



Employment Rights *for Live-in Caregivers*

What is this booklet about?

This booklet by the West Coast Domestic Workers' Association (WCDWA) tells you what rights you have under the Employment Standard Act (ESA) and what to do if you do not get these rights.

This publication explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person's situation is different you may need to get legal help.

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► Introduction

The most important provincial law protecting your employment rights is the *Employment Standards Act* (the *ESA*). The *ESA* sets minimum standards for wages, hours of work, holidays, and other working conditions for all workers in British Columbia.

The *ESA* says that live-in caregivers (called domestic workers in the *ESA*) must have an employment contract. Your contract may give you more rights than we describe in this booklet, but employers cannot make you sign an employment contract that takes away any of your rights under the *ESA*. If an employer makes you sign a contract that is contrary to the *ESA*, they will not be able to enforce it.

A government office called the Employment Standards Branch (ESB) makes sure that employers do what is required under the *ESA*. The *ESA* doesn't deal with every employment problem. In some cases, another law deals with the problem. In other cases, there may not be any law that deals with the problem.

If you require any further information, you can contact us at:

302 -119 West Pender Street
Vancouver, BC V6B 1S5
Phone: 604-669-4482

Note: We use “she” in this booklet to talk about live-in caregivers because most are women. We say “employers” instead of “an employer” because live-in caregivers often work for a couple, not just one person.

All information in this booklet is current as of September 2005.

► Employment contracts

In B.C., employers are legally required to sign an employment contract (sometimes called an employment agreement) before a live-in caregiver starts to work for them.

Before a live-in caregiver can take up employment in British Columbia, her prospective employers must do each of three things that will enable her to apply for a work authorization from Citizenship and Immigration Canada (CIC). First, the employer must offer the live-in caregiver a job and put the details of the job offer in writing, in the form of a signed contract.

Second, the *ESA* says that the employers must register the live-in caregiver with the Domestic Workers' Registry (DWR). Copies of the application for registration at the DWR can be obtained by contacting the ESB, by downloading it from the ESB website (at <http://www.labour.gov.bc.ca/esb/forms/domesticworker.pdf>), or by contacting the WCDWA office.

Finally, the employer must confirm the offer of employment by sending a *Foreign Live-In Caregiver Application* to Human Resources and Skills Development Canada (HRSDC). The application for HRSDC can be found online at <http://www.hrsdc.gc.ca/en/epb/lmd/fw/EMP5093e.pdf> and we have copies at the WCDWA office. The employer must send it to HRSDC, along with a copy of the letter they received confirming registration with the DWR. When HRSDC has confirmed the job offer, they will send the employer a letter. The employer must give this letter to the live-in caregiver, and the live-in caregiver must include a copy when she sends her application for a work permit to CIC. She must also include a copy of her employment contract.

For more information about applying for a work permit, please contact the WCDWA.

Where do I get an employment contract?

Whether you use the “Sample Contract” that CIC supplies on their website, or your employer provides you with a different version, be sure that you agree to everything in your contract before you sign. Read the terms carefully, and make all changes in writing before you sign the final version. If you have any doubt about what you are being asked to agree to, do not hesitate to ask for clarification.

WCDWA also has a Sample Contract that we are happy to provide you with. If you want a copy of our contract, or if you want help negotiating about the terms of your employment contract, please phone, write, or visit our office.

Once you and your employers agree on the terms of the contract, both you and your employers should sign the contract. If you work for a couple, you should ask both of them to sign the contract. Also, ask your employers for a copy of the signed contract.

What should be in an employment contract?

The *ESA* requires that an employment contract must clearly state these things:

- what your duties will be;
- what your hours of work will be;
- what your regular wages will be; and
- what you will be charged for room and board.

The contract can include many more issues, including:

- whether medical premiums (MSP) will be paid by your employers;
- if you are entitled to paid sick leave;

- whether you will be expected to take your holidays when your employers are away;
- what your accommodations will be like; and
- whether you will be expected to pay for your telephone/cable bills.

Your contract cannot say how long you must work for your employers. In some countries, live-in caregivers are required to work for one year, but that is not the law in Canada. No one can make you stay in a job if you do not want to work for them.

If you do not agree with the contract, do not sign it. Never agree to less than what is guaranteed to you by the *ESA*. If you think that you have already signed a contract that goes against the *ESA*, you may not be bound by it, even if you have agreed to the terms in writing. In other words, if your agreement does not accord with the *ESA*, you are not compelled to honour it. You are free to leave an intolerable job without any notice.

Remember:

- **If you do not agree with a contract, do not sign it until you and your employers have made the changes you both agree to.**
- **You should always get a copy of any contract you sign. It is very important to keep your copy of the contract in a safe place. It is a good idea to have two copies of the contract - one to keep with you and one to keep outside your workplace.**

Can the contract be changed?

Yes, but both you and your employers must agree to the changes and these changes must be in writing. You can use the WCDWA Sample Contract or the CIC

Sample Contract just as it is, use only parts of it, or add what you need.

If your prospective employers do not agree to all the terms you want, you cannot force them to sign a contract. Of course, your employers cannot make you sign a contract that has conditions you do not accept. It may take some discussion before you have a contract you both agree on. Or, if you can't agree, you may decide to look for a different job with another family. The important thing is to make sure the terms of your employment are clear before you start a job. If you are unsure or unhappy with the terms proposed by your employers, WCDWA may be able to help you negotiate better terms.

If you or your employers make any changes to the contract, you **both** need to make the changes **in writing** to show that everyone agrees. It is not enough for your employers to tell you that your hours of work will be extended, for example, or for them to write you a letter with new terms. Even if both you and your employers agree, it is not enough that you talk about the changes. For the contract to be altered, something must be put in writing.

What if my employers will not sign my contract?

You can contact the ESB for help if you and your employers agree about all the conditions of your work, and you want to start the job, but your employers will not sign a contract. If the employers know that the law says they must sign a contract, and they still refuse, maybe you should think about whether you want to work for them.

What if my employers will not give me a copy of the contract?

The law says that your employers must give you a copy of your contract. If they are not willing to do this, they may not know the law. First, you can show them this booklet. If they still do not give you a copy of the contract, you can call the ESB for help.

