



This factsheet has been prepared for general information purposes. It is not a legal document. Please refer to the *Employment Standards Act* and Regulation for purposes of interpretation and application of the law.

July 2016

Complaint Hearings

If employees and employers (the parties) have been unable to resolve a dispute themselves by using a Self-Help Kit, and have refused or been unable to resolve their dispute at mediation, the Employment Standards Branch may hold a hearing to decide whether an employer has contravened the *Employment Standards Act*.

Complaint hearings

A complaint hearing is also called an adjudication hearing. Most hearings are conducted by way of a conference call although some are conducted in person. The parties do not have a legal right to an in-person hearing. An officer of the Employment Standards Branch (the Adjudicator) is appointed to hear the parties give evidence on the issues that gave rise to the complaint. This evidence is given under oath.

The Adjudicator's job is to hear evidence from the parties, including evidence from any witnesses the parties choose to call. After the conclusion of the hearing, the officer will issue a written decision called a "Determination". This Determination can be filed and enforced in the same manner as a judgment of the B.C. Supreme Court.

Notice of hearing

The Branch will send a Notice of Complaint Hearing to both the employer and the complainant.

The notice will include:

- Dial-in instructions (or location) and time of the hearing;
- Dial-in instructions (or location) and time of a pre-hearing conference if one has been scheduled;
- Instructions for providing documents and using witnesses;
- A Demand for Employer Records, if required, which will list the documents and records the employer must produce. Failure to produce records as required will result in a monetary penalty.

Preparing for a hearing

Before the hearing, the parties must:

- Send the Branch two copies of any documents they intend to rely on in enough time for these documents to be provided to the other party;
- Provide a list of people they intend to call as witnesses with a brief summary of the relevant evidence they expect those witnesses to give; and
- Provide all documents required in the Demand for Employer Records, if one was issued.

All documents will be exchanged with the other party.

The parties should also:

- Review any documents or written submissions including the Request for Payment form from the Self-Help Kit, if used;

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- Review the Agreed Statement of Facts from the mediation if there is one;
- List any points they wish to make at the hearing;
- Make a list of any questions they wish to ask witnesses; and
- Ensure their witnesses are able to participate in the hearing

Pre-hearing conferences

The Adjudicator may schedule a pre-hearing conference. The purpose of a pre-hearing conference is to ensure that the hearing runs efficiently by providing the parties with an opportunity to clarify issues in dispute, eliminate issues that are not relevant, discuss what witnesses may be required and consider procedural questions. A pre-hearing conference may be held on a date before the hearing, or at the start of the hearing.

Adjournments

A request for an adjournment must be made in writing, include reasons, alternate available dates and whether the other party consents, and be delivered to the Branch seven days before the scheduled hearing date. Requests for an adjournment will be granted or refused on a case-by-case basis.

Parties should remain prepared to attend the hearing on the originally scheduled date until advised in writing that the adjournment has been granted.

Translation assistance

If a party requires translation assistance, they must bring their own translator, as the Branch does not provide this service. The translator must be someone who is not involved in the complaint as a witness.

Attendance at the hearing

If a party does not appear at the scheduled time, the hearing may proceed in the absence of that party, and a decision may be made based on the evidence presented by the party who does appear, and on information in the file.

Giving evidence

In a hearing, the parties and their witnesses give their evidence under oath, and the other party has the right to cross-examine.

If a party sends a representative to a hearing instead of attending personally, the representative must have personal knowledge of the matters he or she will be giving evidence about. If a representative gives an account of matters he or she has only been told about, it may not be admitted as evidence or will be given very little weight.

An employer or a complainant may call witnesses to give evidence. These witnesses may be questioned by the other party. If parties bring written statements to the hearing instead of producing witnesses in person, the contents of those statements may not be admitted as evidence or will be given less weight than if the person who wrote the statement was available to give evidence and to be questioned.

What to expect at the hearing

Only the employer, the complainant and their representatives will be present with the Adjudicator for the entire hearing. Witnesses may not hear the proceedings before they are called to give evidence.

All documents to be used at the hearing must be provided in advance. The Adjudicator may refuse to consider any documents introduced for the first time at the hearing, or may grant the other party an adjournment to review the new documents and prepare a response.

At the beginning of the hearing, the Adjudicator will introduce him/herself and explain the process to the parties.

The Adjudicator will state which sections of the Act the complaint relates to and review any facts that the parties have agreed to. The Adjudicator will enter any documents into evidence.

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If the Adjudicator feels there are relevant issues that have not been raised, he or she may raise those issues. If issues are raised for the first time at a hearing, whether by the parties or by the Adjudicator, a short recess, or an adjournment, may be granted to give the parties time to address those issues.

The Adjudicator will ask the complainant and the employer to present evidence or call any witnesses. Both parties will be given an opportunity to ask questions of each other's witnesses, and respond to evidence or statements made by the other party.

The Adjudicator may also ask questions of the complainant, the employer and any witnesses.

At the end of the hearing, if any outstanding issues have been identified, the Adjudicator may request written submissions or set a date to reconvene the hearing to address those issues. If all of the evidence has been presented, the Adjudicator will listen to closing arguments. The Adjudicator will then formally conclude the hearing.

After the hearing

The Adjudicator will reserve his or her decision and will provide a written Determination as soon as possible, usually within eight weeks of the date of the hearing. Determinations are sent by registered mail.

The parties are not permitted to contact the Adjudicator after the hearing. Any further information that is sent to the Adjudicator will be forwarded to the other party, but will not form part of the Adjudicator's decision.

If the Adjudicator feels that further information is needed in order to make a decision about an issue, he or she may request further submissions from the parties.

If the Adjudicator finds that the employer has contravened provisions of the Act, the Determination will also include one or more mandatory penalties.

A Determination can be filed at any time in B.C. Supreme Court and enforced in the same manner as a judgment of the Court.

Appeals of Determinations must be made to the Employment Standards Tribunal. Information can be found on the Tribunal's website at www.bcest.bc.ca.