

BRITISH COLUMBIA EMPLOYMENT STANDARDS: PROCESS GUIDE FOR WORKPLACE SEXUAL HARASSMENT

A. Who can make an Employment Standards claim?

The Employment Standards Branch deals with pay, overtime, breaks, leave and working conditions that are set under the BC *Employment Standards Act*. It does not address workplace sexual harassment directly but can help when these issues come up in workplace sexual harassment cases.

The Employment Standards Branch has the power to investigate employers, gather information, and help resolve the issue. Some people find it more user-friendly than other legal options.

EXCEPTION - WHO CANNOT FILE A HUMAN RIGHTS COMPLAINT AT THE TRIBUNAL

A few employers, like banks, airlines, Indigenous band councils and others, are **federally regulated** by the Canadian government, which means the federal government oversees the workplace. If your employer is federally regulated, then the federal *Canada Labour Code* applies instead of the BC *Employment Standards Act*.

To find out if you work for a federally regulated employer, there is a list available online at: <https://www.canada.ca/en/services/jobs/workplace/federally-regulated-industries.html>. You can get more information about this at the end of this guide.

B. Who is an employee?

An “**employee**” includes:

- anyone who is getting paid for work,
- anyone who should be getting paid for work, and
- workers in training and interns.

It does not include independent contractors who provide services to an employer through their own businesses.

C. Who are excluded employees?

The Employment Standards covers most **employees**, but some are **excluded**:

- Some examples of employees who are **completely excluded** from Employment Standards are:
 - Professionals like lawyers, engineers, and nurses
 - Babysitters, high school work-study students
 - People in work programs as part of social assistance (welfare or disability)
- Some examples of employees who are **partially excluded** from the Employment Standards are:

- Farm workers (excluded from overtime rules; paid based on how much they pick, not by hour)
- Residential care workers (excluded from most overtime and hours of work rules)
- Managers (excluded from most overtime and hours of work rules)

A list of employees who are **completely** or **partially excluded** can be found at this website:

<https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/do-employment-standards-apply-to-you>

Employees who are **unionized** have collective agreements and should talk to their union if any Employment Standards issues arise.

D. What are the possible solutions (remedies) available through Employment Standards?

Remedies are usually in the form of payment from the employer, and can include:

- **Payment of regular wages:** If your employer did not pay your wages, you can claim for those wages.
- **Payment of minimum wage:** If your employer paid you less than minimum wage, you can claim for the difference.
- **Payment of overtime:** If you worked overtime (usually more than 8 hours a day or more than 40 hours a week) and did not get paid extra, you can claim for overtime pay.
- **Payment for working during meal breaks:** Employees are entitled to one 30-minute meal break after 5 hours of work. If your employer required you to work, or be available, during a meal break, you can claim for pay for that time.
- **Payment for working a statutory holiday:** Employees who have been employed for 30 days (and worked at least 15 of the 30 calendar days) are entitled to paid days off on statutory holidays, or to be paid extra if they have to work on those days. If you had to work without extra pay on a statutory holiday, you can claim for that extra pay.
- **Payment for unauthorized deductions:** Your employer must pay for your uniform and for the costs of running the business. If your employer took money from your pay cheque for these things, you can claim for this money back.
- **Payment for commissions:** If your pay includes commissions, and you were not paid, you can claim for this money.
- **Payment for vacation time:** You are entitled to receive 4% of your salary for vacation pay after five days of employment, and this goes up to 6% after you have been employed for more than 5 years. You are entitled to use this for 2 weeks of paid vacation after your first year. If your employer owes you vacation pay, you can claim for that pay.
- **Payment if your job was terminated (also known as “compensation for length of service”):** If your job was terminated, you may be entitled to extra pay, depending on how long you worked for that employer. If you quit your job because of the sexual harassment, you can still claim this.

- **Interest on unpaid wages:** The interest is calculated from the date your job was terminated or when you made the ESA complaint.

If your job was terminated, you may be able to make a court claim for a higher amount than what you can claim through Employment Standards. **You should get legal advice right away** (options for free legal advice can be found at the end of this guide).

