



Employment Standards Act
EMPLOYMENT STANDARDS
REGULATION
B.C. Reg. 396/95

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Consolidated Regulations of British Columbia

This is an unofficial consolidation.

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This consolidation includes any amendments deposited and in force as of the currency date at the bottom of each page. See the end of this regulation for any amendments deposited but not in force as of the currency date. Any amendments deposited after the currency date are listed in the B.C. Regulations Bulletins. All amendments to this regulation are listed in the *Index of B.C. Regulations*. Regulations Bulletins and the Index are available online at www.bclaws.ca.

See the User Guide for more information about the *Consolidated Regulations of British Columbia*. The User Guide and the *Consolidated Regulations of British Columbia* are available online at www.bclaws.ca.

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Employment Standards Act

EMPLOYMENT STANDARDS REGULATION

B.C. Reg. 396/95

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Point in time from June 25 to July 16, 2020

Employment Standards Act

EMPLOYMENT STANDARDS REGULATION

B.C. Reg. 396/95

PART 1 – INTERPRETATION

Definitions

1 (1) In this regulation:

“**Act**” means the *Employment Standards Act*;

“**bus operator**” means a person who operates a motor vehicle that

- (a) seats more than 7 passengers,
- (b) is available for use by the public, and
- (c) is operated for or on behalf of a person who charges or collects compensation for transporting passengers in that motor vehicle;

“**charity**” means

- (a) a charity as defined in the *Income Tax Act* (Canada), or
- (b) a society as defined in the *Societies Act*;

“**farm worker**” means a person employed in a farming, ranching, orchard or agricultural operation and whose principal employment responsibilities consist of

- (a) growing, raising, keeping, cultivating, propagating, harvesting or slaughtering the product of a farming, ranching, orchard or agricultural operation,
- (b) clearing, draining, irrigating or cultivating land,
- (c) operating or using farm machinery, equipment or materials for the purposes of paragraph (a) or (b), or
- (d) direct selling of a product referred to in paragraph (a) if the sales are done at the operation and are only done during the normal harvest cycle for that product,

but does not include any of the following:

- (e) a person employed to process the products of a farming, ranching, orchard or agricultural operation other than to do the initial washing, cleaning, sorting, grading or packing of
 - (i) an unprocessed product of the operation during the normal harvest cycle for that product, or
 - (ii) during the same harvest cycle referred to in subparagraph (i), the same or a similar unprocessed product purchased by the operation from another farming, ranching, orchard or agricultural operation;
- (f) a landscape gardener or a person employed in a retail nursery;
- (g) a person employed in aquaculture;

“**first aid attendant**” means a person who

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(a) is a first aid attendant within the meaning of section 3.14 of the Occupational Health and Safety Regulation, and

(b) is employed by an employer who is required to provide first aid services under the *Workers Compensation Act*;

“fish camp worker” means a person employed at a camp as a broker to purchase fish and to arrange for their transportation to a processing plant;

“fisher” means a person

(a) who is employed on a vessel engaged in commercial fishing, and

(b) whose remuneration is a share or portion of the proceeds of a fishing venture,

but does not include a person employed in aquaculture;

“independent school” means the same as in the *Independent School Act*;

“live-in camp leader” means a person who

(a) is employed by a charity at a summer or seasonal camp for persons under 19 years of age,

(b) provides instruction and counselling to campers, and

(c) provides those services on a 24 hour per day live-in basis without being charged for room and board;

“live-in home support worker” means a person who

(a) is employed by an agency, business or other employer providing, through a government funded program, home support services for anyone with an acute or chronic illness or disability not requiring admission to a hospital, and

(b) provides those services on a 24 hour per day live-in basis without being charged for room and board;

“long haul truck driver” means a person employed to drive a truck, usually for a distance exceeding a 160 km radius from their home terminal;

“manager” means

(a) a person whose principal employment responsibilities consist of supervising or directing, or both supervising and directing, human or other resources, or

(b) a person employed in an executive capacity;

“newspaper” means a publication

(a) published on a regular schedule at least once a month in a newspaper format, and

(b) with at least 25% of its content composed of editorials, news and articles of local or common interest other than advertising,

and includes advertising circulars and advertising materials known as flyers that are sold or given away as part of a newspaper;

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Part 1 – Interpretation

“newspaper carrier” means a person who sells or delivers newspapers directly to customers or households, but does not include a person who is engaged in bulk delivery;

“night attendant” means a person who

- (a) is provided with sleeping accommodation in a private residence owned or leased or otherwise occupied by a disabled person or by a member of the disabled person’s family, and
- (b) is employed in the private residence, for periods of 12 hours or less in any 24 hour period, primarily to provide the disabled person with care and attention during the night,

but does not include a person employed in a hospital or nursing home or in a facility designated as a community care facility under the *Community Care Facility Act* or as a Provincial mental health facility under the *Mental Health Act* or in a facility operated under the *Continuing Care Act*;

“prime lending rate” means the prime lending rate of the principal banker to the government;

“resident caretaker” means a person who

- (a) lives in an apartment building that has more than 8 residential suites, and
- (b) is employed as a caretaker, custodian, janitor or manager of that building;

“residential care worker” means a person who

- (a) is employed to supervise or care for anyone in a group home or family type residential dwelling, and
- (b) is required by the employer to reside on the premises during periods of employment,

but does not include a foster parent, live-in home support worker, domestic or night attendant;

“short haul truck driver” means a person employed to drive a truck, usually for a distance within a 160 km radius from their home terminal;

“silviculture worker” means a person who is

- (a) working in the silviculture industry,
- (b) paid primarily on a piece rate basis, and
- (c) involved in reforestation field work including clearing brush, cone picking, creek cleaning, harvesting seeds, applying herbicide, reclamation work, herding sheep, site preparation, stand sanitation, building trails, fertilizing, girdling, planting, pruning, spacing or distributing trees, weeding, or supervising any of these field activities;

“sitter” means a person employed in a private residence solely to provide the service of attending to a child, or to a disabled, infirm or other person, but does not include a nurse, domestic, therapist, live-in home support worker or an employee of

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Part 1 – Interpretation

- (a) a business that is engaged in providing that service, or
- (b) a day care facility;

“talent agency” means a person who, for a fee, engages in the occupation of offering to procure, promising to procure, attempting to procure or procuring employment for actors, performers, extras or technical creative film persons;

“taxi driver” means a person employed to drive a taxi;

“teacher” means the same as in the *School Act* and the *Independent School Act*;

“technical creative film person” includes a film director, director of photography, production designer, art director, person involved in writing or rewriting scripts, hair stylist, make-up artist, costume designer, or animal coordinator involved in the production of a film, video, television show or television commercial;

“tender vessel worker” means a person employed on a vessel to collect and transport fish;

“textile worker” means a person employed to make fabrics or fabric articles, including clothing, in a private residence;

“wilderness guide” means a person employed primarily to guide, teach or assist one or more persons while those persons are engaged in recreational activities in a wilderness environment, including the following activities:

- (a) back-country skiing, cat-skiing, heli-skiing and snowshoeing;
- (b) biking;
- (c) canoeing, kayaking, rafting and jet boating;
- (d) dogsledding;
- (e) hiking;
- (f) horseback riding;
- (g) mountaineering and rock climbing;
- (h) operating all-terrain vehicles or snowmobiles;
- (i) wildlife viewing

but does not include a fishing or hunting guide.

- (2) In section 1 of the Act, in the definition of **“temporary layoff”**, **“exceeds”** means exceeds by not more than 24 hours.
- (3) For the purpose of section 52 of the Act, **“employment year”** means a year beginning on a common date that is used by an employer to calculate family responsibility leave for all employees under section 52 of the Act, so long as this does not result in a reduction of any employee’s rights under that section.

[am. B.C. Regs. 44/97, s. (a); 358/97, s. (a); 270/98, s. 1; 296/99, s. 1; 130/2000, s. 1; 307/2002, s. 1; 432/2003; 250/2014, s. 1; 211/2015, s. 20; 32/2018, s. 1.]

EMPLOYMENT STANDARDS REGULATIONPart 2 – Employment Agencies and Farm Labour Contractors

PART 2 – EMPLOYMENT AGENCIES AND FARM LABOUR CONTRACTORS**Licensing of employment agencies**

- 2** (1) An application for a licence to operate an employment agency must
- (a) be made to the director, and
 - (b) be accompanied by a fee of \$100.
- (2) The director may issue an employment agency licence only if the applicant has
- (a) completed a written application in a form required by the director,
 - (b) paid the licence fee, and
 - (c) satisfied the director that the applicant will operate an employment agency in the best interests of employers and persons seeking employment.
- (3) The director may refuse to issue a licence to an applicant who has had a previous licence cancelled.

Employment agency records

- 3** (1) An employment agency must keep a record of the following:
- (a) the name and address of each employer for whom the employment agency provides a service;
 - (b) the name, occupation and address of each person who is directed to an employer for the purpose of being hired or who is provided with information about employers seeking employees.
- (2) The record must
- (a) be in English,
 - (b) be kept at the employment agency's principal place of business in British Columbia, and
 - (c) be retained by the employment agency for 2 years.

[am. B.C. Reg. 307/2002, s. 2.]

Cancellation or suspension of employment agency licence

- 4** The director may cancel or suspend an employment agency's licence if the employment agency
- (a) makes a false or misleading statement in an application for a licence,
 - (b) contravenes the Act or this regulation,
 - (c) is operating or has operated the employment agency contrary to the best interests of employers and persons seeking employment, or
 - (d) is placing a domestic with an employer and does not inform the employer of the requirement to register the domestic with the Employment Standards

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Branch in accordance with section 15 of the Act and section 13 of this regulation.

[am. B.C. Reg. 204/99, s. (a).]

Licensing of farm labour contractors

- 5** (1) An application for a licence to act as a farm labour contractor must
- (a) be made to the director, and
 - (b) be accompanied by a fee of \$150.
- (2) The director may issue a licence only if the applicant has
- (a) completed a written application in a form required by the director,
 - (b) paid the licence fee,
 - (c) satisfied the director by an oral or written examination, or both, of the applicant's knowledge of the Act and this regulation, and
 - (d) posted security in accordance with subsection (3).
- (3) The security must
- (a) be posted under the *Bonding Act*,
 - (b) be of a type that is listed in section 8 of the Bonding Regulations and is acceptable to the director, and
 - (c) be in the amount directed under section 5.1.
- (3.1) It is a condition of every licence issued under this section that a farm labour contractor require any person who drives or operates a motor vehicle used by the farm labour contractor for the purpose of transporting employees of the farm labour contractor, another farm labour contractor or a producer to have a valid and subsisting driver's licence under the *Motor Vehicle Act* for the category of motor vehicle used for that purpose.
- (4) In addition to the conditions set out in subsection (3.1), the director may include in a licence issued to a farm labour contractor any other condition the director considers appropriate for the purposes of the Act.
- (5) The director may refuse to issue a licence to an applicant who has had a previous licence cancelled.

[am. B.C. Regs. 113/99, s. 1; 197/2003, s. 1; 132/2008, Sch. s. 1.]

Calculation of security

- 5.1** (1) In this section, "**core requirement**" means a requirement under any of the following sections:
- (a) section 13 (1) [*farm labour contractors must be licensed*] of the Act;
 - (b) section 17 (1) [*paydays*] of the Act;
 - (c) section 28 [*payroll records*] of the Act;
 - (d) section 58 [*vacation pay*] of the Act;

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Part 2 – Employment Agencies and Farm Labour Contractors

(e) sections 15 and 18 (1) [*minimum wage*].

