



WORKER COMPLAINT OF DISCRIMINATORY ACTION

Your complaint must be filed in writing with WorkSafeBC within the time limits specified in the *Workers Compensation Act* (“Act”) to preserve your rights under the Act regarding this matter.

Where your complaint is in respect of a discriminatory action, you must file a written complaint with WorkSafeBC **within one year of the action considered to be discriminatory** (section 152(2)(a) Act).

Where your complaint is in respect of a failure to pay wages, you must file a written complaint with WorkSafeBC **within 60 days after the wages became payable** (section 152(2)(b) Act).

The information on this form is collected under the authority of the Act; may be used to investigate your complaints; may be disclosed to other individuals and organizations, including a specific party that this complaint is against as required for the administration of the Act; and is subject to provisions of the *Freedom of Information and Protection of Privacy Act*.

If you have any questions or need help with this form, please call WorkSafeBC using the telephone numbers given on page 3. Alternatively, you may wish to use the free services offered by the Workers’ Advisers Office, Ministry of Labour and Citizens’ Services, who can be contacted locally at 604 713-0360, or toll-free from within BC at 1 800 663-4261.

WorkSafeBC use only

Discrimination complaint number

Worker information

Name of worker (please print)	Daytime phone number (8:30 a.m.–4:30 p.m.) (please include area code)		
Mailing address	City	Province	Postal code
Date of birth (yyyy-mm-dd)	Social insurance number		

Complaint information

This complaint is against an employer <input type="checkbox"/>			This complaint is against a union <input type="checkbox"/>		
Name of employer			Name of union		
Address of employer			Address of union		
City	Province	Postal code	City	Province	Postal code
Phone number (please include area code)			Phone number (please include area code)		

Do you belong to a union
No <input type="checkbox"/> Yes <input type="checkbox"/> ➤ If yes, have you completed form 57W2, <i>Discriminatory Action – Worker Election</i> ?

This complaint is about (please see information sheet on pages 4–5)

Discrimination Failure to pay wages

If this is a **failure to pay wages complaint**, you do not need to complete boxes 1, 2, and 3 below. Please provide details of your complaint and the remedy that you are seeking in the “Additional information” box on page 3.

Date(s) or period of time the incident(s) occurred (yyyy-mm-dd)

Details of my complaint

Please ensure that your description includes as much detail as possible, including the time(s), date(s), place(s), name(s) of person(s) involved, and attach any documents to support your complaint, for example, a Record of Employment, payroll stubs, letters from your employer, or similar evidence. If further space is required, please use the “Additional information” box on page 3 or attach additional pages.

1. Identify the conduct, which you say involves you exercising any right or carrying out any duty in compliance with the Occupational Health and Safety Regulation and/or Part 3 (Occupational Health and Safety) of the Act, or involves you giving any information regarding occupational health and safety to others (see section 151 of the Act).

2. Identify the retaliatory action of your employer and/or union, which you say was taken against you on account of the conduct that you described above (see section 150 of the Act).

3. What personal loss have you suffered as a result of your employer's or union's conduct? What specific remedy are you seeking (see section 153(2) of the Act)?



Additional information

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If you have a person representing you, please provide their name, address, and phone number.

Name of representative <i>(if applicable)</i>	Phone number <i>(please include area code)</i>		
Mailing address	City	Province	Postal code

I certify that the information provided is correct to the best of my knowledge.

Signature of worker	Date <i>(yyyy-mm-dd)</i>
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Visit our website at WorkSafeBC.com.

Mailing Address

PO Box 5350 Stn Terminal
Vancouver BC V6B 5L5

Location

6951 Westminster Hwy.
Richmond BC V7C 1C6

Telephone 604 232-1864

Toll-free in B.C. 1 888 621-7233, ext. 1864

Fax 604 233-4040



Information Sheet — For Workers Who Are Filing a Complaint of Discriminatory Action or Failure to Pay Wages

You are filing a Complaint of Discriminatory Action/Failure to Pay Wages with WorkSafeBC under section 152 of the *Workers Compensation Act* (Act). Relevant portions of the Act are attached. Please read the following information carefully and refer to it when completing your “Worker Complaint of Discriminatory Action” form 57W1.