What is an “averaging agreement” and how does it work?

If your employment contract is an “averaging agreement”, your employers will be entitled to average your hours of work over a period of 1, 2, 3 or 4 weeks when calculating your overtime wages. In this way, your employers can sometimes avoid paying you overtime wages for certain hours worked beyond 8 hours a day and 40 hours a week.

For example, under an averaging agreement, a live-in caregiver who works 20 hours in one week and 60 hours the following week may be paid just 80 regular hours. To avoid paying overtime, her employer could simply add the two weeks together and divide the total hours (80) by two weeks, leaving an *average* of 40 hours worked during each of the two weeks. Were it not for the averaging agreement in this example, the employee would have been entitled to 20 hours of weekly overtime at 1.5x her regular wage during the 60-hour week.

Averaging agreements are only valid if they:

- are in writing;
- are signed by the employer and employee before the start date;
- specify the number of weeks over which they apply;

- specify the work schedule for each day covered;
- specify the number of times, if any, that they may be repeated; and
- provide for a start date and an expiry date for the period over which they apply.

If all of the above conditions are not stated in the agreement, the regular rules regarding overtime will apply.

Under averaging agreements there are still rules as to the maximum hours of daily overtime. For example, if you work under an averaging agreement for more than 12 hours in a day, you are entitled to 2x your regular wage. Furthermore, if your *average* week is more than 40 hours, your rate of pay for the time over 40 hours must be 1.5x your regular wage.

Averaging agreements are complicated and make it difficult to calculate what overtime should be paid. If you need help figuring out whether or not your contract is an averaging agreement, or if you need help calculating overtime, please contact the WCDWA or your local ESB office.

➤ **Minimum standards of employment**

What counts as work?

Work is what you are paid to do. But if you are a live-in caregiver, sometimes it is not clear when your work day is over because you live in the same house as your employers.

Here is a good test of what counts as work time: If your time is being used by your employers so you are not free to do what you want, then you are working and

should be paid. For example, if your employers ask you to wait at the house for a phone call or to stay with a sleeping baby when no one else is around, you are working.

What is the minimum wage?

Your employers are legally obligated to pay you no less than the minimum wage. However, the minimum wage will differ depending on your level of experience in the workforce.

First 500 hours (\$6.00/hour)

The provincial government introduced a “probationary” minimum wage for employees who are new to the job market. For the first 500 hours that a “probationary” worker is employed, his or her employers can pay just \$6.00/hour for the first 500 hours of paid employment, provided the employee has no paid work experience prior to 15 November 2001.

If you have done *any* paid work prior to 15 November 2001, anywhere in the world, your employers cannot apply the probationary minimum wage - you must be started at the regular minimum wage.

For those being paid the probationary minimum wage, the 500 hours do not “re-set” with each new job or employer. Once the initial 500 hours have been worked, the probationary period is completed, and the employee is entitled to at least the regular minimum wage for any position. The probationary minimum wage only applies to the first eight hours per day and the first 40 hours per week. For other time periods, see the section on overtime.

Standard Minimum Wage (\$8.00/hour)

The standard minimum wage rate is \$8.00/hour. This wage will apply when calculating the wage that should be paid for the first eight hours of your day, or the first 40 hours of your week. For other time periods, see the section on overtime.

Recommended Minimum Daily Rates

HRSDC recommends the following wage rates for employers hiring live-in caregivers in the province of B.C.

Number of people in the home	Minimum hourly wage
4 or less	\$8.00
5	\$8.38
6	\$8.76
7	\$9.14
8	\$9.52

For each additional person in the household beyond eight, add \$3.00/day.

What hours of work can I expect?

Meal Breaks

You are entitled to meal breaks of at least one half hour in length after you have been working for five consecutive hours. Unfortunately the *ESA* does not say that you must be paid wages during these breaks unless you are required to be available for work while on break. You may negotiate for paid meal breaks when you make your contract, however if your contract is silent, your mealbreaks will likely be deducted from your wages.

Hours Free From Work

Your employers must ensure that you have at least 32 consecutive hours free from work per week or, if this is not possible, they must pay you 1.5x your regular wage for time worked during the 32-hour period that you should have been free from work.

Split Shifts

Although your shift may be divided in the middle, the shift must always end within twelve hours of when it begins.

Prohibition against Excessive Hours

The *ESA* says that your employers must not require you to work so many hours that your health or safety are put in danger. If you feel that your hours are excessive, you may wish to talk to your employers, or approach the WCDWA or the ESB for assistance.

Do I get overtime pay?

Live-in caregivers are entitled to overtime pay, however if they are working under an averaging agreement, the regular overtime rules may not apply to them (refer to the section above on averaging agreements).

Where an averaging agreement is not being used, live-in caregivers are entitled to higher pay for any time worked over eight hours per day or 40 hours per week. The wage rate for overtime is either 1.5x your regular rate, or 2x your regular rate depending on the number of hours worked:

- The 9th, 10th, 11th and 12th hour of work should be paid at 1.5x the regular wage.
- The 13th hour and any additional hours should be paid at 2x the regular wage.

- If you worked more than 40 *regular* hours in a calendar week, your additional hours must be paid at 1.5x the regular wage.

Example: an employee earning \$8/hour works 13 hours/day, 6 days/week, the calculated wages are:

Mon	Tues	Wed	Thurs	Fri	Sat
8x\$8	8x\$8	8x\$8	8x\$8	8x\$8	
4x\$12	4x\$12	4x\$12	4x\$12	4x\$12	12x\$12
1x\$16	1x\$16	1x\$16	1x\$16	1x\$16	1x\$16
\$128	\$128	\$128	\$128	\$128	\$160

In the example, the employee already worked 40 regular hours in the week when she began her Saturday shift, so she must be paid \$12/hr on Saturday morning. And after she exceeded 12 hours that day, the last hour became payable at double time.

When calculating overtime, Sunday is considered the first day of the week.

How does banking of overtime work?

Normally all overtime hours worked must be paid on the next paycheque. However, the *ESA* allows you to request that your employers establish an overtime bank that can be paid out at a later time. The overtime bank is for *your benefit*, and your employers cannot establish an overtime bank without your consent.

