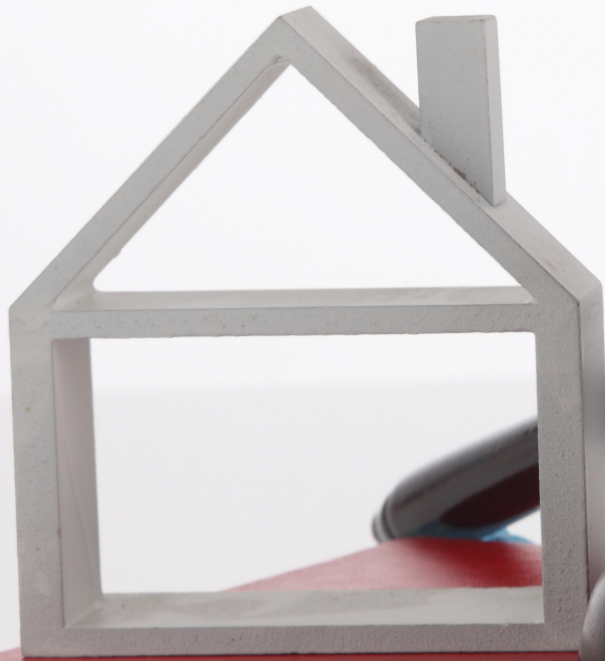




CHF Canada

You, your staff and the law

British Columbia 2019



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1 About this guide

In different ways the board and staff are both important parts of the co-op. They need to see themselves as a team. Housing co-ops depend on the success of this working partnership to meet members' needs. Treating each other with fairness and respect is basic to good teamwork.

The board also needs to understand the rules it must follow as an employer. In fact, respecting employment laws is the best place to start building the partnership.

This publication is a quick guide to employment rules for 2019. It explains:

- what the co-op's board of directors *must do* as an employer—by law
- what the board *may do* as an employer
- where you can get more information.

It is important to remember that this guide describes the minimum employment standard. Your staff deserve fair treatment, which often means more than the bare requirements by law. After all, doesn't your co-op want staff who will go that extra mile?

Check this guide first. When in doubt, use the internet, check with your local federation, call the government phone numbers listed online, read the acts and talk to your lawyer to find out more. Section 5 of this guide includes a list of websites and phone numbers for employment-related websites of your provincial and federal governments. These websites include a wealth of information including providing some materials in multiple languages. You can also subscribe to various email updates and newsletters plus connecting to social media. Increasingly, forms can be submitted on-line or at least completed on-line and printed for mailing. Some websites also include calculation tools, videos, and other learning resources. For general topics like health and safety or human rights, you may also wish to look at resources available in other provinces.

***You, Your Staff and the Law* is intended only as a guide for general information.**



2 Employment: Basic rules for 2019

Work hours

The *Employment Standards Act* covers working conditions in British Columbia.

A normal day

In general, a normal workday is eight hours. Under the British Columbia *Employment Standards Act*, staff cannot work more than 12 hours in one day unless an emergency or serious situation requires staff to work excess hours. A split shift must be completed within 12 hours of when the shift started.

Staff have a right to an unpaid ½ hour meal break after five hours of work. If the co-op requires you to be available for work during this break, it must be paid. Coffee breaks or other rest periods are not required by law, so it's up to the co-op.

Every week, staff must have at least 32 hours in a row off work unless they are required to work because of an emergency. Plus, they must have 8 hours off between shifts.

Overtime

Under the law, "overtime" means more than eight hours in a day or 40 hours in a week (seven days in a row). The work week runs from Sunday to Saturday. The co-op may require an employee to work overtime but they must not require or allow them to work excessive hours or hours that are harmful to the employee's health or safety.

Staff must be paid for *all* the time they work, unless the board has already told them not to work extra hours, even if that means work doesn't get done.

Staff must be paid at 1½ times their regular rate of pay for working:

- more than eight hours but less than 12 hours in a day
- more than 40 hours but less than 48 hours in a week.

If staff work in excess of the overtime hours described above, they must be paid at double their regular rate of pay. If staff are being paid extra for daily overtime, don't count the hours already paid for when you add up weekly overtime.

An employer and an employee can agree to average scheduled work hours over a period of 1, 2, 3 or 4 weeks, which allows employees to work up to 12 hours per day and an average of 40 hours per week without overtime. Averaging agreements must be in writing, have a start date and an end date, and be signed by both the co-op and the employee. Averaging Agreements do not have to be filed with the Employment Standards Branch. Consult the *Employment Standards Act* for more details.

At an employee's written request, the co-op may establish a time bank and credit overtime wages to it instead of paying the wages as they are earned. Special rules apply to employee time banks. Please consult the *Employment Standards Act* for details.



Resident caretakers are not entitled to daily or weekly overtime. They are entitled to 32 consecutive hours free from work each week. If they are required to work during this period they must be paid 1½ times their regular wage.

Do co-ops have to pay every employee for extra time and overtime? Yes, with one exception. A very large co-op could have a manager whose *only work* is supervising and directing other staff, or who can hire and fire other employees without the board’s permission and make important financial decisions alone. Any co-op that has given its manager this much responsibility and authority doesn’t have to pay that manager overtime.

Coming in to work

If an employee who was scheduled to work for at least 8 hours comes to work and starts to work but there was little work for him/her to do, the co-op must pay them for at least four hours. If the worker was scheduled for less than 8 hours and they start work, they must be paid for at least two hours. The co-op must pay for two hours if they arrived at work but there was no work to be done.

Transportation

Under the *Employment Standards Act* the co-op does not have to provide transportation for staff, even if they work very late at night or early in the morning. So it’s up to the co-op and its staff to work out a suitable arrangement about transportation.

Wages

Minimum wage for 2019

The minimum wage is the lowest hourly wage a co-op can pay its staff. The minimum wage is \$13.85 effective June 1, 2019.

