

BC Employment Standards Coalition

Bringing together organizations, advocates and workers to campaign for decent wages, working conditions, respect and dignity in the workplace.

Migrant Worker Recruitment & Protection – Model Legislation

February 25, 2013

The *BC Employment Standards Act* is amended as follows:

1 Section 1(1) is amended by adding:

“**foreign worker**” means an individual who is not

- a) a Canadian Citizen, or
- b) a permanent resident within the meaning of the *Immigration and Refugee Protection Act* (Canada),

and who, pursuant to a temporary foreign worker program or similar immigration program, becomes employed or is recruited to become employed in the Province.

“**foreign worker employer**” means a person who employs a foreign worker.

“**foreign worker recruitment**” means finding or attempting to find one or more foreign workers for the purpose of placing them in employment in British Columbia (whether or not a fee is charged).

“**foreign worker recruiter**” means a person that:

- a) is engaged in foreign worker recruitment;
- b) assists another person engaging in foreign worker recruitment; or
- c) refers an individual to another person that is engaged in foreign worker recruitment.

“**licensee**” means a person who holds a license under this Act.

“**person**” includes a partnership, union, organization and unincorporated association.

2 Section 4 is repealed and replaced with the following:

- 4 The requirements of this Act and the regulations are minimum requirements and are implied terms in all contracts of employment, which cannot be waived.

3 Section 6 is repealed and replaced with the following:

Informing employees of their rights

- 6 (1) An employer must display in each workplace, in locations where it can be read by employees, a statement of the employees' rights under this Act.
- (2) Subsection (1) does not apply to domestics. Instead, an employer must provide a written statement of the domestic's rights under this Act, on the domestic's first day of work or within 14 days of this section coming into effect, whichever is later.
- (3) The statement must be in the form provided by the director.

4 Section 29 is repealed and replaced with the following:

Reasonable and Proper Accommodations

- 29 An employer must provide all employees for which the provision of housing is a condition of employment, with reasonable and adequate accommodation as prescribed by the regulations.

5 Section 35 is changed to section 35.1 and the following section is added:

Work Schedules for domestics

- 35.2 (1) An employer of a domestic must provide the domestic with a written work schedule at the beginning of each work week.
- (2) For the purpose of this section "standby" means any period where the domestic is not scheduled to work, but must remain available to work if necessary.
- (3) An employer may only require or permit a domestic to be on standby if it is agreed in writing and if the domestic is compensated by the payment of at least the equivalent of 3 hours of work per standby shift. The payment under this subsection is in addition to any other payment owed under the Act or the regulations, including section 22(2) of the Employment Standards Regulation.

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(4) An employer may only require or permit a domestic to perform work during the standby period which is urgently required to be done without delay.

(5) The work schedule referred to in subsection (1) must detail:

- (a) the domestic's hours of work each day of the week; and
- (b) the hours during the week when the domestic will be on standby.

(6) At the end of each work week, the employer and the domestic must review the work schedule to determine if there were any deviations from the schedule and make note of any such deviations.

6 Section 36 is changed to section 36.1 and the following section is added:

Minimum hours of work for temporary foreign workers

36.2 A foreign worker employer must pay a foreign worker employed under a federal temporary foreign worker program for the greater of, the number of hours actually worked per week or the number of hours per week specified in a contract.

7 Section 63 is changed to section 63.1 and the following section is added:

Liability resulting from length of service for temporary foreign workers

63.2 (1) Notwithstanding section 63.1, a foreign worker employer is liable to pay a foreign worker employee employed under a federal temporary foreign worker program, an amount equal to one weeks wages as compensation for length of service, for any period of consecutive employment of less than 12 months. This liability is deemed to be discharged if the foreign worker is given one week's written notice of termination.

(2) After 12 consecutive months of employment section 63.1 (2) and (3) apply.

Periods away from work during the notice period

63.3 For a domestic receiving notice under section 63.1 or 63.2, the workday during the notice period is defined as being between the hours of 9:00 AM and 5:00 PM. A domestic is entitled to be away from work with pay for two hours each work day during the notice period for the purposes of finding alternative employment.

