

# Complaint Resolution

The Employment Standards Branch encourages employees and employers to solve problems without immediate government intervention. If the parties cannot resolve their problem themselves, the Branch will try to facilitate a resolution or, if necessary, will issue a decision.

## Understanding rights and responsibilities

The *Employment Standards Act* and *Regulation* set out minimum workplace standards for most employees in British Columbia. Some professionals are exempt from all or part of the Act. Some sectors and industries are subject to specific employment standards provisions which only apply to them.

Information about employment standards, including a guide to the Act and factsheets on various subjects, is available from any Employment Standards Branch office or on the Branch website.

The Act sets a six-month time limit for filing complaints. It also sets a six-month limit on the time period the Branch can go back to see whether an employer owes money to an employee.

## Using the Self-Help Kit

The first step an employee takes to resolve a dispute over the payment of wages or other issues is to contact the employer directly by using a Self-Help Kit. The Kit helps the employee to define the problem and identify the desired solution by:

- Deciding whether the *Employment Standards Act* applies to his or her situation;
- Assessing whether the employer is contravening the Act;
- Calculating how much money is owed; and

- Making a written request to the employer to pay money owing or make changes required under the Act.

If the employer agrees with the employee's request, money can be paid directly to the employee. At this point the matter is resolved.

## Self-Help Kit not required

In certain circumstances, an employee will not be required to use the Kit. Examples are:

- The employer's business is closed;
- The matter involves a person under the age of 19;
- The complaint is related to a leave provision of the Act (pregnancy leave, parental leave, bereavement leave, compassionate care leave, family responsibility leave or jury duty);
- The employee is a farm worker, garment or textile worker, or domestic;
- The employee has significant language or comprehension difficulties; or
- The employee has already sent a letter to the employer attempting to resolve the issue.

## Filing a Complaint

If an employee is unable to resolve a dispute by using the Kit, if an employer does not respond, or if an employee is not required to use the Kit, an employee may make a complaint to the Employment Standards Branch.

Employment standards complaints must be in writing and can be faxed, mailed, dropped off in person or submitted online. The complainant should provide any available evidence that relates to the complaint.

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## Dispute resolution

Although some matters are resolved through investigation, most are resolved through a process of education, mediation and/or adjudication.

## Investigation

If a matter is referred to investigation, the investigating officer will gather information and evidence from both parties. The officer will put each party's position and evidence to the other party for a response. The officer will try to resolve the complaint informally, but if that is not possible, the officer will make a decision and issue a Determination.

## Education

Employment Standards Branch staff will review the complaint and the evidence that has been provided. The Branch will contact the parties to gather more information and to explain the provisions of the Act. If the employer resolves the complaint at this point and pays any money owing, no further action will be taken and the file will be closed.

If the complaint is not resolved, it will be referred to mediation. Both parties will be asked to provide anything they think will be helpful to resolve the dispute, such as payroll information, records of hours worked and wages paid, and documentation of disciplinary actions.

## Mediation

An officer of the Branch will conduct a mediation, which is an informal meeting between the employer and the employee. It will be held in person or by teleconference. (See *Employment Standards Mediation* factsheet)

If the parties resolve their dispute, the officer conducting the mediation will help them draft a "Settlement Agreement" that both the complainant and the employer will sign. Once signed, the agreement is binding on the parties. If it is not honoured, it can be

filed in Supreme Court and enforced as a judgment of the Court.

Even if mediation does not resolve the dispute, it may still help the parties clarify the issues, understand each other's point of view, and identify what facts are agreed upon and what issues remain in dispute.

## Adjudication Hearings

If the complaint is not resolved through mediation, the Branch will schedule an adjudication hearing to be conducted by an officer. If a hearing is scheduled, both parties will be required to attend along with any necessary witnesses. The hearing may be held in person or by teleconference (See *Adjudication Hearings* factsheet.)

## Determinations

If a matter is not resolved informally during an investigation, or at any time during the mediation/adjudication process up to the end of the adjudication hearing, the officer conducting the adjudication will issue a written decision called a Determination. If the Determination finds that money is owing to the complainant or that the employer has otherwise contravened the Act, it will order the employer to pay the amount owing, cease contravening the Act and pay one or more mandatory penalties.

If an employer does not pay the amount ordered, the Determination can be filed in Supreme Court and enforced as a judgment of the court. This may include turning the matter over to a Court Bailiff for collection.

## Appeals

A Determination can be appealed to the Employment Standards Tribunal. More information on appeals is available on the Tribunal website at [www.bcest.bc.ca](http://www.bcest.bc.ca).

