

STARTING THE RELATIONSHIP - OBLIGATIONS OF THE EMPLOYER

A domestic worker is someone who is hired to live and work in a private home to provide cooking, cleaning, child care or other services.

If you are hiring (or have already hired) a domestic worker, you are an employer. You are responsible for providing a contract of employment for your employee.

You have the right to choose the domestic worker and set the terms and conditions of employment. You are also responsible for making sure those terms and conditions meet the minimum standards required under the British Columbia *Employment Standards Act* ("the Act").

A) Registration

The employer must register the domestic worker with the Employment Standards Branch Domestic Registry.

If you are planning to bring a domestic worker into Canada - either directly (by yourself) or indirectly (through an employment agency) - you will need to register your intent to hire a domestic worker with the Branch. You must provide the Branch with the name of the domestic worker within 30 days of hire.

Email to: SDL.ESBDomesticRegistry@gov.bc.ca

Or mail to:
Ministry of Labour
Employment Standards Branch Domestic Registry
1577 - 7th Ave, Prince George BC, V2L 3P5
Or Fax to: 1 866 861-8700

B) Employment contract

The Act requires the employer and the domestic worker to sign an employment contract (sometimes called an employment agreement) before work begins. The contract outlines the terms and conditions of employment, and must include:

- Duties the domestic worker will have to perform;
- Hours and days the domestic worker will have to work in a week;
- Wage rate - the minimum allowed is:
 - May 1, 2012 – \$10.25 per hour;
 - September 15, 2015 - \$10.45 per hour.

- Amount agreed to for monthly room and board;
- When wages will be paid (e.g. bi-weekly, or semi-monthly);

If a monthly or yearly salary is paid, it must at least equal minimum wage for all hours worked.

Example: To determine if a salary of \$1,850.00 a month for a 40-hour work week at least equals minimum wage, calculate as follows:

$$\begin{aligned} & \$1,850.00 \times 12 \text{ months} \div 52 \text{ weeks} \\ & = \$426.92/\text{week} \div 40 \text{ hours} \\ & = \$10.67/\text{hour} \end{aligned}$$

A monthly salary of \$1,776.67 equals minimum wage at \$10.25/hr for a 40 hour week, and a monthly salary of \$1811.33 equals minimum wage at \$10.45/hr for a 40 hour week.

A maximum of \$325 per month may be charged for room and board. (This amount is subject to change by regulation).

The contract may also cover other terms and conditions.

C) Hours of work

The employer has the right to set the domestic worker's work schedule. However, because domestic workers live in their employers' homes, the line between being "at work" and "not at work" is often unclear.

If the employer asks the domestic worker to baby-sit or perform other duties outside of the normal agreed-upon hours of work, that time is work and must be paid appropriately (at overtime rates if applicable).

Unless there is an emergency, domestic workers must have at least eight hours free from work between shifts and 32 consecutive hours free from work each week. Domestic workers can be required to work a split shift; however, the split shift must end no later than 12 hours after it starts.

The employer must keep a record of daily hours worked, even if the domestic worker is paid a salary instead of an hourly wage.

D) Paying wages

Domestics are entitled to overtime pay, statutory holiday pay and vacation pay.

Overtime pay is the extra rate of pay for time worked over either eight hours in a day, or 40 hours in a week.

Daily overtime:

$$\begin{aligned} \text{Hours over 8/day} &= 1.5 \times \text{regular wage} \\ \text{Hours over 12/day} &= 2 \times \text{regular wage} \end{aligned}$$

Weekly overtime:

$$\text{Hours over 40/week} = 1.5 \times \text{regular wage}$$

When determining overtime, a week is seven consecutive days, starting on Sunday. Only the first eight hours in a day count toward weekly overtime.

Where the Branch has approved a variance or the domestic worker works under an averaging agreement, daily overtime may not have to be paid. (See factsheets: *Averaging Agreements* and *Variances*.)

The domestic worker may also store overtime in a time bank. (See factsheet: *Hours of Work and Overtime*.)

E) Payroll requirements

Employers must pay wages at least twice every month, within eight days after the end of a pay period. Wages can be paid by cash, cheque, money order or, with the employee's consent, by direct deposit to the employee's bank account.

On every pay day, the employer must provide a wage statement stating the hours worked, the wage rate, gross and net wages, deductions, and any overtime, statutory holiday or vacation pay paid. If there has been no change from the previous pay period, no wage statement need be provided.

If payment is made by cash, the employer should obtain a receipt.

Employers must keep payroll records including:

- Employee's name and date of birth;
- Date the employee started work;
- Wage rate;
- Hours worked on each day;
- Amount and type of benefits;
- Gross and net wages;
- Amount and purpose of each deduction;
- Dates statutory holidays were taken, and the amount of pay earned;

- Dates of annual vacation, and the amount of vacation pay earned.

These records must be kept in English at the employer's residence for two years after the domestic worker's employment ends.

F) Deductions

A deduction is any amount of money taken by an employer from wages owed to an employee. The employee must give written authorization for all deductions other than income tax, Employment Insurance (EI) premiums and Canada Pension Plan (CPP) contributions.

Deductions must benefit the employee. Costs of doing business cannot be passed on to an employee.

G) Room and board

The employer and domestic worker must agree on the amount charged for room and board, which cannot be more than \$325/month (subject to change by regulation). If room and board will be deducted from the employee's pay, the employee must first agree in writing.

H) Holidays and vacation pay

There are nine statutory holidays in BC. An employee who has been employed for 30 calendar days, and has worked 15 of the 30 days preceding the holiday, is entitled to statutory holiday pay. (See factsheet: *Statutory Holidays*.)

