches of the Employment Standards Act or the Human Rights Code must be resolved through the dispute resolution process mandated by those statutes.

Parties to collective agreements in a unionized employment relationship are required to resolve their disputes by arbitration in accordance with the Labour Relations Code.

Parties to non-union employment contracts may agree to resolve any disputes by a private arbitration process. Otherwise, these disputes are usually resolved in the courts.

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F. Employment References

Under the Pay Transparency Act an employer must not seek pay history information about an applicant for employment by any means unless the pay history information is publicly accessible.

Otherwise, British Columbia does not have any laws or statutes that address this issue. However, there have been cases where a refusal to provide a reference was taken into account by the court in a wrongful dismissal action as a factor that tended to increase the reasonable notice period. Providing an unjustified bad reference may also result in damages being assessed against the employer by the courts. For more information, please reach out to us at Roper Greyell LLP, Attention: Gregory J. Heywood, 604-806-3841, gheywood@ropergreyell.com or James D. Kondopulos, 604-806-3865, jkondopulos@ropergreyell.com

VI. Layoffs/Work Force Reductions/Redundancies/Collective Dismissals

A. Overview

Under the Employment Standards Act a layoff will be considered temporary if it is for a period of less than 13 weeks in any period of 20 consecutive weeks or for a period during which the employee has a right of recall. A layoff, other than a temporary layoff, will be considered the equivalent of termination of employment. Terminated employees are entitled to the minimum notice provisions established in the Act.

The minimum termination notice requirements are discussed in Section V. C. above.

The employer and union, in unionized workplaces, may agree to provisions governing seniority, layoff, recall and severance on termination. In those cases the terms and conditions of the parties' collective agreement will govern unless they do not meet or exceed the minimum standards required under the Employment Standards Act. If the collective agreement provisions respecting seniority retention, recall, termination of employment or layoff, when considered together, meet or exceed the requirements of the individual termination notice provisions of the Act the collective agreement provisions will apply.

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B. Procedure

- Mandatory Notice Periods

In unionized workplaces the employer and union may agree to certain layoff notice provisions. In those cases the employer will be bound to comply with whatever it has agreed to.

In non-union workplaces, or situations where the collective agreement provisions are found not to meet or exceed the minimum requirements of the Employment Standards Act (the "Act"), notice in accordance with the minimum periods described in Section V. C. above must be given.

Termination notice under the Act must not coincide with a period of annual vacation, leave, temporary layoff, strike or lockout or a period when the employee is unavailable for work due to medical reasons. Once notice is given the employee's wage rate, or any other condition of employment, must not be altered without the written consent of the employee or their trade union.

If an employer intends to terminate the employment of 50 or more employees at a single location within any two-month period, group termination notice is required as discussed in Section V. C. above. Group termination notice is in addition to the employer's liability for individual termination notice under the Act or notice in accordance with collective agreement provisions.

The Act requires the employer to give notice of group termination to the affected employees, the union (where applicable), and the Minister. Notice may be by way of working notice or compensation in lieu of working notice. The notice must include the number of employees affected, the effective date or dates of the termination, and the reasons for the termination.

See Section V. C. above.

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- Transfer of Undertakings/TUPE

The Employment Standards Act (the “Act”) provides that if all or part of a business is sold or otherwise disposed of the employment of an employee of the business is deemed, for the purposes of the Act, e.g. with respect to vacation and notice of termination, to be continuous and uninterrupted by the disposition.

If all or part of a union certified business is sold, leased, transferred or otherwise disposed of, the recipient is bound by all proceedings under the Labour Relations Code (the “Code”) including outstanding grievances, applications, potential liabilities, and the existing collective agreement.

If a contract for services in certain sectors is retendered and those services continue to be performed by another contractor, the new contractor will be bound by all existing proceedings under the Code and the existing collective agreement. This provision applies to contracts for services in the building cleaning; security; bus transportation; food and non-clinical health sectors.

Under the Code the Labour Relations Board also has discretionary power to declare two or more enterprises that carry on associated or related businesses under common control and direction to be a single employer for the purposes of the Code.

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- Severance Pay

See the discussion under Section V. C. and the bullet for Mandatory Notice periods above.

- Benefits

Employers are not required by statute to maintain benefits for employees who are laid off.

Continuation of benefits is provided for unionized employees, under the Labour Relations Code (the “Code”) where employees are engaged in a legal strike or the employer is engaged in a legal lockout. The Code provides that health and welfare benefits, other than pension benefits or contributions, normally provided directly or indirectly by the employer to the employees must be continued if the trade union tenders payment to the employer or to any person who was before the strike or lockout obligated to receive the payment in an amount sufficient to continue the employees' entitlement to the benefits, and on or before the regular due date of that payment.

The Employment Standards Act (the “Act”) requires the continuation of benefits during unpaid leaves under the Act. The employer must continue to make payments to a pension, medical or other plan beneficial to the employee as though the employee were not on leave, if the employer would ordinarily pay the total cost of the plan, or in cases where both the employer and the employee ordinarily pay the cost of the plan and the employee chooses to continue to pay their share of the cost.

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- Severance Packages/Separation Agreements

Employers and employees may choose to enter into agreements governing the termination of the employment relationship, subject to statutory minimum notice/severance requirements, see Sections V.C. and V.D. above, and any union representation issues. In addition, employers should be aware that agreements deemed unconscionable or overly restrictive may be void at common law.

