



Know Your Rights

Are you missing wages? Is your employer withholding gratuities? Have you experienced harassment or unfair treatment at work? We organize for what is right, fair, and just for workers, and we've got your back!

Get in touch to learn more about your rights at work, to share your story, and to join a network of people who have shared similar experiences and work together to improve labour conditions.

File a complaint to learn about your rights and access free support.

Employers must follow basic protections for employees in B.C. Most of these are set out in the BC Employment Standards Act, the Workers Compensation Act, and the BC Human Rights Code. No matter what agreement you have made with your employer, you cannot sign away your rights!

Temporary migrant workers in B.C. are also covered by parts of the BC Employment Standards Act. However, farm workers are excluded from overtime and statutory pay. See [here](#) for more information.

Visit the [Migrant Workers Centre](#), [Dignidad Migrante Society](#), [Radical Action with Migrants in Agriculture \(RAMA\)](#), or contact us to be connected with a member of our team. We have translated resources, and members of our network that you can speak to that have lived experience of racial marginalization and barriers to accessing your rights at work.

Below are *some* basic employment rights in BC broken down into 5 categories:



*The following is educational information and should not be taken as legal advice, if you have any questions don't hesitate to ask one of our Solidarity Stewards.

Getting Paid

Top 5 forms of wage theft

1. **Forced to pay “employer costs.”** Employers can't deduct from your pay or tips for things like broken dishes/glasses, customer theft, or as punishment for poor work performance. If you must wear a uniform then the employer must give it to you. A dress code (no jeans, no cut offs, dark clothing, business casual) is not typically considered a uniform.
2. **No statutory holiday pay.** Have you worked 15 of the last 30 days leading up to a stat holiday and been employed for at least 30 days? If so, you're entitled to an average day's pay even when you don't work on the stat holiday. And, if you *do* work on the stat holiday, you're entitled to an average day's pay *plus* time-and-a half for hours worked.
3. **Not getting paid for all your work time.** You should never have to start work early or stay late beyond your paid hours. For example, it is wage theft to be asked to “work off the clock.”
4. **Denied overtime.** Daily overtime is time-and-a half after you've worked 8 hours. Weekly overtime is time-and-a half after you've worked more than 40 hours in a week.
5. **Last pay cheque is late or missing.** Employers must pay all outstanding wages (including tips) within 48 hrs if they fire you, and within 6 days if you quit.



Protect yourself from wage theft by [keeping your own records](#). Keep track of the days and hours you work and compare it to your pay stub! If something is off, get in touch with us, we've got your back.

Tips and Tip-pools

Can an employer take my tips?

Employers are allowed to collect tips and redistribute them to other employees, but they can't take your tips to cover things like spillage, broken dishes, credit card/debit fees, wages, 'house costs' or customer theft.

*Victory for workers! In May 2019, after bringing attention to the problem of tip theft, [we won new laws to protect workers tips](#).

Shareholders and company directors/owners are not allowed to collect a portion of the tip pool.

What about tips and Employment Insurance (EI)?

If the tips you earn are considered "controlled tips," and not "direct tips," then they count towards your total insurable earnings. This means if you receive EI (e.g. for being laid off, or for taking maternity/parental leave, or other reasons) your tips should count as part of your insurable earnings and can increase your EI payment.

Controlled tips: tips an employer controls or possesses and pays to the employee. (e.g. tips allocated to employees using a **tip pool** or a tip-out, a tip sharing formula determined by the employer, or an employer adding a



mandatory service charge to a customer's bill)

Direct tips: tips an employer has no control over. (e.g. a customer leaves a tip and the server keeps the whole amount, or when employees and not the employer decide how the tips are pooled or shared). For more examples see the [CRA policy controlled vs direct tips](#).

Your employer is legally responsible for paying EI premiums on controlled tips. This means that when you go on EI (e.g. take maternity/parental leave, or use regular EI benefit) your EI amount should include gratuities.

