

Legislation Concerning the Hiring and Retention of People with Barriers to Employment: A Guide for Employers

“Employment Standards Legislation”

The provincial and federal employment standards legislation provides minimum working standards for employees, providing a basic protection against exploitation, and preventing vulnerable people from being taken advantage of by employers.

- The purpose of the provincial Employment Standards Act is to:
- ensure that employees in B.C. receive at least a basic standard of compensation and conditions of employment
- provide fair and efficient procedures for dispute resolution over the application or interpretation of the legislation
- assist employees in meeting work and family responsibilities
- promote the fair treatment of employees and employers
- encourage open communication between employees and employers, and
- foster the development of a productive and efficient labour force.

The Canadian Labour Code covers people employed by or in connection with the federal government, federally regulated businesses, and businesses that operate across provinces or internationally. The provincial Employment Standards Act generally covers businesses that are not under federal jurisdiction, although a variety of employees, occupations and professions that are fully or partially exempt from the legislation. (You can find a more detailed list of who is covered by the provincial and federal legislation, and who is exempted, in Appendix A.)

The Employment Standards Act is enforced by the Employment Standards Branch. The branch website provides employees who have a complaint with a self-help kit to help them confront their employer themselves. If this is unsuccessful, the branch will review the complaint to determine whether it will become involved in mediation between the parties.

The Canadian Labour Code is enforced by Human Resources and Social Development Canada's Labour Program. The Labour Program promotes voluntary compliance, providing individuals who file a complaint with advice aimed at reaching a solution. If this is unsuccessful, the program will conduct an inspection, which can lead to an order to ensure compliance, or in the case of serious violations, prosecution. The program can also help negotiate settlements for complaints related to unjust dismissal or appoint an adjudicator to decide on a case.

Does the legislation apply to you?

The Canadian labour Code

The Canadian Labour Code covers people employed by or in connection with the federal government, federally regulated businesses, and businesses that operate across provinces or internationally. These include:

- the armed forces
- the government of Canada
- banks
- broadcasting and telecommunications firms
- inter-provincial and international transportation firms
- firms doing inter-provincial pipeline, canal, bridge and tunnel work
- federal Crown corporations (e.g., Canada Post)
- sea ports
- airports
- railways (except BC Rail)
- nuclear facilities
- grain elevators, seed and feed mills
- many First Nations activities
- business dealing with protection of fisheries as a natural resource.

The Employment Standards Act

The provincial Employment Standards Act generally covers businesses that are not under federal jurisdiction.

However, the Employment Standards Regulation lists a variety of employees, occupations and professions that are fully or partially *excluded* from the legislation (Part 7, section 31). Many professionals whose professions are regulated by other provincial legislation are not covered, and other types of

employees may be excluded under certain conditions. Fully or partially excluded employees, occupations and exemptions include:

- architects
- accountants
- lawyers
- chiropractors
- dentists
- professional engineers
- insurance agents
- land surveyors
- doctors
- podiatrists
- real estate agents
- persons registered under section 35 of the Securities Act
- veterinarians
- professional foresters
- students employed to work in a secondary school they are enrolled in
- students enrolled in a co-op program
- sitters
- persons receiving benefits as a result of working on a job creation project
- persons participating in Youth Community Action
- newspaper carriers who are enrolled in or on vacation from a primary or secondary school who work less than 15 hours/week for one employer
- persons providing foster care.

In addition, some employees who have a collective agreement may be exempt from some sections of the Employment Standards Act.

Hiring and retaining people with barriers to employment

Generally, employment standards legislation does not hinder and in some ways actually supports efforts to hire and retain people with barriers to employment.

Truthful representation

For example, under the Employment Standards Act (Part 2, section 8), an employer cannot misrepresent the availability of the position, the type of work, the wages, or the conditions of employment. This legal requirement for truthful representation helps to promote inclusive workplaces by preventing discriminatory screening through misinformation.

The standards also support flexible scheduling, a key strategy for hiring and retaining people with barriers to employment. The standards establish the basic requirements for work schedules, setting out how many hours can be worked consecutively over certain time periods, for example.

Scheduling flexibility

- Sections of the provincial legislation that offer scheduling flexibility include:
- Section 37 (Averaging Agreements) – Allows an employer and an employee to enter into a written agreement to average hours of work over a one-to-four-week period. The section includes eligibility and related calculations for overtime and rest periods.
- Part 9, Section 72 (Variances) – Enables variances in relation to paydays (section 17), special clothing (section 25), split shifts (section 33), minimum daily hours (section 34), maximum daily hours (section 35), hours free from work (section 36), overtime wages for those not under an averaging agreement (section 40), number of weeks covered by an agreement to average hours of work (section 37[1]), and notice and termination pay requirements for group termination (section 64). These sections can be altered for a class of employees, if they are deemed acceptable by the majority of employees affected and are consistent with the purposes of the act.
- Section 42 (Banking of overtime wages) – At the request of an employee, an employer can establish a time bank for the employee and credit the employee's overtime wages to the time bank instead of paying them to the employee. The employee can access the wages at any time and use them for time off with pay. **Note:** As neither the Employment Standards Act nor the Canadian Labour Code provide for paid leave, this option is useful for people with barriers who have to make regular payments but may not be able to work consistent hours for periods of time.