The Fair Wage Commission was struck to recommend how BC should achieve a \$15 an hour minimum wage. The government has adopted their recommendations. The minimum wage will increase to:

- \$14.60 effective June 1, 2020
- \$15.50 effective June 1, 2021

The minimum wage for resident caretakers depends on the number of suites in the building:

	NO. SUITES	BASE	+ PER UNIT
June 1, 2019	9–60	\$831.45	\$33.32
	61+	\$2,832.11	0
June 2, 2020	9–60	\$876.35	\$35.12
	61+	\$2,985.04	0
June 1, 2021	9–60	\$912.28	\$35.56
	61+	\$3,107.42	0



If an employer has more than one resident caretaker the employer may designate one or more of them as the resident caretaker and treat the others as hourly employees. For more details about employment rules for caretakers:

www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/factsheets/caretakers-resident

Note: There is no separate minimum wage for students.

How to pay

The co-op must pay its staff on a regular payday at least twice a month within eight days of when the pay period ends. A pay period can't be more than 16 days.

Staff can be paid at either the co-op office or, if the employee agrees, by direct deposit into a bank or credit union account. The law allows payment in cash, but co-ops should pay staff by cheque or direct deposit only.

Statements

The co-op must give each employee a statement along with their paycheque that shows:

- the employer's name and address
- the number of hours worked
- the rate of pay the number of overtime hours worked, and the overtime rate(s)
- any additional allowance or payment
- the total payment before deductions (gross pay)
- the amount of and reason for each deduction
- how the payment was worked out if the employee is not being paid by the hour or by salary
- the total payment after deductions (net pay)
- any amounts withdrawn from the employee's time bank and how much remains.

If statements are exactly the same from one pay period to the next, the first statement is all the co-op has to give to the employee. Any change in the employee's pay, hours worked or deductions means that the co-op must give the employee another statement.

Wage statements can be provided electronically as long as the co-op provides confidential access to the wage statement at the workplace and a way to print a paper copy of the statement.

Wage Earner Protection Program

The federal government's Wage Earner Protection Program (WEPP) reimburses eligible workers for unpaid wages, vacation pay, severance pay and termination pay they are owed when their employer declares bankruptcy or becomes subject to a receivership. The maximum payment is the equivalent of seven weeks of Employment Insurance (EI) earnings. For more information:

www.canada.ca/en/employment-social-development/services/wage-earner-protection.html



Deductions

From salaries and wages

The co-op must make some deductions from staff paycheques, including cheques for vacation pay and overtime payments. These statutory deductions are for:

- income tax
- Canada Pension Plan (CPP)
- Employment Insurance (EI).

The amount to be deducted is calculated using tables supplied by the Canada Revenue Agency (CRA). Once a month, the co-op must pay the Receiver General for these held back amounts plus the co-op's contributions. Some small employers can apply to CRA to remit on a quarterly basis.

Sometimes a co-op arranges for an independent contractor, for example a bookkeeper, to spend a certain number of hours a month working at the co-op on a freelance basis. In this case, the co-op doesn't hold back income tax, CPP or EI.

How can a co-op tell if a staff member should be treated as an independent contractor or an employee?
An employee:

- has a permanent job that takes more than a few hours a week
- works only for that co-op and has no other clients
- works regular, fixed hours
- is not registered as a business.

If the board decides to overlook these hallmarks and treat someone as an independent contractor, it's taking a risk. The Ministry of Labour or the Canada Revenue Agency might decide the "freelancer" is really an employee. Then the co-op would have to send the Receiver General all the deductions it should have collected but didn't. The Canada Revenue Agency publication *Employee or Self-Employed* (RC4110) has more information.

www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4110.html

Note: The directors are personally liable for these deductions if the co-op fails to make them.

The co-op can't make deductions from staff wages unless the law requires it or the staff member agrees in writing. The co-op can't ask a staff member to agree to a deduction for:

- damage, breakage or loss
- cash shortages.

An employee may agree in writing to a deduction for benefits not paid for by the co-op, union dues, donations to a charity, a fund for staff social activities or deductions required under the *Family Maintenance Enforcement Act*.

From bonuses and gifts

A bonus, gift or award is a taxable benefit whether it is cash, near-cash (i.e., gift card) or non-cash. If a benefit is taxable then you must also deduct CPP. If the gift or award is cash then you must also deduct EI.

CRA's administrative policy exempts some non-cash gifts and awards in some cases:

- You may give an employee an unlimited number of non-cash gifts and awards that do not have a total value of more than \$500 in one year. If the fair market value of the gift/award is more than \$500 then the amount over \$500 must be included in the employee's income.
- Items of a small or trivial value are not considered a taxable benefit and do not count toward the \$500 threshold. Examples include coffee or tea, plaques, T-shirts with employee logos.
- Once every five years the employer can give a tax-free non-cash long service or anniversary award valued at \$500 or less. Five years must elapse between awards. This is in addition to the annual allowance for a \$500 non-cash gift or award.
- The employer can provide a free social event once a year for all employees and if the cost is less than \$150 per person, it is not a taxable benefit.
- Hospitality provided as part of a work session (i.e., planning, training, and networking) is not a taxable benefit. Hospitality provided to celebrate work or thank an employee is taxable and must be included in income.

Leaves

While on the following leaves, employment is considered continuous for the purposes of calculating vacations and termination entitlements, as well as pension, medical or other plans of benefit to the employee. When the leave or jury duty ends, the employee must return to his/her former position or a comparable position:

- Pregnancy leave
- Parental leave
- Family responsibility leave
- Compassionate care leave
- Bereavement leave
- Jury duty
- Reservists' leave
- Leave respecting disappearance of child
- Leave respecting death of child

Employment Insurance Caregiving benefits and the federal income support for Parents of Young Victims of Crime benefits may complement some provincial leave entitlements. They each have their own eligibility requirements.



Pregnancy leave

An employee does not need to work for a specific period to be eligible for pregnancy leave.

A pregnant employee has a right to take unpaid maternity leave of up to 17 weeks starting up to 13 weeks before her baby is due. At least six of the 17 weeks must be taken following the delivery date unless the employee requests a shorter period. This request must be made in writing one week before she plans to return to work.