Can I get time off if I am sick?

Many workers in B.C. get paid when they are sick and cannot work. Unfortunately, the *ESA* does not require employers to give you sick pay unless they have agreed to this in your contract. However, if you are

too sick to work, your employers should give you time off to rest or to go see a doctor.

If you are sick for more than two weeks, you may be able to get Employment Insurance (EI). For more information about this, read the section later in this booklet about EI.

If your employers try to make you work when you are sick, you can tell them you cannot. Don't let them talk you into working if you are unable – your health is more important than your work.

If you are injured while at work, you may be entitled to benefits through the Workers' Compensation Board (WCB), even if your employers are not paying WCB premiums. For more information, see the section on Workers' Compensation, or contact the WCB number printed at the end of this booklet.

How often must my employer pay me?

Your employers must pay you at least twice a month. If you start work at the beginning of the month, you should be paid half-way through the month for all the work you have done up to then. Your next payday would be at the end of the month.

You can also be paid every week or every two weeks if this is what you arrange with your employers. Your employers cannot be more than eight days late paying you.

Who keeps a record of my hours and wages?

Your employers should give you a written record of your wages. This is called a pay slip. The pay slip should show:

- the number of hours or days you worked during the pay period;
- your wage rate (e.g. \$8.00 per hour);
- any bonuses or other earnings;

- the number of hours of overtime you worked and the overtime rate for those hours;
- the amount and reason for all deductions from your pay;
- the amount of wages you earned before any deductions (called "gross wages"), and
- the actual amount of pay you receive after deductions (called "net pay").

It is very important that you keep all of your pay slips. They are proof of your wages. They also show how your wages are calculated so you can check that your employers are paying you the right amount.

If your pay and deductions are exactly the same every payday, you only need to get a pay slip the first time you are paid, but it is a good idea to get one every time. If there is ever any change in your pay, insist that your employers give you a new pay slip showing the changes.

If you are getting pay slips but do not agree with some of the information your employers put on them, discuss this with your employers. Try to get them to change the pay slip. If they won't, attach a note to the pay slip showing the information you believe is accurate. It would be best if you could get your employers to sign this note, but even if they won't, you should write down your concerns as soon as they occur. Eventually, if the problem is serious or if it continues, you may have to consider changing employers, or making a formal complaint.

In addition to a pay slip, your employers should keep the following records from each pay period:

- days worked;
- overtime hours;
- vacation days taken; and

- statutory holidays – wages paid, hours worked, or days taken off instead of the holiday.

Employers are legally required to keep these records, but often they do not. **It is very important that you keep accurate records that you write *at the time you are working*.** You will need this information if your employers don't give you a pay slip, or if you later want to make a claim for your rights at the ESB or in court. If you ever have a problem with your employers, the person dealing with a complaint is more likely to believe you if you have written proof. It is important to keep a record of:

- the hours you work each day;
- what you did;
- how much you were paid;
- when you were paid; and
- any work breaks taken.

How must my employers pay me?

Your employers can pay you in cash or by cheque. If you agree in writing, they can also deposit money directly into your bank account.

If your employers refuse to give you a signed pay slip when they pay you, ask them to pay you by cheque, not in cash. It is hard to prove the amount someone paid you by cash. If they pay you by cheque, you can photocopy it before you cash it to prove the amount paid. It is a good idea to make a photocopy of at least your first pay cheque so you have a record of your wages, in case you and your employers disagree about how much you were paid.

► Deductions from your salary

What is a salary deduction?

A deduction is any amount of money your employers take from your wages. The amount and purpose of each deduction must be shown on your pay slip. Only certain types of deductions are legal.

The total wages your employers owe you before deductions is called your **gross pay**. The amount you actually receive (after deductions) is called your **net pay**.

When you start a new job it is very important that you and your employers are clear about:

- the gross pay you will be paid;
- the deductions your employers will be entitled to take off your salary; and
- the net pay you will take home at the end of the day.

Some live-in caregivers have serious problems when they get their first cheque and find out that the amount is not what they thought it would be. Usually this happens because it was not clear whether the salary the worker agreed upon was gross pay, or net pay.

To avoid this, your written contract with your employers should include exact information about your wages and what your employers will deduct.

What can my employers deduct from wages?

The law says your employers **must** deduct money for these three things:

- Income Tax (both federal and provincial);
- Employment Insurance (EI); and
- Canada Pension Plan (CPP)

Your employers also have to contribute some of their own money to EI and the CPP on your behalf. This is separate from your contribution and cannot be taken off your wages.

What if my employers do not make deductions?

The government collects money for CPP, EI, and income tax from everyone working in Canada. The law says your employers must make these deductions and send the money to the government. They cannot keep any of this money for themselves.

If you think your employers have not sent in the correct amounts for CPP, EI, or income tax, discuss this with them, or check at the Customs and Revenue Agency (CRA).

If your employers are not sending in all the proper deductions you can make a complaint to CRA. Fill out an “Employee Complaint Form” and mail it to the address on the form. The WCDWA has these forms and can help you make a complaint if this happens to you.

If your employers have not made the right deductions, the law says they must still pay your share of the CPP and EI deductions even if these amounts were not taken off your salary. Unfortunately, even if it was your employers’ fault that your income tax was not sent to CRA, you will have to pay any income tax owing if there is no written agreement that your employers will pay your income tax. As a result, it is important that this be stated clearly in your employment contract.

What are my employers not allowed to deduct from my wages?

Except for CPP, EI, and income tax, your employers cannot deduct anything else from your wages without your written permission or an order from a court. For example, the *ESA* says you do not have to pay for anything you break or damage while you are working. (Of course, your employers can take you to court to try and make you pay if you break something that belongs to them).

If your employers have made, or plan to make, a deduction you don't agree with, ask them to explain it to you. If you don't agree with their explanation, call the ESB or the WCDWA.

What about deductions for room and board?

Most employers of live-in caregivers charge room and board. Usually they take this amount off your net pay (i.e., after all other deductions have been made). If your employers want to deduct your room and board directly from your pay, you must agree to this in writing. You can agree to this in your employment contract, if you want.