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VII. Unfair Competition/Covenants Not to Compete

A. Trade Secrets

The common law obliges employees not to disclose confidential information or trade secrets imparted by their current or previous employer. Although employees are entitled to bring to their next jobs the general knowledge and skills learned from their previous employer, they are prohibited from divulging confidential information. Generally, information is deemed "confidential" where a reasonable outside observer, such as a court, would conclude that the employee knew or ought reasonably to have known that the information was confidential. Items marked clearly as confidential are treated as such and trade secrets would fall into this category. Other items, less clearly or obviously confidential may be identified and specifically protected by contract.

Confidential information may include marketing strategies, personnel information, or standard business practices. Confidential information also includes trade secrets, such as manufacturing processes, sales information, commercial contracts, computerized data, and supplier and customer lists. However, confidential information generally does not include trivial or self-evident matters, or information in the public domain.

See also Section I. D. above.

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B. Covenants Not to Compete

The obligations of departing employees with respect to competing with their former employer are determined by the type of relationship that was formed in the employment contract, and could depend on whether the employee owes a fiduciary duty to the employer. A contractual duty not to compete imposed on a non-fiduciary employee will receive close scrutiny from a court to ensure that it minimally impairs the right of the employee to earn a living while protecting only the core

business interest of the employer. Subject to contractual obligations, there are few restrictions on the right of an employee in a non-fiduciary position to compete with a former employer since the law favours free competition. By contrast, there is a larger, more exacting duty imposed on an employee with a fiduciary duty. The scope of the duty imposed on a fiduciary is similar to that owed to a corporate employer by its directors.

See also Section I. D. above.

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C. Solicitation of Customers & Employees

Typical employment contracts contain a description of the duties expected of the employee, their remuneration, and other benefits. Employment contracts may also contain confidentiality clauses, non-solicitation clauses and non-compete provisions.

Written employment contracts will be interpreted strictly by the courts, but will generally be upheld unless it can be shown that they were signed under duress or where they are so unfair as to be unconscionable. A contractual duty not to compete imposed on a non-fiduciary employee will receive close scrutiny from a court to ensure that it minimally impairs the right of the employee to earn a living while protecting only the core business interest of the employer.

Non-solicitation clauses are generally less onerous than non-compete clauses and will often be upheld by the courts.

Please note that amendments to the Competition Act came into force June 23, 2023. It is now a criminal offence for non-affiliated employers to agree:

- To fix, maintain, decrease or control wages or other terms of employment; or
- To refrain from hiring or trying to hire one another's employees

This applies only to agreements to not solicit or hire "each other's" employees. When a restraint contained in an agreement only applies to one employer it will be viewed as a one-way agreement and not applicable to "each other's" employees. However, if there are reciprocating promises enforcement action may be taken. Employers who violate the Competition Act may face possible imprisonment up to 14 years, or fines in amounts determined at the court's discretion. Prior to these amendments fines had been capped at a maximum of $25 million.

See also Section I. D. above.

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D. Breach of Duty of Loyalty/Breach of Fiduciary Responsibility

Fiduciary employees are subject to the general, common law, standards of loyalty, good faith and avoidance of a conflict of duty and self-interest. An employee may be a fiduciary if they are considered a key employee or if they hold a unique position with the employer, even if the employee does not hold a directorial or senior management position. The scope of the duty of loyalty imposed on a fiduciary is similar to that owed to a corporate employer by its directors.

See also Section I. D. above.

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VIII. Personnel Administration

A. Payroll Requirements

- Method of Payment

The Employment Standards Act requires employers to provide employees with a written wage statement. A wage statement may be provided electronically as long as the employer provides confidential access to the statement and a means of making a paper copy.

- Payment Frequency

The Employment Standards Act (the "Act") provides that paydays be at least semi-monthly and within eight days after the end of the pay period. Each payday, an employer must pay an employee all wages that the employee earned in the preceding pay period.

The Act requires all wages owing to an employee who is terminated to be paid within 48 hours after termination. If the employee quits they must be paid all wages owing within six days.

- Special Record-Keeping Requirements

The Employment Standards Act requires employers to give each employee a written wage statement on every payday unless the wage statement is the same for the previous pay period. Another wage statement need not be given until a change occurs. The wage statement may be provided electronically if the employer provides the employee, through the workplace, confidential access to the electronic wage statement and a means of making a paper copy of that wage statement.

The wage statement must provide the following information for the pay period:

- The employer's name and address
- The hours worked by the employee
- The wage rate
- Overtime rate

- Overtime hours
- Any allowance or other payment the employee is entitled to
- Deductions and purpose for the deductions
- The method of calculation of the wages
- The employee's net and gross wages
- The status of the overtime time bank if relevant

The Employment Standards Act requires employers to maintain specific information, such as the employee's personal information, wage rate, vacation dates, etc., at the employer's principal place of business in British Columbia. The records must be in English. The records must be retained for four years after the date on which they were created.

The Workers Compensation Act requires employers to keep at all times at a place in the province complete and accurate particulars of the employer's payrolls. The employer must give notice to the Workers Compensation Board of the location where records will be maintained.

The Pay Transparency Act came into force May 11, 2023. The Act places new requirements on employers in an effort to address systemic gender discrimination in the workplace as it relates to wages. Unless exempted by regulation an employer must specify the expected salary or wage range for publicly advertised jobs. The Act prohibits employers from seeking pay history information from a job applicant. It also prohibits employers from disciplining employees who ask about their pay; share their pay information with others; or provide information to the Director of Pay Transparency about their employer.