If an employee requests her pregnancy leave *after* the birth of the child or termination of the pregnancy, she is entitled to six weeks of leave beginning on the date of the birth or termination.

Pregnancy leave may be extended for up to six weeks if an employee is unable to return to work for reasons (confirmed by a doctor or nurse practitioner's letter) relating to the birth or termination of pregnancy.

The co-op can tell the employee to take a leave of absence if the directors believe she can't reasonably perform her work because of her pregnancy. If the employee brings in a letter from a doctor or nurse practitioner stating that she is able to perform her duties during her pregnancy, the co-op must let her continue to work.

An employee must give the co-op written notice, at least four weeks before she starts her maternity leave. The co-op may require the employee to provide a doctor or nurse practitioner's letter stating when the baby is due.

While an employee is on maternity leave, the co-op must continue to contribute to any pension, Registered Retirement Savings Plan, life insurance, extended health, dental, and other benefit plans, unless she has told the co-op in writing that she doesn't want to pay her normal share (if any) to keep the benefit.

The co-op must give the employee her job back without any drop in pay when her maternity leave ends.

Parental leave

Any birth mother who has taken pregnancy leave can claim unpaid parental leave of up to 61 consecutive weeks. If the birth mother has not taken pregnancy leave, she can claim 62 weeks of unpaid parental leave. Any employee who is a father or adoptive parent can claim unpaid parental leave of up to 62 consecutive weeks.

A birth mother must begin parental leave immediately after her pregnancy leave ends unless a different agreement has been made with the co-op.

A birth father or adopting parent must begin parental leave within 78 weeks of the child's birth or placement with the parent.

An employee must give written notice of at least four weeks if they want parental leave. If the child requires an additional period of parental care, the employee may take up to five more weeks of parental leave.

An employer may require an employee to provide a doctor or nurse practitioner's certificate or other evidence that the employee is entitled to leave or leave extension.

While an employee is on parental leave, the co-op must continue to contribute to any pension, Registered Retirement Savings Plan, life insurance, extended health, dental, or other benefit plans, unless the employee has told the co-op in writing that they don't want to pay their normal share (if any) to keep the benefit.

The co-op must give the job back to the employee without any drop in pay when their parental leave ends.

Maternity and parental EI benefits

EI maternity benefits are offered to biological mothers, who cannot work because they are pregnant or have recently given birth. A maximum of 15 weeks of EI maternity benefits is available. The weekly benefit rate is 55% of the claimant's average insurable earnings up to the maximum amount.

EI parental benefits are offered to parents who are caring for a newborn or newly adopted child or children. There is a choice of standard or extended parental benefits.

- Standard parental benefits can be paid for a maximum of 35 weeks and must be claimed with a 52-week period after the week the child is born or placed for the purpose of adoption. The weekly benefit rate is 55% of the claimant's average insurable earnings up to the maximum amount. The two parents can share these 35 weeks of standard parental benefits, which adds 5 weeks (total 40 weeks).
- Extended parental benefits can be paid for a maximum of 61 weeks and must be claimed within 78-week period after the week the child is born or placed for the purpose of adoption. The benefit rate is 33% of the claimant's average insurable earnings up to the maximum amount. The two parents can share extended benefits, which adds 8 weeks (total 69 weeks).

Family responsibility leave

An employee is allowed five days of unpaid leave per year to meet their responsibilities for the care, health or education of immediate family members. Immediate family includes a spouse, child, parent, guardian, sibling, grandchild, grandparent or anyone who lives with the employee as a member of their family. This leave is not cumulative.

Employees are expected to give the co-op as much notice as possible and provide sufficient information for the co-op to understand the reason for the leave. Employees are not required to give notice in writing or disclose any personal or private information.

Compassionate care leave

The *Employment Standards Act* allows employees to take 27 weeks within a 52-week period of compassionate care leave to provide care and support to a family member or anyone considered like a close relative in situations where the family member is gravely ill with a significant risk of death within 26 weeks.

All employees are entitled to this unpaid leave. The employee must get a certificate from a medical practitioner.



There is no requirement that the request for leave be in writing or to give the co-op advance notice. When the employee returns to work, the co-op must give the employee their job back without any drop in pay.

The employee may be eligible for benefits under the federal Employment Insurance Caregiving Benefits. Eligibility for leave is not the same as eligibility for benefits.

Bereavement leave

Staff are allowed up to three working days of unpaid leave following the death of a member of their immediate family.

Jury duty

Staff who are required for jury duty are treated as if they are on unpaid leave and their job is protected.

Reservists' leave

The ESA provides unpaid job protected leave to an employee who is a reservist with a Canadian Forces operation outside Canada, is engaged in pre or post deployment activities either inside or outside Canada or is deployed inside Canada to assist with dealing with an emergency or its aftermath. The reservist must provide written notice 4 weeks in advance or as soon as practicable after deployment is announced. An employee who is a reservist is entitled to 20 days unpaid leave in a calendar year if engaged in Canadian Forces training activities.

Leave respecting disappearance of a child

If an employee's child disappears in circumstances where it is likely that the disappearance is the result of a crime, the employee is entitled to up to 52 weeks of leave. The employee may take leave in different units of time with the employer's consent.

The employee may be eligible for benefits under the federal income support program Canadian Benefit for Parents of Young Victims of Crime. It provides \$450 per week for 35 weeks over a two-year period. Eligibility for leave is not the same as eligibility for benefits.

www.canada.ca/en/employment-social-development/services/parents-young-victims-crime.html

Leave respecting death of a child

If an employee's child dies as a result of a crime, the employee is entitled to up to 104 weeks of leave. The leave starts on the date of the child's death or, in the case of a child who disappeared, on the date the child is found dead. The employee may take leave in different units of time with the employer's consent.

