Significant Amendments To The British Columbia Employment Standards Act Now In Force

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This article will outline significant amendments to the *Employment Standards Act* proposed by Bill 8.

The provincial government has passed the most significant changes to the *Employment Standards Act* and *Labour Relations Code* in years.

This article outlines important amendments to the *Employment Standards Act* implemented via Bill 8, which received royal assent on May 30. To read more about the amendments to the *Labour Relations Code*, read **"Significant Amendments to the British Columbia *Labour Relations Code* Now in Force"**

Bill 8 — Employment Standards Amendment Act, 2019

1. **Collective Agreements will be required to meet or exceed *Employment Standards Act* Entitlements**
   Previously, the *Employment Standards Act* (the ESA) provided that many of its requirements, including hours of work and overtime, statutory holidays, vacation time and pay, and seniority retention, recall and individual termination entitlements, did not apply to collective agreements provided that the collective agreement had any provision dealing with these subjects. Under Bill 8, collective agreements only replace these sections of the ESA if the collective agreement provisions dealing with these subjects "meet or exceed the requirements" of the ESA. Bill 8 delays the implementation of this amendment until the expiry of the current collective agreement in force; however, compliance with these ESA requirements will need to be dealt with during subsequent rounds of collective bargaining.
2. **New Unpaid Leaves of Absence**
   Under Bill 8, employees may take an unpaid critical illness or injury leave of up to 36 weeks if an immediate family member under 19 years of age is at risk of death, and up to 16 weeks for an immediate family member who is 19 or older. Bill 8 also provides for a leave respecting domestic or sexual violence of up to 10 days, taken in units of one or more days, and an additional period of up to 15 consecutive weeks.

3. **Terminations during a Resignation Period**
   Bill 8 amends section 63 of the ESA to clarify that if an employee with more than three months of service gives notice of resignation and the employer subsequently ends the employee's employment during that notice period, the employee is entitled to the lesser of the wages the employee would have earned during the resignation notice they provided, or the pay in lieu of notice of termination the employee is entitled to under the ESA.
4. **Increased Wage Recovery Period**
   Significantly, Bill 8 extends the wage claim period from the current six months to twelve months following the earlier of the employee's termination date or the date a complaint is filed. The amendments also leave open the door for the Director of Employment Standards to prescribe circumstances in which the wage recovery period may be extended to two years.
5. **Restrictions on Gratuities**
   Bill 8 prohibits employers from withholding gratuities, making deductions from gratuities or requiring gratuities to be returned to the employer. Despite this, Bill 8 clarifies that employers may withhold gratuities as part of a tip pool that redistributes gratuities to employees.
6. **Extended Record Keeping**
   Bill 8 requires employers to retain certain records, including payroll records, averaging agreements, and agreements about special workplace clothing and statutory holidays, for a period of four years, an increase from the previous two years.
7. **Expanded Authority for the Director**
   While the Director of Employment Standards already had the authority to conduct an investigation absent a complaint, Bill 8 establishes that the Director may at any time and for any reason conduct an investigation to ensure compliance with the ESA, reflecting a governmental emphasis on increased enforcement of the provisions of the ESA.

By

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