- (2) Subject to subsection (3), the amount of security required to be posted by a farm labour contractor under section 5 (3) (c) is equal to the amount obtained by multiplying the minimum hourly wage by 80, and multiplying the result by the number of employees specified in the licence.
- (3) If a farm labour contractor has not contravened any core requirement for a period stated in Column 1 of the following table, the amount of security required to be posted under section 5 (3) (c) is equal to the amount obtained by multiplying the minimum hourly wage by the number set out in Column 2 opposite the period of non-contravention in Column 1, and multiplying the result by the number of employees specified in the licence.

Period of non-contravention	Multiplier
1 year to less than 2 years	60
2 years to less than 3 years	40
3 years or more	20

- (4) For the purpose of subsection (3), the “period of non-contravention” begins
- (a) on the date the farm labour contractor begins operating, if the farm labour contractor has not previously been licensed or is newly licensed after the farm labour contractor’s licence was cancelled, or
- (b) on the date the farm labour contractor resumes operating, if the licence of the farm labour contractor was suspended.

[en. B.C. Reg. 197/2003, s. 2.]

Duties of farm labour contractors

- 6** (1) A farm labour contractor must do all of the following:
- (a) carry the farm labour contractor’s licence at all times while carrying on the licensed activities and display a copy of the licence prominently on all vehicles used for transporting employees;
- (b) show the licence beforehand to all persons with whom the farm labour contractor intends to deal as a farm labour contractor;
- (c) immediately notify the director of a change in the farm labour contractor’s business or residential address;
- (d) display prominently at the site where the work is to be performed, and on all vehicles used by the farm labour contractor for transporting employees, the wages the farm labour contractor is paying to employees;
- (e) ensure that each vehicle used by the farm labour contractor for transporting employees has affixed to it an unexpired inspection certificate in accordance with section 25.02 of the Motor Vehicle Act Regulations;
- (f) file with the director

EMPLOYMENT STANDARDS REGULATIONPart 2 – Employment Agencies and Farm Labour Contractors

- (i) an up-to-date list of the registration numbers and licence numbers of each vehicle used by the farm labour contractor for transporting employees, and
 - (ii) if the vehicle is owned by the farm labour contractor, copies of the inspection certificate and other records that must be maintained under section 25 of the Motor Vehicle Act Regulations.
- (2) A farm labour contractor who provides transportation to a job site for a farm worker employed by the farm labour contractor and who does not then provide employment for the worker must pay the worker at least the minimum hourly wage for the longer of
 - (a) 2 hours, or
 - (b) the time spent from the departure point to the return to that place or to a place that is no further away and is acceptable to the employee.
- (3) Subsection (2) does not apply if employment is not available due to unsuitable weather conditions or any other cause completely beyond the farm labour contractor's control.
- (4) A farm labour contractor must keep at the work site and make available for inspection by the director a daily log that includes
 - (a) the name of each worker,
 - (b) the name of the employer and work site location to which workers are supplied and the names of the workers who work on that work site on that day,
 - (c) the dates worked by each worker,
 - (d) the fruit, vegetable, berry or flower crop picked in each day by each worker, and
 - (e) the volume or weight picked in each day by each worker.
- (5) The records required by subsection (4) must
 - (a) be in English, and
 - (b) be retained by the employer for 2 years after the employment terminates, at the employer's principal place of business in British Columbia.

[am. B.C. Regs. 216/98, s. (a); 113/99, s. 2; 307/2002, s. 3; 195/2003, s. 1.]

**Additional duties of farm labour contractors –
posting safety notices in vehicles**

- 6.1** (1) A farm labour contractor must, in every vehicle used by the farm labour contractor to transport employees, post a notice provided by the director respecting vehicle and passenger safety requirements under the *Motor Vehicle Act* and the *Workers Compensation Act*, including driver, seating and seat belt requirements.

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- (2) A notice required to be posted under subsection (1) must be displayed in one or more positions in the vehicle that are clearly visible to the driver or operator of the vehicle and employees riding in the vehicle.

[en. B.C. Reg. 197/2007.]

Administrative fee – transportation costs

- 6.2** (1) The administrative fee prescribed for the purpose of section 30.1 (1) of the Act is \$500 and must be paid
- (a) in Canadian currency, or
 - (b) by cheque, draft or money order, made payable to the Minister of Finance.
- (2) The fee prescribed under subsection (1) must be paid to and received by the director, at the address specified in the notice served on the farm labour contractor under section 30.1 (2) of the Act, within 30 days after a farm labour contractor is deemed, under section 122 of the Act, to have been served with the notice.

[en. B.C. Reg. 132/2008, Sch. s. 2.]

Cancellation or suspension of farm labour contractor's licence

- 7** The director may refuse to issue a licence to a farm labour contractor, refuse to renew or reinstate a farm labour contractor's licence or cancel or suspend a farm labour contractor's licence in any of the following circumstances:
- (a) the farm labour contractor made a false or misleading statement in an application for a licence;
 - (b) the farm labour contractor is in breach of a condition of the licence;
 - (c) the farm labour contractor or an agent of the farm labour contractor contravenes the Act or this regulation;
 - (d) a peace officer has, with respect to a motor vehicle used by the farm labour contractor for the purpose of transporting employees of the farm labour contractor, another farm labour contractor or a producer, ordered the farm labour contractor, under the *Motor Vehicle Act*, to
 - (i) remove the vehicle from the highway for repairs, or
 - (ii) surrender the vehicle licence or number plates, or both, for the vehicle to the Insurance Corporation of British Columbia or to the peace officer;
 - (e) the farm labour contractor has been found, with respect to a motor vehicle used by the farm labour contractor for the purpose of transporting employees of the farm labour contractor, another farm labour contractor or a producer, under the *Motor Vehicle Act*, to have contravened a provision of Division 39 – Road Safety of the Motor Vehicle Act Regulations;
 - (f) the Workers' Compensation Board has, under the *Workers Compensation Act*, taken an enforcement action described in one or both of

EMPLOYMENT STANDARDS REGULATIONPart 2 – Employment Agencies and Farm Labour Contractors

subparagraphs (i) and (ii) against the farm labour contractor with respect to transportation, by the farm labour contractor, of employees of the farm labour contractor, another farm labour contractor or a producer:

- (i) issued an order under section 187 of the *Workers Compensation Act* to comply with section 115 of that Act or section 4.1 or 4.3 or Part 17 of the Occupational Health and Safety Regulation;
- (ii) imposed an administrative penalty in the circumstances described by section 196 (1) of the *Workers Compensation Act* with respect to a contravention of section 115 of that Act or section 4.1 or 4.3 or Part 17 of the Occupational Health and Safety Regulation.

[am. B.C. Reg. 132/2008, Sch. s. 3.]

If there is a change of directors or officers

- 8** (1) A corporation that is licensed as a farm labour contractor must apply for a new licence within 7 days after any change in its directors or officers.
- (2) If the corporation does not apply within the time specified in subsection (1),
- (a) its licence is void, and
 - (b) the corporation must surrender the licence to the director.

Rules about licences

- 9** (1) A licence issued under this regulation
- (a) is valid for one year after the date on which it was issued, and
 - (b) is not transferable or assignable.
- (2) Despite subsection (1) (a), effective January 1, 2000, the director may issue a licence under this regulation for a 3 year term if the farm labour contractor
- (a) renews its irrevocable letter of credit for each year of the term, and
 - (b) has not had a licence under this regulation cancelled by the director.

[am. B.C. Regs. 113/99, s. 3; 197/2003, s. 3.]

If a licence is refused, cancelled or suspended

- 10** On making a determination to refuse to issue, renew or reinstate or to cancel or suspend, a licence under this regulation, the director must serve the person who applied for or held the licence with a copy of the determination that includes
- (a) the reasons for the determination, and
 - (b) the time limit and process for appealing the determination to the tribunal.

[am. B.C. Reg. 132/2008, Sch. s. 4.]

Surrender of licence

- 11** When served with a copy of a determination cancelling or suspending a licence issued under this regulation, the licence holder must immediately surrender the licence to the director.

EMPLOYMENT STANDARDS REGULATIONPart 3 – Employees Working in Residences

**Appeals from the refusal, cancellation
and suspension of a licence**

- 12** (1) A person who is served with a determination under section 10 may appeal the determination to the tribunal by delivering to its office a written request that includes the reasons for the appeal.
- (2) The request must be delivered to the tribunal within
- (a) 30 days after the date of service, if the person was served by registered mail, and
 - (b) 21 days after the date of service, if the person was personally served or served under section 122 (3) of the Act.
- (3) For an appeal under this section,
- (a) the tribunal has the same powers as under sections 114 to 116 of the Act, and
 - (b) sections 108, 109 (b) to (h) and 111 of the Act apply.
- [am. B.C. Reg. 195/2003, s. 2.]

PART 3 – EMPLOYEES WORKING IN RESIDENCES**Registry information**

- 13** (1) An employer of a domestic or a textile worker must provide the director with the following information:
- (a) the employer's name, address, telephone number and fax number;
 - (b) the employee's name, address and telephone number;
 - (c) whether the employee is a domestic or a textile worker.
- (2) The employer must provide the information required under subsection (1) in writing to the director
- (a) within 30 days after the date the employee was hired,
 - (b) in the case of an employee hired before November 1, 1995, by January 1, 1996, or
 - (c) in the case of an employee who is to be employed as a domestic and who is coming to Canada from another country, before the employee is hired and before making an application to bring the employee to Canada.
- (3) An employer who is aware of any change in the information provided under subsection (1) must, each 6 months after January 1, 1996, provide the director with a written list of the changes.
- [am. B.C. Reg. 204/99, s. (b).]

Maximum room and board rates for domestics

- 14** An employer must not charge a domestic more than \$325 per month for room and board.

EMPLOYMENT STANDARDS REGULATION

Part 4 – Minimum Wages

PART 4 – MINIMUM WAGES**Minimum hourly wage**

15 Subject to sections 16 to 18.1, the minimum wage is \$14.60 an hour.

[en. B.C. Reg. 67/2011, App. 1, s. 1; am. B.C. Regs. 67/2011, App. 2, s. 1 and App. 3, s. 1; 40/2015, s. 1; 136/2016, s. 1; 158/2017, s. 1; 12/2018, s. 1 (a) to (c).]

Minimum daily wage

16 (1) The minimum daily wage for a live-in home support worker is \$113.50 for each day or part day worked.

(2) The minimum daily wage for a live-in camp leader is \$116.86 for each day or part day worked.

[en. B.C. Reg. 307/2000, s. 2; am. B.C. Regs. 67/2011, App. 1, s. 2, App. 2, s. 2 and App. 3, s. 2; 40/2015, s. 2; 136/2016, s. 2; 158/2017, s. 2; 80/2018, Sch. 1, s. 1, as am. by B.C. Reg. 103/2018, Sch. 3, s. 1 and Sch. 4, s. 1.]

Minimum wage – resident caretakers

17 The minimum wage for a resident caretaker is,

(a) for an apartment building containing 9 to 60 residential suites, \$876.35 a month plus \$35.12 for each suite, and

(b) for an apartment building containing 61 or more residential suites, \$2 985.04.