Minimum Wage

Minimum wage is the minimum rate an employer can legally pay you (this includes all time worked, **including training time**). Some workers such as farm workers, live-in home support workers, and other workers might have different wage rates. Find out [more info here](#).

General minimum wage is \$16.75/hr, and will increase to \$17.40/hr on June 1, 2024.

Liquor servers minimum wage is \$16.75/hr and will also increase to \$17.40/hr on June 1, 2024 (same as the regular wage).*

*Victory for workers! In 2018 we successfully campaigned to [put an end to the lower liquor server wage](#) and the [government listened!](#)

How often you should be paid

You must get paid at least **twice a month** and receive a **pay stub** with the hours you worked, rate(s) of pay (including overtime, stat holiday pay), total earnings and deductions (like CPP, EI, and taxes). You must be paid in cash,



cheque, or by direct deposit. Gift cards, staff discounts, or free food and perks do not count toward the hourly wages you are owed.

Appearing to a shift

If you are scheduled and required by an employer to report for work, you are legally entitled to 2 hours pay at your regular rate if you show up to work and are turned away because it's slow, whether or not you start work. If you were scheduled for over 8 hours that day, you are entitled for 4 hours pay under the [Employment Standards Act](#).

Your right to overtime pay

There are 2 types of overtime pay:

- 1. Daily overtime:** After working 8 hours you should be paid time-and-a-half (1.5 x your hourly wage). After working 12 hours you should be paid double-time (2 x your hourly wage).
- 2. Weekly overtime:** If you work over 40 hours in a week, you should be paid time-and-a-half for all hours worked after 40 hours. For example, if you work 45 hours in a week, you must be paid for 5 hours of overtime. Weekly overtime applies even if you never work more than 8 hours in a day.

There are exceptions to overtime; An employer may ask you to sign an averaging agreement. This is an agreement between workers and employers that allows hours of work to be averaged out over a specific period of time.

You can agree to work up to 12 hours a day, averaging 40 hours a week, without being paid overtime.



But **there are certain rules for averaging agreements**, and often these rules are often violated by employers:

1. You cannot be forced to sign an averaging agreement or fired for not signing one.
2. It must be written and signed by you and the employer *before* the start date of agreement.
3. It must specify the number of weeks over which hours will be averaged (1-4 weeks).
4. It must specify the work schedule for each day covered by the agreement.
5. It must have a start and an end date and specify the number of times the agreement can be repeated.
6. The agreement can be altered, but changes must be made in writing and agreed to by you.

Keep a copy of the agreement for your own records. Even with an averaging agreement, you may be entitled to daily overtime. For example if according to your agreement you're supposed to work 10 hours and you end up working 12, you must be paid time and a half for 2 hours.

When you should receive vacation pay

After one year of continuous employment, you're entitled to two weeks vacation (at 4% of your total earnings). After five years, an employee is entitled to three weeks vacation (6% of your total earnings).



You can take your vacation in periods of one or more weeks. You need to take your vacation within 12 months of it being earned. If you work less than one year you are not entitled to take a vacation, but you still must be paid 4% vacation pay if you quit or get fired.

What if my employer doesn't pay me what I'm owed?

If your employer doesn't pay you correctly, this is **wage theft**. The Worker Solidarity Network can help you to get your wages or tips back. If you are missing wages, [let us know here](#).

Contractors, Managers and Mischaracterization of Employment

Independent contractors

An independent contractor is considered to be self employed, whereas an employee's work is directed by an employer. The overwhelming majority of workers are characterized as employees, and are protected by the Employment Standards Act. In order to be characterized as an independent contractor, the Employment Standards Branch considers the nature of the work, and not what your employer, your contract or anything else may say. Because independent contractors do not have their rights protected under the Employment Standards Act, the rules are strict in order to minimize the number of people with fewer protections. In order for a worker to be considered an independent contractor, the working relationship must meet



several conditions. The Employment Standards Branch looks at 4 major things (below) in order to determine if a worker is correctly characterized as an independent contractor.

