

HOW TO BRITISH COLUMBIA | NON-CONSTRUCTION File An Unfair Labour Practice Complaint

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Employees, whether unionized or not, who want to be more informed, should refer fellow employees to this web site and may certainly download, print, copy, transmit and distribute these materials to fellow employees or any interested parties by any means whatsoever. You do not need to contact us for permission to do so.

Employers may do the same, for management training and communication purposes, whether within their organization or with other interested parties. In some situations, employers may provide these materials to their employees. However, we suggest, in the strongest possible terms, that you only do so in consultation with a labour lawyer who knows your individual situation.

Unions may do the same, for training and communication purposes, whether within their union or with other interested parties such as their Members and or non-Members they may represent.

For help, call LabourWatch TOLL-FREE at

1-888-652-2687

INTRODUCTION

At this time there is no "Employee Advisor or Ombudsman" funded by taxpayers or union dues to help you address concerns about a Union in British Columbia. If you have a problem with a Union's actions, that your Employer cannot address with the Labour Relations Board of British Columbia and the Union, you are expected to take it up with the Union or go to the BCLRB on your own, or with a lawyer. Generally, Employees are discouraged from approaching their Employer regarding a Union's actions.

Similarly, British Columbia regulated Employers are discouraged from offering assistance to you if you have concerns with the Union's actions. While they may not, in most situations, pay legal fees of the Employees, there are times that Unfair Labour Practices (ULP) against a Union could be raised by an Employer. These situations are unusual so please read [Question 1](#) of our British Columbia Unfair Labour Practices FAQ's - in fact print and read all nine of the ULP FAQ's.

While there are many sections of the British Columbia Labour Relations Code about Unfair Labour Practices, most relate to the relationship between Employers and the Union. We will only be addressing those between Employees and the Union. The Union will provide significant help to Employees who want to file a ULP against the Employer and LabourWatch does not attempt to duplicate the excellent information and resources available to Employees from Unions.

GET THE FORMS

The BCLRB has a form specifically for Employees to file a ULP. LabourWatch has included that form in this "How To Guide".

Given the difficulty the average Employee may have with any legislation such as the British Columbia Labour Relations Code, completing the Form will require that you know which section of the British Columbia Labour Relations Code you are saying has been violated. We have included the excerpts from the Code at the end of this document.

Our "How To Guide" is only meant to address situations where you believe a Union has violated the British Columbia Labour Relations Code regarding a Union's conduct towards Employees it is trying to unionize or with unionized Employees the Union actually represents.

COMPLETE THE FORMS

The first few sections of the Form are easy, requiring primarily names, addresses, phone and fax numbers. If you feel that filing a ULP is too complicated please contact one of the Employee Advisors in your area - see the [Contacts](#) section of our website. The form has limited space so attach extra pages if you need to.

You will be required to state the section of the British Columbia Labour Relations Code that you claim has been violated, you will find the complete list at the top of the Form 5 attached, and a detailed list at the end of this document.

Each of these sections should be reviewed before completing your ULP complaint.

TIMING THE FILING OF YOUR ULP COMPLAINT

The BCLRB states that an Unfair Labour Practice Complaint should be filed no later than 90 days from "the date on which you knew, or in the opinion of the Labour Board ought to have known", of the incident(s) leading to the complaint. In an organizing campaign, file your ULP as soon as possible as it may affect the organizing campaign. Same in a decertification campaign.

DELIVER YOUR FORMS

You must deliver the Forms to the BCLRB. The BCLRB's [website](#) offers a comprehensive, explanation of when and how to deliver your forms.

You can send your decertification documents (your application, the individual forms and a copy of the collective agreement) by fax, hand-delivery, courier or registered mail. But, the best way is to hand-deliver them or courier them.

Usually, we'd say fax your documents, but the rules say that if you fax your documents you still need to courier or hand-deliver the originals within 3 days.

WHAT HAPPENS NEXT?

If the BCLRB upholds a Complaint, it may order a remedy that is not aimed at punishing the party that committed a violation, but rather at putting the affected employees in the position they would have been in had the violation not occurred. The remedies could include compensation to the employee for lost pay, reinstatement of the employee, or revocation of disciplinary action taken. It could lead to the rejection of the Union's application for certification or an application will not be voted on because there are not enough legitimate cards for the Union to obtain a vote.

LABOUR RELATIONS CODE

**BRITISH COLUMBIA
LABOUR RELATIONS BOARD**

UNFAIR LABOUR PRACTICE COMPLAINT
For example: Sections 5, 6, 7, 9, 32, 45

• *PLEASE TYPE OR PRINT CLEARLY. ATTACH EXTRA PAGES IF NECESSARY.*

Are you requesting an expedited hearing under Section 5(2)? yes no

COMPLAINANT INFORMATION

• PERSON, TRADE UNION, EMPLOYER OR EMPLOYER'S ORGANIZATION MAKING THE COMPLAINT.