[en. B.C. Reg. 307/2000, s. 2; am. B.C. Regs. 67/2011, App. 1, s. 3, App. 2, s. 3 and App. 3, s. 3; 40/2015, s. 3; 136/2016, s. 3; 158/2017, s. 3; 80/2018, Sch. 1, s. 2, Sch. 3, s. 2 and Sch. 4, s. 2.]

Minimum wage – farm workers

18 (1) The minimum wage, including 4% of gross earnings vacation pay, for farm workers who are employed on a piece work basis and hand harvest the following berry, fruit or vegetable crops, is, for the gross volume or weight picked, as follows:

(a) apples	\$21.06 a bin (27.1 ft ³ / 0.767 m ³);
(b) apricots	\$24.23 a 1/2 bin (13.7 ft ³ / 0.388 m ³);
(c) beans	\$0.289 a pound / \$0.637 a kg;
(d) blueberries	\$0.488 a pound / \$1.077 a kg;
(e) Brussels sprouts	\$0.201 a pound / \$0.443 a kg;
(f) cherries	\$0.277 a pound / \$0.610 a kg;
(g) grapes	\$22.38 a 1/2 bin (13.7 ft ³ / 0.388 m ³);
(h) mushrooms	\$0.290 a pound / \$0.639 a kg;
(i) peaches	\$22.38 a 1/2 bin (12.6 ft ³ / 0.357 m ³);
(j) pears	\$23.72 a bin (27.1 ft ³ / 0.767 m ³);
(k) peas	\$0.360 a pound / \$0.794 a kg;

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Part 4 – Minimum Wages

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| (l) prune plums | \$23.72 a 1/2 bin (13.7 ft ³ / 0.388 m ³); |
| (m) raspberries | \$0.440 a pound / \$0.971 a kg; |
| (n) strawberries | \$0.424 a pound / \$0.934 a kg. |
- (1.1) The minimum wage for farm workers who are employed on a piece work basis and hand harvest daffodils is \$0.169 a bunch (10 stems) for gross number picked.
 - (2) Each employer of farm workers must display, in a location where they can be read by all employees, notices stating the following:
 - (a) the volume of each picking container being used;
 - (b) the volume or weight of fruit, vegetables or berries required to fill each picking container;
 - (c) the resulting piece rate.
 - (3) Farm workers described in subsection (1), and their employers, are exempted from section 58 of the Act on condition that the farm workers receive not less than the minimum wage described in subsection (1).
 - (4) A farm labour contractor must keep records of the following information:
 - (a) the name of each worker;
 - (b) the work site location and dates worked by each worker;
 - (c) the fruit, vegetable, berry or flower crop picked in each day by each worker;
 - (d) the volume or weight picked in each day by each worker.
 - (5) The records required by subsection (4) must
 - (a) be in English,
 - (b) be kept at the employer's principal place of business in British Columbia, and
 - (c) be retained by the employer for 2 years after the employment terminates.

[en. B.C. Reg. 307/2000, s. 2; am. B.C. Regs. 348/2000; 307/2002, s. 4; 196/2003, s. 1; 67/2011, App. 1, ss. 4 and 5; 40/2015, ss. 4 and 5; 136/2016, s. 4; 158/2017, s. 4; 80/2018, Sch. 2.]

Minimum wage – liquor servers

- 18.1** (1) In this section, “**liquor server**” means an employee
- (a) whose primary duties are as a server of food or drink or both, and
 - (b) who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence to sell liquor has been issued under the *Liquor Control and Licensing Act*.
- (2) The minimum wage for a liquor server is \$13.95 an hour.

[en. B.C. Reg. 67/2011, App. 1, s. 6; am. B.C. Regs. 67/2011, App. 2, s. 4 and App. 3, s. 4; 40/2015, s. 6; 136/2016, s. 5; 158/2017, s. 5; 80/2018, Sch. 1, s. 3, Sch. 3, s. 3 and Sch. 4, s. 3.]

PART 5 – HOURS OF WORK AND STATUTORY HOLIDAY PAY

19 to 21 Repealed. [B.C. Reg. 307/2002, s. 5.]

Rest periods for residential care workers

- 22** (1) If a residential care worker is required by an employer to remain on the premises for a 24 hour period, the employer must schedule a rest period of 8 or more consecutive hours for the worker during the 24 hour period.
- (2) For each interruption of a rest period to which a residential care worker is entitled under subsection (1), the employer must pay the worker at the regular wage for the longer of
- (a) 2 hours, or
 - (b) the number of hours of work caused by interruption of the rest period.

23 Repealed. [B.C. Reg. 196/2003, s. 2.]

24 Repealed. [B.C. Reg. 307/2002, s. 7.]

PART 6 – INTEREST AND PENALTIES**Interest on money owing by employer**

- 25** During each successive 3 month period beginning on October 1, January 1, April 1 and July 1, the interest rate payable under section 88 (1) of the Act is equal to the prime lending rate on the 15th day of the month immediately preceding the 3 month period.
- [am. B.C. Reg. 359/99, s. (a).]

Investigation without a complaint

- 26** For the purposes of section 88 (1) of the Act, the date of delivery of a complaint includes the date information is obtained under section 76 (2) of the Act about an employer's failure to pay wages or another amount.
- [am. B.C. Reg. 307/2002, s. 8.]

Interest on money received by the director

- 27** (1) The interest payable on
- (a) money received by the director under section 113 (2) of the Act, or
 - (b) money collected under a determination or an order of the tribunal
- is equal to the actual amount of interest earned on the money from the date the money is deposited in a savings institution to the date the money is forwarded to the person entitled to it.
- (2) Interest under subsection (1) is payable from the date the money is deposited in a savings institution to the date the money is forwarded to the person entitled to it.
- [en. B.C. Reg. 195/2003, s. 3; am. B.C. Reg. 36/2019, s. 1.]

EMPLOYMENT STANDARDS REGULATIONPart 6 – Interest and Penalties

28 Repealed. [B.C. Reg. 307/2002, s. 10.]

Administrative penalties

- 29** (1) Subject to section 81 of the Act and any right of appeal under Part 13 of the Act, the following monetary penalties are prescribed for the purposes of section 98 (1) of the Act:
- (a) a fine of \$500 if the director determines that a person has contravened a requirement under the Act, unless paragraph (b) or (c) applies;
 - (b) a fine of \$2 500 if
 - (i) after the date of a determination under paragraph (a), the director determines that the person contravened the requirement referred to in that paragraph subsequent to the determination under paragraph (a), and
 - (ii) that subsequent contravention occurs within 3 years after the date of the most recent contravention of the same requirement in relation to which there has been a determination under paragraph (a),unless paragraph (c) applies;
 - (c) a fine of \$10 000 if
 - (i) after the date of a determination under paragraph (b), the director determines that the person contravened the requirement referred to in that paragraph subsequent to the determination under paragraph (b), and
 - (ii) that subsequent contravention occurs within 3 years after the date of the most recent contravention of the same requirement in relation to which there has been a determination under paragraph (b).
- (1.1) For the purposes of subsection (1), an act or omission of an employer constituting a contravention of a requirement under the Act is deemed to be a single contravention regardless of the number of employees affected by the contravention.
- (2) The penalties imposed under subsection (1) apply to the person only in respect of the location where the contravention occurred.
- (3) Despite subsection (2), if an employer dispatches an employee from one location to another worksite, a contravention that occurs at that other worksite is considered to be, for the purposes of subsection (1), a contravention at the location from which the employee was dispatched.
- (4) If an administrative penalty is imposed on a person, a prosecution under the Act for the same contravention may not be brought against the person.
- (5) A person who is subject to an administrative penalty under this section must pay the amount to the minister charged with the administration of the *Financial Administration Act*.

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- (6) Subsections (1) to (5) apply only in respect of contraventions that occur on or after November 30, 2002.
- (7) In subsection (8), “**former provisions**” is a reference to sections 28 and 29 and Appendix 2 of this regulation, as those provisions read immediately before November 30, 2002.
- (8) The former provisions apply, despite their repeal, for purposes of contraventions of the Act and this regulation that occurred before November 30, 2002.

[en. B.C. Reg. 307/2002, s. 10; am. B.C. Regs. 64/2006; 364/2007.]

PART 7 – VARIANCES AND EXCLUSIONS**How to apply for a variance**

- 30** (1) To apply under section 72 of the Act for a variance, a letter must be delivered to the director.
- (2) The letter must be signed by the employer and a majority of the employees who will be affected by the variance and must include the following:
 - (a) the provision of the Act the director is requested to vary;
 - (b) the variance requested;
 - (c) the duration of the variance;
 - (d) the reason for requesting the variance;
 - (e) the employer’s name, address and telephone number;
 - (f) the name and home phone number of each employee who signs the letter.

30.1 Spent.**Professions and occupations excluded from the Act**

- 31** The Act does not apply to an employee who is
 - (a) an architect, as defined in the *Architects Act*,
 - (b) a member, other than an honorary member, of the Organization of Chartered Professional Accountants of British Columbia under the *Chartered Professional Accountants Act* or a person enrolled as a student under that Act,
 - (c) a member of the Law Society of British Columbia under the *Legal Profession Act* or a person enrolled as an articled student under that Act,
 - (d) a registrant of the College of Chiropractors of British Columbia continued under the *Health Professions Act*,
 - (e) a registrant of the College of Dental Surgeons of British Columbia continued under the *Health Professions Act*, other than a registrant who is only authorized under the bylaws of that College to use the title “dental therapist” under that Act,

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- (f) a professional engineer, as defined in the *Engineers and Geoscientists Act*, or a person who is enrolled as an engineer-in-training under the bylaws of the council of The Association of Professional Engineers and Geoscientists of the Province of British Columbia,
- (g) a person licensed as an insurance agent or adjuster under the *Financial Institutions Act*,
- (h) a practising land surveyor, land surveyor associate or land surveyor in training as those terms are defined in the *Land Surveyors Act*,
- (i) a registrant of the College of Physicians and Surgeons of British Columbia continued under the *Health Professions Act*,
- (j) a registrant of the College of Naturopathic Physicians of British Columbia established under the *Health Professions Act*,
- (k) a registrant of the College of Optometrists of British Columbia established under the *Health Professions Act*,
- (l) a registrant of the College of Podiatric Surgeons of British Columbia established under the *Health Professions Act*,
- (m) a person licensed under the *Real Estate Services Act*,
- (n) a person registered under section 35 of the *Securities Act*,
- (o) a registrant of the College of Veterinarians of British Columbia continued under the *Veterinarians Act*, or
- (p) a professional forester as defined in the *Foresters Act*,

so long as that person is carrying on the occupation governed by the Acts referred to in paragraphs (a) to (p).

[am. B.C. Regs. 372/98; 518/2004, Sch. s. 9; 202/2006, s. 3 (a); 420/2008, App. s. 4; 421/2008, App. s. 4; 422/2008, App. s. 4; 423/2008, App. s. 4; 169/2010, App. s. 4; 7/2014; 188/2016; 32/2018, s. 2.]