8 Section 74 is repealed and replaced with the following:

Limitation Period

- 74.1 (1) Any person or group of persons that alleges that a person has contravened
- (a) a requirement of Parts 2 to 8 of this Act, or
 - (b) a requirement of the regulations specified under section 127(2)(l).
- (2) A complaint must be in writing and must be delivered to an office of the Employment Standards Branch.
- (3) A complaint relating to an employee whose employment has terminated must be delivered under subsection (2) within 36 months after the last day of employment.
- (3.1) Subsection (3) applies to an employee whose employment is terminated following a temporary layoff and, for that purpose, the last day of the temporary layoff is deemed to be the last day of employment referred to in subsection (3).
- (4) A complaint that a person has contravened a requirement of section 8, 10 or 11 must be delivered under subsection (2) within 36 months after the date of the contravention.
- (5) Subject to subsection (6), a complaint may be filed on behalf of
- (a) another person; or
 - (b) a group or class of persons, whether or not the person filing the complaint is a member of that group or class.
- (6) The Director may refuse to accept a complaint made on behalf of another person or a group or a class of persons, if the Director is satisfied that
- (a) the person whose rights under the Act are alleged to have been contravened does not wish to proceed with the complaint, or
 - (b) proceeding with the complaint is not in the interest of the group or class on behalf of which the complaint is made.
- (7) The Director may proceed with 2 or more complaints together if he is satisfied that it is fair and reasonable in the circumstances to do so.

Separate persons treated as one entity

- 74.2 (1) Subsection (2) applies if,

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- (a) associated or related activities or businesses are or were carried on by or through an employer or recruiter and one or more other persons; and
- (b) the intent or effect of their doing so is or has been to directly or indirectly defeat the intent and purpose of this Act.

(2) The employer or recruiter, as the case may be, and the other person or persons described in subsection (1) shall all be treated as a single entity for the purposes of this Act, even if the activities or businesses are not carried on at the same time.

(3) Persons who are treated as one entity under this section are jointly and severally liable for any contravention of this Act and for any amounts owing by any of them for the contravention.

9 Section 76(3)(d) is repealed.

10 Section 80(1) is repealed and replaced with the following:

- 80 (1) The amount of wages an employer may be required by a determination to pay an employee is limited to the amount that became payable in the period beginning
- (a) in the case of a complaint, 36 months before the earlier of the date of the complaint or the termination of the employment, and
 - (b) in any other case, 36 months before the director first told the employer of the investigation that resulted in the determination, plus interest on those wages.

11 Section 83 is repealed and replaced with the following:

Reprisal by employer

- 83 (1) An employer must not
- (a) refuse to employ or refuse to continue to employ a person;
 - (b) threaten to dismiss or otherwise threaten a person;
 - (c) discriminate against or threaten to discriminate against a person with respect to employment or a condition of employment; or
 - (d) intimidate or coerce or impose a monetary or other penalty on a person, nor threaten to intimidate or coerce or impose a monetary or other penalty on a person

because an employee asks any person to comply with this Act; makes inquiries about his or her rights under this Act; gives information to an employment standards officer; or testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act.

Reprisal by recruiter

- (2) No person acting as a foreign worker recruiter, shall intimidate or penalize or attempt or threaten to intimidate or penalize a foreign worker because that foreign worker,
- (a) asks any person to comply with this Act;
 - (b) makes inquiries about his or her rights under this Act;
 - (c) files a complaint with the Ministry under this Act;
 - (d) exercises or attempts to exercise a right under this Act;
 - (e) gives information to an employment standards officer; or
 - (f) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act.

Onus of proof

- (3) If a complaint is made under this section the onus of proof that a contravention did not occur is on the party being complained against.

12 Section 85(2) is repealed and replaced with the following:

(2) Despite subsection (1), the director may only enter a place occupied as a private residence with the consent of the occupant or under the authority of a warrant issued under section 120, unless the inspection of that private residence are routine or random administrative inspections that:

- (a) involve a minimum intrusion into the privacy of the occupant;
- (b) involve no search and seizure of the property; and
- (c) are reasonably expected by the community as a matter of health and safety standards.

(3) The director must perform regular random inspections of residences where domestics work in order to ensure general compliance with this Act.

13 Section 101(2) is repealed and replaced with the following:

Publication of violators' names

(2) Despite the Freedom of Information and Protection of Privacy Act, the director may

- (a) publish information compiled under subsection (1);
- (b) make that information available for public inspection during regular business hours at offices of the Employment Standards Branch;
- (c) publish under subsection (1) includes authority to publish on the Internet.

(3) If the offence is committed by the employer of a foreign worker employed under a federal temporary foreign worker program, the director must:

- (a) compile the information under subsection (1);
- (b) and provide that information to Citizenship and Immigration Canada pursuant to the Canada-British Columbia Memorandum of Understanding on Certain Temporary Foreign Workers.