The Act requires pay transparency reports to be posted on the company website by November 1 of each year. This applies to employers that have the following number of employees on January 1 of the applicable year as follows:

(a) for 2024, 1 000 or more;

(b) for 2025, 300 or more;

(c) for 2026, 50 or more;

(d) for a year after 2026, more than the lesser of 49 and any prescribed number.

The Regulation to the Act sets out what information employers are required to provide in their pay transparency reports and the calculations for determining the differences in mean and median pay, including bonuses, and overtime hours. The Regulation requires the calculations to reference hourly rates of pay for employees, and sets out the appropriate calculation to use to determine hourly rates of pay for salaried employees.

Employers will be required to provide differences in pay and overtime information by gender. The Regulation sets out four gender categories: male, female, non-binary and unknown. "Unknown" is for employees who do not identify with one of the other gender categories, or who do not wish to

specify their gender category. It is also the category that employers will use for employees who do not wish to provide their information. Gender disclosure is voluntary for employees.

Employers will be required to report on the difference between the median and mean pay, overtime pay, overtime hours worked and bonus pay in each gender category. The Regulation also requires employers to provide the percentage of employees working in four specified segments (essentially divided equally based on hourly pay). Bonuses are defined broadly in the Regulation and include holiday and year-end bonuses, money related to profit sharing, securities, commission, money that is an incentive related to hours of work, production or efficiency, and money that is discretionary and not related to hours of work, production or efficiency.

However, employers will not be required to report percentages of employees in each gender category who receive overtime pay or bonus pay in the reporting period if there are fewer than 10 employees in the specific gender category, or if there is only one gender category with 10 or more employees. Similarly, if there are fewer than 10 employees in the specific gender category, employers are not required to provide differences in the mean and median pay or overtime hours worked.

The BC Government has developed a Pay Transparency Reporting Tool and Guidance materials to help employers meet their reporting obligations. To use the Reporting Tool employers must have a Business BCeID account. The Reporting Tool and Guidance materials can be accessed at this link: https://www2.gov.bc.ca/gov/content/gender-equity/pay-transparency-in-bc

Free copies of British Columbia statutes and regulations can be obtained here: https://www.canlii.org/ .

B. Required Postings

The Workers Compensation Act (the "WCA") requires all employers to make a copy of the WCA and the Occupational Health and Safety regulations readily available for review by the employer's workers and, at each workplace where workers of the employer are regularly employed, and to post and keep posted a notice advising where the copy is available for review.

The WCA requires a joint health and safety committee to be established in each workplace where 20 or more workers of the employer are regularly employed. The employer must post and keep posted the names and work locations of the joint health and safety committee members, the reports of the three most recent joint committee meetings and copies of any applicable orders for the preceding 12 months.

The Pay Transparency Act requires pay transparency reports to be posted on the company website by November 1 of each year. This applies to employers that have the following number of employees on January 1 of the applicable year as follows:

(a) for 2024, 1 000 or more;

(b) for 2025, 300 or more;

(c) for 2026, 50 or more;

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C. Required Training

The Workers Compensation Act imposes a general duty on employers to ensure that all employees receive training and supervision sufficient to ensure their health and safety and the health and safety of other workers at the workplace.

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D. Meal and Rest Periods

The Employment Standards Act (the “Act”) provides that employees must not work more than 5 consecutive hours without a meal break. Each meal break must last at least 30 minutes. If employees are required to be available for work during the meal break the meal break must be counted as time worked.

The Act requires employers to ensure that employees have at least eight consecutive hours free from work between each shift except in an emergency. Employees are also entitled to have at least 32 consecutive hours free from work each week. If employees are required to work during that 32-hour period, they must be paid time and one-half their regular wages.

Employers are generally obliged to ensure that employees are not required or allowed to work excessive hours, or hours detrimental to the employee's health or safety.

Managers are specifically excluded from the hours of work provisions of the Act. "Manager" is defined in the Employment Standards Regulations as:

- A person whose principal employment responsibilities consist of supervising or directing, or both supervising and directing, human or other resources; or
- A person employed in an executive capacity.

Some other types of workers and professions are also excluded from the hours of work and overtime provisions of the Act. There are also special rules relating to hours of work and overtime applicable to certain industries.

Different standards may apply to unionized employees covered by a collective agreement as long as the provisions of the collective agreement related to hours of work or overtime meet or exceed the hours of work and overtime requirements of the Act.

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E. Payment Upon Discharge or Resignation

The Employment Standards Act requires employers to pay all wages owing to an employee within 48 hours if the employee is dismissed, or six days if the employee resigns.

Employers must not deduct or withhold an employee's wages for any purpose except where required by statute or authorized in writing by the employee.

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F. Personnel Records
- Right of Access

The Personal Information Protection Act, SBC 2003, c. 63 ("PIPA") establishes a protectionist privacy regime governing the collection, use, and disclosure of personal information.

PIPA provides that individuals, generally, have the right to access the personal information that an organization holds about them. They also have the right to challenge the accuracy and completeness of the information, and have that information amended where necessary.

Under PIPA an employer will be required, on request, to advise the individual about the personal information that it has retained about them, explain where the information was obtained, explain how the information has been used or disclosed, grant access to the information at minimal or no cost, and correct any inaccuracies.

Personal information means information that can identify an individual, e.g. name, home address, home phone number, physical description, etc. It includes “employee personal information” which can be described generally as information that is collected, used or disclosed for the purposes reasonably required to establish, manage or terminate an employment relationship.

