



B.C. Child and Youth Employment Standards Policy Recommendations

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Submitted to
Hon. Harry Bains Minister of Labour
and
The British Columbia Law Institute's Employment Standards Act Reform Project

putting children and youth **first**

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Introduction and Guiding Principles

This framework proposes to modernize BC's Employment Standards Act as it relates to children and adolescents, and align it with the International Labour Organization's Convention 138 ratified by the Government of Canada in 2016.

First Call's position is based on the following, widely accepted tenets related to child and adolescent development, and the need for special protections related to employment.

1. Childhood is a period of life which should be dedicated, not to work, but to education and development.
2. Not all work is harmful to children. Appropriate light work of a casual nature can be beneficial to psychosocial development, and promote self-sufficiency and confidence.
3. "Child labour" by definition is never acceptable. Child labour means work that compromises children's safety, that is harmful to physical or mental development, and that interferes with their education.
4. Child labour often accompanies family and community poverty. It also perpetuates poverty by depriving the child of opportunities to pursue studies and to fully develop.
5. Without government protections, some employers will hire children for inappropriate and dangerous work. Children and adolescents are generally more compliant, will accept lower pay, and are less aware of safety issues and their rights than adults.
6. Child labour will exist when governments do not expressly prohibit it through legislation and regulation, and when those laws are not strictly enforced.

Proposed Employment Standards Legislative Framework

First Call recommends the following modernized legislative and regulatory framework aligned to Canada's commitment to international standards that protect children and youth.

- **raise the minimum age for formal employment to 16 with exceptions for appropriate light work as defined in regulations**
- **require a permit issued by the employment standards branch for the employment of children under the age of 16**
- **prohibit the employment of children under the age of 12 with the exception of the entertainment industry and its current permit system**
- **with respect to the employment of children and adolescents 12 to 15 years establish permit criteria that considers:**
 - **acceptable 'light work' including tasks and work places that do not threaten the health and safety, or hinder the education of children (12-13) and younger adolescents (14-15)**
 - **limits on the time-of-day for work, appropriate to age groups (e.g. prohibit late night and over-night work)**
 - **limits on the length of work time on a daily and weekly basis appropriate to age groups (e.g. no more than 4 hours per day on a school day for children)**
- **ensure hazardous tasks and worksites are entirely off-limits to workers aged 16 - 17**
- **mandate adequately resourced, government-led enforcement to ensure employer compliance and inform government's policy monitoring**

Rationale

Currently, there are few protections for children over the age of 12 in B.C.'s Employment Standards Act and research shows children and adolescents are experiencing injuries and exploitation doing jobs meant for adults.

Background

In 2003, the government's permit system for the employment of children 12 – 14 was replaced with minimal legislation and regulation that did not include prohibited occupations, tasks, worksites or times of day.

Currently, during non-school days, children 12 to 14 years old are allowed to work seven hours a day, up to 35 hours a week (with no restrictions on the time of day), under the supervision of an adult over the age of 19 and with a letter of permission from one parent. This has been the case since that law came into force in 2004.

While BC's current Employment Standards Act sets out conditions for the employment of children under 12 that includes both government oversight (through a permitting process) and conditions that meet the basic requirements of child protection principles, the responsibility for ensuring working conditions are safe and appropriate for children over the age of 12 is left to their parents.

In fact, the state has a legal duty, shared with parents and guardians, to protect the interests of young people. Parents are often not equipped to determine whether or not a work situation is safe and do not have authority to compel compliance with safety standards. The potentially competing economic interests of parent and child make it particularly important for the state to play an active role in setting clear and enforceable rules aimed at the protection of children. Additionally, the law should not assume that all minors live in the care of a parent or guardian. Protections must recognize the rights of children as separate and distinct from their parents.

Work-related Injuries

12-year-olds can work in most industries, the most common being food services and accommodation, but many are working in construction, manufacturing and resource-based jobs. We know where they are working, not because government is monitoring but because this is where they are getting injured.