1. The Control Test

Some things that indicate that the employer controls the work include:

- Having to ask to take time off
- Having to follow a schedule
- Having to get permission to hire people to do the work
- Having to ask permission to have other clients

Generally if you feel like you have a boss, you are likely an employee.

2. The Four Fold Test

This test assesses the worker's independence by considering the degree of control the employer has over the worker, the ownership of the tools and space necessary to perform the work, the worker's chance of profit, and the worker's risk of loss, if any.

Generally, the following conditions indicate an employment relationship:

- If you are using the employer's tools and equipment
- If you are using the employer's space
- If there is any risk of loss to you- for example, if you spend money on equipment or to rent a space, but do not make a profit- you can lose money as a contractor. As an employee, you will be paid your hourly wages for showing up to work.



3. The Integration Test

The integration test considers whether the work the worker performs is integral to the business and the business operations. The more integral the work is, the more likely you are to be an employee.

4. The Permanency Test

The more permanent the relationship between the employee and the employer, the more likely you are to be considered an employee.

Often, employers who mischaracterize their workers as independent contractors will meet some conditions, such as flexible hours and schedules, or will require you to use some of your own tools or equipment. This alone does not mean that you are an independent contractor. If only a couple of the things listed below that indicate employment apply to you, you are already quite likely to be considered an employee. You do not have to meet all of these conditions to be considered an employee. Rather the employer must meet all of the conditions in order to prove that you are not an employee.

Managers

Managers are exempt from section 4 of the Employment Standards Act that regulate overtime pay and statutory holiday pay, among other things. However, whether or not you are exempt from section 4 is determined by the Employment Standards definition of a manager, rather than your employer's. Your employment agreement or job title might say manager, but you are protected by all sections of the act unless your work meets certain criteria.

One major factor that is considered is whether supervising and directing employees is the primary function of your role. It is not enough that your obligations include directing **some** of your coworkers.



Another thing that is taken into consideration is how much you can affect the working conditions of other employees. The greater the effect, the more likely it becomes that you are considered to be a manager. For example, if you are able to hire and fire workers, that increases the likelihood that you will be considered to be a manager.

Typically, if you are a manager you will be able to perform your work fairly independently, even if you do have some limitations.

If you are missing out on certain benefits because you are a manager, you can file an Employment Standards complaint. If the complaint is successful, and the Branch determines that you are not considered a manager under the Act, you may be able to recover missing wages.

Scheduling, Breaks & Leaves

Can I take a break?

You are entitled to an uninterrupted unpaid 30 minute break after every 5 hours of work. If you are expected to work or be available to work during it, then you must be paid.

What if my boss sends me home from work early?

If you go into work for a shift and get sent home early, you must be paid for at least two hours, even if you are sent home without starting work. This is



called **minimum daily pay**.

If you're scheduled for a shift that's supposed to last more than 8 hours, you must be paid for at least 4 hours, even if you work less than this or are sent home without working at all.

Split shifts

Split shifts must be completed within 12 hours of when the shift starts. For example: if you're scheduled to work a breakfast shift at 8am and a dinner shift at 5pm, you must finish work at 8pm.

Your right to rest between shifts

Thanks to the efforts of the labour movement, you must get **eight hours** off between shifts unless required to work because of an emergency.

You should have at least 32 consecutive hours free from work every 7 days. This is called a **rest period**. If you work during this rest period, you must be paid time-and-a-half.

Your right to unpaid protected leave

Your employer must give you job protected leave for the following reasons:

Job protected leave related to COVID 19, maternity leave, parental leave, family responsibility leave, 5 days of **paid leave** (plus 5 additional unpaid days) for leaves relating to domestic or sexual violence, compassionate care leave, bereavement leave, jury duty leave, leave respecting disappearance or death of a child, critical illness or injury leave, and reservists' leave for those in the Canadian Forces.



Health & Safety

Your employer must ensure the health and safety of all of their employees. They must fix or remove any workplace conditions that are hazardous to health and safety, and provide workers with policies and tools to be able to perform their work safely.

What is refusing unsafe work?

