

EMPLOYMENT STANDARDS CODE

INTRODUCTION

The public often confuses the [*Labour Relations Code*](#) and the [*Employment Standards Code*](#). Consequently, the public may also confuse the roles of the Labour Relations Board and Employment Standards. This policy describes:

- the differences between the two pieces of legislation;
- the potential overlap between the *Employment Standards Code* and collective agreements; and
- how to direct callers in particular situations.

LABOUR RELATIONS CODE vs. EMPLOYMENT STANDARDS CODE

The *Labour Relations Code* addresses the relationship between employers and trade unions and, to a lesser degree, the relationship between trade unions and their members. It provides a labour relations framework and applies primarily to unionized worksites.

In a unionized worksite, an employee's terms and conditions of employment are normally outlined in a collective agreement. Disputes over the interpretation, application, operation or contravention of the collective agreement are addressed through the grievance and arbitration process.

The *Employment Standards Code* outlines minimum terms and conditions of employment under the law for almost **all** employees. This means the *Employment Standards Code* creates a floor below which no one may go even if a collective agreement says otherwise. Employment Standards provides a resolution mechanism for disputes.

EMPLOYMENT STANDARDS CODE AND COLLECTIVE AGREEMENTS

One reason for the public's confusion may be that the floor created by the *Employment Standards Code* applies to almost all workers, including those covered by collective agreements. Normally, the *Employment Standards Code* outlines minimums related to wages, pay periods, vacations, termination notice, etc. Collective agreements normally include better provisions (e.g., higher wages, longer vacations). What this means is that, in some cases, both the collective agreement and the *Employment Standards Code* may appear to apply to a situation.

DIRECTING CALLERS

The first thing to determine from a caller is whether the caller is represented by a union or not.

- **No:** If no union represents the caller and the caller's concern relates to minimum employment standards, you should refer them to Employment Standards at (780) 427-3731.

- **Yes:** If a union represents them, they should **normally** contact their union for assistance although there are some exceptions (see below).

Callers represented by a union may have already called Employment Standards and been directed to contact the Board. Before sending them on to their union, you should learn more about their concern (thereby defusing their frustration about the government phone shuffle) and provide them with some additional information about the process before them. The following scenarios are common.

Dispute Covered by the Collective Agreement

If a dispute is covered by a collective agreement, the caller should contact their union and file a grievance. The grievance process outlined in the collective agreement should be used to remedy the matter. Advise the caller to act quickly as most collective agreements have a deadline (e.g., 10 days) for filing grievances.

If a caller is uncertain whether a matter is covered by a collective agreement, they should read their collective agreement or contact their union to find out. If the matter is not covered by a collective agreement, they may then wish to contact Employment Standards (see below).

If a caller has missed the timelines in the grievance process **and** the *Employment Standards Code* addresses the matter, direct the caller to contact Employment Standards which **may (or may not)** decide to accept the complaint.

Matter not Covered by the Collective Agreement

If a matter is not covered by the collective agreement, the matter **may** fall under the [*Employment Standards Code*](#). For example, a collective agreement may be silent on the matter or there may be no collective agreement in force. The *Employment Standards Code* outlines minimums in the following areas:

- minimum wages,
- payment of earnings,
- hours of work,
- overtime,
- general (statutory) holidays,
- vacations,
- maternity and parental leaves,
- termination,
- layoff and recall, and
- the employment of children.

If the caller's concern relates to one of these areas, refer them to Employment Standards. Advise them to explain to the person they contact that:

- although they are represented by a union, their collective agreement is silent on the matter;
- in this case, the [Employment Standards Code](#) may apply;
- they require information about the minimums in the *Employment Standards Code*; and
- they may need to access Employment Standards' dispute resolution mechanism.

If the matter is not covered by either collective agreement or the *Employment Standards Code*, the caller's options diminish. Depending upon the nature of the complaint, the caller may be able to file a complaint with the Human Rights Commission. The caller may also wish to seek legal advice prior to accepting the employer's action.

Collective Agreement Provides Less Than Employment Standards

Occasionally, a collective agreement will provide less than the minimum(s) outlined by the *Employment Standards Code*. Collective agreement provisions providing for less than the minimum standards are against public policy and that portion of the agreement is void.

In this case, the caller should contact their union to file a grievance. An arbitrator has the ability to apply the minimum standard provided for by the *Employment Standards Code* when interpreting a collective agreement. A union may be unaware that provisions providing less than the minimums are void and they can file a grievance on such a matter. They may also be unwilling to do so.