

Enforcement Measures and Penalties

The Employment Standards Branch assists employers and employees to resolve disputes under the *Employment Standards Act* and *Regulation* through a variety of means such as education, mediation, investigation and adjudication.

Audits

The Branch may review payroll records for the matter in dispute, or may require an audit of the Employer's entire payroll. This audit may be done by the Branch, or the employer may be required to do it and have it checked by the Branch.

Determinations

If voluntary resolution of a dispute is not achieved, the Branch will decide the matter and issue a written decision called a determination.

If a determination finds that an employer has contravened the Act or Regulation, the employer is ordered to pay any wages owed to the employee. The employer is also ordered to pay a mandatory penalty for each requirement of the Act or Regulation found to have been contravened.

Penalties

Penalties for contraventions of the Act and Regulation are as follows:

- First Contravention: \$500.

- Contravention of the same requirement at the same location within three years of the first contravention: \$2,500.
- Contravention of the same requirement at the same location within three years of the second contravention: \$10,000.

Interest

If a determination is issued, the employer is ordered to pay interest on unpaid wages owing to an employee. Interest is calculated from the earlier of the date of the employee's termination or the date the complaint was filed to the date of payment. Interest is charged at the prime lending rate of the government's banker.

Lien for Unpaid Wages

Unpaid wages are a lien, or legal claim, against the property of the employer. The lien takes effect at the time the wages were earned. These liens take priority over all other claims, including a claim of the provincial government, with the exception of a prior-registered mortgage or debenture against land.

Demands on Third Parties

The Branch can make demands on third parties to recover money owing under a determination, a settlement agreement or an order of the Employment Standards Tribunal.

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If a third party is or will be indebted to a person who is required to pay money under a determination, the Branch may demand that the third party pay all or part of their indebtedness directly to the Branch. If the third party does not comply with the demand, the Branch may begin collection action directly against the third party.

Court Judgments

A determination, a settlement agreement, or an order of the Employment Standards Tribunal may be filed at any time in Supreme Court and enforced as a judgment of the Court.

Seizing Assets

The Branch may seize assets of a person required to pay under a determination, settlement agreement or order to satisfy the amount owing and the costs of the seizure. The Branch may direct the Court Bailiff to seize assets to recover the amount owing. The bailiff will also recover his costs in accordance with the *Court Order Enforcement Act*.

Certificates of Judgment

The Branch may register a Certificate of Judgment against land owned by a person required to pay money under a determination, settlement agreement or order.

Corporate Officer Liability

A director or officer of a corporation is personally liable for up to two months' unpaid wages per employee if the director or officer held office when the wages were earned or payable.

A director or officer is **not** liable for:

- Compensation for length of service or group termination pay if the corporate employer is in receivership; **unless** the Director of Employment Standards has issued a

determination ordering a director or officer to pay wages **before** the date of receivership;

- Wages, compensation for length of service or group termination pay if the corporate employer is the subject of a bankruptcy or insolvency proceeding; **unless** the Director of Employment Standards has issued a determination ordering a director or officer to pay wages **before** the date of the bankruptcy or insolvency proceeding;
- Vacation pay that becomes payable after the director or officer leaves office;
- Money that remains in an employee's time bank after the director or officer leaves office.

A director or officer of the corporation who authorizes, permits or acquiesces in a contravention of the Act or Regulation is also subject to penalties.

Security to Ensure Compliance

An employer who at any time has contravened a requirement concerning the payment of wages may be required by the Branch to post a bond, or to provide an irrevocable letter of credit or other security, to help ensure future compliance.

Publishing Violators' Names

The Director of Employment Standards may compile and publish information about contraventions of the Act and Regulation and make this information public.