Employees excluded from the Act**32** (1) The Act does not apply to any of the following:

- (a) a student who is employed, by a board as defined in the *School Act* or by an authority as defined in the *Independent School Act*, to work at the secondary school where he or she is enrolled;
- (b) a student enrolled at a secondary school under the supervision of a board as defined in the *School Act* or an authority as defined in the *Independent School Act* in a work study, work experience or occupational study class;
- (c) a sitter;
- (d) Repealed. [B.C. Reg. 396/95, s. 32 (2).]
- (e) Repealed. [B.C. Reg. 356/97, s. (a).]
- (f) a person who is a claimant, as defined in the *Employment Insurance Act* (Canada), and is

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- (i) attending a course or program of instruction or training referred to in section 25 (1) (a) of that Act, or
 - (ii) participating in any other employment activity referred to in section 25 (1) (b) of that Act.
- (g) Repealed. [B.C. Reg. 32/2018, s. 3.]
- (2) Spent.
- (3) The Act does not apply to a person receiving
 - (a) income assistance or supplements under the *Employment and Assistance Act*, or
 - (b) disability assistance or supplements under the *Employment and Assistance for Persons with Disabilities Act*,
 - (c) Repealed. [B.C. Reg. 36/2019, s. 3 (a).]while the person is participating in a time-limited government program that provides on-site training or work experience and is operated under an Act referred to in paragraph (a) or (b).
[am. B.C. Regs. 445/95, s. 2; 396/95, s. 32 (2); 81/97; 356/97, s. (a); 210/98; 32/2018, s. 3; 36/2019, ss. 2 and 3.]

Exclusions from Parts of the Act and this regulation

- 33** Parts 2 and 4 to 8 of the Act and Part 4 of this regulation do not apply to any of the following:
- (a) subject to paragraph (b), a student in an academic or technical program recognized under the bylaws of the British Columbia College of Nursing Professionals as meeting a standard of academic or technical achievement required for registration as a member of that college;
 - (b) a student who is in training to be a licensed practical nurse within the meaning of the Nurses (Licensed Practical) Regulation, at a hospital as defined in the *Hospital Act*;
 - (c) an auxiliary or volunteer fire fighter employed by a fire department that is organized by a municipality or regional district for the protection of the public.
- [am. B.C. Regs. 232/2005, App. s. 2; 202/2006, s. 3 (b); 270/2008, s. (e); 152/2018, s. 2.]

Exclusions from hours of work and overtime requirements

- 34** Part 4 of the Act does not apply to any of the following:
- (a) a fishing or hunting guide;
 - (a.1) a wilderness guide;
 - (b) a person, other than a percussion drill or diamond drill operator or a helper of either operator, employed in any of the following activities while exploring for minerals other than oil or gas:
 - (i) staking;

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- (ii) line cutting;
 - (iii) geological mapping;
 - (iv) geochemical sampling and testing;
 - (v) geophysical surveying or manual stripping;
- (c) a teacher;
- (d) a person employed as a noon hour supervisor, teacher's aide or supervision aide by
 - (i) a board as defined in the *School Act*, or
 - (ii) an authority as defined in the *Independent School Act*;
- (e) a person employed part time by an institution that
 - (i) provides training or instruction in a trade, occupation, vocation, recreational activity or hobby, and
 - (ii) is owned or operated by a municipality, regional district or the government;
- (f) a manager;
- (g) a tender vessel worker;
- (h) a guard, fire warden or fish camp worker employed in connection with a commercial fishing operation;
- (i) a person employed on a towboat other than
 - (i) a boom boat,
 - (ii) a dozer boat, or
 - (iii) a camp tenderin connection with a commercial logging operation;
- (j) a police officer employed by a municipal police board established under the *Police Act*;
- (k) a fire fighter employed by a paid fire department as defined in the *Fire Department Act*;
- (l) a commercial traveller who, while travelling, buys or sells goods that
 - (i) are selected from samples, catalogues, price lists or other forms of advertising material, and
 - (ii) are to be delivered from a factory or warehouse;
- (m) an operator of a motor vehicle who is employed exclusively to transport
 - (i) students, teachers and other persons accompanying them on school related activities that have been approved by a board as defined in the *School Act* or by an authority as defined in the *Independent School Act*, and
 - (ii) persons to and from a church;
- (n) the master or crew of a chartered boat;

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- (o) any of the following employees of BC Rail Ltd. or of a subsidiary of that company as defined in the *British Columbia Railway Act*:
 - (i) a locomotive engineer or helper;
 - (ii) a train conductor or a train baggageman;
 - (iii) a brakeman;
 - (iv) Repealed. [B.C. Reg. 357/97.]
- (p) Repealed. [B.C. Reg. 113/99, s. 5.]
- (q) a live-in home support worker;
- (r) any of the following who are employed by a charity to assist in a program of therapy, treatment or rehabilitation of physically, mentally or otherwise disabled persons:
 - (i) a counsellor;
 - (ii) an instructor;
 - (iii) a therapist;
 - (iv) a childcare worker;
 - (v) Repealed. [B.C. Reg. 44/97, s. (c).]
- (s) a faculty member as defined in the *University Act*;
- (t) a professor as defined in the *Royal Roads University Act*;
- (u) an instructor, counsellor, librarian or administrator who is employed by an institution as defined in the *College and Institute Act*;
- (v) a senior tutor, or tutor, who is employed by the Open Learning Agency;
- (w) a night attendant;
- (x) a residential care worker;
- (y) a live-in camp leader.
- (z) Repealed. [B.C. Reg. 56/2017, s. 1 (c).]
[am. B.C. Regs. 44/97, s. (c); 357/97; 26/98, s. 1; 113/99, s. 5; 250/2014, s. 2; 56/2017, s. 1.]

Farm workers

34.1 Part 4, except section 39, and Part 5 of the Act do not apply to farm workers.

[en. B.C. Reg. 196/2003, s. 3.]

Hours of work and overtime for livestock brand inspectors

- 34.2**
- (1) In this section, “**livestock brand inspector**” means a person who provides ownership identification services on domestic livestock.
 - (2) Section 40 of the Act does not apply to livestock brand inspectors.
 - (3) Repealed. [B.C. Reg. 307/2002, s. 11 (b).]
 - (4) An employer who requires or allows a livestock brand inspector to work more than 120 hours within a 2-week period must pay the employee for the hours worked in excess of 120 hours at not less than 1 1/2 times the regular wage.

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(5) Repealed. [B.C. Reg. 307/2002, s. 11 (d).]

[en. B.C. Reg. 298/2001; am. B.C. Reg. 307/2002, s. 11.]

Resident caretakers

35 (1) Part 4 of the Act, other than sections 36 and 39, does not apply to a resident caretaker.

(2) Each employer of a resident caretaker must

(a) for the information of residents in the apartment building where the caretaker is employed, display in the building a schedule specifying the caretaker's hours of work and days off work, and

(b) give the caretaker a copy of the schedule.

(3) If 2 or more persons, each meeting the definition of resident caretaker, live in the same apartment building and are each employed to do the work of a resident caretaker in that apartment building,

(a) the employer may designate, in writing, one or more of those employees as a resident caretaker, and

(b) on the making of the written designation, section 17 and this section apply to only the designated resident caretakers.

(4) An employer must, immediately after designating a person as a resident caretaker under subsection (3) (a), give a copy of that written designation to the resident caretaker.

[am. B.C. Regs. 307/2002, s. 12; 189/2016.]

Election workers

35.1 Part 4 of the Act, except section 39, does not apply to persons appointed or retained under section 19 (1), 23 or 88 (3) or (4) of the *Election Act*.

[en. B.C. Reg. 131/2008.]

Exclusion from statutory holiday pay requirements

36 Part 5 of the Act does not apply to a manager.

36.1 Repealed. [B.C. Reg. 196/2003, s. 4.]

Fishers

37 The following provisions of the Act do not apply to fishers:

(a) section 16 (minimum wages);

(b) Part 4, other than section 39;

(c) Parts 5, 7 and 8.

Taxi drivers

37.1 (1) If an employer leases a taxi to a taxi driver

(a) section 10 of the Act does not apply to a taxi driver driving the taxi, and

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- (b) the employer must pay a taxi driver any shortfall that arises if
 - (i) the taxi driver tracks hours under the lease arrangement on a per shift basis, and
 - (ii) the taxi driver does not recover in fares an amount which, in total, is greater than or equal to the lease payment for the taxi plus the minimum wage for each hour worked, averaged monthly.
- (2) Sections 35, 40 and 42 of the Act do not apply to a person employed as a taxi driver.
- (3) An employer who requires or allows a taxi driver to work more than 120 hours within 2 consecutive weeks must pay the employee for the hours in excess of 120 at least 1 1/2 times the regular wage.
- (4) An employer must pay a taxi driver any shortfall that arises if
 - (a) the taxi driver does not recover in fares an amount which, in total, is greater than or equal to the minimum wage for each hour worked, averaged monthly,
 - (b) the taxi is not leased by the employer to the taxi driver, and
 - (c) the taxi driver tracks hours under the employment arrangement on a daily basis.

[en. B.C. Reg. 270/98, s. 2; am. B.C. Reg. 307/2002, s. 13.]

Logging truck drivers

- 37.2** Sections 32 to 35, 36 (1), 40 and 42 of the Act do not apply to a person employed as a logging truck driver who is paid on a compensation system other than an hourly rate and who is working in the interior area as defined in section 1 (1) of B.C. Reg. 22/96, the Timber Harvesting Contract and Subcontract Regulation.

[en. B.C. Reg. 389/97; am. B.C. Reg. 307/2002, s. 14.]

Truck drivers

- 37.3** (1) Sections 35, 40 and 42 (2) of the Act do not apply to a person employed as a long haul or short haul truck driver.
- (2) An employer who requires or allows a long haul truck driver to work more than 60 hours in a week must pay the employee at least 1 1/2 times the employee's regular wage for the hours worked in excess of 60 hours in a week.
 - (3) An employer who requires or allows a short haul truck driver to work more than 9 hours in a day or 45 hours in a week must pay the employee at least
 - (a) 1 1/2 times the employee's regular wage for the hours worked in excess of 9 hours in a day, and
 - (b) 1 1/2 times the employee's regular wage for the hours worked in excess of 45 hours in a week.

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- (4) An employee's time bank, as set out in section 42 (1) of the Act, must be credited at the rates required under subsection (2) or (3) of this section.
- (5) For the purpose of calculating weekly overtime under subsection (3) (b), only the first 9 hours worked by an employee in each day are counted, no matter how long the employee works on any day of the week.

[en. B.C. Reg. 307/2002, s. 15.]

Container truckers

37.31 (1) In this section, “**container trucker**” has the same meaning as “trucker” in the *Container Trucking Act*.

- (2) Parts 10, 11 and 13 of the Act do not apply to container truckers in relation to remuneration or fuel surcharges under the *Container Trucking Act*.

[en. B.C. Reg. 248/2014, App. 3.]

Newspaper carriers

37.4 (1) The Act does not apply to a newspaper carrier who is enrolled in, or on vacation from, a primary or secondary school and is employed as a newspaper carrier for 15 hours a week or less.

- (2) Sections 33, 34 and 36 of the Act do not apply to a person who is employed as a newspaper carrier for 15 hours a week or less.

[en. B.C. Reg. 5/98; am. B.C. Reg. 307/2002, s. 16.]

**Oil and gas field workers paid by an hourly rate –
exclusion from section 36 (1) of the Act**

37.5 Section 36 (1) [*hours free from work*] of the Act does not apply in respect of employees who work for an employer in the oil and gas well drilling and servicing industry and who are

- (a) paid by an hourly rate, and
- (b) referred to in Appendix 3.

[en. B.C. Reg. 29/2005, s. 1.]

**Specific oil and gas field workers paid by an hourly rate –
rest periods and pay for interruption in rest periods**

37.51 (1) This section applies in respect of the following employees who work for an employer in the oil and gas well drilling and servicing industry and who are paid by an hourly rate:

- (a) a first aid worker referred to in Appendix 3;
- (b) a water truck operator referred to in Appendix 3;
- (c) a camp catering worker referred to in Appendix 3.

