



Employment Law

This info sheet provides general information to workers employed under the terms of the British Columbia *Employment Standards Act* (the “ESA”) as of August 17, 2021. The ESA sets out the minimum standards that employers must follow. An employer may offer greater entitlements than provided for in the ESA; speak with your employer to see what options and entitlements may be available to you. You may also have greater entitlements or other rights and remedies at common law outside of what is provided for in the ESA; consider consulting a lawyer.

The information in this info sheet does not apply to:

- > *Unionized workers, who should consult their collective agreement, and contact their union.*
- > *Contractors, who should seek specialist legal advice.*
- > *This info sheet may also be rendered inapplicable by the terms of any relevant award, workplace agreement, or policy.*

This info sheet is to be used as general information only and is not intended to substitute for or provide legal advice.

NO AVAILABLE WORK

If business operations are badly affected and my employer has no work for me, does my employer have to pay me when they can't provide work for reasons beyond their control?

There is generally no requirement created by the ESA to pay you if you are not performing any work (with some exceptions, like paid vacation).

CHANGES TO WORKING CONDITIONS AND DUTIES

If there is a lot of cleaning up to do at the business premises before I can return to normal work, can my employer ask me to help with that?

There is nothing in the ESA that prevents your employer from asking you to help with clean-up. However, there may be increased safety risks associated with clean-up after a natural disaster such as a fire. All work must comply with the British Columbia *Workers Compensation Act* and related Occupational Health and Safety Regulations. You do not have to perform work if you reasonably believe there is an imminent danger to your health or safety. If you have concerns about safety, you should contact WorkSafeBC before proceeding with the work.

If my employer can't provide me with my usual work because of the fire, can I be asked or directed by my employer to do other available work?

The employer can offer and you can accept new duties, but you should discuss the nature and expected duration of the duties with your employer. These alternative duties should be reasonable and

appropriate to your capabilities, experience, training, and qualifications. As mentioned above, you and your employer should also discuss any potential safety risks associated with the alternative duties.

Under the ESA, if you are offered and refuse reasonable alternative duties, you are not entitled to notice of termination or pay in lieu. If your work situation is being altered substantially, however, you may wish to consult a lawyer.

Can I be allowed or required to work from home by my employer while the business premises are affected by the wildfires?

The ESA does not specifically address this topic. Employers may ask, and allow, you to work from home.

If you have concerns about a request that you work from home, you should first discuss these with your employer. Recall that an employee who unreasonably refuses to perform work may be excluded from the ESA's pay and/or termination notice provisions, as noted above. In some cases, however, being asked to work from home may be a substantial alteration of your specific type of employment; in that case, you may wish to consult a lawyer about how to react.

If you handle confidential information as part of your work, you and your employer should take steps to ensure that the work performed at home complies with privacy legislation. As mentioned above, consideration should be given to safety risks associated with the altered location. It is important that both you and your employer keep records of the hours that you work at home.

TEMPORARILY/PERMANENTLY CLOSED WORKPLACES

Can I be forced by my employer to take paid annual vacation if they can't usefully employ me for a period of time for reasons beyond their control?

In general, employers determine the timing of ESA vacation, so your employer can force you to take vacation if you have vacation remaining for the year. The ESA requires that allotted time off for vacation must be taken—you cannot waive the entitlement—so employers may have no choice in some instances but to choose to treat the time away as paid vacation.

While business operations are restored, my employer has nothing else for me to do. Can my employer 'suspend' my employment without pay while they cannot provide work?

There is no right to “suspend” employment in the ESA, but the ESA defines a “temporary layoff” as one lasting no longer than 13 weeks in any period of 20 consecutive weeks. If your employer lays you off and the layoff ends up exceeding that amount of time, your relationship with your employer is deemed by the ESA to have been terminated. Nothing in the ESA precludes you and your employer from agreeing to an extended leave of absence, however. If you are affected by a temporary layoff (or termination), you may apply for Employment Insurance wage replacement benefits.