The enforcement of PIPA comes within the authority of the Office of the Information and Privacy Commissioner for British Columbia.

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- Retention Requirements

The Personal Information Protection Act, SBC 2003, c. 63 ("PIPA") prohibits organizations from collecting, storing or retaining unnecessary personal information. Personal information means information that can identify an individual, e.g. name, home address, home phone number, physical description, etc. It includes “employee personal information” which can be described generally as information that is collected, used or disclosed for the purposes reasonably required to establish, manage or terminate an employment relationship.

PIPA requires that personal information that is collected must be accurate, appropriately protected and retained for reasonable purposes. The organization must use reasonable physical, administrative and technical safeguards to protect personal information from unauthorized access.

If the organization uses an individual’s employee personal information to make a decision that directly affects the employee PIPA requires the employer to retain that information for at least one year after using it so that the individual has a reasonable opportunity to obtain access to it. Otherwise, the organization must destroy documents containing employee personal information once the purpose for which the employee personal information was collected is no longer served by keeping it and retention is not necessary for legal or business purposes.

Under the Employment Standards Act the employer must maintain payroll records for four years after the date on which the payroll records were created. See Section VIII. A. above.

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IX. Privacy

A. Drug and Alcohol Testing

Employers contemplating implementation of a drug and alcohol policy should be aware of the following:

- Pre-employment drug testing is illegal except for some safety-sensitive worksites.
- Employees must be notified during the hiring process that they may be subjected to alcohol and/or drug testing. If a policy is to be implemented with existing employees, they must be provided with reasonable notice of implementation.
- Alcohol testing post-incident and for cause is permissible where there is reason to suspect that alcohol use was part of the problem.
- Drug testing post-incident and for cause is permissible only if it is necessary as one part of a larger assessment. A positive test does not necessarily indicate impairment and, therefore, should only be used as part of a larger investigation.
- The response to a positive alcohol or drug test cannot result in automatic termination. The employer's response must be tailored to the individual employee's circumstances.
- A positive test result may oblige the employer to accommodate if the employee or prospective employee suffers from an addiction
- Random alcohol and drug testing for employees in non-safety-sensitive positions is illegal.
- Random drug testing for employees in safety-sensitive positions is illegal.
- Random alcohol testing for employees in safety-sensitive positions, where supervision is limited or non-existent, is permissible in some jurisdictions, as long as the method of testing will show impairment.
- Employers may conduct drug and alcohol testing for certification of employees for safety-sensitive positions, as long as it is a part of a larger method of assessment to determine whether the employee is abusing drugs or alcohol.
- Employers may also conduct drug and alcohol testing as part of a post-reinstatement plan after an employee has been suspended due to drug and alcohol abuse if it is part of a larger assessment of the employee.

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B. Off-Duty Conduct

Generally, an employer has no right to scrutinize an employee's off-duty behaviour or activities. However, to some extent, an employee's duty to act in the employer's best interests extends into off-work hours. Businesses are entitled to be concerned about their reputations and their profits. When an employee, outside the course of their employment, does something that puts these interests in jeopardy, the employer has a right to take steps to protect itself. Discipline, including termination, may be justified when an employee's off-duty conduct is prejudicial to the employer's interests or negatively impacts the duties of the employee in question, or if a causal connection or nexus exists between the impugned conduct and the employer's business, and the conduct is "wholly incompatible" with continuing the employment relationship.

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C. Medical Information

Employers do not have a right to disclosure of employees' medical information. Under certain circumstances there may be an onus on an employee to provide medical evidence in support of a claim, for example, that they are fit to return to work, or eligible for medical benefits, or entitled to a certain form of accommodation. However, even in those circumstances the employee is not obliged to disclose their private medical information and cannot be disciplined for failing to do so. There may be negative employment consequences that flow naturally to the employee as a result of their failure to adequately prove their claim.

See also Section VIII. F. above, for information on the employer's obligations with respect to the collection, use, retention and disclosure of employee information, including medical information.

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D. Searches

Section 8 of the Canadian Charter of Rights and Freedoms protects Canadians from unreasonable search and seizure by the state. This does not apply to work place searches unless the search is performed by an agent of the state.

Employees are, however, protected by privacy rights at common law. The individual employee's privacy rights will be balanced against the employer's legitimate right to protect its property or business. These issues generally arise where the employer is seeking to introduce evidence obtained by a search in support of its decision to discipline or dismiss the employee. If the adjudicator decides that the search was unreasonable the evidence will not be admitted.

If the search results in a very serious violation of the individual's privacy rights, damages may be awarded.

Free copies of statutes and regulations can be obtained here: https://www.canlii.org/ .

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E. Lie Detector Tests

See Section VIII. F. above, for information on the employer's obligations with respect to the collection, use, retention and disclosure of employee information.

Polygraph test results are generally not admitted into evidence if they are intended solely to determine the credibility of witnesses. The admissibility of such evidence is up to the trier of fact in each case. There are no laws that require it to be accepted or rejected in all cases.

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F. Fingerprints

See Section VIII. F. above, for information on the employer's obligations with respect to the collection, use, retention and disclosure of employee information.

Other than as discussed under Section VIII. F. above there are no British Columbia laws or statutes that address this issue in an employment context.