You may be asked to perform work that you consider to be unsafe or hazardous. In that case, **you have the right to refuse unsafe work**, without retaliation from your employer.

You do not need to prove that something is unsafe prior to refusing unsafe work. Instead, you must take the following steps:

- 1.** Immediately report the unsafe work or conditions to your supervisor, who must then immediately investigate the matter. The supervisor or employer must either fix the problem, or state that there is no risk to health and safety.
- 2.** If your supervisor or employer states that there is no risk to health and safety, you are not obligated to perform the work. The employer must first inform you of their findings, and then investigate the matter in your presence and a health and safety representative from your workplace; If there is no health and safety worker available, any other worker may be present instead;
- 3.** If, after that, you still feel that the work or conditions are hazardous, you, the worker who joined the investigation and the employer must notify an officer at WorkSafe BC, who will then perform an



investigation and issue an order.

4. You are not required to perform the unsafe work throughout this time, and must not lose wages from refusing the unsafe work.
5. If WorkSafe issues an order stating that the conditions are unsafe, the employer must fix the problem immediately.
6. If WorkSafe issues an order stating that the work is not unsafe, the right to refuse work does not protect you if you **continue** to refuse the work. However, your employer must not discipline you for refusing the work until that point in any way, regardless of the outcome of the investigation.

Bullying and harassment

Your employer's obligation to provide you with a safe workplace includes ensuring the workplace is free from bullying and harassment. This includes bullying and harassment from your employer, your coworkers, and customers.

Employers must have a harassment policy in place that outlines the process of both resolving and preventing bullying and harassment.

The policy must describe the process of investigation in the case of a report, what will be included in an investigation, who to contact to report bullying and harassment at work, and a way to report if your manager or employer is the harasser and your employer must follow the process outlined in their own policy.

Bullying and harassment is not always overt or clear. While verbal



aggression, insults and threats are considered harassment, so are:

- Spreading gossip or rumours;
- Sabotaging someone's work;
- Verbal attacks based on someone's personal life;
- Targeted social isolation.

If your employer does not have an adequate policy in place, or is not appropriately addressing bullying and harassment that is taking place, you can file a complaint through [WorkSafe BC](#) within 6 months of the last incident. It is important to know that the employer will likely be able to see the contents of the complaint against them.

The employer must not discipline you in any way for reporting bullying and harassment or for filing a complaint.

Discriminatory action

You have the right to speak up about any health and safety concerns to your employer, coworkers, and WorkSafe BC without experiencing retaliation or intimidation by your employer. If you do, this may be illegal.

Discriminatory actions, or prohibited actions, include various forms of disciplinary action or intimidation that an employer might take against you after you raise a concern or file a complaint, and they are illegal;

Discriminatory action includes:

- Being suspended, laid off, or having your position be eliminated;
- Being demoted, or denied the opportunity for a promotion;
- Having your duties



transferred to someone else;

- Having your wages or hours reduced;
- Being coerced or intimidated;
- Being disciplined, reprimanded or penalized in any way.

You can file a Prohibited Action complaint through [WorkSafe BC](#) within 1 year. If the complaint is successful, the employer may be ordered to hire you back, pay you lost wages or require the employer to hire a third party to conduct investigations.

If you work alone in a retail position after 11pm, your employer must make sure that you are safe from harm.

You can't be forced to work excessive hours that put your health or safety at risk.

Human Rights at Work

Facing discrimination at work?

It is illegal for your employer or coworkers to discriminate against you based on race, place of origin, ethnicity, religion, political belief, gender expression or identity, sex (including sexual harassment or pregnancy), sexual orientation, age (over 19), mental or physical disability, and family status, marital status, or a criminal or summary conviction unrelated to the employment (or intended employment).

Your right to work free from discrimination starts before you get hired and might apply even if you are not employed. For example, you are protected from discrimination during job recruitment, hiring, job assignment, termination, pay rates, and conditions of work.



Is it legal for employers to refuse to hire me because of a past criminal charge/conviction?