- (2) If the employer schedules an employee referred to in subsection (1) (a) or (b) for a 24 hour shift, section 36 (2) [*hours free from work between shifts*] of the Act

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does not apply but the employer must include in the shift a rest period of 12 or more consecutive hours.

- (3) If the employer schedules an employee referred to in subsection (1) (c) to remain on site on a 24 hour basis, section 36 (2) [*hours free from work between shifts*] of the Act does not apply but the employer must include in each 24 hour period
 - (a) a rest period of 8 or more consecutive hours, and
 - (b) a total of at least 12 hours of rest.
- (4) Section 1 (2) [*employee deemed to be at work while on call*] of the Act does not apply to a rest period or rest referred to in subsection (2) or (3) of this section.
- (5) For each interruption of a rest period or rest referred to in subsection (2) or (3), the employer must pay the employee wages for the greater of the following:
 - (a) 2 hours;
 - (b) the hours actually worked during the interruption.
- (6) The rate of pay for the hours referred to in subsection (5) is as follows:
 - (a) 1 1/2 times the employee's regular wage if the total hours worked or earned that day are 12 hours or fewer;
 - (b) double the employee's regular wage if the total hours worked or earned that day are more than 12 hours.

[en. B.C. Reg. 29/2005, s. 1.]

**Oil and gas field workers who are paid
other than by an hourly rate**

37.6 Sections 37.61 to 37.65 apply in respect of employees who

- (a) work for an employer in the oil and gas well drilling and servicing industry,
- (b) are primarily engaged in
 - (i) any of the following on site activities:
 - (A) drilling, evaluating, stimulating, completing, re-completing, enhancing production or optimizing services of an oil or gas well;
 - (B) performing remedial treatment of an oil or gas well;
 - (C) providing safety services or other services unrelated to the administration of the employer's business, for an oil or gas well, and
 - (ii) transporting oilfield equipment, or
 - (iii) oil or gas well site preparation,
- (c) have a compensation system other than an hourly rate, and
- (d) are not working under an averaging agreement under section 37 of the Act.

[en. B.C. Reg. 29/2005, s. 1.]

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**Oil and gas field workers under section 37.6 –
exclusion from section 36 (1) of the Act**

37.61 Section 36 (1) [*hours free from work*] of the Act does not apply in respect of employees referred to in section 37.6 of this regulation.

[en. B.C. Reg. 29/2005, s. 1.]

**Oil and gas field workers under section 37.6 –
“regular salary”**

37.62 (1) The term “**regular wage**”, wherever it is used in the Act, does not apply in respect of employees referred to in section 37.6 of this regulation but, to establish other conditions of employment for those employees, the following term is substituted in its place:

“**regular salary**” means

- (a) if the employee is paid a monthly salary, the monthly salary multiplied by 12 and divided by 2 080,
- (b) if the employee is paid a yearly salary, the yearly salary divided by 2 080, and
- (c) if the employee is paid a weekly salary, the weekly salary divided by 40.

(2) In sections 37.64 and 37.65, “**regular salary**” has the same meaning as in subsection (1) of this section except that the term “**salary**”, as it is used in that definition, does not include any bonus, allowance or remuneration to which the employee is otherwise entitled under the compensation system, if the bonus, allowance or remuneration is based on geographic location of the employee’s residence.

[en. B.C. Reg. 29/2005, s. 1.]

**Oil and gas field workers under section 37.6 –
paydays and bonus pay**

37.63 (1) Section 17 [*paydays*] of the Act does not apply in respect of employees referred to in section 37.6 of this regulation but the conditions of employment respecting payment of wages established in this section apply instead.

(2) At least semimonthly and within 8 days after the end of the pay period, an employer must pay to an employee referred to in section 37.6 all wages earned by the employee in a pay period.

(3) Subsection (2) does not apply to

- (a) overtime wages credited to an employee’s time bank,
- (b) vacation pay, or
- (c) any bonus to which the employee is entitled under the compensation system for that period of employment.

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- (4) The employer must pay to the employee the bonus referred to in subsection (3) (c) within the next 3 pay periods that follow the pay period in which the bonus was earned.

[en. B.C. Reg. 29/2005, s. 1.]

Oil and gas field workers under section 37.6 – overtime wages

- 37.64** (1) Section 40 [*overtime wages*] of the Act does not apply in respect of employees referred to in section 37.6 of this regulation but the conditions of employment respecting entitlement to overtime wages established in this section apply instead.
- (2) Subject to subsection (5), if an employee referred to in section 37.6 works over 8 hours a day, the employer must pay the employee as follows:
- (a) 1 1/2 times the amount of the employee's regular salary for the time over 8 hours;
 - (b) double the employee's regular salary for any time over 12 hours.
- (3) Subject to subsection (5), if an employee referred to in section 37.6 works over 40 hours a week, the employer must pay the employee 1 1/2 times the employee's regular salary for the time over 40 hours.
- (4) For purposes of calculating weekly overtime under subsection (3), only the first 8 hours worked by the employee in each day are counted, no matter how long the employee works on any day of the week.
- (5) If during the pay period in respect of which subsection (2) or (3) applies the employee is entitled under the compensation system to a bonus, allowance or remuneration, other than a bonus, allowance or remuneration that is based on geographic location of the employee's residence, then the employer must pay the employee the greater of the following:
- (a) the sum of that bonus, allowance or remuneration and the employee's regular salary for that pay period;
 - (b) the wages to which the employee is entitled for that pay period including the overtime wages under subsections (2) to (4).
- (6) For purposes of references in the Act, or in section 37.63 (3) of this regulation, to section 40 [*overtime wages*] of the Act or to "overtime wages", those references are to be read as references to the employee's entitlement to overtime wages as established by this section.

[en. B.C. Reg. 29/2005, s. 1.]

Oil and gas field vacuum workers under section 37.6 – rest periods and pay for interruption in rest periods

- 37.65** (1) This section applies to an employee referred to in section 37.6 who is primarily engaged in vacuuming waste from an oil or gas well.

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- (2) If the employer schedules an employee referred to in subsection (1) for a 24 hour shift, section 36 (2) [*hours free from work between shifts*] of the Act does not apply but the employer must include in the shift a rest period of 12 or more consecutive hours.
- (3) Section 1 (2) [*employee deemed to be at work while on call*] of the Act does not apply to a rest period referred to in subsection (2) of this section.
- (4) For each interruption of a rest period referred to in subsection (2), the employer must pay the employee wages for the greater of the following:
 - (a) 2 hours;
 - (b) the hours actually worked during the interruption.
- (5) Subject to subsection (6), the rate of pay for the hours referred to in subsection (4) is as follows:
 - (a) 1 1/2 times the employee's regular salary, if the total hours worked or earned that day are 12 hours or fewer;
 - (b) double the employee's regular salary, if the total hours worked or earned that day are more than 12 hours.
- (6) If during the pay period in respect of which subsection (5) applies the employee is entitled under the compensation system to a bonus, allowance or remuneration, other than a bonus, allowance or remuneration that is based on geographic location of the employee's residence, then the employer must pay the employee the greater of the following:
 - (a) the sum of that bonus, allowance or remuneration and the employee's regular salary for that pay period;
 - (b) the wages to which the employee is entitled for that pay period including the wages under subsection (5).

[en. B.C. Reg. 29/2005, s. 1.]

Loggers working in Interior

- 37.7**
- (1) Sections 33, 35, 36 (1), 40 and 42 (2) of the Act do not apply to loggers working in the interior area as defined in section 1 (1) of B.C. Reg. 22/96, the Timber Harvesting Contract and Subcontract Regulation.
 - (2) An employer of a logger working in the interior area must pay
 - (a) 1 1/2 times the employee's regular wage for the time worked over 8 hours in a day, and
 - (b) 1 1/2 times the employee's regular wage for the time worked over 40 hours in a week.
 - (3) For the purpose of calculating overtime under subsection (2) (b), only the first 8 hours worked by an employee in each day are counted, no matter how long the employee works on any day of the week.
 - (4) Repealed. [B.C. Reg. 307/2002, s. 20 (b).]

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- (5) If an employer has scheduled at least one hour overtime per employee on each of the previous 5 days in that week,
- (a) if the majority of employees agree in writing, up to 8 hours may be worked at regular wage on the 6th day of work but an employer must pay 1 1/2 times the regular rate for all hours worked on the 7th day,
 - (b) if the majority of employees do not agree in writing, the overtime provisions in subsection (2) apply, and
 - (c) a majority of employees may cancel an agreement under paragraph (a) by notifying the employer in writing.
- (6) An employer of a logger working in the Northeast Forest Region as established under the Administrative Boundaries Regulation must pay
- (a) if the logger works a maximum of 100 consecutive working days within the period November 1 to March 31, inclusive, 1 1/2 times the employee's regular wage for the time worked over 8 hours in a day, and
 - (b) in any other case, as set out in subsection (2).
- (6.1) A log harvesting worker's time bank, as set out in section 42 (1) of the Act, must be credited at the rates required under subsections (2), (5) (a) and (6) (a).
- (7) The definition of "temporary layoff" in section 1 of the Act does not apply to loggers working in the interior area who are recalled to work if the temporary layoff is the result of a normal seasonal reduction in activity.

[en. B.C. Reg. 245/98, s. 1; am. B.C. Regs. 165/2000; 307/2002, s. 20; 137/2014, Sch. 3.]

Exclusions – high technology companies**37.8** (1) In this section:

"high technology company" means a company where more than 50 percent of employees meet the definition of a high technology professional, are managers of persons meeting the definition of a high technology professional or are employed in an executive capacity;

"high technology professional" means any of the following:

- (a) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to investigate, analyze, design, develop or engineer an information system that is based on computer and related technologies, or a prototype of such a system, but does not include a person employed to provide basic operational technical support;
- (b) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to investigate, analyze, design, develop, engineer, integrate or implement a scientific or technological product, material, device or process, or a prototype of such a product, material, device or process, but does not include a person employed to provide basic operational technical support;

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- (c) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to carry out scientific research and experimental development as defined in section 248 (1) of the *Income Tax Act* (Canada);
 - (d) an employee who is engaged as a sales or marketing professional in relation to
 - (i) a service or system described in paragraph (a),
 - (ii) a product, material, device or process described in paragraph (b), or
 - (iii) scientific research or experimental development described in paragraph (c),but does not include a person employed in the retail sale of any of these things.
- (2) The following provisions do not apply to high technology professionals:
 - (a) Part 4, other than section 39, of the Act;
 - (b) Part 5 of the Act.
 - (3) An employee of a high technology company who is not a high technology professional may enter into an averaging agreement with his or her employer under section 37 of the Act if the employer and employee also agree in writing that the scheduling requirement under section 37 (2) (a) (iv) of the Act does not apply.
 - (4) If an employee and an employer enter into the averaging agreement referred to in subsection (3) of this section,
 - (a) section 37 (2) (b), (3), (6), (10) and (12) of the Act do not apply to that averaging agreement, and
 - (b) section 37 (2) (a) (i) to (iii), (v) and (vi), (2) (c), (4), (5), (7) to (9), (11), (13) and (14) of the Act are deemed to be incorporated into the averaging agreement as terms of the agreement.
- [en. B.C. Reg. 28/99, s. 1; am. B.C. Regs. 177/99; 307/2002, s. 21; 195/2003, s. 4; 375/2003.]