The amount your employers deduct for room and board depends on what you both agree on. The law in B.C. says that employers cannot charge a live-in caregiver more than \$325 per month for room and board. Immigration says that people in the live-in caregiver program should have a private room and three meals a day but, unfortunately, there is no law about what you must get for room and board. This depends on what you can arrange with your employers.

Make it clear in your employment contract what you are paying for and what arrangements you want when you are away on holidays or weekends. If these terms are written into your contract and your employers do not follow them, you can try to enforce your contract in court.

What about deductions for Workers' Compensation?

Your employers must pay Workers' Compensation premiums on your behalf. They are not allowed to deduct this from your pay. There is more information about Workers' Compensation later in this section.

What taxes do I have to pay?

Every year you must pay income tax on the wages you earned in the past year. Usually, your employers deduct these taxes from your salary and send them to CRA. At the end of every year, you have 4 months to send in your income tax return to CRA. For example, you must send your income tax return to the government by 30 April 2005, for any money you earned in 2004. Once CRA has calculated your total tax liability for the year, you may be entitled to a tax refund.

Your employers must give you a T-4 slip for each year you do any work for them. A T-4 slip is a summary of the money they paid to you during that year. You must receive a T-4 by the end of February in the year following the year for which you are paying taxes. For example, by 28 February 2005 you must receive T-4 statements from all employers you worked for in 2004.

Even if you leave a job before the end of the calendar year, you will not usually receive your T-4 until February of the following year. You can get an income tax

form and a guidebook on how to fill out the form at any post office. If you need help filling out the form, you can call CRA or contact the WCDWA.

Some people must also pay taxes in their home country. If you do not know if you owe taxes in your home country, check with your embassy here in Canada.

What if my employers do not give me a T4?

If your employers do not give you a T-4 slip by the end of February, contact CRA. They may be able to help you get your T-4. If they cannot, you must still file an income tax return by the end of April. Calculate what you believe you earned and tell CRA what taxes you think were paid. You will not get in trouble from CRA if you do not have a T-4, but if you do not file your income tax by April 30, you may have to pay interest on any taxes that you owe.

► Statutory holidays and vacation

What are statutory holidays?

In British Columbia, live-in caregivers are entitled to have a paid day off on all statutory holidays, provided that they have been with their current employer for at least 30 calendar days before the statutory holiday, *and* provided that they have worked at least 15 out of the 30 days preceding the statutory holiday, OR they worked under an averaging agreement at any time within that 30 day period.

To determine what you should be paid on a statutory holiday, you must calculate your “average days pay”, as follows: add together all regular (not overtime) wages you were paid by your employer over the

last 30 days and divide that figure by the number of days you worked. If you work on the statutory holiday, you are entitled to be paid the average days pay, *plus* 1.5x your regular salary for each of the first 12 hours you work on the statutory holiday, *plus* 2x your regular salary for all hours worked after the first 12 hours. If you do not work on the statutory holiday, you should be paid just an average days pay.

The following are statutory holidays under B.C.’s *ESA*:

New Year’s Day	January 1 st
Good Friday	March or April
Victoria Day	3rd Monday in May
Canada Day	July 1 st
B.C. Day	1st Monday in August
Labour Day	1st Monday in September
Thanksgiving Day	2nd Monday in October
Remembrance Day	November 11 th
Christmas Day	December 25 th

If you have worked for less than 15 of the last 30 calendar days, you may not be entitled to statutory holiday pay under the *ESA*. If you are unsure whether you are entitled to statutory holiday pay, or if you need help calculating what you should be paid, contact the WCDWA or the ESB for help.

What if I get a different day off instead of the statutory holiday?

It is possible for your employers to substitute another day for a statutory holiday, but only if you agree. If such an agreement is made, the appointed holiday will be treated exactly as if it were the statutory holiday for the purpose of the *ESA*. In other words, you will still be entitled to have that day off with pay, or if you work on that day, you will be entitled to pay at the statutory holiday rates.

What if the statutory holiday is on a day I usually have off?

If you are eligible for statutory holiday pay, your employers must pay you for the statutory holiday or give you a different day off, even if the statutory holiday falls on your regular day off.

What are annual leave and vacation pay?

Employees who have worked 12 consecutive months for their employers are entitled to receive at least two weeks annual vacation, whereas employees who have stayed at their jobs for five consecutive years are entitled to at least three weeks annual leave.

The *ESA* requires employers to ensure that the employee takes the annual vacation within 12 months after completing the year of employment. The *ESA* states that the vacation time must be taken in periods of one or more weeks, so employers cannot compel you, for example, to use up your vacation days by taking just one or two days off at a time.

Employers are also liable for vacation pay in the amount of 4% of the employee's total wages during the year of employment, as long as the employee has worked a minimum of five calendar days for that employer. Where the employee has served an employer for five consecutive years, the rate of vacation pay is increased to 6% of the employee's total wages earned in the calendar year.

Vacation pay must be given to the employee at least seven days before the employee intends to take his or her annual leave or, if the employer and employee have agreed in writing, on each of the employee's scheduled paydays.

Any unpaid vacation pay must be paid out to the employee at the termination of employment.

Can my employers take deductions off my vacation pay?

Yes, your employers must take CPP, EI, and income tax off your vacation pay.

When can I take my vacation?

Your employers must let you take your vacation sometime within the 12 months following your work year.

If your employers agree, you can take your vacation before the end of the work year. If you do this, your employer will record this vacation as an advance on your vacation. The *ESA* does not allow you to waive your vacation, or to wait for more than a year after you earned the vacation to take it.

If you want to split up your vacation and take off a day here and there, you can do that as long as your employers agree. However, if you don't want to do this, your employers cannot make you take a vacation in periods shorter than one week.

What if I leave my job part way through the year?

If you leave your job part way through the year and have not yet taken your vacation, your employers owe you vacation pay, regardless of the reason. Your employers must pay you 4% of the total wages you earned so far that year (6% if you have worked for them more than five years), as well as any other salary they owe you.

Who keeps a record of my vacations?

Your employers must keep a record of how long you have worked at the job, the dates of any vacations, and the amount of any vacation pay. It is a good idea to keep your own records too.