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G. Social Security Numbers

In Canada, employees are identified with Social Insurance Numbers. This type of information would come within the definition of "personal information". The Personal Information Protection Act ("PIPA") establishes a protectionist privacy regime governing the collection, use, and disclosure of personal information. Please see Section VIII. F. above for a discussion of the employer's obligations under PIPA.

The Employment Insurance Act requires every person employed in insurable employment, or who is self-employed, to have a Social Insurance Number that has been assigned to that person. The employer must keep a record of every employee's Social Insurance Number.

Free copies of statutes and regulations can be obtained here: https://www.canlii.org/ .

H. Surveillance and Monitoring

Video surveillance in the workplace is not prohibited by legislation. However, the capturing of images of identifiable individuals through video surveillance is considered to be a collection of personal information. The Personal Information Protection Act ("PIPA") establishes a protectionist privacy regime governing the collection, use, and disclosure of personal information. Please see Section VIII. F. above for a discussion of the employer's obligations under PIPA.

Employees also have a common law right to privacy. Some common law rights have been enshrined in the Privacy Act. The individual employee's privacy rights will be balanced against the employer's legitimate right to protect its property or business. These issues generally arise where the employer is seeking to introduce evidence obtained by surveillance or monitoring in support of its decision to discipline or dismiss the employee. If the adjudicator decides that the surveillance or monitoring was unreasonable the evidence will not be admitted.

If the surveillance / monitoring is found to be a serious violation of the individual's privacy rights, damages may be awarded.

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I. Cannabis (medical and recreational use)

Under the Cannabis Act recreational marijuana use is legal in Canada.

Legalization does not permit marijuana use at work or allow impairment at work. Marijuana in the workplace is treated in the same manner as alcohol use. Recreational users can be disciplined for consuming, possessing or being impaired by marijuana at work. It must be noted, however, that employees who are considered disabled by an addiction to marijuana (or alcohol or other legal or illegal drugs) must be accommodated where possible.

The employer has no right to prohibit or monitor off-duty use of marijuana unless such use has a negative impact on the workplace.

Under the Human Rights Code, employers have a duty to accommodate employees who have been prescribed medical marijuana if it is used to treat a disability and only if it is a necessary treatment. Accommodation will not be required if the marijuana use would pose a threat to workplace safety.

A prescription for medical marijuana does not entitle an employee to be impaired at work, to compromise safety, to smoke in the workplace or to automatically be entitled to unexcused absences or late arrivals.

The employee's medical information is personal information. See Section VIII. F. above, for information on the employer's obligations under the Personal Information Protection Act with respect to the collection, use, retention and disclosure of employee personal information.

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J. Social Media

Employees are protected by privacy rights at common law and by the Personal Information Protection Act. The individual employee's privacy rights will be balanced against the employer's legitimate right to protect its property or business interests. These issues generally arise where the employer is seeking to introduce evidence obtained by accessing an employee's social media account in support of its decision to discipline or dismiss the employee. If the adjudicator decides that the access of the social media was unreasonable the evidence will not be admitted.

If the access of the social media account is determined to be a serious violation of the individual's privacy rights, damages may be awarded.

Any information viewed or collected through an employee's social media account is governed by the Personal Information Protection Act. Viewing personal information is considered to be collection of personal information. See section VIII. F. for information on the collection, use, retention and disclosure of employee personal information.

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K. Weapons/Workplace Violence Policy

Private citizens are generally prohibited from carrying weapons for personal protection in Canada.

Some employees may be authorized to carry firearms or handguns where required for their occupation. Under the Firearms Act only those individuals who have successfully completed training in firearms proficiency and the appropriate use of force are authorized to carry firearms.

The Workers Compensation Act requires employers to provide a workplace as safe from the threat of violence as possible. If there is a risk of violence in a workplace, the employer must set up and instruct workers on procedures to eliminate or minimize the risks. Employers are required to conduct a risk assessment. If there is a risk of violence the employer must develop and implement a workplace violence prevention program as part of their overall health and safety program.

A violence prevention program should include the following components:

- Written policy to eliminate or minimize risk
- Regular risk assessments
- Prevention procedures

- Worker and supervisor training
- Procedures for reporting and investigating incidents
- Incident follow-up
- Program review

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X. Employee Injuries and Workers Compensation

A. Work Related Injuries

The Workers Compensation Act (the "WCA") governs entitlement to compensation for personal injury caused to employees by accident or occupational illness arising out of and in the course of employment. Under the *WCA*, the cost of compensable injuries and diseases is paid entirely by the employers in the province, and contributions are collected in the form of assessments.

The collective liability of employers is part of the insurance plan. As a result, an injured worker and their dependents are provided with guaranteed benefits, regardless of the financial status of the employer. Remittance of funds to the Workers' Compensation Board (the "WCB") is the exclusive responsibility of the employer. It is an offense for an employer to deduct, directly or indirectly, from an employee's wages any amount the employer must pay to the accident fund.

An employee cannot sue an employer for a work-related injury or disease. Workers' compensation is the only remedy. The system is "no-fault" with some limited exceptions (e.g. where the injury is attributable to the serious and willful misconduct of the injured employee). Coverage is compulsory for all employers that come within the scope of the WCA, which is virtually all employers. These employers must register with WorkSafeBC; they do not have the option of choosing to buy private insurance instead of registering.

Administrative penalties may be levied against individual employers where the Board considers that sufficient precautions have not been taken for the prevention of injuries or occupational disease; the place of employment or working conditions are unsafe; or the employer has not complied with regulations, orders or directions of the Board.