Continued...

If a business has been so badly affected that it will not be reopening at all or will not be able to operate for a substantial period of time, can my employer dismiss me on the grounds that my services are not going to be required for the foreseeable future?

Under the ESA, your employment may be terminated in this situation. Or, as noted above, the termination may occur automatically if the allowable temporary layoff period expires.

If it is impossible for work to be performed due to a change in circumstances that could not have been anticipated, you are not entitled to the termination notice and/or pay requirements contained in the ESA. An example of such a change would be the destruction of a worksite by fire or flood; such events are not foreseeable and would exclude affected employees from compensation for length of service.

PAID AND UNPAID LEAVE

My home was badly affected by the fire. Am I entitled to paid or unpaid leave to sort out personal problems caused by the wildfires?

The ESA does not provide for a leave of absence in such situations. Some employers do offer such leaves as part of their benefit plans or may grant them if asked. The decision to grant time off with/without pay is up to the employer.

The wildfires do not directly affect me, but my family members have been directly affected. Am I entitled to ask for time off to assist those family members?

You are entitled under the ESA to take compassionate care leave in some circumstances to care or support a family member who has a serious medical condition

with a significant risk of death. The ESA does not provide for other leaves of absence in such situations. If you qualify for a compassionate care leave, you can apply to receive Employment Insurance benefits during the leave.

The wildfires did not directly affect me, but I would like to take time off work to perform volunteer community work. Does an employer have to allow that?

The ESA does not require the employer to consent to a leave of absence in such situations.

This info sheet is Robert Smithson's pro bono contribution to APB's 2021 Wildfire Legal Response. Robert is an employment lawyer and the founder of Smithson Employment Law, a firm in Kelowna, BC.

Resources

RED CROSS: call 1-800-863-6582 to register with Red Cross and make sure you are accounted for during the Wildfires emergency. You may be able to receive up to \$1,200 per household (or up to \$2,000 if you were evacuated from the Lytton region) to assist with evacuation costs: www.redcross.ca/how-we-help/current-emergency-responses/2021-british-columbia-fires.

ACCESS PRO BONO'S LAWYER REFERRAL SERVICE can assist you in finding a lawyer. You can receive a free half-hour consultation:

- > Lower Mainland: (604) 687-3221
- > Toll free: 1-800-663-1919
- > Book online: www.accessprobono.ca/our-programs/lawyer-referral-service

POVNET: find a lawyer at www.povnet.org/.

WORK SAFE BC: www.worksafebc.com/.

FOR ADDITIONAL INFORMATION ON EMPLOYMENT LAW:

B.C. EMPLOYMENT STANDARDS BRANCH:

- > www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards or 1-800-663-3316.

DIAL-A-LAW:

- > (604)-687-4680
- > 1-800-565-5297 (toll-free)
- > www.dialalaw.org

LSLAP:

- > www.lslap.bc.ca/manual.html

LEGAL CLINICS MAY BE ABLE TO ASSIST:

ACCESS PRO BONO'S SUMMARY LEGAL ADVICE PROGRAM:
30 minutes of free legal advice.

- > 1-866-762-6664 to receive legal advice ASAP over the phone
- > (604) 878-7400 to set up an appointment

ACCESS PRO BONO'S EMPLOYMENT STANDARDS PROGRAM:
free legal representation at the Employment Standards Branch.

- > (604) 482-3195 ext. 1500
- > Email esp@accessprobono.ca.

COMMUNITY LEGAL ASSISTANCE SOCIETY (CLAS):

- > (604) 685-3425
- > 1-888-685-6222 (toll-free)

JUSTICE ACCESS CENTRE (JAC):

- > Nanaimo: (250) 741-5447; 1-800-578-8511
- > Vancouver: (604) 660-2084; 1-800-663-7867
- > Victoria: (250) 356-7012; 1-800-663-7867

UBC LAW STUDENTS LEGAL ADVICE PROGRAM (LSLAP):

- > (604) 822-5791