Silviculture workers

- 37.9** (1) Sections 33, 35, 36 (1), 37, 40 and 42 (2) of the Act do not apply to a silviculture worker.
- (2) An employer of a silviculture worker must
 - (a) implement a shift schedule that consists of
 - (i) no more than 5 consecutive days of work followed by a day off, and
 - (ii) within each month at least 2 consecutive days off or at least 8 non-consecutive days off, or
 - (b) an employer may implement an alternative shift schedule that consists of up to 9 consecutive days of work followed by at least 2 consecutive days off, or no more than 10 consecutive days of work followed by a minimum of 4 consecutive days off as long as

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- (i) the work is being done at a remote camp to which there is no ready access,
 - (ii) written approval has been received from the majority of the affected employees, and
 - (iii) employees receive at least 8 days off in a month.
- (3) A silviculture worker paid on a piece rate basis must receive at least
 - (a) the equivalent of minimum wage for the first 8 hours worked,
 - (b) the equivalent of minimum wage times 1 1/2 or the applicable piece rate, whichever is greater, for any time worked over 8 hours, and
 - (c) double the piece rate for all time worked over 12 hours in a day.
- (4) A silviculture worker paid a regular wage must receive at least
 - (a) 1 1/2 times the employee's regular wage for the time over 8 hours, and
 - (b) double the employee's regular wage for any time over 12 hours.
- (5) A silviculture worker working a shift schedule set out in subsection (2) of this section must receive at least
 - (a) if subsection (2) (a) of this section applies, 1 1/2 times the piece rate or regular wage for any time worked beyond the schedule set out in (2) (a), or
 - (b) if subsection (2) (b) of this section applies, 1 1/2 times the piece rate or regular wage for any time worked beyond the schedule set out in (2) (b).
- (6) A silviculture worker's time bank, as set out in section 42 (1) of the Act, must be credited at the rates required under subsection (3), (4) or (5) of this section.
- (7) If the employee agrees in writing, the employer may charge a silviculture worker a fee for lodging provided by the employer, but may not charge more than
 - (a) \$25 per day for camp costs, or
 - (b) if the worker is lodged in a motel, the actual cost for that individual to stay at the motel.
- (8) Part 5 of the Act, except section 48, does not apply to a silviculture worker on condition that the employer pays that silviculture worker, in place of statutory holiday pay,
 - (a) 4% of gross earnings for the pay period on each paycheque, or
 - (b) if the silviculture worker is being paid on a piece rate basis, a sum calculated by multiplying the applicable piece rate by 1.04.
 - (c) Repealed. [B.C. Reg. 307/2002, s. 22 (g).]
- (9) Section 58 of the Act does not apply to a silviculture worker on condition that the employer pays that silviculture worker in place of vacation pay
 - (a) an amount for each day that is
 - (i) equal to 4% of gross earnings for the pay period on each paycheque, or

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- (ii) if the silviculture worker is being paid on a piece rate basis, calculated by multiplying the applicable piece rate by 1.04,
- and
- (b) after 5 consecutive years of employment, an amount for each day that is
 - (i) equal to 6% of gross earnings for the pay period on each paycheque, or
 - (ii) if the silviculture worker is being paid on a piece rate basis, calculated by multiplying the applicable piece rate by 1.06.

[en. B.C. Reg. 130/2000, s. 3; am. B.C. Regs. 74/2001, s. 1; 307/2002, s. 22; 21/2013, s. 1; 36/2019, s. 4.]

37.10 Repealed. [B.C. Reg. 396/95, s. 37.10 (2).]

Municipal police recruits

37.11 Section 21 (2) of the Act does not apply to tuition charged to a municipal constable as defined in section 1 of the *Police Act* for enrollment in the Police recruit training program as defined in Subject 2.1.1 of the Provincial Policing Standards as established under section 40 (1) (a.1) of the *Police Act* and as amended from time to time.

[en. B.C. Reg. 108/2002; am. B.C. Reg. 32/2018, s. 4.]

Aquaculture – fin fish workers

- 37.12** (1) Sections 35, 36 (1) and 40 of the Act do not apply to an employee at a fin fish farm site who has worked or earned an average of at least 35 hours per week in a one to 8 week period which is specified by the employer before the work begins.
- (2) If an employer requires an employee to work at a fin fish farm site on a 24-hour live-in basis, the employer must include in each 24-hour period
- (a) a rest period of 8 or more consecutive hours, and
 - (b) a total of at least 12 hours of rest.
- (3) Section 1 (2) of the Act does not apply to a rest period or rest referred to in subsection (2).
- (4) For each interruption of a rest period or rest referred to in subsection (2), the employer must pay the employee for the greater of
- (a) 2 hours, or
 - (b) the hours actually worked during the interruption.
- (5) The rate of pay for the hours referred to in subsection (4) is as follows:
- (a) 1 1/2 times the employee's regular wage if the total hours worked or earned that day is 12 hours or fewer;
 - (b) double the employee's regular wage if the total hours worked or earned that day is more than 12 hours.

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- (6) Sections 33, 35, 36 (1) and 40 of the Act do not apply to an employee who is required to work at a fin fish farm site on a 24-hour live-in basis.
- (7) An employer who requires an employee to work on a fin fish farm site on a 24-hour live-in basis must pay the employee, at 1 1/2 times the regular rate, for all hours worked in excess of an average of 40 hours per week in a one to 8 week period which is specified by the employer before the work begins.

[en. B.C. Reg. 307/2002, s. 23; am. B.C. Reg. 195/2003, s. 5.]

Mining

- 37.13** (1) In this section, “**mining employer**” means the employer of an employee who works for a surface mining operation regulated under the provisions of the *Mines Act*.
- (2) A mining employer may institute a work schedule which provides for a regular schedule of hours of 12 per day and a shift cycle of 4 days at work and 4 days off work, which cycle repeats over a period of 8 consecutive weeks.
 - (3) The shift schedule referred to in subsection (2) may begin on any day of the week, but the shift cycle of 4 days on and 4 days off must remain constant over the 8 week period.
 - (4) A mining employer who institutes a work schedule under subsection (2) must pay overtime as follows:
 - (a) daily overtime at the rate of double the regular wage must be paid for all hours worked in excess of 12 hours in a day;
 - (b) weekly overtime at the rate of 1 1/2 times the regular wage must be paid for all hours worked in excess of 40 hours per week averaged over the 8 week period.
 - (5) For the purpose of calculating weekly overtime under subsection (4) (b), only the first 12 hours worked by an employee in each day are counted.
 - (6) Daily overtime under subsection (4) (a) must be paid in the pay period for which the overtime is worked.
 - (7) Sections 35, 37 and 40 of the Act do not apply to a mining employer in respect of employees who are covered by the work schedule set out in this section.

[en. B.C. Reg. 307/2002, s. 23.]

Commission sales

- 37.14** (1) A salesperson paid entirely or partly by commission is excluded from sections 35 and 40 and Part 5 of the Act on the condition that all wages earned by the employee in a pay period exceed the wages that would be payable under those provisions when calculated at the greater of the employee’s base rate or the minimum wage under the Act.

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- (2) Section 16, Part 4 except section 39, and Part 5 of the Act do not apply to a salesperson who is paid entirely or partly by commission and who is employed to sell, or sell a lease arrangement for, any of the following products:
- (a) Repealed. [B.C. Reg. 118/2003.]
 - (b) heavy industrial or agricultural equipment;
 - (c) Repealed. [B.C. Reg. 118/2003.]
 - (d) sailing or motor vessels.
- (3) Part 4 of the Act, except section 39, does not apply to a salesperson who is paid entirely or partly by commission and who is employed to sell, or sell a lease arrangement for, automobiles, trucks, recreation vehicles or campers.
- (4) Part 5 of the Act does not apply to a salesperson who is paid entirely or partly by commission and who is employed to sell, or sell a lease arrangement for,
- (a) automobiles or trucks, on condition that the employer pays that salesperson, in place of statutory holiday pay, 4% of gross earnings for the pay period on each paycheck, or
 - (b) recreation vehicles or campers.
- (5) For the purpose of section 16 of the Act, a salesperson who is paid entirely or partly by commission and who is employed to sell, or sell a lease arrangement for, automobiles, trucks, recreation vehicles or campers must be paid each month according to the following requirements:
- (a) despite the amount earned in commission or other wages, the first payment referred to in section 17 (1) of the Act must be equal to at least the minimum wage for all hours worked, at the request of the employer, in the pay period;
 - (b) the final payment referred to in section 17 (1) of the Act must be equal to the greater of
 - (i) all wages earned in the month, or
 - (ii) the minimum wage for all hours worked, at the request of the employer, in the month to a maximum of 160 hours, minus the amount paid under paragraph (a).

[en. B.C. Reg. 307/2002, s. 23; am. B.C. Regs. 118/2003; 21/2013, s. 2; 36/2019, s. 4.]

Foster care**37.15** The Act does not apply to

- (a) a person providing foster care in their place of residence to children or adults if the foster care situation meets
 - (i) criteria established by the provincial government to receive or deliver foster care services, or
 - (ii) criteria established by a health authority, or any other designated authority, to receive or deliver foster care services if the provincial

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government has delegated its authority to that body to establish criteria, or

- (b) a person providing relief to a person referred to in paragraph (a).

[en. B.C. Reg. 307/2002, s. 23.]

Ice hockey players

- 37.16** (1) The Act does not apply to a player on a major junior ice hockey team if the player is entitled, in respect of each of the first 5 hockey seasons the player completes, to receive a scholarship from the team, or the league of which that team is a member, in an amount equal to or greater than the eligible cost of an academic year of a post-secondary educational program in Canada of the player's choice.
- (2) In this section, "**eligible cost**", in relation to an academic year of an educational program, means the lesser of the following:
- (a) the cost of tuition fees, compulsory student fees and required textbooks for a full time student to attend an academic year of the educational program;
 - (b) the cost of tuition fees, compulsory student fees and required textbooks for a full time student to attend an academic year of a comparable educational program offered by a publicly funded post-secondary educational institution in British Columbia.

[en. B.C. Reg. 18/2016.]

Licensing of talent agencies

- 38** (1) Sections 10 and 11 of the Act do not apply to talent agencies that are licensed.
- (2) An application for a licence to operate a talent agency must be made to the director, in the form required by the director, and must be accompanied by
- (a) a licence application fee of \$100,
 - (b) a copy of the talent agency's standard contract, and
 - (c) a bond that accords with the *Bonding Act*, and that is equal to the average monthly wages that an actor, performer or extra earning between \$1 and \$100 000 would receive based on the BC Film Commission's statistics from the previous year.
- (3) The director may issue a licence to operate a talent agency only if the applicant has complied with subsection (2).
- (4) The director may refuse to issue a licence to an applicant that has previously had its licence cancelled or that is involved in activities outlined in subsection (5) (d).
- (5) The director may suspend or cancel a talent agency's licence if the talent agency
- (a) makes a false or misleading statement in its application for a licence,
 - (b) contravenes the Act or this regulation,
 - (c) does not display the agency's licence number on all public advertising, or

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- (d) is or has been involved in any activity that the director determines to be illegal, dishonest, fraudulent or deliberately misleading, and that is related to the operation of the talent agency.

[en. B.C. Reg. 296/99, s. 3; am. B.C. Reg. 36/2019, s. 5.]