The WCA requires employers to notify the WCB immediately of any accident that results in the serious injury or death of an employee. The employer must also immediately investigate the cause of any accident or other incident that requires a report or that results in, or has the potential for causing, serious injury to an employee.

All employees have the legal right to refuse to do unsafe work if they have reasonable cause to believe that doing the work would create an undue hazard to the health and safety of any person. The refusal must be reported immediately to the employee's supervisor or employer, who

must then immediately investigate the matter and ensure that any unsafe condition is remedied without delay.

An employee must not be discriminated against for refusing to carry out unsafe work. Discriminatory action would include suspension, layoff, dismissal, demotion, transfer of duties, change in location of workplace, and reduction in wages. A temporary assignment to alternative work at no loss in pay until the matter is resolved does not constitute discriminatory action.

The Criminal Code imposes criminal liability where an organization or individual fails to take reasonable steps to prevent workplace accidents. Employers, trade unions, employees, agents, and contractors could potentially face charges.

Effective January 1, 2024 new provisions in the Workers Compensation Act (WCA) imposed a legal duty on employers and workers to cooperate with each other and with WorkSafeBC to promote a timely and safe return to work following an injury. The obligation includes a requirement for the parties to cooperate in identifying and making suitable work available for the injured worker. The amendments require employers that regularly employ 20 or more workers, to maintain the employment of an injured worker if that worker was employed with them for at least one year prior to the injury.

If an employer refuses to re-employ or accommodate an employee recovering from an injury the employee may seek redress under the WCA or the Human Rights Code which prohibits discrimination in employment on the basis of disability. See Section IV. above.

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B. Non-work related injuries

Please see Section II. F. Benefits / Health Insurance above.

Under the Human Rights Code employers must not discriminate on the basis of physical or mental disability. This imposes a duty to accommodate physical and mental disabilities in the workplace where possible without incurring undue hardship. Please see Section IV. above.

Free copies of statutes and regulations can be obtained here: https://www.canlii.org/

XI. Unemployment Compensation

A. Eligibility

Employment Insurance (EI) in Canada is governed by the Employment Insurance Act (EIA). The EIA is intended to assist individuals who are unable to find employment through no fault of their own and who are able and ready to work.

To be entitled to receive regular EI benefits the individual must have lost their employment through no fault of their own. The individual must also have accumulated a certain number of hours of insurable employment during the 52 week period immediately preceding the date of their claim. The threshold number of hours to qualify for EI varies between 420 and 700 hours of insurable employment during the qualifying period. The number of hours depends on the individual's place of residence and the unemployment rate for their region.

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B. Procedure

Applications for Employment Insurance must be made by the individual online from their home, a public internet access site, or from any Service Canada Centre. Service Canada is a department of Employment and Social Development Canada.

XII. Health and Safety

A. Overview

The Workers Compensation Act (the "WCA") and the Occupational Health and Safety Regulations contain the legal requirements that all workplaces under the jurisdiction of the Workers Compensation Board (the "WCB") must meet. The WCB has jurisdiction over most workplaces in British Columbia, except mines and those that are federally regulated. It applies to unionized, as well as non-unionized workers. The WCA and Regulations set out the rights and responsibilities of employers and workers, and outline the general conditions required in the workplace.

Every employer must ensure the health and safety of all of its employees, as well as any other workers present at a workplace at which the employer's work is being carried out. An employer must remedy any workplace conditions that are hazardous to the health and/or safety of its workers.

Please see Section X. A. above.

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B. Regulatory Requirements

- Health and Safety Committee

Under the Workers Compensation Act (the "WCA") an employer who regularly employs 20 or more workers must establish and maintain a joint health and safety committee (the "Committee").

The Committee will be expected to:

- Identify situations that may be unhealthy or unsafe for employees;
- Consider and expeditiously deal with complaints relating to the health and safety of workers
- Consult with employees and the employer on issues related to occupational health and safety;
- Make recommendations to the employer and the employees that will improve their occupational health and safety and occupational environment;
- Make recommendations to the employer on educational programs promoting the health and safety of workers and the importance of compliance;
- Advise the employer on programs and policies required under the Regulations for the workplace and to monitor their effectiveness;
- Advise the employer on proposed changes to the workplace or the work processes that may affect the health or safety of workers
- Ensure that accident investigations and regular inspections are carried out as required; and
- Participate in inspections, investigations and inquiries required by the WCA and the Regulations.

In workplaces where more than 9 but less than 20 workers are regularly employed the WCA provides that a worker health and safety representative must be appointed. The representative will have the same duties and functions as a joint health and safety committee.

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XIII. Trade Unions – Industrial Relations

A. Overview
- Favoured/Disfavoured by Government

Trade unions are favoured by government.

The right to form a trade union is guaranteed by the Charter of Rights and Freedoms. The Charter is enshrined in the Constitution Act, 1982. It is the highest law of the country. The Charter establishes the basic rights and freedoms guaranteed to every person in Canada. Freedom of association is a fundamental freedom guaranteed to every person in Canada in accordance with the Charter.

The Supreme Court of Canada (the highest level of court in Canada), in *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, has interpreted the freedom of association to include protection of a process of engagement that permits employee associations to make representations to employers, which employers must consider and discuss in good faith. Laws or state actions that substantially interfere with the ability to achieve workplace goals through collective actions have the effect of negating the right of free association and therefore constitute a limit on the Charter right of free association. Such a law will be unconstitutional unless the infringement of the Charter right can be demonstrably justified under s. 1 of the Charter. Section 1 provides that the Charter guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Every Canadian jurisdiction has some form of labour legislation that establishes the process for the formation of trade unions, protects the rights of individuals who form those trade unions and obliges employers to bargain collectively with trade unions to reach agreement on terms and conditions of employment for employees who are covered by the union's certification.

