

Employees are Unionized and Have a Collective Agreement Quiz



QUESTION

Federal and provincial governments have established employment standards for employees. If those employees are unionized and have a collective agreement, are those employees subject to provincial or federal law or, to the terms of the collective agreement?

ANSWER

Certain industries fall under federal regulation, while other must comply with provincial or territorial employment standards. These maybe additional standards set out in their collective agreements that go beyond what is required by law.

Labour Standards in Canada are seen through the lens of the following:

- Canada Labour Code and Canada Labour Standards Regulations (CLSR).
- Provincial Employment Standards.
- Provincial and Canadian Human Rights acts.

WHY IS IT RIGHT

The CLSR specify how the labour standards of the *Canada Labour Code*, Part III are to be met and adhered to.

The provisions of Part III of the *Canada Labour Code* must always be read in conjunction with the CLSR and any other applicable regulations.

Key Elements of CLSR

Key elements of the CLSR specify provisions pertaining to:

- hours of work
- age
- wages
- annual vacations
- general holidays
- keeping of records
- bereavement leave

- group and individual termination of employment and severance pay
- work-related illness and injury

Businesses Affected by Canada Labour Standards

The CLSR apply to all federally regulated employers and employees such as:

- banks
- marine shipping, ferry and port services
- air transportation, including airports, aerodromes and airlines
- railway and road transportation that involves crossing provincial or international borders
- canals, pipelines, tunnels and bridges (crossing provincial borders)
- telephone, telegraph and cable systems
- radio and television broadcasting
- grain elevators, feed and seed mills
- uranium mining and processing
- businesses dealing with the protection of fisheries as a natural resource
- many First Nation activities
- most federal Crown corporations
- private businesses necessary to the operation of a federal act

Federal/Provincial Government Employment Standards

To ensure that employees are treated fairly, **the federal and provincial governments** have established employment standards regarding:

- Minimum wage
- Annual vacations and other types of leave
- Public (statutory) holidays
- Hours of work, including standard hours, overtime and emergency requirements

Certain industries fall under federal regulations, while others must comply with provincial or territorial employment standards. If your employees are unionized, there may be additional standards set out in their collective agreement that go above and beyond what is required by law.

WHY IS EVERYTHING ELSE WRONG

Provincial Standards

There are laws to protect rights with Provincial employment. There are **Employment Standards Code** for most non-unionized employees and Labour Relations Code for unionized employees.

Employment Standards Code

The Employment Standards Code is a provincial law that sets out basic rights that employers must give their non-unionized employees when they enter into an employment contract.

Labour Relations Code covers the following

Provincial Labour Relations Code governs relations between employers and trade unions, and relations between trade unions and their members.

Other Provincial Law Protection for Employees

The Provincial Human Rights Act sets out a Code of Conduct that includes the issues of discrimination and equal pay with regard to employees. Also, there are laws that deal with issues of health and safety in the workplace, Workers Compensation, employment insurance, pensions, and other benefits.

Provincial Employment Standards covers the following:

- payment of wages including pay periods, overtime pay, holiday pay, method of pay,
- deductions from pay;
- minimum wage;
- hours of work, rest periods and days of rest;
- overtime hours and overtime pay;
- general holidays and general holiday pay;
- vacations and vacation pay;
- maternity and parental leave;
- compassionate care leave;
- termination of employment and termination pay;
- employment of those under 18 and
- reservists leave.

Does the Employment Standards Code provincial employees?

The Employment Standards Code does not apply to all provincial employees.

- Federal government employees or employees in industries governed by the federal government (e.g., railways, shipping, telephone systems and telecommunications, radio and broadcasting, banking). These types of employees are covered by the federal *Canada Labour Code*.
- Municipal police service employees
- Farm owners or family members of a farm owner

Some parts of Provincial Employment Standards Code (usually relating to hours of work, overtime and overtime pay) do not apply to certain employees, for example:

- Supervisors and managers
- Certain professions such as:
 - Architects
 - Accountants
 - Engineers
 - Lawyers
 - Dentists
- Employees carrying out certain types of work such as:
 - Salespersons
 - Real estate brokers
 - Securities dealers/advisors
 - Insurance agents

Provincial Employment Standards Code

Employment Standards Officers will receive and investigate complaints and recommend a procedure to deal with the complaint.