This sheet is for general information only. The Compliance Section cannot provide you with advice about your specific case. The Workers’ Advisers Office is available to provide free assistance to workers. They can be contacted locally at 604 713-0360, or toll-free from within BC at 1 800 663-4261. Other sources of assistance or legal advice may include your union, a lawyer, or other legal service providers.

Background information

WorkSafeBC deals only with action taken against a worker by an employer or union if it arises in an occupational health and safety context. Not every negative action is a violation of the Act. Other agencies and tribunals also deal with negative actions taken against workers. For example, the Human Rights Tribunal deals with discrimination based on gender, family status, race, sexual orientation, and other issues. The Employment Standards Branch enforces statutory rights and obligations under the *Employment Standards Act*. Claims of wrongful dismissal may be dealt with in the court system. The Labour Relations Board also deals with worker complaints against unions and employers.

If you do not provide enough information to show that your complaint may be one that WorkSafeBC has authority to deal with, it may be dismissed, even before the party you are complaining about is asked to respond. You have to supply the basic facts to show that the party about whom you have complained might have violated the Act.

How do I show discriminatory action?

You need to supply **two pieces** of information.

First, you must describe the action that was taken against you. The kinds of actions that are considered discriminatory are set out in section 150 of the Act. These include, for example, being dismissed or demoted (or being threatened with dismissal or demotion).

Second, you must explain **why** you think the action was taken against you. Discriminatory actions are only violations of the Act if they are carried out because (or partly because) you first took one of the actions listed in section 151 of the Act. Please explain the connection between your action and the discriminatory action taken against you.

What is a failure to pay wages?

The Act provides that an employer is required to pay a worker for lost time in certain specific circumstances. These are:

- Section 134(2) – time off work by members of joint committees
- Section 135(3) – educational leave for committee members (section 152 only applies to the payment of wages, not other costs such as travel expenses)
- Section 182(4) – worker accompanying a prevention officer inspection, and
- Section 192(1) – lay off resulting from stop work order

An employer’s failure to pay a worker wages in these circumstances amounts to a “failure to pay wages,” and can also be the subject of a worker complaint to WorkSafeBC.

How much information do I need to give?

You may have already explained the circumstances surrounding your complaint to several people, including officers in other areas of WorkSafeBC. It is very important that you provide the Compliance Section with a complete explanation of the circumstances surrounding your complaint, even if it seems repetitive. If you do not provide a complete explanation, the decision maker will determine what happened based only on summaries provided by

other persons, or on information provided by other parties. These summaries or the information from other parties may not include all of the facts that you believe are important.

If you have provided written statements to other persons, please provide a copy of these statements or else tell us who has copies. If you have, or can obtain, written statements from witnesses or other people with relevant information, please include these statements.

If you have filed a compensation claim for injury or occupational disease with WorkSafeBC that you believe relates to your complaint, provide us with the claim number. The decision maker may also make inquiries on his or her own to determine if there is relevant information in a compensation claim file.

You do not need to use technical or legal phrases. Try to be as clear as possible. You can present the facts in whatever form you like although a chronological description is usually easiest to read. Be as specific as possible. Use full names, job titles, dates, and even time of day if it is important to the sequence of events.

Please note that for procedural fairness reasons WorkSafeBC is required to disclose all information on your complaint to the party about whom you are complaining. If you do not wish the other party to see some of the information you might provide to WorkSafeBC you should not provide that information to WorkSafeBC.



Information Sheet — Remedies for Worker Complaints of Discriminatory Action

When completing a “Worker Complaint of Discriminatory Action” form (57W1), workers must provide details of what remedy or remedies they are seeking.

Section 153(2) of the *Workers Compensation Act* (Act) addresses the available remedies. It provides that WorkSafeBC (the Compliance Section) may make an order requiring one or more of the following:

- a) that the employer or union cease the discriminatory action;
- b) that the employer reinstate the worker to his or her former employment;
- c) that the employer pay wage loss to the worker;
- d) that the union reinstate the membership of the worker in the union;
- e) that any reprimand or other references to the matter in the employer’s or union’s records on the worker be removed;
- f) that the employer or the union pay the reasonable out of pocket expenses incurred by the worker by reason of the discriminatory action;
- g) that the employer or the union do any other thing that the Board considers necessary to secure compliance with Part 3 of the Act and the regulations.