The rights and obligations of employers and employees with respect to the formation of trade unions and the right to bargain collectively in British Columbia are enforced through the Labour Relations Code.

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- Prevalence of Trade Unions

In British Columbia the percentage of employees who are members of a union and/or covered by a collective agreement or union contract is approximately 30%.

- Special Requirements (e.g. US-Right to Work)

The Labour Relations Code (the "Code") prohibits the use of replacement workers during a legal strike or lockout. A replacement worker is someone who is hired or transferred to the strike/lockout location after notice to bargain is given. This provision applies to new hires as well as employees transferred from other employer operations.

The Code prohibits employers from refusing to employ or continue to employ a person or intimidate or coerce a person because of the person's refusal to perform any work of an employee in the bargaining unit that is on strike or locked out.

The Code provides that employers must not unduly interfere with union organizing campaigns.

The Code prohibits anyone from using "coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union."

The Code prohibits employers from taking any action against an employee for participating in a Board proceeding.

The Code prohibits an employer or anyone acting on its behalf from:

- Participating in or interfering with the formation, selection or administration of a union, or contributing financial or other support to the union;
- Discharging, suspending, transferring, laying off or otherwise disciplining an employee because that employee seeks to exercise their right to be a member of a union;
- Discharging, suspending, transferring, laying off, or otherwise disciplining an employee except for proper cause during a union certification drive;
- Imposing any condition in a contract of employment that attempts to restrain an employee from exercising their rights under the Code; and,
- Threatening a penalty or promising a benefit to force an employee to refrain from becoming, or continuing to be, a member of a union.

An employer responding to a union unfair labour practice complaint alleging that a layoff or a discharge was motivated by anti-union feelings will bear a "reverse onus" to disprove the alleged violation.

If an employer intends to introduce a measure, policy, or change that affects the terms, conditions, or security of employment of a significant number of employees, the employer must give the union 60 days' notice of the change. The Code requires the parties to meet in good faith to consider alternative proposals and attempt to agree on a plan to address the issues.

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B. Right to Organize/Process of Unionization

The Labour Relations Code (the “Code”) regulates all aspects of unionized employment in British Columbia.

Where there is no union certified to represent the employees and no collective agreement is in force, a trade union may apply to the Labour Relations Board (the “Board”) for certification if it claims to have at least 45% of the employees in the proposed bargaining unit as members.

If there is an existing certification, but no collective agreement, a certification application (an "application") can be made if six months have elapsed since the initial certification and if the applicant union has support from at least 50% of the employees in the bargaining unit.

If a collective agreement is in force with a different union, a union claiming at least 50% support can make an application (a "raid") within the seventh and eighth months in each year of the term of the collective agreement. An unsuccessful raiding union cannot make an application within 22 months of the previous application.

In the event of a strike or lockout, the Board's consent is required before an application may be filed.

Upon receipt of an application, the Board will determine whether the proposed unit is appropriate for collective bargaining and may make amendments to the unit. It will also examine and verify the membership, as evidenced by signed membership cards. Shortly after receipt of an Application, the Board will appoint an Industrial Relations Officer ("IRO") to determine the size of the bargaining unit by examining the payroll records of the employer. The IRO will also determine whether membership cards demonstrate that the union has support from at least 45% of the employees.

The Board's practice is to hold a hearing promptly after receipt of an application. The IRO will complete a report of their findings and will fax a copy to both the union and the employer prior to the hearing. Names of union members are confidential and will not be disclosed to the employer. At the certification hearing, the employer will have an opportunity to raise any objections to the application.

If the Board is satisfied that at least 55% of the employees in the unit are members in good standing of the union, it will automatically certify the union. If the Board is satisfied that at least 45%, but less than 55%, of the employees in the unit are members in good standing of the union, it must order that a representation vote by secret ballot be taken from among the employees in the proposed unit. The Code requires that the representation vote be conducted within 5 days from the date the board receives the application. The Board may extend the time limit if the vote is to be conducted by mail. The board may direct that another representation vote be conducted if less than 55% of the employees in the unit cast ballots. If the Board is satisfied that the majority of employees who cast ballots support the union, and the unit is appropriate for collective bargaining, the union will be certified. If the application is successful the Board will issue a formal certification order stating that the union is certified to represent the employees.

Voluntary recognition is an alternative means for a union to acquire bargaining rights. An employer and trade union can agree that the employer recognizes the union as the exclusive bargaining agent for its members.

After certification, either party can provide the other with written notice to begin collective bargaining. Once notice is received, the parties must meet within 10 days, begin bargaining in good faith, and make every reasonable effort to conclude a collective agreement.

If at least 45% of employees in a bargaining unit apply to cancel a certification, the Board will order that a vote be conducted within 5 business days of the date of the application. The certification will be cancelled if the majority of employees vote against having the union represent them. The Board may order a second vote if less than 55% of eligible employees cast ballots. If a certification is cancelled, the collective agreement between the employer and union is void. Unless the Board consents, unions are prohibited from making a new application within 10 months of the decertification. The Code prohibits decertification applications during the first 12 months following certification.