What if I go with my employers on their vacation?

Sometimes employers will ask you to go along with them on their vacation. If your employers take you along so you can look after the children, then you are working. Even if you go to Hawaii and your employers pay for your airfare, it still counts as work if you are looking after children. The law is that you must be paid for all hours you work. If you are scheduled for a full eight hour day, the *ESA* says that you must generally be paid for a minimum of four hours, even if you work less than four hours that day. If you work while on “vacation” with your employers, remember that you have a right to your own vacation another time.

The best way to avoid problems is to be very clear with your employers about what each of you is agreeing to before you go on such a vacation with your employers.

Am I on vacation when my employers go on vacation?

If your employers are taking their vacation and ask you to take your vacation at the same time, that will be a vacation for you as long as you are free to do what you like and you do not have to stay in the house. This can be frustrating, particularly if you do not wish to take a vacation at this time, but you cannot force your employers to pay you if you are not being asked to work.

If your employers go away on vacation and leave you to look after the house or do other work, that does not count as your vacation. If you are not free to do what you want, you should be paid your regular wages and take your own vacation another time.

It is best to talk with your employers before they go on vacation about whether they believe you are on vacation while they are away. If they say you are on vacation, but still ask you to do work for them, explain that this is not a vacation and ask to be paid for your work. Contact the WCDWA if you require assistance.

► Leaving your job

There are a wide variety of reasons why an employer or employee may chose to end an employment relationship. For the most part, the *ESA* does not trouble itself with the *reasons*, except where the employer has failed to give the employee adequate notice, and where the employee has not been paid what the *ESA* calls “compensation for length of service” (CLOS).

What is “notice”?

Employers are generally required to give employees “notice” that their job is coming to an end. The purpose of notice is to allow employees time to find alternate employment and, for live-in caregivers, time to find a new place to live. The *ESA* creates certain penalties where employers fail to provide adequate notice. However, where employers can prove that they have “just cause” for ending an employment relationship, they can sometimes avoid penalties for failing to give proper notice.

If my employers end my job do they have to give me notice?

To determine whether your employers must give you notice, it is necessary to know why they want you to stop working for them and how long you have worked for them:

- If you have worked less than three months for your employers, your employers do not legally have to give you any notice.
- If you have worked longer than three months but less than a year, your employers must give you at least one week notice, unless they have a good reason ("just cause") for firing you (see the section on just cause).
- After you have worked for your employers for a year, you are entitled to receive two weeks notice before your job is ended. After three years employment you are entitled to receive three weeks notice. Each additional year you work after three years entitles you to an additional weeks notice, up to a maximum of eight weeks. For example, if you have worked for five years, your employers must give you five weeks notice.
- If you are not doing your job properly, your employers may be able to ask you to leave without giving you notice. However, before they do that, they should first let you know what you are doing wrong and give you a chance to improve.

If you are fired without notice, you should contact the WCDWA or the ESB to find out what to do.

Can employers give me money instead of notice (i.e. what is "compensation for length of service")?

If your employers end your employment and they want you to leave right away, they have the option of paying you money instead of giving you notice. This is called "compensation for length of service" (CLOS) or "severance pay". Your employers can (and many do) avoid paying compensation by asking you to work through to the end of the notice period. The following rules can be used to determine how much compensation for length of service you are owed:

- If you have worked less than three months for your employers, your employers do not have to pay you CLOS.
- If you have worked longer than three months but less than a year, your employers must pay you at least one week wages, unless they have a good reason ("just cause") for firing you (see the section on just cause).
- After you have worked for your employers for a year, you are entitled to receive two weeks wages. After three years employment you are entitled to receive three weeks wages. Each additional year you work after three years entitles you to an additional week wages for CLOS, up to a maximum of six weeks. For example, if you have worked for five years, your employers must give you five weeks wages for CLOS.

If you *voluntarily* leave a job, CLOS will not ordinarily be payable. In certain extreme cases, where the conditions of work were so intolerable, it is possible to make a claim for CLOS. An employee who feels she had no choice but to leave her job might argue that she is entitled to CLOS even though she was not formally told to leave by her employer. Please contact the WCDWA for more information.

Do I have a right to quit, and do I have to give notice or be released?

You have a right to terminate your employment, and this right to terminate employment is virtually absolute, subject only to the terms of your contract.

As a live-in caregiver, the *ESA* does not prevent you from saying “I am quitting now,” and leaving the job right away. You do not have to be “released” by your employers. Just remember that if you do this, your employers might give you a bad job reference, and it might be difficult for you to complete the Live-in Caregiver Program work requirements. That said, leaving your job may be the only option if the conditions of work are intolerable.

In many cases you will want to leave right away, without giving notice, even if your employment contract says you have to. For example, if you are afraid your employers will hurt you or make life uncomfortable for you when you give your notice, you can leave without giving notice. You can always explain the situation if another employer asks why you did not give notice, or why you don’t have a good reference from your previous employer.

If you want advice about leaving a job, call the WCDWA.

What is “just cause”?

If your employers can prove that you were dismissed for “just cause”, they don’t have to give notice OR pay you CLOS. To prove just cause, your employers must show that you did something *seriously* wrong, and that they had a good reason to end your employment. It is difficult to exactly describe what will constitute just cause in a given case. Certain types of conduct may constitute just cause if committed only once – theft, fraud, harassment of

co-workers, or destruction of property (on purpose). Other behaviour could lead to a finding of just cause if continued over a period of time, such as chronic absenteeism or lateness, or continuously unsatisfactory work.

Here are some examples of what is not just cause for employers to fire you without notice:

- your employers do not like you;
- you insist on your legal rights;
- you are sick or hurt;
- your contract expired;
- your employers decided to hire somebody else they liked better;
- you are looking for another job; or
- your employers cannot afford to pay you

Your employers can end your job for any of these reasons, but if they do, they must give you the proper notice or CLOS, as outlined in the previous sections.

What if I am too uncomfortable to stay at my job after I give notice?