As set out in policy item D6-153-2 of WorkSafeBC’s *Prevention Manual* (Manual), the object in providing remedies in discriminatory action complaints, as far as is practicable, is to put the worker in the same position that he or she would have been in had the discriminatory action not occurred.

Most of the remedies under section 153(2) are self-explanatory; however, the following provides further explanation of certain remedies.

A. Reinstatement to employment — section 153(2)(b) of the Act

Reinstatement is the primary remedy available for termination of employment. However, it is not automatically granted, particularly where damages can “make whole” a worker. Some of the circumstances which justify denying reinstatement of a worker are:

- the deterioration of personal relationships between the worker and the employer, or other workers, or where the employer’s operation is so small that face-to-face contacts between disputing individuals would be unavoidable;
- a disappearance of the relationship of trust which must exist;
- an attitude on the worker’s part leading to the belief that reinstatement would bring no improvement;
- the worker’s physical inability to start work immediately;
- the abolition of the job held by the worker at the time of the dismissal;
- other events subsequent to the worker’s dismissal that would make reinstatement impossible, such as closure of the place of employment, bankruptcy or layoffs.

B. Payment of wages — section 153(2)(c) of the Act

In assessing an appropriate loss of wages payment for a dismissed worker, the primary consideration is to “make whole” the worker. In other words, as set out in policy, to put the worker in the same position that he or she would have been in but for the dismissal. If the evidence establishes that the employer would likely have continued to employ the worker but for the discriminatory action, the Compliance Section will consider paying the worker wage loss until such time as he or she has secured new employment. This is, of course, subject to the worker’s obligation to immediately make reasonable efforts to find new employment in order to reduce or eliminate the loss.

In those cases where the evidence establishes a likelihood that the worker’s employment would not have continued (the worker would likely have been dismissed in any event or the business closed, for example) until such time as new employment was found, the Compliance Section may seek guidance from wrongful dismissal case law for general principles applicable to determining an appropriate period of notice (or pay in lieu) when assessing an order to pay wages. These factors include:

- age of the worker;
- nature of the worker’s employment;
- length of service with the employer; and
- availability of suitable alternate employment to the worker.

To make an award for loss of wages, the worker must provide the Compliance Section with evidence of his or her earnings. As well, when assessing a loss of wages, the Compliance Section must deduct any benefits that the employer paid to the worker following dismissal, such as severance, and payments made pursuant to the *Employment Standards Act* upon termination of employment.

Finally, if the Compliance Section orders the employer to pay the worker wage loss, the employer must deduct CPP, EI, and income tax from the amount awarded.

C. Out-of-pocket expenses — section 153(2)(f) of the Act

In general, this refers to those expenses that a worker incurs to find new employment, such as postage or facsimile charges for sending resumés.

D. Interest — section 153(2)(g) of the Act

Section 153(2)(g) of the Act refers to WorkSafeBC's authority to order a party "to do any other thing that WorkSafeBC considers necessary to secure compliance with this Part and the regulations." Consistent with *Appeal Division Reference #2003-0089* (January 15, 2003), in which the panel ordered an employer to pay interest on back wages to a complainant under section 153(2)(g) of the Act, the Compliance Section awards interest on wage-loss payments.

E. Reference letters — section 153(2)(g) of the Act

Where a worker has been dismissed, and does not wish to be reinstated, the worker will often ask for a letter of reference. The Compliance Section can order employers to provide letters of reference. An example of this type of letter is as follows:

[Worker's name] was employed by [employer's name] from [date] to [date]. [The worker's] job title was [job title]. [Worker's name]'s responsibilities included:

- [list job duties]

[Worker's name] competently performed and completed his/her duties. We wish him/her well in the future.

What WorkSafeBC does not grant as a remedy

1. Pain and suffering

As is noted in policy item D6-153-2 in the Manual, the Compliance Section's object in providing remedies in discriminatory action complaints, as far as is practicable, is to put the worker in the same position that he or she would have been in had the discriminatory action not occurred. This generally involves reinstatement of workers or payment for loss of wages. It does not extend to general damages for pain and suffering/emotional trauma.

