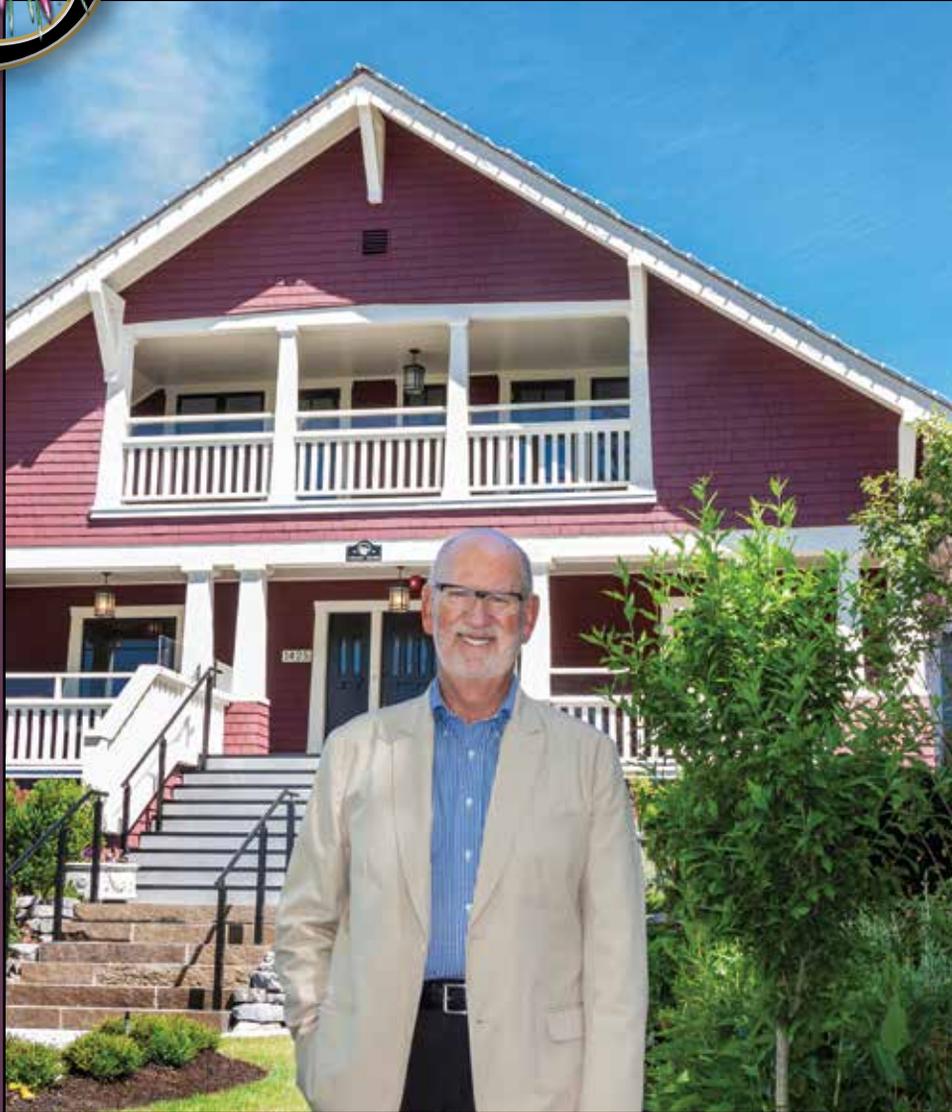


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## THE MiX

# Employment Standards Act Update Report



### In December 2018, BCLI issued its *Report on the Employment Standards Act*.

Publication of this 320-page report marked the conclusion of the *Employment Standards Act* Reform Project, a multiyear law reform initiative that was the first comprehensive, independent review of the Act in nearly 25 years.

The *Employment Standards Act* sets minimum standards for terms of employment and working conditions that apply to most workplaces in British Columbia. The Act is largely geared toward the workplace of the mid-to-late 20th century, although today's workplace is markedly different. The 21<sup>st</sup> century workplace has been transformed by digital technology, changes in workforce demographics, and competitive pressures resulting from globalization, among other factors.

Longterm, relatively secure full-time employment has increasingly given way to less secure temporary and part-time employment. New kinds of working relationships have emerged that are not an easy fit with the traditional legal distinction between employees and independent contractors. Workers and employers alike demand greater flexibility in work arrangements. The major changes in the world of work have created an urgent need to reform and modernize employment standards legislation.

BCLI's *Employment Standards Act* Reform Project was intended as a response to that need. It attracted broad-based support from the Law Foundation, the business sector, the labour movement, and the provincial government. As an independent nonpartisan law reform agency, BCLI was uniquely positioned to provide a neutral forum and research support for indepth analysis of the Act by a highly knowledgeable and experienced volunteer Project Committee. The members of the Project Committee were carefully chosen to represent a balance between employer and employee interests.

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As part of the project, a consultation paper was published in mid-2018. It attracted over 700 online responses and many detailed submissions from a range of stakeholders. This public input fed into the 71 reform recommendations in the report that cover virtually all aspects of the Act. Consensus was not reached in all areas, but the report explained the majority and minority positions.

### Some of the More Notable Majority Recommendations in the Report Calling for Changes in Legislation

- Introduction of unpaid sick leave of up to 7 days per year.  
(The new sick leave provision and the existing family responsibility leave provisions would not be cumulative, but the 7 leave days could be used in either situation, that is, if the employee is ill or if circumstances arise that would now entitle the employee to family responsibility leave.)
- Legalization of everyday informal arrangements to allow employees to work extra time (within specified limits) to make up for time voluntarily taken off
- Different rules for minimum call-in pay
- Legalization of the conventional methods of paying vacation pay now technically disallowed by the Act
- Rules similar to those introduced in Ontario for handling tips and gratuities and for regulating tip pooling, in establishments where tipping takes place
- Alignment with national and international standards of British Columbia's rules on employment of children under 16
- Changes in the complaint and enforcement process

In February and March 2019, the BC Ministry of Labour carried out its own consultation on six “areas of focus” under the *Employment Standards Act* and interspersed hyperlinks throughout its brief online consultative document to the portions of the BCLI report discussing each of those areas. Comments by the Minister of Labour reported at the time made it clear that “priority amendments” to the Act could be expected in bill form shortly.

On April 29, 2019, the *Employment Standards Amendment Act, 2019* (Bill 8) was introduced in the BC Legislative Assembly. Bill 8 is partially in keeping with unanimous or majority recommendations contained in the BCLI report, specifically ones in relation to the following.

- Employment of children
- Tips and gratuities
- The complaint and investigation procedure
- Redefinition of “domestic worker”
- Clarification of how certain provisions about reinstatement after a statutory nondiscretionary leave and group termination should operate
- Aligning the successor employer provision with its counterpart in the *Labour Relations Code*
- Continuity of employment under a Court-appointed receiver

The Minister of Labour has indicated that further changes to the *Employment Standards Act* are under consideration, so other recommendations in the BCLI report may be implemented in the future.

The *Report on the Employment Standards Act* is downloadable from the BCLI website at <https://www.bcli.org/law-reform-resources/bcli-publications>. ▲

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