The employee may be eligible for benefits under the federal income support program Canadian Benefit for Parents of Young Victims of Crime. It provides \$450 per week for 35 weeks over a two-year period. Eligibility for leave is not the same as eligibility for benefits.

www.canada.ca/en/employment-social-development/services/parents-young-victims-crime.html



Federal caregiving benefits

Through federal Employment Insurance, employees may be eligible to receive financial assistance of up to 55% of earnings, to a maximum of \$562 per week. These benefits will help the employee take time away from work to provide care or support to a critically ill or injured person or someone needing end-of-life care. The employee does not need to be related to or live with the person they care for or support, but they must be considered to be like family. The right to any of the above leaves of absence are not the same as the right to caregiving benefits. Eligibility for each is different.

THREE TYPES OF CAREGIVING BENEFITS		
BENEFIT NAME	MAXIMUM WEEKS PAYABLE	WHO IS RECEIVING CARE
Family caregiver benefit for children*	Up to 35 weeks	A critically ill or injured person under 18
Family caregiver benefit for adults*	Up to 15 weeks	A critically ill or injured person 18 or older
Compassionate care benefits	Up to 26 weeks	A person of any age who requires end of life care

**BC does not have job-protected leave that corresponds with the family caregiver benefits.*

For more detail: www.canada.ca/en/services/benefits/ei/caregiving.html

Time to vote

Staff are entitled to the following voting time on election day while the polls are open:

- three consecutive hours for a federal election
- four consecutive hours for a provincial election

Staff may shorten their work day to ensure that they have time to vote before the polls close.

Holidays and vacations

Statutory holidays

These holidays are:

- New Year's Day
- Family Day
- Good Friday
- Victoria Day
- Canada Day
- British Columbia Day
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day

Staff get these days off with pay if they:

- have worked for the co-op for at least 30 calendar days, and
- have worked on at least 15 of the 30 calendar days just before the holiday.

If an employee who qualifies for a paid holiday has to work on the holiday, the co-op must pay them at least 1½ time their regular rate of pay for the first 12 hours they work, and double time after that *plus* an average days pay.

Staff who do not qualify for a paid holiday are paid at their regular rate for working that day.

The co-op and a majority of employees can agree to substitute another day for a statutory holiday. The substitute day must be treated the same as a statutory holiday.

Civic holidays

Civic holidays are:

- Easter Monday
- Boxing Day

These are not paid holidays by law, but co-ops often give staff one or more of these days off, with or without pay. The co-op and its staff should work out an agreement about this.

Vacations

The co-op must give its staff:

- at least two weeks paid vacation after one year of employment
- at least three weeks paid vacation after five years of employment.

The employee may take their vacation in periods of one day or more, but the co-op can't ask an employee to take a vacation of less than a week. Staff must take vacation within 12 months of earning it. An employee can't take the pay and work through the vacation.

If a statutory holiday occurs while an employee is on vacation, it counts as the statutory holiday and they must take another vacation day off with pay.

While staff are taking their vacation, the co-op must continue to pay them at their regular rate. Their pay must be at least:

- 4% of total yearly earnings for staff employed more than five days but less than five years
- 6% of total yearly earnings for staff employed more than five years.

An employee must be given their vacation pay at least seven days before their vacation starts or on regularly scheduled paydays if agreed to by both the employee and the co-op.

When employment ends

Dismissal

Under the ***Employment Standards Act***, a co-op can dismiss an employee at any time but must provide the employee with proper notice or pay in place of notice.

Note: Before dismissing an employee, consult your lawyer. Do it right, or not at all. This is because the law for independent contractors and employees hired for specific periods is different.

The process

The board hires and dismisses staff by majority decision, unless it has chosen to give a senior employee authority to make this decision. The normal legal rules are that a staff person who has worked for the co-op at least three months must be dismissed in writing.

Once a decision has been made, a director or senior manager hands the employee the letter of dismissal or sends it by registered mail. The board of directors must be able to confirm that the employee received the letter.

The dismissal letter should include:

- the date of the last day to be worked
- the reason for dismissal
- when benefits end
- the length of notice, or amount of payment in place of notice.

The co-op must complete a *Record of Employment* (ROE). If a paper version is completed, a copy must be sent to Service Canada and the employee *within* five calendar days of the dismissal. If the ROE is submitted electronically the deadline is within five days of the end of the pay period in which the dismissal occurred. Federal Employment Insurance rules require this. The co-op as the employer can be subject to penalties if this information is not filed.

The co-op must also pay the employee within 48 hours:

- all wages owed to them
- any vacation they have earned but not taken by the end of the notice period.

The co-op can't make the employee take a vacation during the notice period. An employee must be paid for any vacation they have earned *up to the end of their notice period*, at 4% or 6% of gross wages (see information on vacations).

Notice

Most staff have a right to notice if they are being dismissed. The co-op can't just order them to leave.

The general rule is that length of notice increases with length of service. Staff who have worked for the co-op more than three months but less than one year have a right to at least one week's notice. If an employee has worked more than one year but less than three years, they have a right to two weeks notice, plus one extra week for each additional year worked thereafter (up to eight weeks).

Remember that these standards are the legal minimum. In general, the more responsibility an employee has, the longer they have worked for the co-op and the greater their age, the more notice the co-op needs to give them.

Dismissal without notice

The board may dismiss an employee without notice if it pays the employee an equal number of weeks pay in place of giving notice, and continues employee benefits for what would have been the notice period.

The board may also dismiss an employee without notice or compensation if they:

- were hired less than three months earlier
- quit or retired
- worked on an on-call basis doing temporary assignments which they could accept or reject
- were employed for a definite term or hired for specific work to be completed in less than 12 months
- could no longer work due to an unforeseeable event (other than bankruptcy or receivership)
- refused reasonable alternative work
- were dismissed for “just cause” (wilful misconduct, disobedience, deliberate neglect of duty not condoned by the board).

Be very, very careful—“just cause” for dismissal is a legal term. It is not the same as the reasons the co-op might use to describe why it intends to dismiss an employee. “Just cause” means the employee has conducted themselves in a way the courts would approve to allow the co-op to terminate employment without notice or payment of an amount of money instead of notice. Often an employee dismissed for “just cause” will take the co-op to court, a costly route even if the co-op ultimately wins.