Every single year over the past decade, children under 15 were injured on the job seriously enough for WorkSafeBC to pay out tens of thousands of dollars in injury claims¹ – not including health-care only claims. In some cases, children have sustained life-altering injuries as evidenced by the size of individual claims. Over that same period over 2,000 children under the age of 15 claimed work-related health costs.

¹ Worksafe BC Claims cost statistics for ages 15 & under, by sector, 2007-2017, Aril 2018
https://firstcallbc.org/wordpress/wp-content/uploads/2018/07/claim_costs_ages_15_under_bysector_2007-2017_25APR18.pdf

B.C. Out-Of-Step with North American Standards

B.C. is the only province that does not place restrictions on the occupations, tasks or time of day that a child can work. Without a doubt, B.C. has the lowest child-employment standards in North America, a fact that was recently re-stated by a cross-sector panel of advisors at the Law Institute of B.C. in its review of the Employment Standards Act.

That review concluded: “British Columbia’s legislation and regulations dealing with employment of children diverge in important respects from Canadian and international norms with regard to the minimum age for employment and the forms of work in which children may be employed. The jobs that 12-to-15-year-olds in British Columbia are permitted to do extend to potentially hazardous forms of work such as construction, from which they are barred in neighbouring provinces and most of North America.”²

While they did not reach consensus on the mechanism for government oversight, The Law Institute of B.C.’s Project Committee recommended changes: “The Project Committee believes that the uppermost public policy concern in relation to child employment is the health and safety of employed youth and non-impairment of their education. To those ends, the Project Committee believes that the employment of persons under 16 in certain industries and forms of work should be entirely prohibited.”

Compliance with International Agreements

In 2016, the Canadian Government ratified the International Labour Organization’s Convention 138 on the minimum age for employment. Countries that ratify the convention must set a minimum age for employment. Canada committed to 16 years of age and agreed to prohibit hazardous work for those under the age of 18.

Public Support for Better Protections

In June, First Call commissioned the Mustel Group to conduct an opinion survey³. Only six per cent of British Columbians could correctly identify the age at which a child can be formally employed without the need for a government permit in B.C. We asked what participants thought the work-start age should be and more than 50% said it should be 15 or 16 – ages that support international standards and Canada’s commitment to 16.

We also found that the great majority (78%) of BC residents would support the introduction of legislation to provide greater regulation of the employment of children aged 12 to 14 years, including almost half (47%) who would strongly support it.

² Law Institute of BC Employment Standards Act Reform Project Consultation Paper, June 2018, “Employment of Children” (pages 203-213) <https://www.bcli.org/project/employment-standards-act-reform-project>

³ Mustel Group, Child Labour Survey, June 2018

<https://firstcallbc.org/wordpress/wp-content/uploads/2015/06/B933-First-Call-Child-Labour-Survey-2018-June15.pdf>

Of those who opposed the idea of new legislation, 15 per cent did so because they said children of this age should not be working at all.

Conclusion

We are calling on the provincial government to protect children by complying with international conventions to which Canada is a signatory. We recommend that government raise the formal employment age to 16 and oversee appropriate casual work opportunities for children aged 12 – 15 through a permit system that sets out reasonable hours and places of work, and suitable tasks. Government must also prohibit 16-18 year-olds from working in potentially hazardous workplaces.

Not all forms of work should be off limits to adolescents, in fact age appropriate and safe work experience can be beneficial, but with few rules in B.C., too many children and adolescents are being injured at work. We must act to protect children from experiencing needless work-related injuries and from employers who exercise poor judgement.

Definitions: Child and Adolescents

Broadly, the ILO defines children as those aged 5 to 17. As there is considerable difference in the capabilities of young people as they grow from children to older adolescents, rules specific to what is reasonable for the age and stage of the child are appropriate.

