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**The Top 10 Things Employers Need
to Know About
BC Employment Standards
Legislation**

by Georg D. Reuter

1. Application of BC Employment Standards Act

- The BC Employment Standards Act (the "**ESA**"), generally applies to most BC employees. In particular it applies whether:
 - Employees are part-time, full-time, temporary or permanent employees;
 - Employees are paid by the hour, by salary or commission, or by piece rate.

1. Application of BC ESA (cont'd)

- Exceptions. The ESA does not apply to:
 - Employers under the federal government's jurisdiction. For example employers engaged in the following sectors of the economy:
 - air, rail, marine and inter-provincial transport;
 - pipelines;
 - banks;
 - broadcasting and telecommunications;
 - grain elevators, uranium mines and certain other designated works.

1. Application of BC ESA (cont'd)

- **Exceptions (cont'd). ESA does not apply to:**

- **Certain professions, including:**

- certain health care professionals (including doctors, dentists, veterinarians, optometrists, chiropractors and naturopaths);
- lawyers;
- professional engineers and foresters;
- licensed insurance agents, real estate agents, and investment advisors (brokers);
- chartered accountants;
- note that teachers, pharmacists, nurses as well as non-chartered accountants are **not** excluded.

- **Independent Contractors**

2. Termination

- Reason for Termination? If the termination is "for cause" then no severance is required.
- Minimum Severance: The ESA only prescribes the **MINIMUM** notice or severance that has to be paid by an employer on termination.
- Under the ESA these statutory minimums are:

Length of employment

0 - 3 months

After 3 months up to 12 months

After 12 months up to 3 years

After 3 years up to 4 years

After 4 years up to 5 years

After 5 years up to 6 years

After 6 years up to 7 years

After 7 years up to 8 years

After 8 years

Amount of notice/pay

none

1 week

2 weeks

3 weeks

4 weeks

5 weeks

6 weeks

7 weeks

8 weeks

2. Termination (cont'd)

- Employers must pay final wages within 48 hours of terminating an employee or within six days if the employee quits.
- Employers are also exposed to "wrongful dismissal" claims in the courts. Courts can award "common law" severance which greatly exceeds the minimum severance prescribed under the ESA.
- The best way to avoid wrongful dismissal claims is to have a written Employment Agreement with a robust termination / severance clause.

3. Paydays

- All employees must be paid at least twice a month.
- All money earned, including overtime and statutory holiday pay, must be paid within eight days after the end of the pay period.

4. Deductions from Wages

- The only permissible deductions from an employee's wages are those:
 - permitted by the ESA;
 - permitted by other legislation (e.g. income tax, CPP, EI, garnishee orders); or
 - to pay for group insurance benefit premiums (e.g. Group Life, LTD).

4. Deductions from Wages (cont'd)

- Other deductions require the employee to sign an express "assignment of wages".
- Without written consent an employer can't:
 - Deduct amounts stolen by an employee from their final wages;
 - Deduct an overpayment from the employee's wages.

5. Business Costs

- The ESA prohibits an employer from requiring an employee to pay any portion of an employer's business costs.
- For example, employers can't charge employees for:
 - the cost of repairs for damage caused by an employee;
 - lost property (employer's tools, cell phones, etc.);
or
 - supplies or consumables used in their work.

6. Vacation and Vacation Pay

- The ESA minimum vacation requirements are:
 - two weeks per year after 12 months of employment, and
 - three weeks per year after five years of employment.
- Vacation must be taken: The ESA does not permit vacation to be carried over from year to year, or paid out in lieu (unless the employee is terminated);

6. Vacation and Vacation Pay (cont'd)

- Vacation pay can be dealt with in three ways:
 - Paid to the employee before they take their vacation;
 - Continue the employee's wages while they are on vacation; or
 - With the employee's written consent, paid on each pay cheque;
- Vacation pay must be calculated on the employee's total wages which includes:
 - Overtime pay;
 - Statutory holiday pay;
 - Commissions and bonuses.

7. Statutory Holidays

- As of 2014 there are 10 statutory holidays in BC:
 - New Year's Day
 - Family Day (second Monday in February)
 - Good Friday
 - Victoria Day
 - Canada Day
 - B.C. Day
 - Labour Day
 - Thanksgiving Day
 - Remembrance Day
 - Christmas Day

7. Statutory Holidays (cont'd)

- Note that Boxing Day, Easter Sunday and Easter Monday are not statutory holidays in BC.
- Eligibility: To be eligible for a statutory holiday (and statutory holiday pay) an employee must be employed for 30 calendar days before the statutory holiday, and have worked 15 of the 30 days immediately before the statutory holiday.

7. Statutory Holidays (cont'd)

- Stat Holiday on Day Off: If a statutory holiday falls on an eligible employee's regular day off then the employee must be paid an average day's pay for the holiday;
- Working on Stat Holiday: Employees who work on a stat holiday are entitled to be paid overtime rates of pay (i.e. time-and-a-half for the first 12 hours worked and double-time for any work over 12 hours), plus an average day's pay.

8. Overtime

- Most BC employees are entitled to overtime;
- Overtime must be paid at:
 - 1.5 times the employee's regular wage for the time over 8 hours, and
 - double the employee's regular wage for any time over 12 hours,
- Daily overtime applies for hours worked over 8 hours in any day. Weekly overtime must be paid for hours worked over 40 hours in any week.

8. Overtime (cont'd)

- Paying an employee by salary, does **NOT** automatically exempt them from entitlement to overtime;
- Only certain specific categories of employees are exempt from overtime. The most common exemptions are:
 - Managers: Defined as someone whose principal employment duties consist of *supervising or directing, or both supervising and directing, human or other resources*, or a person employed in an *executive capacity*;
 - Professions excluded from the ESA;

8. Overtime (cont'd)

- Certain specific jobs specified in the ESA regulations (for example certain long haul bus and truck drivers, underground miners, high-tech workers, teachers and university faculty members, police officers, fire fighters, travelling sale people, and some residential care workers);
- Can't "contract out" of overtime, but can put in place policies to monitor and authorize overtime, and to categorize employees who are exempt from overtime.

9. Employment Records

- Employers must keep employee records showing each employee's:
 - wage rate;
 - the hours worked each day;
 - benefits paid;
 - gross and net wages for each pay period;
 - deductions taken;
 - dates of statutory holidays and vacations taken, and amounts paid.
- These records must be kept whether the employee is paid by the hour, by salary or commission, or by piece rate.

10. Leaves of Absence

- Employers must grant the following types of *unpaid* leave:
 - Pregnancy (17 weeks) / parental leave (35 weeks) (combined for 52 weeks);
 - Family responsibility leave (5 days);
 - Compassionate care leave (8 weeks);
 - Bereavement (3 days);
 - Jury duty; and
 - Reservists' leave.

10. Leaves of Absence (cont'd)

- Reinstatement: An employee returning from any of the above leaves must be returned to his or her former position or to a comparable position.
- Unpaid: The above leaves are all unpaid. However, benefits must be continued provided that the employee pays their share of the benefit costs.



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