The co-op is always on safer grounds if it dismisses an employee “without cause” even if it feels it has good reason because, while the co-op will have to pay an amount equal to the legal notice period or give the employee the notice period the law requires, any disputes about the proper amount or period of notice are often settled without having to go to court. The safest route is to consult a lawyer.

Resignation

Under the *Employment Standards Act* an employee does not have to give any notice before leaving their job with the co-op. The co-op has six days to pay all wages and vacation pay owing to an employee who resigns.

For its own protection, the co-op needs a written agreement with its employees that covers pay rate, hours, benefits, notice period and other employment matters. If your co-op would like to explore this further, contact your local federation or CHF Canada for help.

Records

The co-op must keep updated employment records for at least two years after employment ends. The records should include the following information for each employee:

- name, date of birth, occupation, phone number and address
- the date when employment began
- rate of pay and whether payment is calculated hourly, salary or some other basis
- hours worked each day
- benefits paid
- gross and net earnings for each pay period
- amount and reason for each deduction
- dates of statutory holidays taken and amounts paid
- dates of annual vacation taken, amounts paid and days and amounts owing (if any)
- dates taken and amounts paid from their time bank, and balance remaining
- averaging agreements.

Canada Revenue Agency requires the co-op to keep payroll records (hours of work and statutory deductions) for six years. This includes TD1s, information slips and returns that are filed.

Social insurance number

Every person who works in Canada must have a social insurance number (SIN). The SIN is a personal identification number that is used by government departments and agencies (e.g., Canada Revenue Agency) for income-related information. SINs are issued only as a confirmation letter, no longer as a plastic card. Employers are required to request a new employee's SIN number within 3 days of the employment start date and to record the name and number.

If a Social Insurance Number (SIN) begins with 9 it is only valid until the expiry date on their immigration document. (SINs that begin with the number 9 are issued to temporary foreign workers who are neither Canadian citizens nor permanent residents.)

Posting

The ESA recommends that employers display a poster, Working in BC (February 2018), with information about employees' rights. The co-op can get a copy of the poster from an Employment Standards Branch office or at:

www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/employer-s-corner/working-in-bc-poster

Complaints and appeals

If an employee thinks the co-op hasn't obeyed the *Employment Standards Act*, they must first try to settle the matter through direct discussion with the co-op. The Employment Standards Branch has created a Self-Help Kit which outlines a step-by-step process to help employees resolve a complaint with their employers. The Self-Help Kit is located on the Employment Standards Branch's website:

www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/info-forms/self-help-kit

The Branch will not investigate a complaint if the employee has not taken steps to resolve the problem directly with their employer.

If, after trying to resolve their complaint with their employer, the employee still isn't satisfied, within six months of the incident they may file a claim in writing with the local Employment Standards Branch office. The co-op can't punish staff in any way for filing a complaint.

The Director of Employment Standards is required to review every complaint filed unless:

- the *Employment Standards Act* does not apply to the complaint
- the complaint is frivolous, trivial or not made in good faith
- there isn't enough evidence to prove the complaint
- a related proceeding is already before or has been resolved by a court, tribunal, arbitrator or mediator
- the dispute that caused the complaint has been resolved.

If a complaint is accepted, staff at the Employment Standards Branch will review it to decide if the matter should be mediated, adjudicated or investigated.

Employment Standards Branch staff can enter the co-op to inspect and remove records, require members, staff or directors to disclose information, and ask to have records delivered.

If the Employment Standards Branch believes the dispute can be resolved through mediation, the officer may arrange a mediation session. If the parties agree on a solution, the officer will draft a *Settlement Agreement*.

The Director of Employment Standards' decision about the complaint, called a "Determination," is issued after the investigation is complete and all parties named in the decision are given a copy of it.

The co-op can appeal the Determination by filing an appeal in writing with the Employment Standards Tribunal. The appeal must be filed within 21 days if the decision was personally served or within 30 days if it was received by registered mail. For details, contact your local Employment Standards Branch office listed in Section 5 of this guide.

3 The Human Rights Code

In British Columbia, the *Human Rights Code* protects workers by giving them a right to equal treatment on the job, and when applying for a job. Workers are also guarded by law from hurtful actions or comments of certain kinds, and from unwelcome sexual behaviour.

General information about human rights and the *Human Rights Code* is available from the Ministry of Justice. The Human Rights Tribunal (HRT) deals with human rights complaints. If a settlement can't be reached, the HRT may decide to hold a hearing to resolve the matter.

The Human Rights Clinic is a non-profit organization that promotes and strengthens human rights in British Columbia.

In 2018 the provincial government re-established the BC Human Rights Commission. The Commission will work with the Tribunal, which remains responsible for resolving human rights complaints. The Commissioner will be responsible for human rights education as well as examining and addressing areas of discrimination.

Fairness

The *Human Rights Code* ensures a fair basis for hiring and promotion. The co-op can't discriminate on the basis of:

- race
- colour
- ancestry
- place of origin
- political belief
- religion
- marital status
- family status
- physical or mental disability
- sex (including pregnancy, breastfeeding and sexual harassment)
- sexual orientation
- age (19 or more)
- gender identity or gender expression
- record of criminal or less serious convictions unrelated to the job (for example, a co-op couldn't refuse to hire an applicant to cut the grass because the person had been convicted of fraud—but could decide they shouldn't keep the co-op's books)
- lawful source of income (only protected in the area of tenancy)
- retaliation

Harassment

Harassment is a form of discrimination. It means being the object of unwelcome actions or comments based on any of the characteristics listed above.

Co-op staff have a right to a healthy and safe workplace. When a conflict occurs between members and staff, the co-op needs to have a way to resolve it. A model policy and procedure is available. Contact your local federation, staff association or CHF Canada for more information.

The co-op must protect its staff from harassment by people they come into contact with at work, such as:

- directors
- agents of the co-op
- co-op members
- other employees.

