

# Ministry of Labour - Employment Standards Act - Consultation Paper -

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Government has prioritized delivering the services people count on, and the Minister of Labour is leading the commitment to “update employment standards to reflect the changing nature of workplaces and ensure they are applied evenly and enforced”. Following the release of the BC Law Institute’s Consultation Paper and its Final Report (BCLI Report) on the Employment Standards Act (ESA), the Ministry received submissions from stakeholders about issues outlined in the Consultation Paper, the Final Report and about other areas of concern related to the ESA. Based on all of that feedback, the Ministry of Labour wishes to consult with stakeholders and the public regarding the first areas of focus for possible amendments to the ESA. We have identified six themes for modernizing the ESA and the Employment Standards Branch, and we welcome your input on these themes:

Theme 1 - Increasing protection of child workers

Theme 2 - Transforming the Employment Standards Branch

Theme 3 - Supporting families through difficult times with job-protected leaves of absence

Theme 4 - Strengthening workers’ ability to recover wages/monies owed

Theme 5 - Clarifying hours of work and overtime standards

Theme 6 - Improving fairness for terminated workers

## **Theme 1 – Increasing protection of child workers:**

**Current State:** The BCLI Report recommended that children under 16 should be prohibited from working in industries or occupations that are likely to be harmful to their health, safety or morals, and that the special rules for child workers in recorded and live entertainment should not change. BC has few legal restrictions on the types of work that young workers may perform. The Ministry has heard from stakeholders that greater protections are required to keep young workers safe. We have also heard support for children working with parental consent in artistic endeavors, including recorded and live entertainment. Other provinces limit the work that children under 14 can do without a permit, and identify some work as too hazardous for young workers to perform. In contrast, BC’s minimum age for employment is effectively 12 since a permit is only required for children under 12. Children aged 12 to 14 may work with the consent of a parent/guardian, subject to some restrictions (for example, regulations that limit the number of hours young workers may work during the school year, and that require adult supervision of young workers). [\[Review BCLI discussion here\]](#)

**1 – For Input: What is your view on increasing protections for child workers? Should government categorize some work as hazardous/unsuitable for children?**

## **Theme 2 – Transforming the Employment Standards Branch:**

Current state: The BCLI Report expressed concern with some Branch processes, including the focus on complaints resolution rather than proactive enforcement and investigations, and recommended removal of the Self-Help Kit. The Ministry heard from employers about unfair processes like mandatory penalties, and the need for more transparency in investigation processes. Workers told us that the mandatory use of the Self-Help Kit is a barrier for them to access justice and that there should be more proactive enforcement. The Ministry also received concerns about lack of oversight for workers in temporary help arrangements. [\[Review BCLI discussion here\]](#)

**2 – For Input: What are your views on how we can address issues raised by the BCLI Report and stakeholders to improve the Employment Standards Branch and better serve workers and employers?**

## **Theme 3: Supporting families with job-protected leaves of absence**

Current State: The BCLI Report considered existing provisions authorizing workers to be absent from work for a specific reason (“special leaves”). BC currently has 9 categories of special leave:

- Maternity leave
- Parental leave
- Family responsibility leave
- Compassionate care leave
- Reservists’ leave
- Bereavement leave
- Leave for Jury duty
- Leave respecting disappearance of child
- Leave respecting death of child

Across Canada, most jurisdictions have some similarities in their leaves that align with federal EI benefits. BC provides unpaid leave that aligns with federal EI benefits under the following circumstances: maternity leave, parental leave, and compassionate care leave. As BC does not provide unpaid critical illness leave, BC workers cannot take full advantage of federal EI benefits without the risk of job loss. Submissions have been made to government to consider implementing other types of leaves to better support families (i.e. domestic violence leave). [\[Review BCLI Discussion here\]](#)

**3 – For Input: Should BC expand unpaid leaves and, if so, in what areas?**

## **Theme 4: Strengthening workers’ ability to recover wages/monies owed**

Current state: The BCLI Report considered whether to extend the wage recovery period, but was divided on whether to move to a 12-month period, which is the standard in most other Canadian jurisdictions. The BCLI Report also considered other ways of strengthening workers’ ability to recover wages/monies owed by examining issues related to corporate officer and director liability for wages in bankruptcy situations, and by providing recommendations for ensuring that workers receive tips and gratuities intended for them. In addition, the BCLI had some discussion (but came to no conclusion) about establishing the Employment Standards Act as a floor for collective agreements. The Ministry heard from stakeholders that tips and gratuities can form an important part of some workers’ income, and that the existing six-month wage recovery period is too short. [Review BCLI Discussion [here](#), [here](#), [here](#) and [here](#)]

**4 – For Input: What are your views on steps that could be taken for strengthening workers’ ability to recover wages/monies owed?**

## **Theme 5: Clarifying hours of work and overtime standards**

Current state: The BCLI Report provided some recommendations about hours of work and overtime and did not recommend changes to the overtime thresholds and pay rates. The BCLI did recommend that a worker be entitled to decline overtime hours if doing so would conflict with family obligations, educational commitments, or professional health care appointments or procedures, or create a scheduling conflict with other employment.

The Ministry has heard from both employers and workers that workplaces need greater flexibility and that we should include other work patterns within the legislation. Some stakeholders have requested we consider a worker’s right to refuse to work overtime in certain specified circumstances. Workers in BC do not generally have a legal right to refuse to work overtime unless it is a term of their individual contract of employment, or an applicable collective agreement, or unless there is a specific regulatory enactment limiting hours of work.

[Review BCLI Discussion [here](#)]

**5 – For Input: What changes to the hours of work and overtime standards should we consider to improve the flexibility of BC’s workplaces?**

## **Theme 6: Improving fairness for terminated workers**

Current state: Until a worker has been employed for three consecutive months with an employer, the worker is not entitled to notice of termination or pay in lieu of notice. The BCLI Report considered the three month eligibility period and did not recommend any changes. Government has received submissions to remove the eligibility period so that all workers are entitled to notice of termination or pay in lieu, regardless of their length of service. The ESA is silent on how termination pay applies if a worker is terminated after giving their employer notice of their intention to quit, but before that notice period is completed. The BCLI Report recommends a provision that would clarify how much termination pay is required in this situation. [\[Review BCLI Discussion here\]](#)

**6 – For Input: Should any changes be made to the provisions concerning notice of termination or pay in lieu?**