Usually, just being uncomfortable is probably not enough reason to require your employers to pay you CLOS. Sometimes it is reasonable to ask for CLOS even though you are the one who left the job. For example, if you quit because your employers have sexually or racially harassed you, you should be able to get CLOS. If this has happened to you, call the WCDWA, the ESB or the Human Rights Tribunal for more information.

What if I believe that I am being discriminated against?

The *Human Rights Code* of British Columbia prohibits discrimination in employment on certain grounds. In particular, an employer cannot refuse to employ a person, nor can they end a person’s employment, because

of the race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person, or because that person has been convicted of a criminal offence that is unrelated to the employment or intended employment of that person.

If you believe that you have been discriminated against in the course of your employment, it is important that you make a complaint at the human rights tribunal within six months of the alleged violation. If your complaint is not filed in time, you may not be able to get any legal remedy. If you require advice about the human rights complaint process, contact the WCDWA, the Human Rights Tribunal, or the Human Rights Coalition. Contact information is listed at the end of this booklet.

When do my employers have to pay the wages they owe me?

If you quit a job, your employers have 6 days to pay all wages (plus vacation pay). If your employers end your job, they must pay all wages they owe you (including vacation pay) within 48 hours of ending your job.

Your employers cannot change your wages or any other condition of your employment just because notice has been given.

What if I work after the period of notice ends?

If your employers say your job will end on a certain day but later ask you to work past that day, then it is as if they never gave you notice. They must give you notice again if they want to dismiss you from the job.

Is my vacation part of the two-week notice period?

If your employers end your job, they cannot make you take your vacation during the notice period. Your vacation time is separate and you should receive vacation pay when you leave your job.

What is a Record of Employment?

A Record of Employment (ROE) is a document that your employers get from the government to show how long you worked for them and how much you were paid. Your employers must give you an ROE whenever you leave a job. They should give it to you within 5 days after you leave your job.

Your ROE is your best record of the time you worked, and it can be used if/when you apply for Employment Insurance (EI) benefits, or as proof that you have worked in Canada for two years when you apply to Citizenship and Immigration Canada for permanent residence.

Unfortunately, many employers do not give ROEs right away. Because this document is important for you at Immigration, you should try to get it. If your employers do not give you an ROE within 5 days after you leave your job, remind them that it is their duty to give it to you. If this doesn't work, try writing them a letter (keep a copy!) and send it by registered mail. If you still don't receive a reply, contact the WCDWA for assistance. If you intend to apply for EI but you cannot get your ROE, you should still apply to HRSDC within four weeks of leaving your job, even without an ROE, otherwise you may become ineligible for EI. Just explain to HRSDC that your employers have not yet given you an ROE.

How can I find a new job?

Here are a few ways you might find a new job:

- Look at newspaper advertisements, or put your own ad in the community newspaper;
- Tell friends, neighbors and family that you are looking for work;
- Contact employment agencies, but remember:
 - it is illegal in B.C. for agencies to charge you any money to find an employer, and
 - live-in caregivers cannot begin work with a new employer until they have a work permit, even for a “trial period”.
- Contact your local Human Resources Centre;
- Make a poster and put it up at local hospitals, community centres or grocery stores; and
- Prepare a resume with your work experience.

► Government benefits

What is Workers' Compensation?

The Workers' Compensation Plan is a provincial government insurance policy that pays compensation to those who are injured or become ill because of workplace accidents or exposure.

Your employers must pay money into this plan every month. This money cannot be taken from your wages – it is the responsibility of your employers to pay. However, even if your employers have not paid money to the Workers' Compensation Board (WCB), you have the right to make a claim if you become seriously ill or are injured during the course of your employment duties.

If you have been injured at work, or have developed a serious illness, you should report a claim immediately to the WCB. For free and expert advice on WCB claims, contact a Workers' Advisor. Website addresses and telephone numbers for the WCB and the Workers' Advisors are listed at the end of this booklet.

What is Employment Insurance (EI)?

The purpose of Employment Insurance (EI) is to pay a portion of a worker's salary during temporary periods of unemployment. Live-in caregivers pay into the government's EI fund, through statutory deductions on their gross income, when they are working. If you find yourself out of work because you are seriously ill, or because you are laid-off from your job through no fault of your own, the government may agree to use the fund to pay you a portion of what you would have earned if you were working.

Who can get EI?

To be eligible for regular EI benefits, you must have worked a certain number of hours in Canada, and you must have paid employment insurance premiums for a certain length of time. As of January 2005, people in Vancouver and the Lower Mainland will be eligible for EI after they have worked 665 hours in a year. If you are applying from outside the Vancouver area, check with your local HRSDC office about the number of hours required for eligibility. This varies from region to region.

In addition, you must be able to prove the following things, depending on what type of benefits you are applying for:

- If you are applying for REGULAR benefits, you must prove that you lost your

job through no fault of your own (e.g., your employers laid you off because they could no longer afford a live-in caregiver).

- If you are applying for SICKNESS benefits, you must prove that you are sick or injured and will be out of work for longer than two weeks.
- If you are applying for MATERNITY or PARENTAL benefits, you must prove that you are pregnant or are adopting a child and are taking a maternity or parental leave from work.
- If you are applying for COMPASSIONATE CARE benefits, you must provide medical evidence to prove that you have a family member who has a serious medical condition with a significant risk of death.

A person who quits her job or who is fired for “just cause” is not eligible for EI (see the section above on just cause). But, if you must quit a job for a good reason (for example, your employers have been harassing you, or have not been paying you for all the hours you work), then you have a strong argument that you are eligible for EI. If this happens to you, contact the WCDWA.

How do I apply for EI?

You can apply for EI at the nearest office of HRSDC. These are listed in the blue pages of the phone book under “Human Resources – Ministry of.”

What do I need to take with me to apply for EI?

- your Social Insurance Number (SIN);
- a Record of Employment (ROE) for each job you have held during the past 52 weeks; and

- your Employment Authorization (work permit).

If your employers do not give you an ROE, make a complaint at your HRSDC office. You have a maximum of four weeks from your last day at work to apply for regular EI benefits. Remember, even if you don't have your ROE, you should apply right away for EI because the papers take quite a bit of time to process.

What do I have to do while I am on EI?