First Call recommends that the following three definitions be adopted to inform appropriate employment standards and workplace protections for young people in these different age groups:

- “child” is anyone under 14
- “younger adolescent” is anyone age 14 or 15
- “older adolescent” is anyone age 16 or 17

Though young people in BC do not gain full legal rights and status until they turn 19, by 18, almost all young people are out of secondary school and there is no longer a need, for example, to build safeguards around their classroom hours.

An Appropriate Work Start Age

As a general rule, First Call is proposing that a young person be at least 16 years old before entering the formal workforce unless there are special circumstances that warrant an exception. The exceptions are outlined below. While the ILO Convention No. 138 sets the minimum age at not less than the age of completing compulsory schooling, and in no event less than 15 years of age, the Government of Canada in ratifying the convention committed to a nation-wide work-start age of 16.

This work start age corresponds to the age at which mandatory schooling ends in BC and recognizes that until 16, a young person’s primary focus should be schooling and they are not responsible for their own care and support.

It should be noted that the legal work start age does not prevent the type of casual work (baby-sitting, refereeing, paid chores, etc.) that is common among adolescents and children. This type of work is not regulated by the Employment Standards Act.

Restrictions on Hours of Work

For a child under 14, the restrictions on hours of work would be specified in conditions set out in the permit but should not exceed the minimum standard for younger adolescents.

For a younger adolescent (14-15), the minimum standard should be the following:

- No work on a school day during scheduled school hours.
- No longer than 4 hours on a school day
- No longer than 7 hours on a non-school day
- Only between the hours of 6 am and 11 pm on any day
- A maximum of 20 hours a week when there is a school day
- A maximum of 35 hours a week when there is no school day

Prohibited Workplaces

First Call proposes that regulations make certain types of work and/or workplaces off limits to anyone under the age of 18. This type of prohibition is common in other jurisdictions and recognizes that some workplaces contain hazards to which no one under 18 should be exposed.

The decision about which workplaces would be off limits can be informed by existing WorkSafeBC ratings codes. The codes are based on historical data regarding hazards in the workplace and are used for determining WorkSafeBC premiums. For example, we can see from 2007 – 2017 data, that twenty-seven 15-year olds injured in the construction sector triggered over two million dollars in long and short-term disability payments.⁴

Mandatory Supervision

In the case of children and younger adolescents, direct and immediate supervision must be provided at all times by someone who is not less than 19 years of age.

In the case of older adolescents, direct and immediate supervision must be provided between 9:00 p.m. and midnight by someone who is not less than 19 years of age.

⁴ Ibid. WorkSafeBC

A supervisor must not be expected to supervise more than five younger or older adolescents at any one time. Note that direct and immediate supervision means within sight and sound distance.

Advisory Committee

For the purpose of developing the regulations needed to implement the recommended changes to BC's child labour regime, First Call proposes the Minister of Labour appoint an advisory committee that includes at least three young people (under 25, with work experience) to ensure their perspective informs the decision-making about such things as the types of hazards that would make a workplace unsafe for young people and common ways young people are exploited by their employers. The committee could include a number of persons nominated by external parties.

Training Requirements

Under existing regulations all new and young workers must receive an orientation to a workplace that includes "health and safety orientation and training specific to that new or young worker's workplace." The regulation provides an extensive list of what must be included in that training and requires employers to document the training provided.

In interviews with young people⁵, First Call found little evidence that such comprehensive training has been provided to young people entering a new workplace. Further, what training was provided was frequently unpaid.

First Call recommends that WorkSafeBC take immediate measures to enforce the training requirements for new and young workers and make it paid time.

Record Keeping

In order to ensure employer compliance with new rules, government must have a means of knowing where children and youth are employed.

First Call recommends that the employer of a child shall keep a copy of the Permit at the place where the child works.

An employer of a younger adolescent(s) shall post a copy of the licence issued by the ESB.