An employer CANNOT terminate or restrict the employment of any individual employee for making a complaint to Employment Standards.

Employment Standards Officers consider the following complaint:

- entitlement to unpaid earnings
- suspension, termination or lay off arising out of certain situations, for example:
 - after starting maternity leave, parental leave, compassionate leave or reservist leave
- garnishment proceedings are taken against the employee
- employee gave or is going to give evidence in an inquiry, proceeding or prosecution arising from the *Employment Standards Code*,
- employee asked for something he or she is entitled to under the *Employment Standards Code*, or
- employee made or is about to make a statement or disclosure required of him or her under the *Employment Standards Code*.

The complaint must be made in the form and manner determined by the Director and should contain the required information including your contact information. You must notify the director if any changes are made to the required information.

Employment Standards Officer can do the following:

- entering the place of employment or where business occurs or where records are kept;
- searching relevant records including using data storage, information processing or retrieval devices used by an employer;
- conducting an audit of compliance,
- questioning an employee without the employer being present during work hours;
- requesting written and oral statements from employees and employers;
- requiring the employer to post information or notices of the *Employment Standards Code* in easy-to-find places;
- providing copies of information under the *Employment Standards Code* to employees;
- entering a private dwelling with consent or permission from the court.

The officer can refuse to accept a complaint that is frivolous or vexatious, where there is not enough evidence to uphold the complaint, or where there is another means available to the employee to resolve the matter that should be pursued first. The complaint can also be refused if the employee is proceeding with another action about the same matter: for example, by court proceedings.

Results of an investigation by an Employment Standards Officer

The officer might offer to mediate the issue between an employee and employer or to facilitate a settlement. If the matter is not settled, the officer will decide whether the employee has a valid complaint. If the officer decides that the complaint is not valid, he or she must serve the employee with notice of the decision, unless the complaint has been withdrawn. A matter can be found invalid if the employee refuses or fails to participate in the investigation and reasonable effort is made to contact the employee. The employee can appeal the decision to the Director of Employment Standards within 21 days.

- If an officer decides that wages are due to the employee and is not able to settle the matter between the employer and employee, whether or not a complaint has been made, and the matter is not settled, he or she can order the employer to pay the employee, or the Director to pay on behalf of employee the earnings he/she is entitled and specify the date by which the order must be complied with. This decision can be appealed by the employer or employee to the Director of Employment Standards.
- If the officer decides that the employee was suspended, terminated, or inappropriately laid off for a reason set out above, and the matter has not been

settled, the officer must refer the complaint to the Director of Employment Standards.

Powers of the Director of Employment Standards

- The Director can make a final decision on the Employment Standards Officer's determination that an employee was not entitled to earnings or that an officer was justified in refusing to investigate the complaint. There is no appeal from these decisions.
- A Director can make a finding that an employee is entitled to payment of earnings. Both the employer and employee can appeal this decision to an Umpire.

On a decision concerning suspension, termination, or layoff, if the matter cannot be mediated or settled, the Director can order reinstatement, compensation or both if he or she finds that the employee was suspended, terminated, or laid off inappropriately. This order must specify the date by which it must be complied with. An employer or employee can appeal this decision to an Umpire. However, if the Director finds that there was no suspension, termination, or layoff there is no appeal and the Director must serve the employee with notice of this decision.

Appeals

In order for the matter to reach an Appeal Body, a notice of appeal must be served on the Registrar of Appeals within 21 days of the date of service of the decision of the Director.

The procedure before an Appeal Body is more like a hearing with each party having the opportunity to present their case. The hearing is not as formal as a court hearing and the Appeal Body is not bound by the rules of evidence, but must follow the rules of natural justice in giving each party a fair hearing. The Appeal Body has the same power as a civil court to call witnesses to court and compel witnesses to give evidence under oath, in person, or to produce a relevant record or thing.

The Appeal Body can choose to carry out the procedure by video conferencing or electronic conferencing.

An Appeal Body will make a decision, which has to be in writing and made available to each party. There is no appeal from an Appeal Body's decision, although it is possible to seek judicial review of the decision in the courts if the requirements for judicial review are present. The law in the area of judicial review is complex and you should seek the opinion of a lawyer if you are considering this option.