

June 6, 2023

Mary Walsh

Executive Director

P.O. Box 9570 Stn Prov Govt

Victoria, B.C. V8W 9K1

Mary.Walsh@gov.bc.ca

Dear Ms. Walsh:

Re: Timely Notification of Complaints Under *Employment Standards Act*

We write on behalf of the Public Policy Committee of the Chartered Professionals in Human Resources of British Columbia and Yukon (CPHR BC & Yukon). Founded in 1942, CPHR BC & Yukon has grown to include more than 7,500 members encompassing CEOs, VPs, directors of HR, HR generalists, HR advisors, consultants, educators, students and small business owners in B.C. and the Yukon. We support our members with education and advocacy and, where public policy topics affect HR professionals, we provide our feedback and recommendations to government.

We write today to address the matter of timely notification of complaints under the *Employment Standards Act* (the "ESA").

The administrative backlog at the Employment Standards Branch (the "Branch") is heavy and delays are lengthy. We are alive to the reasons for that backlog, which are connected in large part to the COVID-19 pandemic but also to statutory changes to the *ESA*, the elimination of the former self-help kit and a change in administrative processes at the Branch, including a change in focus from mediation to investigation and, where necessary, adjudication. We find no fault with the Branch in that regard and appreciate that all personnel at the Branch are working hard to process complaints

and assist employers and employees to resolve the same as quickly and efficiently as possible. We do, however, have a significant concern about the late date at which employers in many cases are being notified for the first time about alleged breaches of the *ESA* – several months and, in a number of cases, 12 to 18 months after the breach alleged under the legislation.

This is problematic of course for multiple reasons. Apart from natural justice and procedural fairness concerns, including the ability to preserve evidence and generally prepare a proper defence, employer respondents are deprived of the opportunity to resolve complaints early, eliminate or mitigate circumstances giving rise to similar complaints, and be educated or informed sooner rather than later about actual or potential contraventions of the employment standards legislation. Just as importantly, employee complainants are deprived of the opportunity to have their concerns addressed at an early date and problematic behaviour corrected and, where applicable, to be provided with the compensation and other redress to which they are entitled.

Recommendations

Employer respondents should be notified of complaints against them in a timely way. Because of the specific objectives of the *ESA* and, more generally, the protective and ameliorative purpose of employment standards legislation, delays of months or, for that matter, many weeks are simply not acceptable. The status quo is challenging to all for all the reasons detailed above.

Notification that an *ESA* complaint has been filed against the employer should be delivered promptly. We propose a model similar to the model applied in the B.C. Provincial Court (Small Claims Court): at or around the same time as a claim is filed with the Court, the claimant serves each defendant named in the “Notice of Claim” with a copy of that document and a blank copy of a “Reply” to respond to the claim.

The defendant is notified of the claim against it almost immediately and, at the same time, the Court is able to process the file in the usual course.

This model, which is simple and easy to understand and deployed in dozens of cases involving lay litigants (non-lawyers) on a daily basis, can be easily adapted to the employment standards context and the administrative processes of the Branch.

To the extent that there is any concern about employer mischief, including retaliation or reprisal against an employee after the filing of a complaint, the employer can be reminded clearly and unequivocally of the provisions of ss. 79 and 83 of the *ESA*, which deal with “Determinations and consequences” and “Employee not to be mistreated because of complaint or investigation” respectively.

Please do not hesitate to contact us should you have any question or concern regarding the issues raised in this letter. Similarly, members of our Committee would be happy to meet with you in person should you find that helpful.

Truly yours,

Chartered Professionals in Human Resources of British Columbia and Yukon (CPHR BC & Yukon)

Per:

James D. Kondopulos, CPHR
Chair, Public Policy Committee and Board Director

cc: Public Policy Committee
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