As part of the employer's regular (usually quarterly) reporting to WorkSafeBC, the employer must report the number of workers employed that are under 18.

⁵ First Call, *Child Labour is No Accident: The Experience of BC's Working Children*, 2013
<https://firstcallbc.org/wordpress/wp-content/uploads/2015/08/Child-Labour-Is-No-Accident-FirstCall-2013-05.pdf>

Monitoring and Reporting

Though the law in BC was changed in 2003/2004 to allow children as young as 12 to work without a permit, the government did not ensure any type of monitoring that would track the number of children working and where. Further, information about accidents and injuries to young people under 15 is not published publicly by WorkSafeBC and has been made available only through Freedom of Information Requests.

In the absence of a permitting system, the government has no way of knowing where and how many children aged 12 – 15 are working and at what tasks. Statistics Canada does not track or report on the participation of those under 15 in the workforce.

The lack of statistical data has made it difficult to monitor the effects of policy changes and the participation of children in the workforce beyond injury data. Over the years, advocates have relied on qualitative research through interviews and focus groups to better understand the work experiences of children and youth.

As a starting point, there is no reason for WorkSafeBC not to report the same information about all people working in BC. First Call recommends WorkSafeBC change its reporting and include statistics on all people working in BC, including children under 12 currently working under a permit.

WorkSafeBC Enforcement

Current legislation gives WorkSafeBC fairly broad discretion to regulate workplace health and safety issues. However, beyond the few ‘rules’ related to the employment of children, in effect, all workers age 12 and over are treated the same way with respect to workplace safety.

In the absence of prohibited occupations and/or tasks, the agency’s primary strategy aimed at protecting children and youth is delivered through education programs.

While the number of accidents and injuries to children and youth reported to and accepted by WorkSafeBC over the past 11 years is more than enough evidence to justify greater oversight, First Call found that none of the many injuries reported to us by young people during interviews and on surveys,⁶ were reported to WorkSafeBC.

This suggests far more young people are being injured than WorkSafeBC is aware of, some of them in ways that have potential lifelong consequences.

First Call recommends that WorkSafeBC exercise its duty to protect the interests of children by becoming more proactive in addressing their workplace safety.

⁶ First Call, *Child Labour is No Accident: The Experience of BC’s Working Children*, 2013
<https://firstcallbc.org/wordpress/wp-content/uploads/2015/08/Child-Labour-Is-No-Accident-FirstCall-2013-05.pdf>

Appendix 1: Definitions

Child labour: The term “child labour” is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.

Hazardous work: Labour that jeopardizes the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out, is known as “hazardous work”. Often, statistical data about workplace injuries informs the occupations and workplaces considered to be hazardous.

Work Start Age: ‘Work start age’ is the age at which a person can work without government oversight (e.g. a permit) or special rules.

Appendix 2: Current Legislation and Regulation

Text source: B.C.'s Employment Standards Act

Current Legislation:

9. (1) A person must not employ a child under 15 years of age unless the person has obtained the written consent of the child's parent or guardian.
- (2) A person must not employ a child under 12 years of age without the director's permission.
- (3) On permitting the employment of a child under 12 years of age, the director may set the conditions of employment for the child.
- (4) An employer must comply with the conditions of employment set under subsection (3).⁷

Text of Current Regulation:

Part 7.1 — Conditions of Employment for Children, Division 1 — Children Generally

Application

45.1 This Division establishes conditions of employment for children 12 to less than 15 years of age but does not apply in respect of the employment of those children to whom Division 2 or 3 applies. [en. B.C. Reg. 431/2003; am. B.C. Reg. 146/2012, Sch. 1, s. 1.]

Exclusions from the Act

45.2 Section 37 of the Act does not apply to children in respect of whom this Division applies. [en. B.C. Reg. 431/2003.]