The co-op must also protect its staff from unwelcome conduct of a sexual nature, such as the following:

- unwelcome or embarrassing jokes, remarks, suggestions, abuse or taunting
- suggestive hand gestures or facial expressions, such as a leer of invitation
- sexual advances or requests, if that person should know the advance is unwelcome
- threats or punishment for refusing a sexual advance by anyone able to grant or refuse a benefit to the employee
- display of offensive pictures
- unnecessary physical contact, such as touching, patting, pinching, punching
- sexual assault (also a criminal matter).

There is more information on violence and harassment in this guide in Section 4 Health and Safety.

Making complaints

As an employer, the co-op needs to know what to do and what to expect if discrimination or harassment takes place. The co-op's board must clearly support the right of staff, paid or volunteer, to work without harassment. A carefully written policy will help people understand that the board is serious about protecting their employees.

If possible, the employee should tell the person harassing them that they object to this conduct.

If harassment continues, the employee should complain to the board, a senior employee, or the director they are closest to. Their local housing federation may be able to help them present the problem. If the employee works for an operational services company, they may prefer to have their supervisor raise the matter with the client co-op's board. At this time, the co-op's representatives should take appropriate action.

An employee may make a complaint to the HRT within 12 months of the most recent incident if they can't get help within the co-op. The Tribunal will review the Complaint Form and decide if there are grounds for a complaint. If there are, the HRT will send a copy of the employee's complaint to the co-op or individual you named asking them to provide a written response.

There will be many chances to settle all or part of the complaint at any time during the process, including at an early settlement meeting, before the co-op files a response to the complaint. In most cases, a case manager will be assigned to the complaint.

A complaint can be dismissed if:

- another act would deal with it better (for example, criminal law)
- there is no reasonable basis for the complaint or it was made in bad faith
- was filed more than six months after the incident unless the reason for the delay is a good one.

Both parties will be invited to attend a settlement meeting. If the parties cannot agree on a settlement there will be a hearing at which there will be a decision about whether the complaint is justified and if so, what the appropriate remedy is. The employee and accused may both be represented by a lawyer. A decision is reached after hearing from both sides and any witnesses. The HRT can award money or order the co-op to give an employee back their job and to do things differently in future so that the problem doesn't happen again.

The co-op and its staff should be aware that some time may pass between the date of the incident and the settlement of a complaint by the HRT. Remedies outside the system, such as mediation or arbitration, may be less stressful and have better results. Mediation can happen at any stage in the complaint. Mediators and arbitrators are available, including some who are familiar with housing co-ops.

4 Workplace health and safety

The *Workers Compensation Act (WCA)* and the *Occupational Health and Safety Regulation* are the key pieces of legislation for workplace health and safety in British Columbia. The *Human Rights Code* often has to be considered in dealing with OHS issues. WHMIS is a Canada-wide law relating to hazardous materials in the workplace.

Occupational health and safety

The purpose of the Occupational Health and Safety Regulation (OHSR) is to promote occupational health and safety and to protect workers and other persons present in workplaces from work-related risks to their health safety and wellbeing. It establishes procedures for dealing with workplace hazards and rights for workers plus enforcement if compliance is not voluntary.

Rights and responsibilities

The employer has a duty to:

- take all reasonable precautions to protect the health and safety of workers
- ensure that equipment, materials and protective equipment are in good condition
- provide information, instruction and supervision to protect worker health and safety.

In addition, the co-op must:

- comply with all regulations made under the *WCA*
- develop and implement a health and safety program and policy, including an emergency plan
- post a copy of the *WCA* in the workplace.

Workers have a general duty to take responsibility for personal health and safety, which means they should not behave or operate equipment in a way that would endanger themselves or others. Additional specific duties include:

- work in compliance with the Act and regulations
- use any equipment, protective devices or clothing required by the employer
- tell their supervisor about any known missing or defective equipment or protective device that may be dangerous
- not remove or make ineffective any protective device required by the employer or by regulation

The co-op is required to provide all young and new workers with orientation and training specific to the worksite. They must also record and document this training.

The OHSR requires employers to identify, eliminate and control hazards before a worker is assigned to work alone or in isolation. The employer must also develop and implement a written procedure for checking the well-being of any worker assigned to work alone. Working alone means working where assistance would not be readily available to the worker in case of an emergency, injury or ill health.

Smaller workplaces with less than 20 workers are exempt from the requirement for a joint health and safety committee or a designated health and safety representative. The co-op should still consult regularly with workers about health and safety. The co-op should maintain records of these meetings.

Unsafe working conditions and workplace injuries

Health and safety concerns should first be brought to the attention of a supervisor. If the co-op does not correct the situation, the worker can report it to WorkSafeBC (the Workers' Compensation Board of BC).

Workers have a right to refuse unsafe work. The procedure is outlined in Section 3.12 of the OHS Regulation.

There is a section below under Workers' Compensation that covers accidents and injuries in the workplace.

Special health and safety issues

The Canadian Centre for Occupational Health and Safety (www.ccohs.ca) is a federal agency that provides resources on work-related injury and illness prevention initiatives and occupational health and safety information.

Some particular health and safety issues for co-ops to consider:

- working alone – many co-op staff work alone and this places them at a higher risk for violence
- sun exposure – landscape workers will spend long periods outside exposed to the sun
- youth workers – statistics show that youth workers are at a higher risk for injury
- repetitive strain injury – anyone who repeatedly makes the same motion, using a keyboard or turning a screw, is at risk for long-term damage
- workplace violence – the incidence is higher in workplaces dealing with the public, dealing with people with mental illness or that are responsible for enforcement
- infectious diseases – workers who clean up bodily fluids and waste are at risk for various infectious diseases
- asbestos – a hazardous material found in many building components used before 1990
- confined spaces – workers in an enclosed or partially enclosed space not primarily designed for human occupancy (i.e., duct work) are at increased risk due to poor air quality, temperature extremes, fire and evacuation in the event of an emergency.