Compliance requirements – talent agencies**38.1** (1) A talent agency must comply with all of the following:

- (a) all fees paid to the talent agency by an actor, performer, extra or technical creative film person who is employed as a consequence of the efforts of the talent agency, are not more than 15 percent of the wages owing to the actor, performer, extra or technical creative film person from his or her employment;
- (b) the gross income of an actor, performer, extra or technical creative film person employed as a consequence of the efforts of the talent agency, less the fees described in paragraph (a), is not less than the corresponding gross income that the actor, performer, extra or technical creative film person would receive for the employment if paid the applicable minimum wage;
- (c) the talent agency must not charge an actor, performer, extra or technical creative film person a fee for taking and providing photographs of the actor, performer, extra or technical creative film person, unless the fee
 - (i) does not exceed \$25 a year, and
 - (ii) is only deducted from payment of wages received by the actor, performer, extra or technical creative film person;
- (d) no fees, other than the fees described in paragraphs (a) and (c), are charged by the talent agency;
- (e) if the wages of an actor, performer, extra or technical creative film person employed as a consequence of the efforts of the talent agency, less the fee described in paragraphs (a) and (c), are received by the talent agency, they must be paid to the actor, performer, extra or technical creative film person within
 - (i) 5 business days of receipt if payment is made from within British Columbia, or
 - (ii) 12 business days of receipt if payment is made from outside British Columbia;
- (f) if a talent agency cannot locate an actor, performer, extra or technical creative film person to pay the wages received by the talent agency, they must be forwarded to the director within 60 days after receipt by the talent agency;
- (g) a talent agency must not make a payment, directly or indirectly, to a person for obtaining or assisting in obtaining employment for someone other than by paying for any form of advertisement placed by the talent agency;

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- (h) a talent agency must display its licence number on any contract or written agreement made with an actor, performer, extra or technical creative film person;
 - (i) records must be kept to indicate for each actor, performer, extra or technical creative film person employed as a consequence of the efforts of the talent agency,
 - (i) the amount of money received by the talent agency for the employment,
 - (ii) the amount the talent agency is claiming as its fee, and
 - (iii) the amount paid to the actor, performer, extra or technical creative film person;
 - (j) records must be kept of
 - (i) the name and address of each employer for whom the talent agency provides a service, and
 - (ii) the name and address of each client employed as an actor, performer, extra or technical creative film person as a consequence of the efforts of the talent agency, or who is provided with information about employers seeking actors, performers, extras or technical creative film persons;
 - (k) the records referred to in paragraphs (i) and (j) must be
 - (i) in the English language,
 - (ii) kept at the talent agency's principal place of business in British Columbia, and
 - (iii) retained by the talent agency for not less than 2 years.
- (2) The director must give a talent agency a receipt for any wages received from the talent agency under subsection (1) (f).
- [en. B.C. Reg. 296/99, s. 3; am. B.C. Reg. 307/2002, s. 24.]

**Exclusions from farm labour
contractor licensing requirements**

- 39** Section 13 of the Act does not apply to a person whose employees work, for or under the control or direction of another person, in connection solely with
- (a) silviculture, or
 - (b) spraying or pruning fruit trees.

Exclusions from payday requirements

- 40** Section 17 of the Act does not apply to any of the following:
- (a) a teacher;
 - (b) a person employed as a noon-hour supervisor, teacher's aide or supervision aide by
 - (i) a board as defined in the *School Act*, or

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- (ii) an authority as defined in the *Independent School Act*;
- (c) an instructor, counsellor, librarian or administrator who is employed by an institution as defined in the *College and Institute Act*;
- (d) a senior tutor, or tutor, employed by the Open Learning Agency.
- (e) Repealed. [B.C. Reg. 56/2017, s. 2 (b).]
[am. B.C. Regs. 26/98, s. 2; 56/2017, s. 2.]

Exclusions from payday requirements for certain farm workers

- 40.1** Farm workers who hand harvest fruit, vegetable, flower or berry crops are excluded from subsection 17 (1) of the Act on the condition that the employer must pay to the farm workers within 8 days after the end of each pay period
- (a) at least 80% of wages earned in the first pay period in the month, and
 - (b) monthly, all wages earned in the month, less wages previously paid under paragraph (a).
- [en. B.C. Reg. 113/99, s. 8.]

Exclusion from payment options for farm labour contractors

- 40.2** (1) In respect of the payment of wages to farm workers, farm labour contractors are excluded from section 20 of the Act.
- (2) A farm labour contractor must pay all wages to farm workers employed by the farm labour contractor
- (a) in Canadian dollars, and
 - (b) by deposit to the credit of the farm worker's account in a savings institution.
- [en. B.C. Reg. 257/2004.]

- 41** Repealed. [B.C. Reg. 307/2002, s. 25.]

Exclusions from hours-of-work requirements

- 42** (1) Section 33 of the Act does not apply to a person who is employed
- (a) to explore for oil or gas,
 - (b) in drilling, completing, recompleting or remedially treating an oil or gas well, or
 - (c) in supplying supplementary operations or services with the activities in paragraph (a) or (b).
- (2) Section 33 of the Act does not apply to a person employed on a 12 hour live-aboard basis on a vessel operated by the British Columbia Ferry Services Inc.
- [am. B.C. Regs. 307/2002, s. 26; 36/2019, s. 6.]

Exclusions from minimum hours requirements

- 43** Section 34 of the Act does not apply to a post-secondary student who is enrolled in one of the following bodies and is employed by that body:
- (a) a university;

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- (b) a vocational school;
- (c) an institution as defined in the *College and Institute Act*.
- (d) Repealed. [B.C. Reg. 56/2017, s. 3.]
[am. B.C. Reg. 56/2017, s. 3.]

Exclusions from overtime pay requirements

44 Section 40 of the Act does not apply to any of the following:

- (a) a bus operator
 - (i) while waiting during the course of a charter trip or excursion,
 - (ii) for lay-over time, or
 - (iii) for any time that the bus operator is not operating a bus, if the cause is completely beyond the employer's control;
- (b) a truck driver or a truck driver's swamper or helper who, at a location more than 160 km from home, is employed on a truck that
 - (i) has a mechanical breakdown, unless
 - (A) the breakdown resulted from the employer's negligence, or
 - (B) the truck driver, swamper or helper was actively engaged in repairing the truck, or
 - (ii) is immobilized due to weather conditions, road blockage, an accident or any other cause completely beyond the employer's control;
- (c) a miner employed underground for time spent underground after the miner's regular shift, if the cause is completely beyond the employer's control;
- (d) a first aid attendant for any time spent accompanying a person being transported to a medical practitioner, hospital or other destination in the course of the attendant's first aid duties and while returning from the destination to the attendant's normal place of employment.

[am. B.C. Reg. 307/2002, s. 27.]

Exclusion from liability provisions

45 Section 96 of the Act does not apply to a director or officer of a charity who receives reasonable out-of-pocket expenses but no other remuneration for services performed for the charity.

Exclusions during COVID-19 emergency

- 45.01** (1) In this section, "**COVID-19 emergency**" means the emergency that is the subject of
- (a) the notice provided on March 17, 2020 by the provincial health officer under section 52 (2) of the *Public Health Act*, and

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- (b) the declaration of a state of emergency made on March 18, 2020, and any extension of that declaration, under section 9 of the *Emergency Program Act*.
- (2) If an employee is laid off and does not have a right of recall and the COVID-19 emergency is a cause of all or part of the layoff, the definition of “temporary layoff” in section 1 of the Act does not apply in relation to the employee and that layoff and the conditions of employment for the employee are altered in relation to that layoff by substituting the following definition:
“temporary layoff” means a layoff of up to 24 weeks in any period, ending on or before August 30, 2020, of 28 consecutive weeks.
- (3) Subsection (2) does not apply in relation to a layoff described in section 37.7 (7).
- (4) Subsection (2) does not apply in relation to a layoff beginning on or after June 1, 2020.

[en. B.C. Reg. 94/2020; am. B.C. Reg. 148/2020.]

PART 7.1 – CONDITIONS OF EMPLOYMENT FOR CHILDREN**Division 1 – Children Generally****Application**

- 45.1** This Division establishes conditions of employment for children 12 to less than 15 years of age but does not apply in respect of the employment of those children to whom Division 2 or 3 applies.

[en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 1.]

Exclusions from the Act

- 45.2** Section 37 of the Act does not apply to children in respect of whom this Division applies.

[en. B.C. Reg. 431/2003.]

Limits on working hours

- 45.3**
- (1) In this section, “**school day**” means, in relation to a child, a day on which the child’s school is in session.
 - (2) An employer of a child must not require or allow the child to work on a school day at a time when the child is scheduled to attend.
 - (3) An employer of a child must not require or allow the child to work
 - (a) more than 4 hours on a school day,
 - (b) more than 7 hours on a day that is not a school day, unless the employer receives prior written approval from the director,
 - (c) more than 20 hours in a week that has 5 school days, and

- (d) in any case, more than 35 hours in a week.

[en. B.C. Reg. 431/2003.]

Adult supervision required

- 45.4** An employer of a child must ensure that the child works only under the direct and immediate supervision of a person who has reached 19 years of age.

[en. B.C. Reg. 431/2003.]

Division 2 – Children in Recorded Entertainment Industry

Definitions and application

- 45.5** (1) In this Division:

“**recorded entertainment industry**” means

- (a) the film, radio, video or television industry, or
- (b) the television and radio commercials industry;

“**recording device**” means any device that records sound or images.

- (2) This Division applies in respect of the employment in the recorded entertainment industry of children under 15 years of age as actors, including background performers and extras, and establishes conditions of employment for those children.

[en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 2 (b).]

Exclusions from the Act

- 45.6** Sections 9 (2) to (4), 33, 36 and 37 of the Act do not apply to children in respect of whom this Division applies.

[en. B.C. Reg. 431/2003.]

Minimum age

- 45.7** A person must not employ a child in the recorded entertainment industry if the child is less than 15 days old.

[en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 2 (b).]

Limits on daily hours

- 45.8** (1) In this section, “**school day**” means, in relation to a child, a day on which the child’s school is in session.
- (2) The employer of a child in the recorded entertainment industry must ensure that, on any day that the employer requires the child to report for work at any location designated by the employer, the child’s shift ends no later than
- (a) 8 hours after the child reports for work at that location, if the child is under 12 years of age, or
 - (b) 10 hours after the child reports for work at that location, if the child is 12 to less than 15 years of age,

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unless the employer receives prior written approval from the director.

- (3) The employer of a child in the recorded entertainment industry must not require the child to report for work earlier than 5:00 a.m. on any day unless the employer receives prior written approval from the director.
- (4) The employer of a child in the recorded entertainment industry must ensure that the child's shift ends no later than the following times unless the employer receives prior written approval from the director:
 - (a) if the child's school is in session,
 - (i) 10:00 p.m. if the next day is a school day, and
 - (ii) 12:30 a.m. if the next day is not a school day;
 - (b) if the child's school is not in session, 2:00 a.m.

[en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 2 (b).]

No split shifts and maximum limit on breaks

45.9 The employer of a child in the recorded entertainment industry

- (a) must not require or allow the child to work a split shift, and
- (b) must ensure that the child's meal breaks are not longer than one hour each.

[en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 2 (b).]

Time before recording device and breaks

45.10 If a child employed in the recorded entertainment industry is of an age specified in Column 1 of the following table, the employer must ensure that the child

- (a) is not before a recording device for longer than the amount of time specified opposite that age in Column 2 before receiving a break under paragraph (b), and
- (b) receives a break, between times spent before a recording device, that is no less than the amount of time specified opposite that age in Column 3.