Reinstatement to your job may be possible if your employer fired you:

- for taking allowed unpaid leave (such as maternity leave, leave to care for family, leave to care for a dying family member, leave after experiencing sexual abuse, and others); or
- as punishment for making an Employment Standards claim.

E. When do I need to start a claim?

You need to start a claim with the Employment Standards Branch within **6 months minus 1 day** of the last day you worked. If you still work for the employer, you need to start your claim in **6 months minus 1 day** of the incident that caused the dispute.

F. How do I start a claim?

Using Employment Standards Branch forms

You will need to use a form called **Employment Standards Branch Complaint Form**. You can use the online version here: <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/complaint-process>

You can also use the printed form and send it in by mail, fax, or bring it in person. The printed form is available here: https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/employment-standards-workplace-safety/employment-standards/forms/complaint_form.pdf

Have these documents ready if possible:

- T4 income slip
- Record of Employment
- Pay cheques, pay stubs or statements of wages
- Employment contracts or agreements
- Work schedules or timesheets
- Other documents with details about your complaint or calculations

G. How do I fill out the complaint form?

Information about your employer

Your employer might be a company, or a person. To find your employer's legal name (which can be different from their operating name), you can look at a pay stub, record of employment or T-4. You can also find your employer's legal name by requesting a corporate search through BC Online:

<https://www2.gov.bc.ca/gov/content/employment-business/business/managing-a-business/permits-licences/businesses-incorporated-companies/searches-certificates>

Information about you

You will need to provide your name, address, and information about your union, if you have one.

Authorization

This allows someone else to act on your behalf. You only need to fill this in if there is someone else, like an advocate or lawyer, representing you.

Details about your employment

Fill in your job title and information about your rate of pay, hours of work and pay period. If you can, you should get copies of your paystubs, pay cheque, timesheets, employment contract (or other documents) and make sure the information is consistent. You should include copies of these documents with your form, if possible.

What do you believe you are owed?

Use the information and documents collected above to calculate the total amount of payment you are owed. Wage recovery is generally limited to 12 months of the complaint or termination.

Details of your complaint

You should explain what happened in order, giving dates if you can. If you cannot recall the exact date, you can write the month and year. For each incident, explain what happened, who said or did things, and where things happened, as well as you can remember. You can attach or upload extra pages if needed.

Requesting a confidential process

You may want to keep your identity confidential from the employer. If online, you can select the box stating you do not consent to sharing your contact information with the employer. Or you can write on the form or in a separate letter that you wish your identity to be treated confidentially under section 75 of the Employment Standards Act. However, this does not guarantee that your employer will not figure out who made the complaint based on the other information on your claim.

Declaration

You can check the box that says “no” if you do not want your contact information to be given to your employer. However, the information about amounts owing and what happened will still be shared with the employer.

H. What happens after I file a claim?**Investigation**

After you file a complaint, the Employment Standards Branch will assign an investigator to your case. The investigator’s job is to educate the parties about Employment Standards rules, collect information from you and the employer, and find a resolution. This process can lead to an order for the employer to pay wages and sometimes other fees or penalties.

An investigation can end in two ways:

1. Voluntary Resolution

The complaint can be resolved at this stage if you and the employer agree to resolve some or all of the complaint after being educated about the Act. The investigator can provide a settlement agreement for the parties to sign to make it binding. If you can, you should get legal advice before signing a settlement agreement (see below for information on how to get free legal advice).

2. Determination

This is a formal legal decision. A determination can allow Employment Standards to collect wages and interest from an employer for you.

In some cases, the investigator makes the determination after talking to the parties and reviewing the gathered information and documents.

In other cases, one investigator is assigned to investigate the complaint. This investigator will review all of the materials and produce an Investigation Report, which is then provided to all parties. Parties can respond to the Investigation Report. The Investigation Report and any responses are then forwarded to a decision-making Delegate, who reviews the report and evidence, and makes the determination.

Parties do not have a right to an oral hearing. Most cases proceed with no oral hearing, but if you receive notice that there will be a hearing in your case, get legal advice as soon as possible.