Violence and harassment in the workplace

As part of ensuring the health and safety of workers, employers are obligated to take reasonable steps to prevent or minimize workplace bullying and harassment. The new policy lists the following steps for an employer:

- a) develop a policy statement that workplace bullying and harassment will not be accepted or tolerated
- b) take steps to prevent or minimize workplace bullying and harassment
- c) develop and implement procedures for workers to report incidents or complaints of workplace bullying and harassment

- d) develop and implement procedures for how the co-op will respond
- e) inform workers about the policy in (a) and the steps in (b)
- f) train supervisors and workers on:
 - recognizing the potential for workplace bullying and harassment
 - responding to bullying and harassment, and
 - procedures for reporting
- g) annually review workplace bullying and harassment policy and procedures
- h) not engage in bullying and harassment of workers and supervisors
- i) how to apply and comply with the employer's policies and procedures on bullying and harassment.

There are parallel obligations for workers and supervisors. WorkSafe BC has published a booklet *Take Care: How to develop and implement a workplace violence prevention program* (2012).

www.worksafebc.com/en/resources/health-safety/books-guides/take-care-how-to-develop-and-implement-a-workplace-violence-prevention-program?lang=en

First aid

Workers' Compensation requires that the co-op:

- be a safe workplace
- have a first-aid kit
- make sure staff know where it is kept

The contents of the first aid kit, the level of training and the number of first aiders required by WCB is based on the number of workers, risk of work and travel time to a hospital. For workplaces with less than 6 workers, a first aider is not required, although it is a good idea. The WCB provides a list of recognized training agencies.

Smoking in the workplace

The *Environmental Tobacco Smoke and E-cigarette Vapour Act* bans smoking in indoor public places and workplaces, including vehicles. It also bans smoking within 6 metres of doorways, windows and air intakes. The regulation includes vapour products, i.e., e-cigarettes. The *Act* is enforced by local public health authorities. The OHS Regulation also covers environmental tobacco smoke.

The non-medical use of cannabis became legal in 2018. The province's existing occupational health and safety regulations cover impairment in the workplace. To help ensure a safe workplace, the co-op may wish to develop a policy on the use of any substance that can cause impairment in the workplace.

WHMIS 2015 and the GHS

WHMIS 2015 (Workplace Hazardous Materials Information System) is a national information system for hazardous substances in the workplace. It builds on the original 1988 WHMIS by incorporating the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) for workplace chemicals. WHMIS 2015 includes new international harmonized criteria for hazard classification



and requirements for labels and safety data sheets (SDS). The roles and responsibilities for suppliers, employers and workers have not changed.

To give suppliers, employers and workers time to adjust to the new system, implementation of WHMIS 2015 will take place over a three-stage transition period that is synchronized nationally across federal, provincial and territorial jurisdictions. As of December 1, 2018, WHMIS 1988 no longer applies.

WHMIS is administered through co-ordinated federal, provincial and territorial regulation. The basic requirements are set out in the federal Hazardous Products Act and the Controlled Products Regulations. The *Occupational Health and Safety Regulation* (BC reg 296/97) and the *Workers' Compensation Act* establishes WHMIS requirements in British Columbia.

The key elements of the WHMIS system are:

- cautionary labelling
- Safety Data Sheets (SDS)
- worker education and training programs.

Suppliers will continue to:

- identify whether their products are hazardous products
- prepare labels and SDSs
- provide these SDSs to purchasers of hazardous products intended for use in the workplace

Employers will continue to:

- educate and train workers on hazards and safe use of hazardous products in the workplace
- ensure that hazardous products are properly labelled and provide access to SDSs
- ensure appropriate control measures are in place to protect the health and safety of workers

Workers will continue to:

- participate in WHMIS and chemical safety training programs
- take necessary steps to protect themselves and their co-workers
- participate in identifying and controlling hazards

Labelling

The employee has a right to know when a product they are dealing with is dangerous. Flammable or other potentially deadly substances must be properly labelled. WHMIS 2015 labels use pictograms as well as a signal word – Warning or Danger.

Safety Data Sheets

The Safety Data Sheet or “SDS” on a hazardous substance provides detailed and comprehensive safety information about it. It covers proper handling and protection against overexposure, the health effects of overexposure, and emergency procedures. The SDS on each hazardous substance in a workplace must be in the workplace and available for workers. The SDS are standardized in a 16-section format. The 9-section WHMIS format for MSDSs is no longer acceptable.

Worker Education and Training

The purpose of education and training is to ensure that workers understand the hazards of the materials they are exposed to, and the measures they should take to protect themselves. The co-op is required to maintain written records of employee education programs. The co-op must review the WHMIS training program at least once a year, in consultation with workers.

Education refers to the instruction of workers in general information about how WHMIS works and the hazards of controlled products. Training refers to the instruction on site-specific information such as work and emergency procedures. Both education and training are an important part of understanding the hazards that may be present in the workplace. Not all employees in one workplace will need the same training. For example, maintenance workers are exposed to different hazardous materials than office workers.

The Canadian Centre for Health and Safety (CCOHS) in partnership with Health Canada has released a free on-line training course to help workplace prepare for *WHMIS After GHS: An Introduction*:

www.ccohs.ca/catalog/product_info_ccohs.php?products_id=349

They have also developed a series of free fact sheets about WHMIS 2015:

www.ccohs.ca/products/publications/whmis_ghs

WorkSafeBC has published WHMIS 2015: The Basics (April 2019), which is available at:

www.worksafebc.com/en/resources/health-safety/whmis/whmis-basics-2015?lang=en

Workers' Compensation

What is it?

Workers' Compensation (WorkSafe BC) is a provincial program offering workers a modest degree of insurance protection against workplace violence and industrial accidents. Decisions about payments for any injuries to staff are made by the Workers' Compensation Board (WCB).

Does the co-op need it?

The *Workers' Compensation Act* applies to almost all workplaces in the province and employers must comply.