Column 1 Age	Column 2 Time before Recording Device	Column 3 Breaks
less than 3 years of age	15 consecutive minutes	20 consecutive minutes
3 years to less than 6 years of age	30 consecutive minutes	15 consecutive minutes
6 years to less than 12 years of age	45 consecutive minutes	10 consecutive minutes
12 years to less than 15 years of age	60 consecutive minutes	10 consecutive minutes

[en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 2 (b).]

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Hours free from work

- 45.11** (1) The employer of a child in the recorded entertainment industry must either
- (a) ensure that the child has at least 48 consecutive hours free from work each week, or
 - (b) pay the child 1 1/2 times the regular wage for time worked by the child during the 48 hour period the child would otherwise be entitled to have free from work.
- (2) The employer of a child in the recorded entertainment industry must ensure that the child has at least 12 consecutive hours free from work
- (a) between each shift worked, and
 - (b) before the child is scheduled to attend school.
- [en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 2 (b).]

Work week

- 45.12** The employer of a child in the recorded entertainment industry must not require or allow the child to work more than
- (a) 5 days in a week, or
 - (b) if the director approves in writing, 6 days in a week.
- [en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 2 (b).]

Chaperones

- 45.13** (1) In this section:
- “**chaperone**” means, in relation to a child referred to in this section,
- (a) the child’s parent or guardian, if the parent or guardian has reached 19 years of age and is not working as an actor in the production, except as a background performer or extra, or
 - (b) a person who
 - (i) has reached 19 years of age,
 - (ii) is designated chaperone by the child’s parent or guardian, and
 - (iii) is not the child’s employer or tutor or an employee of either.
- (2) The employer of a child in the recorded entertainment industry must ensure that
- (a) the child has a chaperone on the production set, and
 - (b) subject to subsection (3), if the child is of an age specified in Column 1 of the following table, the chaperone under paragraph (a) is not, at the same time, chaperone for more than the number of children specified opposite that age in Column 2.

Column 1 Age of Child	Column 2 Number of Children per Chaperone
15 days to less than 6 years	1

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Part 7.1 – Conditions of Employment for Children

6 years to less than 12 years	3
12 years to less than 15 years	5

(3) If

- (a) the child under subsection (2) is 12 to less than 15 years of age, and
- (b) the child's chaperone is the child's parent or guardian and is working as a background performer or extra on the same production set,

the employer must ensure that the chaperone is not, at the same time, chaperone for more than 2 other children on the production set.

[en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 2 (b).]

Income protection

45.14 If a child employed in the recorded entertainment industry earns more than \$2 000 on a production, the employer must remit 25% of any earnings over \$2 000 to the Public Guardian and Trustee to hold in trust for the child.

[en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 2 (b).]

Division 3 – Children in Live Entertainment Industry**Definition and application**

- 45.15** (1) In this Division, “live entertainment industry” means the performing arts industry that provides live entertainment in theatre, dance, music, opera or circus.
- (2) This Division applies in respect of the employment in the live entertainment industry of children 4 to less than 15 years of age as performers, including background performers and extras, and establishes conditions of employment for those children.
- (3) For the purposes of subsection (2), employment in the live entertainment industry is employment at rehearsals and performances associated with the provision of live entertainment.

[en. B.C. Reg. 146/2012, Sch. 1, s. 3.]

Exclusions from the Act

45.16 Sections 9 (2) to (4), 36 and 37 of the Act do not apply to children in respect of whom this Division applies.

[en. B.C. Reg. 146/2012, Sch. 1, s. 3.]

Limits on daily hours

- 45.17** (1) Subject to subsections (2) and (3), the employer of a child in the live entertainment industry must not require or allow the child to work more than 8 hours in a day.
- (2) The employer of a child in the live entertainment industry may require or allow the child to work up to 12 hours in a day, if the child does not work at a performance on that day.

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- (3) Subsection (2) applies on no more than 4 days for each production.
- (4) The employer of a child in the live entertainment industry must not require or allow the child to report for work earlier than 7:00 a.m. on any day.
- (5) The employer of a child in the live entertainment industry must ensure that, on any day, the child's shift ends no later than 12:30 a.m.

[en. B.C. Reg. 146/2012, Sch. 1, s. 3.]

Hours free from work

- 45.18** (1) The employer of a child in the live entertainment industry must either
- (a) ensure that the child has at least 36 consecutive hours free from work each week, or
 - (b) pay the child 1 1/2 times the regular wage for time worked by the child during the 36 hour period the child would otherwise be entitled to have free from work.
- (2) The employer of a child in the live entertainment industry must ensure that the child has at least 12 consecutive hours free from work between each shift worked.

[en. B.C. Reg. 146/2012, Sch.1, s. 3.]

Chaperones

- 45.19** (1) In this section, “**chaperone**” means, in relation to a child referred to in this section,
- (a) the child's parent or guardian, if the parent or guardian has reached 19 years of age and is not working as a performer in the same rehearsal or performance, except as a background performer or extra, or
 - (b) a person who
 - (i) has reached 19 years of age,
 - (ii) is designated chaperone by the child's parent or guardian,
 - (iii) is not the child's employer or tutor or an employee of either, and
 - (iv) is not working as a performer in the same rehearsal or performance, except as a background performer or extra.
- (2) The employer of a child in the live entertainment industry must ensure that
- (a) the child has a chaperone at the work location, and

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- (b) if the child is of an age specified in Column 1 of the following table, the chaperone under paragraph (a) is not, at the same time, chaperone for more than the number of children specified opposite that age in Column 2.

Column 1 Age of Child	Column 2 Number of Children per Chaperone
4 years to less than 6 years	6
6 years to less than 10 years	10
10 years to less than 15 years	15

[en. B.C. Reg. 146/2012, Sch. 1, s. 3.]

Income protection

- 45.20** If a child employed in the live entertainment industry earns more than \$1 000 in a week, the employer must remit 25% of any earnings over \$1 000 to the Public Guardian and Trustee to hold in trust for the child.

[en. B.C. Reg. 146/2012, Sch. 1, s. 3.]

PART 8 – MISCELLANEOUS**Production of records**

- 46** (1) A person who is required under section 85 (1) (f) of the Act to produce or deliver records to the director must produce or deliver the records as and when required.
- (2) No person may restrict or attempt to restrict the director from making an entry under section 85 (1) (a) of the Act.

[am. B.C. Reg. 269/98.]

Complaints of contraventions of this regulation

- 47** A contravention of section 6, 14, 18 (2), 21, 22, 23 or 35 (2) of this regulation may be the subject of a complaint under section 74 of the Act.

Definition

- 48** In sections 49 and 50, “**associate chair**” means the Associate Chair of the Adjudication Division of the Labour Relations Board.

[am. B.C. Regs. 307/2002, s. 28; 32/2018, s. 5.]

Appeals in cases where the tribunal is the employer

- 49** (1) Any person served with a determination in a case involving the tribunal as an employer may appeal the determination to the associate chair by delivering to the principal office of the Labour Relations Board a written request that includes the reasons for the appeal.
- (2) Sections 112 (2) and (3) and 113 to 115 of the Act apply to an appeal under this section, except that a reference to the tribunal is to be read as a reference to the associate chair.

- (3) In relation to an appeal under this section,
- (a) the associate chair has the same power that the tribunal has under sections 108 and 109 (1) (b) to (h) of the Act, and
 - (b) sections 110, 111 and 116 of the Act apply.

Enforcement of orders of associate chair

- 50** For the purpose of the definition of “wages” in section 1 of the Act and for the purpose of Part 11 of the Act, an order of the associate chair relating to an appeal under section 49 is deemed to be an order of the tribunal.

Fee to search director’s records

- 51** The fee prescribed in respect of the services provided under section 101.1 of the Act is \$35 and must be paid to the director by cheque, draft or money order, made payable to the Minister of Finance.

[en. B.C. Reg. 131/2010.]

APPENDICES 1 AND 2

Repealed. [B.C. Reg. 307/2002, s. 29.]

APPENDIX 3

[en. B.C. Reg. 355/97, s. 3; am. B.C. Regs. 150/99, s. 3; 177/2001, s. (b); 307/2002, s. 30.]

**OIL AND GAS WELL DRILLING AND SERVICING
OCCUPATIONS – HOURLY RATE OF PAY**

Geophysical or seismic drillers engaged in any type of seismic process, including heliportable operations, for the purpose of hydrocarbon exploration, specifically: drillers, drillers’ helpers, drill push, jug hustlers, field mechanics, equipment operators, labourers.

Heavy motorized equipment operators for the preparation, construction or maintenance of all aspects of industry work purposes, specifically: equipment operators, labourers.

Slashing and timber salvage workers engaged in the removal or disposition of any form of vegetation in areas designated for industry work purposes, specifically: chain saw operators and labourers.

Gathering systems and facility installers engaged in construction, installation, or establishment of pipelines not more than 41 cm in diameter or stations required for pumping or gathering of hydrocarbon fuels up to and including the point where the main pipe is met, specifically: gathering systems and facility installers, equipment operators, welders and labourers.

Service rig workers engaged in drilling activities for the purposes of servicing oil wells, specifically: operators, derrick workers, labourers, floor workers and tool pushes.

Camp catering workers engaged in providing services in the operation of a field camp that provides food services or accommodations or both, specifically: cooks, cooks’ helpers and camp attendants.

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First aid workers engaged in medical support activities, specifically: first aid attendants.

Safety workers engaged in activities to reduce danger, risk or injury, specifically: safety coordinators.

Oil and gas drilling rig workers engaged in activities for the purposes of drilling oil and gas wells, specifically: tool pushes, drillers, derrickhands, floorhands, motorhands and leasehands.

Land survey workers, specifically: chainers, rodperson/surveyor's assistant, labourer/helper, Global Positioning System pack operator, Geographic Information System field mapper, instrument operator, and Cat-Push/Advance person.

Water truck operators engaged in the provision of water for mudding and lubrication for drilling, and for the watering of roads accessing the drill site.

APPENDIX 4

Repealed. [B.C. Reg. 29/2005, s. 2.]

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Point in time from June 25 to July 16, 2020

AMENDMENT NOT IN FORCE

Employment Standards Act

EMPLOYMENT STANDARDS REGULATION, B.C. REG. 396/95

amended by B.C. Reg. 12/2018

effective June 1, 2021

- 1 Section 15 of the Employment Standards Regulation, B.C. Reg. 396/95, is amended*
(d) effective June 1, 2021, by striking out “\$14.60” and substituting “\$15.20”.

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AMENDMENTS NOT IN FORCE

Employment Standards Act

EMPLOYMENT STANDARDS REGULATION, B.C. REG. 396/95

amended by B.C. Reg. 80/2018

effective June 1, 2021

SCHEDULE 5

- 1** *Section 15 of the Employment Standards Regulation, B.C. Reg. 396/95, is amended by striking out “sections 16 to 18.1” and substituting “sections 16 to 18”.*
- 2** *Section 16 (2) is amended by striking out “\$116.86” and substituting “\$121.65”.*
- 3** *Section 17 is amended*
 - (a) in paragraph (a) by striking out “\$876.35” and substituting “\$912.28” and by striking out “\$35.12” and substituting “\$36.56”, and*
 - (b) in paragraph (b) by striking out “\$2 985.04” and substituting “\$3 107.42”.*
- 4** *Section 18.1 is repealed.*

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