I. What happens after a Determination?

Enforcing a Judgement

If the **Delegate** decides the employer owes you wages, but the employer does not pay, the Employment Standards branch will take action to make sure the Employer pays, including seizing bank account assets and other enforcement methods.

You can find out more about this online: <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/investigations/enforcement-penalties>

About your Record of Employment

If you have left your employment for any reason, your employer should provide a **Record of Employment**. This is a federal document. You do not need a Record of Employment to make an Employment Standards Branch claim, but it might include helpful information, such as whether you quit, were laid off, or fired. If you have not received a Record of Employment, you should contact Service Canada.

When you do get a Record of Employment, look carefully at the reason for ending employment. If you disagree with the reason, contact Service Canada and ask for it to be corrected. Information on how to find your local Service Canada location can be found at the following link:

<https://www.servicecanada.gc.ca/tbsc-fsco/sc-hme.jsp?lang=eng>

J. What if I am punished for making a claim?

If you are discriminated against, fired, threatened, suspended, or otherwise punished for making an Employment Standards complaint, this is “mistreatment because of complaint or investigation” and you can make a separate complaint to the Employment Standards Branch about this. You can ask to be reinstated to your job if you have been fired for this reason.

K. How are claims normally resolved?

Most claims are resolved at the voluntary resolution stage, and some at the determination stage.

L. How long does it take?

Your claim could be resolved in a few months or could take over a year, depending on how complex it is and how many other cases the Employment Standards Branch has to deal with.

M. What if I disagree with the decision?

You have the right to appeal the determination to the Employment Standards Tribunal. However, there are only a few reasons that a decision can be overturned. You need to show that the decision-maker made an error in law, or there was a failure of natural justice, or there is new evidence that was not available at the time of the original determination.

You must file your appeal **within 30 days** of when you get a copy of the original decision by registered mail, or **within 21 days** if you were personally served, emailed, or faxed the decision.

If you disagree with a decision, **you should get legal advice as soon as possible** (see below for information on how to get free legal advice).

You can find out more about the Employment Standards Tribunal, including a list of its decisions, on its website: <http://www.bcest.bc.ca/>

N. How does an Employment Standards complaint interact with other options?

There are other legal options, like human rights, workers' compensation or other WorkSafeBC claims, wrongful dismissal or personal injury or privacy lawsuits that you may be able to pursue in addition to an employment standards complaint. **You should get legal advice to help decide which options make sense for you.**

Generally, you cannot have the same remedy twice – so if you received payment for two weeks of lost wages from the Employment Standards Branch, you could not claim for those same two weeks in a Human Rights claim. You could still claim lost wages for periods that you did not already recover, and other remedies like injury to dignity.

It is common for an employer to ask you to sign a release in exchange for settlement. Sometimes this covers all types of claims and would stop you from pursuing other options. **It is important to get legal advice before signing a release.**

Other options can sometimes give you access to different **remedies** than the ones available in an Employment Standards complaint. Please refer to our other process guides for the various available **remedies** to consider which ones are the best match for your case.

O. Where can I get more help with this?

Detailed process guides on other topics are available at: [Stand Informed Resources](#).

You can get free legal advice at:

Access Pro Bono

This program provides free summary advice (15 minutes) from a lawyer, as well as several other legal assistance programs.

Call: 604-878-7400 or 1-877-762-6664

Email: appointments@accessprobono.ca

Website: <http://accessprobono.ca>

Law Students' Legal Advice Program (LSLAP)

This program provides free legal advice and representation (by supervised law students) in the Lower Mainland for low-income people at all stages of the Employment Standards process.

Call: 604-822-5791

Website: <https://www.lslap.bc.ca>

University of Victoria - The Law Centre

This program provides free legal advice and representation (by supervised UVic law students) in Victoria, BC.

Call: 250-385-1221

Email: reception@thelawcentre.ca

Website:

<https://www.uvic.ca/law/about/centre/services/humanrightsclinic.php>

Find an Advocate

You can also **find advocates** across BC by using PovNet's "Find an Advocate" Tool, available online: <https://www.povnet.org/find-an-advocate>.