

## **Backgrounder**

### **What do changes to the Employment Standards Act mean to the small business employees and employers of BC?**

Fully one-third of jobs today don't fit into the traditional "9 to 5" industrial model on which BC's current employment standards law is based. The economy and the workforce have diversified beyond the point where one rigid employment standards law can effectively and efficiently satisfy the aspirations of all.

Employment standards legislation to date has not been responsive to the needs and aspirations of ordinary people like these and their employers. The changes that the BC government has made to employment standards are a step towards recognizing the new ways in which work is being done. The changes also ensure the key principle that employment standards legislation, in particular, must provide a basic standard of protection for employees.

#### **Elimination of Director's Liability for Bankrupt Firms**

*"If my business goes under so do I." Small business respondent, Coalition survey.*

When a company is facing insolvency, it needs the strength and experience of its directors. As the only province in Canada that previously held directors personally liable, directors were often faced with no other option but to resign when they are needed most. In the case of a small business, directors are usually personally tied to the business, with personal assets like their home tied to the company. This change brings British Columbia in line with other jurisdictions and ensures that directors of companies, who should be working to ensure the survival of the company, are not being forced to "bail out" to protect their personal assets.

#### **Hours of Work and Overtime**

*"Hours are not nine to five. Changes occur by the hour. The more flexible we are the better. We could increase our workforce by 20 to 30% ... It would make us more able to respond to the needs of the industry. Very beneficial." Small business respondent, Coalition survey*

Providing flexibility will allow employers and employees to strike mutually beneficial hours of work. Since the *Act* was amended in 1995, it has been difficult to obtain variances from the *Act's* hours of work and overtime provisions even though employers and employees have mutually agreed to them.

Balancing longer shifts in return for longer periods of time off has been commonplace in the unionized sector for many years. It only makes sense that the non-union sector should be able to do the same.

In many industries, allowing employers and employees to work out mutually beneficial hours of work, is essential. For example:

**Tourism:** Whether it is working on the ski slopes of Whistler or taking tourists out whale watching in Tofino, employees are anxious to maximize their earnings during the short tourism seasons that British Columbia experiences. Employers and employees will now be able to negotiate work cycles that meet both parties' interests.

**Hospitality:** In a number of different hospitality businesses the ability to work longer shifts is desired. For example, the employees of a catering company that does primarily weekend functions want to maximize their hours on Friday, Saturday and Sunday because they know there will be little or no work for the rest of the week.

**Creative, knowledge-based industries:** The high-technology sector negotiated a special exemption from the old employment standards act, which took them years to achieve. They sought an exemption on the hours of work and overtime provisions to reflect the intellectual, creative and knowledge-based nature of their work. There are many other industries that also focus on results, not time served. These new changes mean that both the high technology sector, and other sectors with similar characteristics, will be able to easily achieve flexible work schedules.

Finally, the new provisions allow employers and employees to accommodate employees short term personal needs. People want the flexibility to balance their work with the other demands in their busy lives, whether it might be their family, their education, or their leisure time. Everyone faces these realities. Maybe it's arriving at work later or leaving earlier because of your child's daycare. Maybe it's because you're a student trying to squeeze in a two-hour lunch shift at a restaurant with good tips. Maybe it's your neighbour, the carpenter who likes to work longer shifts and trade them for time off later to go fishing. Maybe it's your friend who is an aspiring actor who needs time off from his or her day job to go to an audition.

### **Minimum Daily Hours**

*“Sometimes people want to work two to three hours and that sometimes works well with my business, but due to the four-hour minimum I don't do it. Everyone loses. It's unfortunate because every time I want to hire someone I have to factor in these regulations. This is why I don't hire as many...or any students as I would like.” Respondent, Coalition survey*

The change to allow from a 4-hour minimum shift to a 2-hour minimum shift is an important step towards changing employment standards legislation that has not been responsive to the needs and aspirations of ordinary people and their employers. For example:

**Restaurants:** Lunch business is customer driven and typically lasts less than four hours. As a result of the four-hour minimum requirement, employees who are servers must work for approximately one hour, when there really aren't any customers or operational requirements for them to be there. This employment standards requirement does not take into consideration the fact that a large part of the compensation restaurant servers receive is in the form of tips. If there are no customers in the restaurant after the lunch rush is over, obviously there are no tips, and it is not economically worthwhile for the servers to remain at work. They want to leave work, but because the employer is required to pay the four-hour minimum, employees in the restaurant industry have found themselves forced to work split shifts. This means that employees work two hours over lunch and then come back to work two or three hours over dinner. Many employees have found this inconvenient.

**Hotels:** Small owner-operated properties often do not have four hours of work available every day for the housekeeping/maintenance staff. The amount of work available is typically tied to the occupancy rate, which is substantially affected by seasonality and weather.

**Statutory Holidays**

*“It is very complicated to figure out earnings. There is too much record keeping for statutory holidays.”  
Small business employer, Coalition Employment Standards Survey*

Changes have been needed to the Act’s statutory holiday provisions for two reasons. The rules were overly complicated for employers, especially small businesses, to administer. Moreover, employees have been losing out because many small businesses have been forced to close on statutory holidays because the rules made it too expensive to remain open to serve customers. The changes mean that employees will be able to get work that they have not had.

-30-

**Further information:**

Suromitra Sanatani, CFIB 604-684-5325	Mark Startup, Retail BC 604-730-5252	Philip Hochstein, ICBA 604-298-7795
Mark von Schellwitz, CRFA 604-685-9655	Geoffrey Howes, BCRFA 604-540-2827	Jim Chase, BCYHA 604-681-7164
Kevin Evans, Retail Council of Canada 604-904-7705	John Winter, BC Chamber of Commerce 604-683-0700 x304	