Name: _____

Address: _____

Postal Code: _____ Telephone: _____ Fax: _____

Name of Contact Person: _____

Address (if different from above): _____

ADDITIONAL COMPLAINANTS

Name: _____

Position: _____

Address: _____

Postal Code: _____ Telephone: _____

ADDITIONAL COMPLAINANTS

| | |
|--------------------|------------------|
| Name: _____ | Position: _____ |
| Address: _____ | |
| Postal Code: _____ | Telephone: _____ |
| | |
| Name: _____ | Position: _____ |
| Address: _____ | |
| Postal Code: _____ | Telephone: _____ |
| | |
| Name: _____ | Position: _____ |
| Address: _____ | |
| Postal Code: _____ | Telephone: _____ |

| |
|---|
| Number of Employees in Bargaining Unit: _____ |
|---|

WHO IS YOUR COMPLAINT AGAINST?

| | | | |
|---|------------------|------------|-------|
| • PERSON, TRADE UNION, EMPLOYER OR EMPLOYERS' ORGANIZATION WHO YOU ARE COMPLAINING ABOUT. | | | |
| Name: _____ | | | |
| Address: _____ | | | |
| Postal Code: _____ | Telephone: _____ | Fax: _____ | _____ |
| | | | |
| Name: _____ | | | |
| Address: _____ | | | |
| Postal Code: _____ | Telephone: _____ | Fax: _____ | _____ |

WHICH SECTIONS OF THE LABOUR RELATIONS CODE DO YOU ALLEGE HAVE BEEN VIOLATED?

- PLEASE SPECIFY WHICH SECTION(S) AND SUBSECTION(S)

- IF THERE IS MORE THAN ONE RESPONDENT SPECIFY WHICH SECTION EACH RESPONDENT IS ALLEGED TO HAVE VIOLATED.

- BACKGROUND: WHEN WAS THE UNION CERTIFIED? WHAT ARE THE CLASSIFICATIONS OF THE PERSONS AFFECTED? HOW LONG HAVE THEY BEEN EMPLOYED AND HAS THERE BEEN PREVIOUS DISCIPLINE? WHAT ARE THE EMPLOYER'S USUAL PRACTICES?

PARTICULARS: WHAT ARE THE DETAILS OF YOUR COMPLAINT?

- GIVE THE FACTS AND CIRCUMSTANCES YOU ALLEGE VIOLATE THE CODE. INCLUDE ALL RELEVANT INFORMATION.

- DETAIL HOW EACH SECTION OF THE CODE IS ALLEGED TO HAVE BEEN VIOLATED BY EACH RESPONDENT.

REMEDIES

- WHAT REMEDIES ARE YOU ASKING THE LABOUR RELATIONS BOARD TO ORDER IF THE BOARD FINDS IN FAVOUR OF THE COMPLAINT? SPECIFY WHICH REMEDIES APPLY TO WHICH OF THE RESPONDENTS AND COMPLAINANTS.

HEARING

- IF THERE IS ANY URGENCY TO THE MATTER, PLEASE EXPLAIN.

Signature of Complainant or Representative: _____

Print name: _____

Position: _____

Date of signing: _____

Copies must be delivered to affected parties
Has this been done? yes no

Note Labour Relations Board
Rules 2(3) and Rule 6(1) and (2).

COMPLETE AND DELIVER TO: Registrar
Labour Relations Board
600 - 1066 West Hastings Street
Vancouver, BC V6E 3X1
Tel: 604-660-1300
Fax: 604-660-1892

LABOUR RELATIONS BOARD FEES

- APPLICATION/COMPLAINT MUST INCLUDE FEE OF \$100.00
- METHOD OF PAYMENT (CHECK ONE)
CREDIT CARD - MASTER CARD VISA CREDIT CARD NO: ___
EXPIRY DATE: ___

- SIGNATURE: _____

- CHEQUE
- DEBIT CARD
- CHARGE TO PRE-APPROVED ACCOUNT

- PAYMENT (CHECK ONE)
 ENCLOSED
 TO BE SENT WITH ORIGINAL COPY AS APPLICATION/COMPLAINT SENT BY FAX
 CHARGED TO PRE-APPROVED ACCOUNT

- NOTE: FEE OF \$50.00 MUST ACCOMPANY REPLY TO APPLICATION/COMPLAINT
- NOTE: CREDIT CARD INFORMATION WILL BE DELETED BY THE BOARD PRIOR TO DISTRIBUTING THIS FORM TO THE PARTIES

Sections of the BC Labour Code relating to Unfair Labour Practice Complaints

5 (1) A person must not

- (a) refuse to employ or refuse to continue to employ a person,
- (b) threaten dismissal of or otherwise threaten a person,
- (c) discriminate against or threaten to discriminate against a person with respect to employment or a term or condition of employment or membership in a trade union, or
- (d) intimidate or coerce or impose a pecuniary or other penalty on a person, because of a belief that the person may testify in a proceeding under this Code or because the person has made or is about to make a disclosure that may be required of the person in a proceeding under this Code or because the person has made an application, filed a complaint or otherwise exercised a right conferred by or under this Code or because the person has participated or is about to participate in a proceeding under this Code.