14 Section 124 is repealed and replaced with the following:

124 No proceeding for an offence under this Act may be commenced in any court more than 6 years after the facts on which the proceeding is based first come to the director's knowledge.

15 The following Sections are added:

PART 15 – Migrant Worker Recruitment and Protection

LICENSING

Foreign worker recruitment must be licensed

130 No person shall engage in foreign worker recruitment unless the person holds a license under this Act that authorizes him or her to do so.

Exemptions

131 The following persons are not required to hold a license under this part of the Act:

- (a) a person who, without receiving a fee directly or indirectly, engages in activities to find employment for a family member.

License application: foreign worker recruitment

132 A person may apply, in a form approved by the director, for a license authorizing him or her to engage in foreign worker recruitment.

Applicant to provide information

133 A person applying for or renewing a license to engage in foreign worker recruitment (“Recruitment Applicant”) must provide:

- (a) the Recruitment Applicant’s name, address, phone number and e-mail address;
- (b) if the Recruitment Applicant is not self-employed, the name, address, phone number and e-mail address of the Recruitment Applicant’s employer;
- (c) the Recruitment Applicant’s signed consent, in the form approved by the director, authorizing the director to obtain information or material from any person that the director has reason to believe can provide information or material relevant to determine whether the Recruitment Applicant meets the requirements to be licensed; and
- (d) if requested to do so by the director, a criminal record check.

134 If a Recruitment Applicant is applying for the purpose of engaging in foreign worker recruitment on behalf of their employer, sub-sections 133(c) and (d) also apply to that employer, including:

- (a) each officer and director of the corporation, if the employer is a corporation; or
- (b) each partner, if the employer is a partnership.

License fee

135 Before the director issues a license, the applicant must pay a fee of \$100.

Security: foreign worker recruiter

136 Before the director licenses a Recruitment Applicant to engage in foreign worker recruitment, the Recruitment Applicant must provide an irrevocable letter of credit from a financial institution that carries on business in British Columbia in the amount of \$10,000. In lieu of an irrevocable letter of credit, cash in the amount of \$10,000 may be deposited with the director.

Corporations and partnerships

137 If the Recruitment Applicant is a corporation or partnership, the director may inquire into or investigate the conduct of the officers, directors or partners of the Recruitment Applicant,

Terms and conditions of license

138 The director may, if he or she considers it in the public interest to do so, impose terms and conditions on a license at the time of issuing it, or at any time by written notice to the licensee. A license is also subject to any terms or conditions imposed by regulation.

Duration of license

139 A license is valid for one year from the day it is issued.

License not transferable or assignable

140 A license is not transferable or assignable.

REGISTERING EMPLOYERS OF FOREIGN WORKERS

Employer must register to recruit or employ foreign workers

141 No employer shall employ a foreign worker or engage in foreign worker recruitment without being registered with the director. An employer must apply to be registered to recruit or employ a foreign worker, in a form approved by the director.

Applicant to provide information and documentation

142 (1) When applying to be registered, the employer must provide the following information:

- (a) the employer's name and address;
- (b) the business number assigned to the employer by the Canada Revenue Agency, if the employer has a business number;
- (c) the name, address and telephone number of every individual who will be engaged, directly or indirectly, in foreign worker recruitment on behalf of the employer;
- (d) any contract or agreement under which the employer retains or directs an individual licensed to engage in foreign worker recruitment;

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- (e) upon employing a foreign worker the foreign worker's name, address and phone number, the foreign worker's job title and the location where he or she performs the majority of his or her employment duties;
- (f) any contract or agreement that the employer, or a temporary foreign worker recruiter acting on the employer's behalf, has entered into with a foreign worker;
- (g) a sworn statement that no law applicable in BC has been contravened in the recruitment or employment of any foreign worker employed by the employer, including the Human Rights Code of British Columbia and the Canadian Charter of Rights and Freedoms in the form prescribed by regulation;
- (h) a sworn statement in the form prescribed by regulation that the that the Director has never refused to register, under section 15 of this act:
 - i. the applicant;
 - ii. the applicant's directors or officers;
 - iii. a company owned by the applicant, or the applicant's directors or officers, at the time the Director refused to register that company; or
 - iv. a company for which the applicant, or the applicant's directors or officers, were directors or officers at the time the Director refused to register that company; and
- (i) any additional information that is required by the regulation or the application form, or requested by the director.

(2) An employer that applies to be registered under this section has an ongoing obligation to immediately inform the director of any changes or additions to the information provided under section 143 or 151.