Under the BC Human Rights Code, employers can't discriminate against you because of a criminal conviction or criminal charge that is **unrelated to your employment** or a job you are applying to. Employers can't refuse to hire you, refuse to promote you, or fire you because of a criminal charge or conviction unrelated to the job.

Your right to file a human rights complaint

If you experience discrimination it is your right to file a human rights complaint with the BC Human Rights Tribunal. Your complaint must usually be filed within 1 year from the incident your complaint is about. (After 1 year, you can also file a late complaint including an additional section describing why it is filed late, and the Tribunal can make the decision to accept it).

The BC Human Rights Code protects you from **retaliation**. If you filed a human rights complaint, are named in a complaint, or if you give evidence or help someone file a complaint you are protected from retaliation at work.

Getting help: If you are in the Vancouver Island Area, The Vancouver Island Human Rights Coalition can help you file a complaint for free. If you are on the mainland, The BC Human Rights Clinic provides free legal support.

Quitting & Being Fired

I want to quit. Do I need to give notice?

If you want to quit, you don't need to give two-weeks notice, that is a courtesy not an employee obligation.



My employer just fired me without notice. Is that legal?

Non-unionized workers do not have a right to employment in British Columbia. Your employer can fire you without notice and without cause as long as your rights under the Employment Standards Act (ESA) are upheld which is compensation in lieu of service or working notice.

There are few job protections for workers in BC and it is unfair, especially to low-wage and precarious employees.

If you agree with us that there should be better job protection laws than the ESA currently provides, and if you want to support the work we do, join the network [here](#).

Minimum rights after you've been fired

In your first 3 months of work your employer can fire you without giving you notice or paying you severance. This is often known as a probationary period.

If you're fired after working for more than 3 months, you may be entitled to **compensation for length of service:**

- **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.

No compensation is required if you're given written notice equal to the number of weeks for which you're eligible (see above formula). For example:



If you worked at the same place for two years, your boss has to either give you two weeks of notice or two weeks of pay when firing you. They can also give you a combination of the two: one weeks' pay and one weeks' notice.

If your employer gives you working notice of termination, they must provide you with your regular weekly pay, regardless of the number of hours that you work.

Just cause

If you're fired without written notice or severance pay it is the employer's responsibility to provide evidence that they fired you for 'just cause'. Unsatisfactory performance or instances of minor misconduct such as absenteeism or tardiness do not usually cut it. Just cause is not needed if you are in your 3 month probationary period.

What about getting my final pay cheque or tips?

If you're fired you must receive all outstanding wages within 48 hours. If you quit, your employer must pay you all outstanding wages within 6 days. All outstanding wages include vacation pay, compensation in lieu of service and tips if applied.

Need help getting your final pay cheque or tips, request support by filling out WSN's complaint form.

My boss cut my scheduled shifts, is that legal?

If there is a week in which 50% of your weekly wages are cut (averaged over the previous 8 weeks) and you did not consent to this, you may be eligible for severance pay if you quit your job as a result of the reduction. Your severance in this case is calculated in the same manner if you had been fired or laid off.



Workplace Justice

Filing a complaint against your employer

If you are no longer working for the employer, you must file your complaint within six months of your last day of work. The wage recovery period is 1 year starting from your last day of work or when the issue occurred.

If you're owed wages, an employer can be required to pay you interest. It is illegal for an employer to fire you or punish you because you file an employment standards or human rights complaint, or claim with WorkSafe BC.

Organizing your workplace

You have a right to associate with the Worker Solidarity Network, labour unions, and to organize your co-workers for the purpose of improving your collective working conditions. Unionized workers, and workers who are in the process of unionizing, have added protections through the BC Labour code.

Your right to unionize

Organizing a union or association amongst your co-workers will give you a stronger voice to make improvements in your workplace. This is an effective way to put the control of your work life into yours and your co-worker's hands. There are many benefits to forming a union. [Learn more about how to form a union here.](#)

Do you feel like these laws don't go far enough? We agree! [Join our network to organize for better conditions.](#)