



Introduction to the *Employment Standards Act (ESA)*

This fact sheet explains the law in general. It is not intended as legal advice for your particular problem. Because each person's situation is different, you may need to seek legal advice. A lawyer at MWC reviewed this information in May 2018.

British Columbia's Employment Standards Act (ESA) and Regulations set minimum standards for the treatment of employees, including caregivers and other migrant workers, in the province. It covers most areas of the employment relationship, including the hiring of employees, wages, records, hours of work and overtime, statutory holidays, leaves, vacation and vacation pay, and termination of employment.

The Employment Standards Branch (ESB) website has several fact sheets on the rights of employees under the *ESA*. The website can be accessed at <http://www.labour.gov.bc.ca/esb/>

It is illegal for an employer to violate or contract out of these minimum standards.

For example, the *ESA* requires employers to pay their employees minimum wage. An employer may not pay a worker less than minimum wage, even if the contract states a lower rate.

However, some workers are excluded from minimum wage protection. These include farm workers, liquor servers, live-in camp leaders and residential caretakers.

Violations of the *ESA*

In the event an employer violates the *ESA*, the migrant worker should try to take immediate action because a complaint can only be submitted within six months of the violation(s) or of the worker's last day of employment. A worker may only recover unpaid wages for the 6-month period prior to the last day of employment or the date the complaint was submitted.

Some workers do not need to complete a self-help kit to submit a complaint. Caregivers, farm workers, and people with language difficulties are examples of workers who do not need to complete a self-help kit. They only need to complete and submit a complaint form on the ESB website:

<http://www.labour.gov.bc.ca/esb/forms/esbcomp.htm>

It is important to collect documents to support the claim such as: the written contract, pay cheque stubs, records of days and hours worked, Record of Employment, a diary detailing your work schedule and tasks, receipts for any money that was paid to the employer, and bank deposit statements.

It is highly recommended that workers seek legal assistance from MWC or another community organization when submitting their complaint. If the complaint cannot be resolved through mediation, then the ESB will schedule an adjudication hearing to be attended by both the employer and employee.

If the ESB determines that the employer violated the *Employment Standards Act*, then it will order the employer to pay the employee unpaid wages and/or penalties.