(3) Before the director licenses an employer to employ a foreign worker or engage in foreign worker recruitment, the employer must provide an irrevocable letter of credit from a financial institution that carries on business in British Columbia in the amount of \$5,000. In lieu of an irrevocable letter of credit, cash in the amount of \$5,000 may be deposited with the director.

(4) The security bond referred to in subsection (3) is forfeitable for non-compliance with any requirement of this Act, the Regulations or contract between the foreign worker and foreign worker employer, regarding:

- (a) hours of work and overtime;
- (b) payment of wages
- (c) deduction of wages;
- (d) accommodations;
- (e) special clothing;
- (f) payment of return airfare; and
- (g) charging a fee for employing or obtaining employment for a foreign worker.

Term of registration

143 Subject to the regulations, a registration is valid for the period stated in the registration.

Refusal to register

- 144 The director may refuse to register or continue the registration of an employer if
- (a) the employer provides incomplete, false, misleading or inaccurate information in support of the application;
 - (b) the employer has been found in breach of this Act or the regulations;
 - (c) the employer has been found in breach of the *Workers Compensation Act*, *Human Rights Code* or *Occupational Health and Safety Regulation*;
 - (d) having regard to the past conduct of the employer, there are reasonable grounds to believe that the employer will not act in accordance with the law, or with the undertakings the employer has given in respect to employing a foreign worker;
 - (e) an individual who will be engaged in foreign worker recruitment on behalf of the employer is required to hold a license under section 1 but does not; or
 - (f) there are reasonable grounds to believe that an employee who will be engaged in foreign worker recruitment on behalf of the employer will not act in accordance with law, or with integrity, honesty or in the public interest.

OBLIGATIONS AND PROHIBITIONS

Foreign workers not to be charged

145 Notwithstanding section 10 a foreign worker recruiter must not directly or indirectly charge or collect a fee from a foreign worker regardless of whether recruitment takes place in Canada or another country.

No recovery from foreign worker

- 146 No employer shall, directly or indirectly, recover from a foreign worker
- (a) any cost incurred by the employer in recruiting the worker; or
 - (b) any amount, except an amount in respect of the reasonable monetary value of a good, service or benefit that
 - (i) was given to the worker by the employer,
 - (ii) was to the direct benefit or advantage of the worker, and
 - (iii) was not required to be obtained by the worker as a condition of being employed, or if it was, the worker was not required to obtain it from the employer.

No reduction of wages etc. of foreign workers

- 147 A foreign worker employer must not reduce the wages of a foreign worker, or reduce or eliminate any other benefit or term or condition of a foreign worker’s employment that the employer undertook to provide as a result of participating in the recruitment of a foreign worker, and any agreement by the foreign worker to such reduction or elimination is void.

Foreign worker property

- 148 (1) In this section “property that the foreign worker is entitled to possess” includes the foreign worker’s passport, work permit, SIN card and CareCard.
- (2) No employer or recruiter, and no person on the employer’s behalf, shall take possession of, or retain, property that the foreign worker is entitled to possess.
- (3) No person shall assist another person to do any of the things described in subsection (2).
- (4) Where the director is satisfied that an employer or recruiter, or any person on behalf of an employer or recruiter, has taken possession of, or retained, property that a foreign worker is entitled to possess, the director may, in writing, order the contravening person to
- (a) do any act or thing that in the opinion of the director constitutes full compliance with this Act, or
 - (b) rectify an injury caused to the person injured or make compensation therefor.

Director’s duty to publish documents

- 149 (1) The director shall prepare and publish documents providing such information as the director considers appropriate about the rights and obligations under this Act of,
- (a) foreign workers employed in BC;
 - (b) foreign worker employers in BC; and
 - (c) foreign worker recruiters.

If the director believes that a document prepared under subsection (1) has become out of date, the director shall prepare and publish a new document.

- (2) The director shall prepare the content of the orientation sessions required under Section 152, providing such information as the director considers appropriate about the rights and obligations of both foreign worker employers and foreign workers under this Act and the regulations.