Once you qualify to receive EI, it might take a number of weeks before you actually receive a cheque. You can choose to have the money deposited directly into your bank account, but you will have to sign a consent form at the HRSDC office. In order to keep getting EI payments, you must be looking for work and you must be ready and willing to work (unless you are sick or pregnant).

Every two weeks while you are on EI you will be expected to call in to a telephone system called TELEDEC to inform HRSDC that you are looking for work. You will be asked questions about whether you worked and received pay during the two week reporting period. If you have worked, you must give information about the wages you received; if you have not, you need only report that you are “ready and willing” to work.

Once you start working, all you need to do is stop calling TELEDEC and your EI benefits will stop. It is against the law to continue collecting EI after you have started working and receiving your salary, and HRSDC will force you to give back any money that they have overpaid you.

How much will I be paid by EI?

Even if you qualify for regular EI benefits, you will not be paid any money for the first two weeks after you stop working. Once your qualification period begins, you will normally be paid 55% of what you normally earn. For example, if you earned \$200 per week, you would get about \$110 per week in EI payments.

How long can I get EI?

Regular EI benefits may be paid for as many as 45 weeks in a 52-week period. The number of weeks available will depend on how long the applicant worked before claiming EI, where the applicant lives, and whether the applicant has received EI earlier in the same year. If you receive compensation for length of service when you leave your job, this will also reduce the time you are paid EI benefits.

Sickness benefits last up to 15 weeks. Maternity benefits are also 15 weeks, but they can be combined with sickness and parental leave benefits up to a maximum of 50 weeks. Compassionate Care benefits can be up to a maximum of six weeks. For more information about EI, contact the information line listed at the end of this booklet.

Can I apply for welfare?

If you are a live-in caregiver and you apply for welfare (also called “income assistance”), you risk losing the right to work in Canada. You also may not be able to get your landed status when you apply, because immigration could say that you are unwilling or unable to support yourself.

If you currently do not have a place to live and are not able to support yourself, please call the WCDWA instead of applying for welfare. We will refer you to other organizations that may be able to help provide you with temporary shelter until you are able to find employment.

Because applying for welfare could have such serious consequences, please contact the WCDWA before you apply.

How do I get medical insurance?

It is very expensive to go to a doctor unless you have medical insurance to pay for it. The B.C. government has a medical insurance plan called the Medical Services Plan of B.C. (MSP), which pays for medical expenses. You can join the MSP if:

- you have been in B.C. for three months;
- you have a valid work permit; and
- you (or your employers) pay a monthly fee of \$54 (as of January 2005)

To get MSP coverage, you can get an application form by writing to or phoning MSP. The contact information for MSP is provided at the end of this booklet. Mail the completed MSP application form along with a photocopy of your work permit.

If for some reason you are not eligible for MSP, or if you have difficulty obtaining MSP coverage, contact the WCDWA. We may be able to help you get MSP, or we can give you advice about where to get free medical help.

► Problems with employers

This booklet deals with problems you may have claiming your wages or other benefits from your employers. If an employer harasses you or assaults you, please contact the WCDWA, the Human Rights Tribunal or the B.C. Human Rights Coalition at one of the numbers listed at the end of this booklet.

How can I avoid employment problems?

As mentioned earlier, the *Employment Standards Act (ESA)* compels your employers to give you a copy of your employment contract. The contract must state clearly the conditions of your employment, and it must be signed by you and by your employer.

The more issues you address clearly in your contract, the fewer problems you are likely to have later on. If your employers treat you unfairly, you have a better chance of getting what you deserve if your contract clearly lists your rights.

What can I do about problems with my employers?

When you have a problem with your employers there are a number of things you can do to try and solve it:

- Talk to your employers. Tell them what is wrong and ask them to change it, or write them a letter and keep a copy.
- Keep a record of the days and hours you work. You can also ask your employers to sign your record of hours.
- Keep a diary of any problems you have with your employers.
- Get in touch with groups that can help you, such as the WCDWA.

- Call the employment agency that got you the job and ask them to talk to your employers. Suggest that they write your employer a letter and ask them to give you a copy for your records.
- Complain to the ESB.
- Change jobs; you do not have to stay with your employers if they do not treat you fairly.

What do I do if my employment agency is part of the problem?

If your employment agency is part of the problem, be sure to keep a record of any correspondence you have with them. For example, if you were charged a fee for placement with an employer, keep the receipt. If no receipt was provided, keep any e-mail in which the agency told you what the fee would be, or get letters from witnesses who delivered money to the agency office.

In B.C., all employment agencies are required to operate with a license, and they are prohibited from charging employees for their services. If you think that your agency violated these rules, you can make a complaint to the ESB. If you succeed in your claim, you may be able to recover the money that they charged you. As with all employment standards complaints, there are strict time limits for filing complaints – just six months from the date of the contravention. For more information, or for assistance, contact the WCDWA.

Can I get help from the Employment Standards Branch (ESB)?

You can call the ESB with questions about employment problems. When you call the ESB for information, you do not have to give your name or any other personal

information. The services of the ESB are free; you do not have to pay when you ask a question or make a complaint.

Detailed contact information for the ESB can be found at the end of this booklet.

How do I make a complaint?

If you are not paid properly, first make sure that your employer knows what you should be paid. If the employers understand the law but do not agree to pay you what you are owed, you can file a “Complaint and Information Form” at your local ESB office. Either take the form in or send it to the office nearest you. The addresses of all the ESB offices in B.C. are listed at the end of this booklet. The complaint form can be downloaded from the ESB website, or picked up at the ESB offices. We also have copies at the WCDWA office.

How long do I have to make a complaint?

Employment standards complaints must be filed very soon after the problem occurs. If they are filed late, you may not be able to succeed, even if you can prove your case.

If you bring an employment standards complaint while still working for your employer, your complaint must be filed within six months after your employer violates the *ESA*. If you have left your job, you must file your complaint within six months of your last day of work.

How much of my wages can I recover if I make a complaint?

Even if an employer has violated the *ESA* for two years before the complaint is filed, the *ESA* only allows an employee to recover lost wages for the six month period prior

to a) the date the job ended or b) the date the complaint was filed (whichever is earlier).