2. Letters of apology

The Compliance Section has found that ordering an apology is not an appropriate remedy on a discriminatory action complaint. An apology is a personal expression of regret from one person to another. For an apology to have any meaning it must be voluntary; it is not a matter that should be ordered. As well, the Compliance Section considers that the ordering of apologies would constitute an inappropriate incursion into the labour relations environment. Whether or not an apology is necessary or appropriate is left to the parties.

3. Remedying occupational health and safety concerns in the workplace

Remedies in discriminatory action complaints are in relation to workers' personal losses. The actual occupational health and safety concerns, which may have led to the discriminatory action, are addressed by WorkSafeBC prevention officers, who visit the work site and may write orders against the employer. The Compliance Section does not have the authority to write orders against employers in relation to alleged occupational health and safety violations when ordering remedies in relation to discriminatory action complaints. Workers must follow up with prevention officers with respect to their actual workplace health and safety concerns and any orders that may be written.



Workers Compensation Act, Part 3

Division 6 — Prohibition against discriminatory action

Actions that are considered discriminatory

150 (1) For the purposes of this Division, “**discriminatory action**” includes any act or omission by an employer or union, or a person acting on behalf of an employer or union, that adversely affects a worker with respect to any term or condition of employment, or of membership in a union.

- (2) Without restricting subsection (1), discriminatory action includes
- (a) suspension, lay-off or dismissal,
 - (b) demotion or loss of opportunity for promotion,
 - (c) transfer of duties, change of location of workplace, reduction in wages or change in working hours,
 - (d) coercion or intimidation,
 - (e) imposition of any discipline, reprimand or other penalty, and
 - (f) the discontinuation or elimination of the job of the worker.

Discrimination against workers prohibited

151 An employer or union, or a person acting on behalf of an employer or union, must not take or threaten discriminatory action against a worker

- (a) for exercising any right or carrying out any duty in accordance with this Part, the regulations or an applicable order,
- (b) for the reason that the worker has testified or is about to testify in any matter, inquiry or proceeding under this Act or the *Coroners Act* on an issue related to occupational health and safety or occupational environment, or
- (c) for the reason that the worker has given any information regarding conditions affecting the occupational health or safety or occupational environment of that worker or any other worker to
 - (i) an employer or person acting on behalf of an employer,
 - (ii) another worker or a union representing a worker, or
 - (iii) an officer or any other person concerned with the administration of this Part.

Complaint by worker against discriminatory action or failure to pay wages

152 (1) A worker who considers that

- (a) an employer or union, or a person acting on behalf of an employer or union, has taken, or threatened to take, discriminatory action against the worker contrary to section 151, or
- (b) an employer has failed to pay wages to the worker as required by this Part or the regulations

may have the matter dealt with through the grievance procedure under a collective agreement, if any, or by complaint in accordance with this Division.

- (2) A complaint under subsection (1) must be made in writing to the Board,
- (a) in the case of a complaint referred to in subsection (1) (a), within 1 year of the action considered to be discriminatory, and
 - (b) in the case of a complaint referred to in subsection (1) (b), within 60 days after the wages became payable.
- (3) In dealing with a matter referred to in subsection (1), whether under a collective agreement or by complaint to the Board, the burden of proving that there has been no such contravention is on the employer or the union, as applicable.

Response to complaint

153 (1) If the Board receives a complaint under section 152 (2), it must immediately inquire into the matter and, if the complaint is not settled or withdrawn, must

- (a) determine whether the alleged contravention occurred, and
- (b) deliver a written statement of the Board's determination to the worker and to the employer or union, as applicable.

(2) If the Board determines that the contravention occurred, the Board may make an order requiring one or more of the following:

- (a) that the employer or union cease the discriminatory action;
- (b) that the employer reinstate the worker to his or her former employment under the same terms and conditions under which the worker was formerly employed;
- (c) that the employer pay, by a specified date, the wages required to be paid by this Part or the regulations;
- (d) that the union reinstate the membership of the worker in the union;
- (e) that any reprimand or other references to the matter in the employer's or union's records on the worker be removed;
- (f) that the employer or the union pay the reasonable out of pocket expenses incurred by the worker by reason of the discriminatory action;
- (g) that the employer or the union do any other thing that the Board considers necessary to secure compliance with this Part and the regulations.