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C. Managing a Unionized Workforce

- Collective Bargaining

The Labour Relations Code (the “Code”) regulates all aspects of unionized employment in British Columbia.

In a newly certified bargaining unit, collective bargaining is initiated when either the union or the employer serves the other party with a notice in writing to commence bargaining. Once such notice has been served, the employer is not entitled to increase or decrease the rates of pay of employees or to alter any other term or condition of their employment until 12 months after certification or until a collective agreement is negotiated, whichever occurs first.

If the parties are bargaining to renew an existing agreement, notice to require the other party to commence bargaining can be served only when four months or less are left in the term of the agreement then in force. However, should neither party to the agreement serve notice to commence bargaining, then the Code provides that the notice is deemed to have been given 90 days prior to expiry of the agreement.

Once a notice to commence bargaining has been served, the union and the employer must begin "good faith" bargaining within 10 days. The requirement to bargain in good faith means that both parties must be sincere in their attempts to reach an agreement. This includes meeting with the other side and making every reasonable effort to conclude an agreement.

Every collective agreement must be for a minimum term of one year. The parties are free to agree to a longer term. During the term of the collective agreement changes to its provisions can only be made with the consent of both the union and the employer.

The Code requires the parties to engage in an ongoing consultation process to deal with workplace issues that arise during the term of the collective agreement. If an employer intends to introduce a change that will affect working conditions of a significant number of employees it must develop an adjustment plan in consultation with the union for dealing with the impacts of the planned change.

Where the parties have attempted but failed to negotiate a first collective agreement, and the union is in a legal strike position, either party may apply to the Labour Relations Board (the “Board”) to have a mediator assist them in negotiating a first collective agreement.

The terms of the collective agreement recommended or concluded under that mediation or arbitration process will be binding on the parties. It is rare, however, for the Board to impose terms. Every opportunity will be given to the parties to reach agreement.

The Code requires every collective agreement to be in writing, to have a term of at least one year, and to contain a provision protecting employees from discipline or discharge except for just and reasonable cause. The parties may negotiate a different disciplinary standard for probationary employees. Every collective agreement will also be deemed to contain a provision prohibiting strikes or lockouts during its operation.

During the four months before the expiry of an existing collective agreement, either party may notify the other party in writing of its desire to bargain to renew the agreement. In the event that neither party gives notice, notice to bargain is deemed to be given 90 days before the agreement expires.

If an employer intends to introduce a measure, policy, or change that affects the terms, conditions, or security of employment of a significant number of employees, the employer must give the union 60 days' notice of the change. The Code requires the parties to meet in good faith to consider alternative proposals and attempt to agree on a plan to address the issues.

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- Dispute Resolution

The Labour Relations Code (the "Code") regulates all aspects of unionized employment in British Columbia. The Code requires every collective agreement to provide for the final and conclusive settlement of disputes, without work stoppage, by arbitration or other method agreed to by the parties.

If the parties are bargaining and are unable to reach a collective agreement, the employer may apply to the Board to have its last offer put to the employees of the bargaining unit for a vote.

During a strike or lockout the Labour Relations Board (the "Board") may restrict picketing activity. The Board will generally confine such activity to a location at or near the striking employees' work site or at the work site of an employer that is helping the struck employer resist the effects of the strike.

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- Impact on Management Rights

Other than the obligations under the Labour Relations Code as discussed above under Section XIII. A., any further limitation on management rights must be bargained by the union and clearly expressed in the collective agreement. Management rights are considered to be inherent to the employment relationship whereas union rights, such as seniority or recall rights, are contractual.

XIV. Immigration / Labour Migration

A. Overview Business Immigration Policy

The Temporary Foreign Worker Protection Act protects foreign workers against exploitation and abuse. The legislation is intended to improve protection for workers and accountability of recruiters and employers by:

- requiring foreign worker recruiters to be licensed, and employers who recruit and hire temporary foreign workers to be registered.
- establishing criteria for issuing, refusing, suspending or cancelling a license or registration.
- imposing tougher penalties for recruiters and employers who violate the legislation, including not just loss of license or registration but financial penalties and possible jail time.
- allowing government to recover, and return to workers, any fees charged illegally by recruiters.
- creating two registries, one for foreign worker recruiters and one for employers, to hold both accountable for their actions and to improve government response to health, housing or other violations of B.C. laws. The registration will be a cost-free and simple online process for employers.

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B. Protocol for business visitors to obtain temporary entry for non-employment purposes

Immigration law in Canada is a specialized area of law and beyond the scope of this overview of labour and employment law.

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C. Visa options for the temporary employment of professional/management foreign nationals

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D. Visa options for the temporary employment of non-professional employees

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E. Visa options for foreign entrepreneurs and/or business investors

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F. Permanent residency based on employment

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G. Citizenship for foreign nationals

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H. Compliance concerns for employers of foreign nationals

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I. Regional, Federal, or state/province specific immigration or compliance issues

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II. Additional Information

COVID-19 Update:

Masks are no longer required in most workplaces. Requirements related to proof of vaccination status have also been eased since 2022. Proof of vaccination status may still be required for health care workers. For the most up-to-date information on COVID-19 and how it may impact your workplace please refer to the Roper Greyell LLP website: https://ropergreyell.com/covid-19-updates/ or reach out directly to Roper Greyell LLP, Attention: Gregory J. Heywood, 604-806-3841, gheywood@ropergreyell.com or James D. Kondopulos, 604-806-3865, jkondopulos@ropergreyell

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