(2) If no collective agreement respecting a unit is in force and a complaint is filed with the board alleging that an employee in that unit has been discharged, suspended, transferred or laid off from employment or otherwise disciplined in contravention of this Code, the board must forthwith inquire into the matter and, if the complaint is not settled or withdrawn, the board must

- (a) commence a hearing on the complaint within 3 days of its filing,
- (b) promptly proceed with the hearing without interruption, except for any necessary adjournments, and
- (c) render a decision on the complaint within 2 days of the completion of the hearing.

6 (1) Except as otherwise provided in section 8, an employer or a person acting on behalf of an employer must not participate in or interfere with the formation, selection or administration of a trade union or contribute financial or other support to it.

(2) Despite this section, an employer may permit an employee or representative of a trade union to confer with the employer during working hours or to attend to the trade union's business during working hours without deducting time so occupied in computing the time worked for the employer and without deducting wages for that time.

(3) An employer or a person acting on behalf of an employer must not

- (a) discharge, suspend, transfer, lay off or otherwise discipline an employee, refuse to employ or to continue to employ a person or discriminate against a person in regard to employment or a condition of employment because the person
 - (i) is or proposes to become or seeks to induce another person to become a member or officer of a trade union, or
 - (ii) participates in the promotion, formation or administration of a trade union,
- (b) discharge, suspend, transfer, lay off or otherwise discipline an employee except for proper cause when a trade union is in the process of conducting a certification campaign for employees of that employer,
- (c) impose in a contract of employment a condition that seeks to restrain an employee from exercising his or her rights under this Code,
- (d) seek by intimidation, by dismissal, by threat of dismissal or by any other kind of threat, or by the imposition of a penalty, or by a promise, or by a wage increase, or by altering any other terms or conditions of employment, to compel or to induce an employee to refrain from becoming or continuing to be a member or officer or representative of a trade union,
- (e) use or authorize or permit the use of the services of a person in contravention of section 68, or
- (f) refuse to agree with a trade union, certified under this Code as the bargaining agent for his or her employees who have been engaged in collective bargaining to conclude their first collective agreement, that all employees in the unit, whether or not members of the trade union, but excluding those exempted under section 17, will pay union dues from time to time to the trade union.

(4) Despite subsection (3), except as expressly provided, this Code must not be interpreted to limit or otherwise affect the right of the employer to

- (a) discharge, suspend, transfer, lay off or otherwise discipline an employee for proper cause, or

- (b) make a change in the operation of the employer's business reasonably necessary for the proper conduct of that business.

7 (1) Except with the employer's consent, a trade union or person acting on its behalf must not attempt, at the employer's place of employment during working hours, to persuade an employee of the employer to join or not join a trade union.

(2) If employees reside on their employer's property or on property to which the employer or another person has the right to control access or entry, the employer or other person must on the board's direction permit a representative authorized in writing by a trade union to enter the property to attempt to persuade the employees to join a trade union and, if the trade union acquires bargaining rights, after that to enter the property to conduct business of the trade union.

(3) If directed by the board and on request by the trade union representative, the employer must provide the representative with food and lodging at the current price and of a similar kind and quality as that provided to the employees.

9 A person must not use coercion or intimidation of any kind that could reasonably have the effect of compelling or inducing a person to become or to refrain from becoming or to continue or cease to be a member of a trade union.

32 (1) If an application for certification is pending, a trade union or person affected by the application must not declare or engage in a strike, an employer must not declare a lockout, and an employer must not increase or decrease rates of pay or alter a term or condition of employment of the employees affected by the application, without the board's written permission.

(2) This section must not be construed as affecting the right of an employer to suspend, transfer, lay off, discharge or otherwise discipline an employee for proper cause.

45 (1) When the board certifies a trade union as the bargaining agent for employees in a unit and a collective agreement is not in force,
(a) the trade union may by written notice require the employer to commence collective bargaining, or the employer may by written notice require the trade union to commence collective bargaining, and
(b) the employer must not increase or decrease the rate of pay of an employee in the unit or alter another term or condition of employment until
(i) 4 months after the board certifies the trade union as bargaining agent for the unit, or
(ii) a collective agreement is executed, whichever occurs first.

(2) If notice to commence collective bargaining has been given and the term of a collective agreement that was in force between the parties has expired, the employer or the trade union must not, except with the consent of the other, alter any term or condition of employment, until
(a) a strike or lockout has commenced,
(b) a new collective agreement has been negotiated, or
(c) the right of the trade union to represent the employees in the bargaining unit has been terminated, whichever occurs first.

(3) Despite subsection (1), the board, after notice to the trade union, may
(a) authorize an employer to increase or decrease the rate of pay of an employee in the unit, or alter a term or condition of employment, and
(b) specify conditions to be observed by an employer so authorized.

(4) This section must not be construed as affecting the right of an employer to suspend, transfer, lay off, discharge or otherwise discipline an employee for proper cause.