In the Canadian Labour Code, Division 1 (2) (Hours of Work, Averaging) states that where the nature of the work necessitates irregular distribution of the hours of work, the hours of work in a day and the hours of work in a week may be calculated as an average for a period of two or more weeks.

Concerns

A number of changes to the Employment Standards Act made between 2002 and 2004 raise several areas of concern in terms of hiring people with barriers to employment:

- The legislation provides the bare minimum and therefore lacks many provisions that would support people with barriers to employment, such as scheduled morning and afternoon breaks and paid sick leave.
- Except in the case of averaging agreements, there is no consultation legislated between the employer and employee in establishing schedules.
- An overall reduction in compliance and enforcement prevents it from being used as intended. For example, optional sections that facilitate flexibility for employees with barriers, such as overtime banks and averaging agreements, can be ignored by unwilling employers with minimal fear of repercussion.
- Section 37, on averaging agreements, is complex and confusing on issues such as sick leave or other absences from work, compensation for statutory holidays, and the effect on vacations.
- Section 31, which required employers to post shift changes at least 24 hours in advance, was removed from the act. This section ensured that people with less flexible schedules were given some notification in advance so they could make alternative arrangements for things like child care.
- Section 34, on minimum hours of work, was reduced from four hours to two hours. This can have a negative impact on people with barriers who have child care or minimum income requirements.
- Provincially regulated farm workers have very limited protection under the act. (Many of these workers are recent immigrants.)

Background: The Labour Market Dialogues

The Labour Market Dialogues is a project of the Community Council, designed to explore ways in which employers in the Capital Region can be better supported in hiring and retaining people who are experiencing barriers to employment.

Phase 1 of the project, which took place in 2006, involved more than 110 interviews with employers, employees and potential employees and representatives from community service agencies. Participants identified more than 1,700 barriers to employment, 1,000 existing supports for people facing barriers, and 200 ideas for addressing the gaps.

The issues identified in Phase 1 were used to design Phase 2 of the project, which took place between March 2007 and February 2008. A group of 30 employers, service providers and other members of the community, including people with barriers to employment, chose two strategies for hiring and retaining people with barriers to employment that could most benefit both employers and employees: helping employers support people in transition to employment and offering flexible schedules. The Labour Market Dialogues then undertook three outreach activities built around these two strategies, to engage employers.

Phase 3 builds on the work of Phases 1 and 2, identifying and communicating positive and innovative practices used by local employers in successfully hiring and retaining people who have transition and scheduling barriers to employment.

Defining *barriers to employment*

In the Labour Market Dialogues project, *barriers to employment* means issues that present people with obstacles to finding and keeping work. Barriers include (but are not limited to):

- being homeless
- having substance abuse issues
- having mental and physical health problems
- having a low level of life skills
- having a criminal record
- lacking work history
- being a sex worker
- having a history of violence and abuse
- being new to Canada
- not speaking English
- being a single parent
- discrimination
- illiteracy
- poverty.

Most people experiencing barriers in one of these areas also experience barriers in at least one other area.

About this guide

Over the course of the Labour Market Dialogues, it has become clear that employers need information about the various provincial and federal laws that can affect their efforts to increase the hiring and retention of employees who face barriers to employment. The Community Council has produced *Legislation Affecting the Hiring and Retention of People with Barriers to Employment: A Guide for Employers* to help meet this need.

The guide provides basic information about five provincial and federal laws, whom they apply to, and their implications for more inclusive hiring and retention practices. The five laws are shown in the table below, along with their jurisdiction (federal or provincial), purpose, and the agency or program that is responsible for ensuring compliance. There is also a brief section on the role of unions.

A list of websites is provided at the back of the full version of this guide (see www.communitycouncil.ca/activities.php#lmd), in case you need more information about the legislation or the agencies associated with it.

Legislation	Jurisdiction	Purpose	Compliance
Human Rights Code	Provincial	Protection from discrimination	B.C. Human Rights Tribunal
Canadian Human Rights Act	Federal	Protection from discrimination	Canadian Human Rights Tribunal
Employment Standards Act	Provincial	Establishes minimum working standards	Employment Standards Branch
Canadian Labour Code	Federal	Establishes minimum working standards	HRSDC Labour Program
Employment Equity Act	Federal	Ensures employment equity through removal of barriers and numerical representation for designated groups	Legislated Employment Equity Program (LEEP) and Federal Contractors Program (FCP)

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