If you want to recover unpaid wages prior to this six month period, a separate civil action must be filed in Provincial or Supreme Court. Court actions will generally be for “breach of contract” rather than breach of the *ESA*, therefore they can be difficult to win if you do not have a copy of your written contract.

The remedies available in a breach of contract action will be different than those described in this booklet. If you need assistance or information about bringing a complaint in court or at the ESB, please contact the WCDWA.

How can I prove that I am telling the truth?

One of the most difficult things to do is to prove that you worked the hours you claim. Often, in a dispute between you and your employers, the ESB has only your word against your employers’. The ESB is more likely to believe the person who has some proof to support what they say.

Because proof is so important when you have a dispute with your employers, it is worthwhile planning ahead. Even if you do not have a problem now, it is good to keep records so that you will have them if a problem develops later.

Here are some of the records and papers that could be useful in proving a complaint against your employers:

- your written contract with your employers about the terms of your work;
- a diary in which you write down every day when you worked and what you did during the day;
- copies of any pay slips or pay cheques your employers give you;

- your bank book (with monthly deposit entries);
- receipts for any money that you pay to your employers (if they will not give you a receipt, then pay by cheque or money order so you have proof);
- any notes or letters you receive from your employers (e.g. list of job duties, schedule of hours, reminders, etc.);
- doctors notes;
- messages on your voicemail;
- photographs of your living conditions if this is a problem; and
- in some cases, a tape recording might help you to prove your case.

In addition to written proof, sometimes a witness can back up your story. For example, a friend or someone else may see the room that you must use as your bedroom, or they might see how your employers treat you. In such cases, be sure you know how to contact the witness, and that you give their name to the ESB to help support your complaint.

How does the ESB investigate a complaint?

Once you make a complaint, you will probably have to wait a few weeks before you get a letter from the ESB telling you the name of the officer assigned to your case. The officer will talk to you and your employers to try to get both sides of the story.

The ESB attempts to resolve employment disputes in one of the following ways:

Mediation

Both parties in the employment dispute are generally asked to attend a mediation, either on their own or with

representatives. At the mediation, officers try to arrange a compromise or settlement in a calm and casual atmosphere.

The officer may suggest that you accept less money so that you will be sure to get some money. If you want help deciding what to do, call the WCDWA.

Adjudication

If the parties do not reach a settlement at mediation, the matter will be set down for adjudication. An adjudicator will review the evidence brought by both parties, consider the relevant sections of the *ESA* and Regulations, and make a decision as to what or whether the employer must pay.

If the adjudicator finds that there has been a violation of the *ESA*, the employer will also be forced to pay penalties to the ESB, in addition to the amount they are ordered to pay their employee.

How do I get any money I win?

If the ESB decides that your employers owe you money, the officer assigned to your case will help you get the money from your employers. Sometimes, it isn't easy for the ESB to collect the money for you. The best way to help the ESB is to have as much information as possible about your employers' finances – where they bank, where they work, whether they own property, or even what their bank account numbers are (these are displayed at the bottom of your pay cheque).

► Conclusion

Now you know what your employment rights are as a live-in caregiver in Canada. The next step is to make sure that you and your friends enforce your rights. If you or your friends need more information or assistance, be sure to contact the WCDWA at (604) 669-4482.

► Resources

Employment Insurance (EI)

Find your local HRSDC by looking up “Employment” in the “Government of Canada” section in the blue pages of your phonebook. This information is also listed on the HRSDC website at <http://www.hrsdc.gc.ca>

General Inquiries:

1-800-206-7218 (toll free)

TELEDEC:

1-800-531-7555 (toll free)

Human Rights Complaints

Information about the human rights complaint process can be obtained at <http://www.bchrt.bc.ca/>, or by telephone at 1-888-440-8844 toll free (in B.C.). Employees who require legal information about the human rights complaint process can contact the Human Rights Coalition at <http://www.bchrcoalition.org/>, or by phone at 1-877-689-8474.

Medical Services Plan of B.C.

P.O. Box 9035

Station Provincial Government

Victoria, BC V8W 9E3

www.healthservices.gov.bc.ca/msp

Vancouver area:

(604) 683-7151 (automated service)

(604) 296-4677 (call centre)

Victoria area:

(250) 382-8406 (automated service)

Other B.C. locations (toll free):

1-800-663-7100 (automated service)

Workers' Compensation Board of B.C. (WCB)

P.O. Box 8940 Stn. Terminal

Vancouver, BC V6B 1H9

www.worksafebc.com

Lower Mainland:

(604) 231-8888

1-888-967-5377 (toll free)

Occupational Disease Services:

(604) 276-3007

1-888-967-5377 x3007 (toll free in BC)

For free, impartial advice on WCB claims, contact a *Workers' Advisor* at:

www.labour.gov.bc.ca/wab

Lower Mainland: (604) 713-0360

Appendix:

Employment Standards Branch Addresses

In the Lower Mainland:

210 - 4946 Canada Way

Burnaby, BC V5G 4J6

Phone: 604-660-4946

Fax: 604-660-7047

Or

101-10475 138 Street

Surrey, BC V3T 4K4

Phone: 604-586-4251

Fax: 604-586-4249

Or

Call Toll-free: 1-800-663-3316

Web: www.labour.gov.bc.ca/esb

In other parts of B.C.:

2500 Cliffe avenue

Courtenay, BC V9N 5M6

Phone: 250-897-7520; Fax: 250-334-1420

302 - Skinner Street

Nanaimo, BC V9R 5E8

Phone: 250-741-5833; Fax: 250-741-5832

220 - 546 St. Paul Street

Kamloops, BC V2C 5T1

Phone: 250-828-4516; Fax: 250-828-4518

107 - 1664 Richter Street

Kelowna, BC V1Y 8N3

Phone: 250-861-7404; Fax: 250-861-7428

1577 7th Avenue

Prince George, BC V2L 3P5

Phone: 250-565-6120; Fax: 250-565-7110

400 - 3960 Quadra Street

Victoria, BC V8V 1X4

Phone: 250-952-4738; Fax: 250-952-4754

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This publication explains the law in general. It is not intended to give you legal advice on your particular problem. Because each person's situation is different you may need to get legal help.