Under this plan workers who are hurt get money in place of their lost wages, and have their medical and retraining expenses paid. Injured workers give up the right to sue the co-op, even if the accident was the co-op's fault. Worker's Compensation coverage is required for housing co-ops.

Contractors and subcontractors

Any contractor or subcontractor hired by the co-op probably has a right to Workers' Compensation. If they don't have their own WCB account, the co-op must report their earnings and pay the premium as if they were staff. Check the WCB's *Information for Employers* brochure on how to do this.



If the contractor or subcontractor has a WCB account, but it's past due, the co-op may have to pay the missed premiums. Before a contracted project starts and again when it is finished, the co-op should ask for a letter of clearance from the WCB. It's important to hold back the final payment due to the contractor until receiving this letter, in case the contractor's WCB account is in arrears. The co-op can check clearance status and print clearance letters on the WorkSafe BC website.

Premiums

The cost of this insurance is determined based on a minimum non-refundable premium applied on the insurable earnings of all the co-op's employees. If the annual premium is over \$1,500, the co-op may be able to pay quarterly. Premiums are based on assessable earnings of workers, the workplace classification and the co-op's experience rating.

The WCB charges penalties if payments are late. The co-op can pay online, by mail, credit card, in person or at many credit unions and banks.

Note: The co-op cannot deduct from its employees' earnings to pay for the premium.

Reporting

Earnings and premium remittance

Annual accounts must be paid in March, quarterly accounts by the 20th of the month following the end of the calendar quarter. Premium payments should include an *Employer's Remittance Form*. Each year the co-op must complete an *Employer Payroll and Contract Labour Report* to reconcile the co-op's account for the previous year.

Accidents

Co-ops should tell employees and volunteers to report any accidents to senior staff or board without delay. If an employee can't return to work the day after an accident, the co-op must send the WCB an *Employer's Report of Injury and Occupational Disease* (Form 7) or submit an Incident & Injury Report (electronic).

The co-op must report to the WCB immediately for fatal and serious injuries and within 72 hours for any other injuries or diseases.

The co-op can request that the injured worker complete a *Worker's Report of Injury or Occupational Disease to Employer* (Form 6A).

These Workers' Compensation forms can be completed and submitted on-line. Advantages to on-line reporting include faster processing, easier to modify, submit multiple forms at one time.

The co-op must conduct an investigation if the worker required medical treatment or there was a potential for serious injury to the worker. The *WCB Guide to Incident Investigation Report* (Form E1IR) will help guide the co-op's investigation.

Posting

The co-op is required to post *Notice to Workers* (PL9; R01/08 – Feb 2013) in a conspicuous place. It is available in 8 languages.

www.worksafebc.com/en/resources/health-safety/posters/notice-to-workers?lang=en

Worker's Compensation requires that information *Notice to Workers* (PL29) (Act & Regulations) about where the *Occupational Health and Safety Regulation* can be reviewed be posted in the workplace.

www.worksafebc.com/en/resources/health-safety/posters/notice-to-workers-act-and-regulation?lang=en

Being prepared

It's important that senior staff and volunteers know what the co-op must do in case of staff injury. Get the information pamphlets from the address in Section 5, read it, and put it where it is easy to find. Someone needs to remember, for example, that the co-op is responsible for getting an injured worker to a hospital or clinic as quickly as possible.

Records

Earnings

Co-ops must keep accurate records of:

- individual employee earnings
- payments to contractors and subcontractors
- volunteer work hours if they are covered by WorkSafeBC.

Accidents

The co-op must keep records of accidents, incidents of violence and illness, including:

- the full name of the injured employee
- the injured worker's description of what happened
- the date and time of the accident, incident or report of the illness and when it was reported to the co-op
- the names of any witnesses
- an exact description of the injury
- the date, time, and kind of first aid treatment given
- a description of any follow-up treatment
- the signatures of the person giving first aid and of the injured worker, if possible.

5 Where to get more information

You, Your Staff and the Law is intended only as a guide for general information.

The guide is based on information as of April 2019 from the British Columbia ministries and departments plus the federal government listed below. For more detail, check these government sources and consult your lawyer.

Employment standards

Employment Standards Branch

General Enquiries
Toll free: 1-833-236-3700
www.labour.gov.bc.ca/esb

Employment Standards Tribunal

604-775-3512
www.bcest.bc.ca
registrar@bcest.bc.ca

Income tax, CPP and EI deductions

Canada Revenue Agency

Toll free: 1-800-959-5525 (business enquiries)
www.cra-arc.gc.ca

Employment insurance

Service Canada
www.canada.ca/en/services/benefits/ei.html

Human rights

Ministry of Justice

Human Rights Protection
www2.gov.bc.ca/gov/content/justice/human-rights/human-rights-protection

BC Human Rights Tribunal

604-775-2000
1-888-440-8844
www.bchrt.bc.ca
BCHumanRightsTribunal@gov.bc.ca



BC Human Rights Clinic

604-622-1100

Toll free: 1-855-685-6222

www.bchrc.net

infobchrc@clasbc.net

Workplace health and safety

Workers' Compensation Board (WorkSafe BC)

www.worksafebc.com

Employer Service Centre: 604-244-6181 or 1-888-922-2768

Prevention Info Line: 604-276-3100 or 1-888-621-7233

Fatalities and serious injury reporting

1-888-621-SAFE (7233)

7 days a week/24 hours a day

WHMIS

Health Canada

WHMIS:

www.canada.ca/en/health-canada/services/environmental-workplace-health/occupational-health-safety/workplace-hazardous-materials-information-system.html

WHMIS 2015/GHS:

www.canada.ca/en/health-canada/services/environmental-workplace-health/occupational-health-safety/workplace-hazardous-materials-information-system/whmis-2015.html

National WHMIS Portal: www.whmis.org

Provincial legislation

British Columbia's current statutes and regulations are available the Queen's Printer at:

www.bclaws.ca

For information on bills before the provincial legislature go to the Legislative Assembly of BC at:

www.leg.bc.ca





You, your staff and the law

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