Mandatory foreign worker employment agreement and documents

- 150 (1) If a foreign worker recruiter contacts, or is contacted by, a foreign worker in connection with matters of employment, the foreign worker recruiter shall give the foreign worker a copy of the documents published by the Director under Section 149, translated into the first language of the foreign worker, as soon as is practical after first making contact with the foreign worker.
- (2) Prior to the commencement of the employment of a foreign worker in the province of British Columbia a foreign worker employer must:
- (a) file a copy of any existing contract of employment signed by the foreign worker and foreign worker employer with the director;
 - (b) provide each foreign worker with a contract of employment, in the form provided in the regulation, or in a form approved by the director¹, that is written in both English and the first language of the foreign worker;
 - (c) file a copy of the contract of employment, signed by the foreign worker employer, the foreign worker to whom it applies and a witness chosen by the foreign worker, with the director as provided for in the employer registration provisions of this part; and
 - (d) prior to any party signing the contract, provide the foreign worker with a copy of the documents published by the director under Section 149, translated into the first language of the foreign worker, if the same have not already been provided by a foreign worker recruiter in connection with the employment.
- (3) Where there is a conflict between a provision in any contract filed under subsection (2)(a) and a provision of the contract filed under subsection 2(c), the provision conferring the greater benefit on the foreign worker will govern.
- (4) If a foreign worker employer employs foreign workers on the day this section comes into force, the foreign worker employer must carry out the requirements under subsection (1), within 14 days of this section coming into force.

Orientation of foreign workers

- 151 Prior to the commencement of the employment of a foreign worker under this part a foreign worker employer must:

¹ The Migrant Worker Sub-Committee is still in discussion with respect to the inclusion of “or in a form approved by the Director” in this section.

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- (a) present with the foreign worker at the nearest Employment Standards Branch for an orientation session, at the cost of the employer; and
- (b) provide to the foreign worker, in his or her first language, a worksite orientation as prescribed by regulation.

Public registry

- 152 The director of employment standards must maintain a registry, which may be in electronic form, containing the information prescribed in this part and the regulations respecting recruiter licensees and registered employers of foreign workers, and of registered foreign workers, making public all information contained in this registry, except the names of the foreign workers, unless required by law.

ENFORCEMENT

Civil proceedings not affected

- 153 Section 82 does not apply to this Part. No civil remedy of an employee against his or her employer is affected by this Act. For rights provided by this Act, an employee can seek a remedy against his or her employer either through this Act or through the commencement and maintenance of a civil action or both. If the employee seeks a remedy through this Act and a civil action, whichever the employee chooses to advance, the other will be held in abeyance pending the outcome.

EMPLOYMENT STANDARDS REGULATION

16 Section 13 of the Employment Standards Regulation is repealed and replaced with the following:

Reasonable and proper accommodations where a condition of employment

- 13 (1) Where the provision of housing is a condition of employment, an employer must provide its employee with accommodations that meet municipal building requirements and health standards set by the province and health authorities.
- (2) The accommodation provided by the employer must include a private room:

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- (a) intended for human habitation;
 - (b) which is not shared with any other person, including children of the residence, or animals;
 - (c) which is in good repair;
 - (d) with a door that is equipped with a lock and a safety bolt from within the room, to which the domestic will be provided with the corresponding key at no charge;
 - (e) with proper heating, ventilation and light; and
 - (f) with adequate furnishings, which at a minimum must include a bed, mattress, sheets, blanket, pillow and wardrobe, that are clean and in good repair.
- (3) The employer must also provide its employee with:
- (a) a private bathroom or access to a bathroom, with a functioning lock, that includes a sink, shower and toilet;
 - (b) a private kitchen or access to a kitchen for the purposes of cooking their meals; and
 - (c) all keys and/or codes necessary to obtain access to the accommodation.
- (4) As part of providing reasonable and proper accommodation, the employer must not:
- (a) perform surveillance on its employee's personal telephone or mail communication, electronic or otherwise; and
 - (b) prevent its employee from leaving residence during non-work hours.
- (5) If the employer has agreed to provide its employee with meals, those meals should be of good quality and sufficient quantity and adapted to the extent reasonable to the cultural and religious requirements, if any, of the employees.
- (6) In the event of termination with notice, the employee is permitted to reside in the accommodation during the notice period.
- (7) In the event of termination without notice, the employee is permitted to reside in the accommodation for no less than 48 hours after termination, after which time the employer may repossess the accommodation.
- (8) If the events contemplated in Section 63(3)(c) of the Act apply to the cessation of the employment relationship, then the employer is entitled to repossess the accommodation immediately.
- (9) The employee must maintain the accommodation and all the objects contained therein in the condition in which they were found, with fair wear and tear excepted.

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17 Section 14 of the Employment Standards Regulation is repealed and replaced with the following:

Maximum accommodation rates for domestics

- 14 An employer must not charge a domestic more than \$325 per month for any accommodations, including food, provided to the domestic.

18 Section 18 of the Employment Standards Regulation is repealed