I) Annual vacation

After working for one full year, a domestic worker is entitled to at least two weeks vacation. After completing five years of employment, the entitlement increases to three weeks. (See factsheet: *Annual Vacation*.)

After five days of employment, a domestic worker is entitled to 4% vacation pay. This increases to 6% after five years of employment. Any outstanding vacation pay must be paid when employment terminates.

The timing of the vacation is the employer's choice, but it must be at least one week long. A vacation does not include those occasions when the domestic worker goes with the employer on a trip, or stays behind to work in the residence.

J) Leaves

Domestic workers are entitled to unpaid leaves of absence for any of the following reasons: pregnancy, parental, family responsibility, compassionate care, bereavement and jury duty. (See factsheet: *Leaves of absence*.)

K) Ending the employment relationship

After three consecutive months of employment, an employer must give compensation, written working notice or a combination of the two if terminating a domestic worker's employment. The amount required is:

- After three months – one week;
- After 12 months – two weeks;
- After three years – one week for each completed year of employment, to a maximum of eight weeks.

An employee who quits, or is fired, either with just cause (see factsheet: *Just cause*) or after working for less than three months, is not entitled to compensation for length of service.

The Act does not require a domestic worker to give her employer notice she is leaving employment.

If a domestic worker quits, the employer has six days to pay wages owing. If a domestic worker is fired, the employer has 48 hours to pay wages owing.

L) Filing a complaint

An employment standards complaint can be filed at any time during employment, but must be filed within six months after the last day of employment. Domestic workers are not required to use the Employment Standards Self-Help Kit.

FREQUENTLY ASKED QUESTIONS

Is the person I hire to care for my children a domestic worker?

Only if she or he is living in your home.

Are domestic workers and live-in caregivers the same?

Both are employees covered by the Employment Standards Act although they may not be exactly the same.

“Domestic worker” is the term used by the provincial government.

“Live-in caregiver” is the term used by the federal government and includes immigration aspects that

do not affect the employment standards entitlements discussed in this guide.

Can I pay wages in cash?

Yes, but you must show that wages have been paid by getting a signed receipt.

Can an employer ask the domestic worker to replace or pay for an item, such as a crystal vase that she broke?

Under the Act, an employer cannot deduct money from wages to recover a cost of doing business. This includes accidental damage to the employer's property.

How can an employer keep track of the hours a domestic worker works when the employer is usually away from the home?

The Act requires that the employer have a written contract of employment that specifies the hours of work required. The employer can also have the domestic worker record hours worked on a timesheet.

If I want to bring my employee to B.C. from another country, would the same contract remain in effect in British Columbia?

Yes, but only if the contract complies with the Act.

If a domestic worker goes with us on vacation and we pay her travel, hotel and living expenses, do we still have to pay her wages?

Yes, if she is required to work during this vacation.

Can the employment agency that places a domestic worker charge that worker for its services?

No. Employment agencies are only allowed to charge the employer.

Is a domestic worker required to give notice to end the employment relationship?

No. The Act does not require employees to give notice.

Should an employee keep a record of time worked?

Yes. Employees should keep a record of all hours worked, including overtime hours which must be paid at overtime rates.

RESOURCES

Questions about the *Employment Standards Act* can be answered by the Branch Information Line: 1 800 663-3316 or 250 612-4100 in Prince George, or in person at any Branch office. If you are making an inquiry, no personal information is required.

Branch publications, including *A Guide to the Employment Standards Act*, the factsheets mentioned in this brochure, and Branch forms are available at any

Branch office, on request from the Information Line, or online at www.labour.gov.bc.ca/esb/.

OTHER RESOURCES

WorkSafe BC - <http://www.worksafebc.com/>

Phone: 1 888 967-5377 or 604 231-8888

Workers' compensation is a compulsory workplace insurance plan paid for by employers. Any work-related illness or injury must be reported to WorkSafe BC.

Medical Services Plan - 604 683-7151 or 1 800 663-7100

<http://www2.gov.bc.ca/gov/content/health/> This agency provides medical insurance for persons residing in B.C.

BC Human Rights Tribunal - 604 775-2000 or 1 888 440-8844 <http://www.bchrt.bc.ca/>

Employers are required to provide a workplace free from sexual harassment and from discrimination because of race, religion, gender, colour, ancestry, place of origin, marital and family status, physical and mental disabilities, political belief, or a criminal conviction unrelated to work responsibilities.

Canada Revenue Agency –

<http://www.cra-arc.gc.ca/menu-e.html>

Employers are required to make the appropriate deductions from wages for income tax, Employment Insurance and Canada Pension Plan, and to send that money to Canada Revenue Agency. Domestic workers are entitled to a “T4” form by the end of February setting out their earnings in the previous year.

Employment Insurance – 1 800 622-6232

Domestic workers are entitled to a Record of Employment when the employment relationship ends.

Other Information – the Affiliation of Multicultural Societies and Service Agencies (AMSSA) of British Columbia is a coalition of more than 75 organizations providing multicultural and immigrant settlement services in the province. AMSSA has a list of agencies, and can be accessed by phone at 604 718-2780 or online at www.amssa.org.

Welcome BC puts out the *British Columbia Newcomer's Guide to Resources and Services*.

<https://www.welcomebc.ca/start-your-life-in-B-C/Newcomers-Guides>.

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A Guide to the Employment Standards Act

For Domestic Workers and their Employers



Ministry of Jobs, Tourism and Skills Training and
Minister Responsible for Labour
Employment Standards Branch

www.labour.gov.bc.ca/esb/