Limits on working hours

- 45.3 (1) In this section, "school day" means, in relation to a child, a day on which the child's school is in session.
- (2) An employer of a child must not require or allow the child to work on a school day at a time when the child is scheduled to attend.
 - (3) An employer of a child must not require or allow the child to work
 - (a) more than 4 hours on a school day,
 - (b) more than 7 hours on a day that is not a school day, unless the employer receives prior written approval from the director,
 - (c) more than 20 hours in a week that has 5 school days, and
 - (d) in any case, more than 35 hours in a week.

[en. B.C. Reg. 431/2003.]

Adult supervision required

45.4 An employer of a child must ensure that the child works only under the direct and immediate supervision of a person who has reached 19 years of age. [en. B.C. Reg. 431/2003.]⁸

⁷Employment Standards Act, [RSBC 1996] CHAPTER 113, Part 2 Hiring Employees, 9. Hiring Children (1) (2) (3) (4) http://www.bclaws.ca/civix/document/id/complete/statreg/96113_01#section9

⁸ Employment Standards Act, Employment Standards Regulation, Part 7.1 — Conditions of Employment for Children

Appendix 3: Factsheet on the General Employment of Young People

Text source: Ministry of Labour's Factsheet on the General Employment of Young People

The information in this factsheet applies to the employment of young people other than in the entertainment industry. Information on young people employed in the entertainment industry is available on the Employment Standards website at www.gov.bc.ca/EmploymentStandards.

Employment of young people between the ages of 12 – 14

An employer must receive the written permission of a parent or guardian before employing a young person aged 12 to 14. This enables the parent or guardian to verify where their child will be working, as well as to evaluate whether the hours of work and the type of work to be performed are suitable for their child. Parents and guardians are responsible for determining that the proposed employment meets the best interests of their child and will not adversely affect the child's social, physical or educational needs. (See Employment of Young People – A Guide for Parents factsheet).

If an employer employs a young person without the consent of a parent or guardian, the employer must be able to prove that the employee is 15 years of age or older.

Employment conditions age 12 – 14

An employer must not require or allow a child aged 12 to 14 to work at the same time the child is scheduled to attend school.

The child must be under the direct and immediate supervision of a person aged 19 or older at all times while working.

An employer must not require or allow a child aged 12 to 14 to work more than the following number of hours:

- Four hours on a school day;
- Seven hours on a non-school day, unless the director has provided written approval;
- 20 hours in a week that has five school days; and
- 35 hours in any other week.

Employment of children under the age of 12

Before employing a child under the age of 12, an employer must have written permission in the form of a child employment permit from the Director of Employment Standards.

Employment conditions under age 12

The director will assess each application carefully. Before permission is granted, the employer must demonstrate that:

- The parent or guardian has given written permission;
- The school has given written permission;
- The child will be under direct and immediate adult supervision at all times;
- The child will not travel to or from the worksite unaccompanied; and
- The child will not work near hot surfaces, noxious substances or dangerous equipment.
- The director will also consider such things as:
 - The degree to which the child can physically be expected to perform the work;
 - Whether the child has the maturity to function in a work environment; and
 - The child's ability to understand the nature of an employment relationship and health and safety issues in the workplace.

The director may set hours of work appropriate for the child, and may restrict the type of work to be performed. If there is any concern about the suitability of the proposed employment, permission will not be granted. The director may cancel a permit after it is issued.

Permission from the director to employ a child does not relieve the employer of responsibility to ensure that the child's work is not dangerous or detrimental to the welfare of the child.⁹

⁹ Employment Standards Branch Fact Sheet, July 2016, General Employment of Young People
https://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/employment-standards-workplace-safety/employment-standards/factsheets-pdfs/pdfs/youth_general.pdf

Appendix 4: ILO C138 - Minimum Age Convention

Text source: The ILO Minimum Age Convention

Convention concerning Minimum Age for Admission to Employment¹⁰

Fixing the minimum age for admission to employment is a basic obligation of ratifying member States, and the Convention establishes three categories for this:

- (1) The minimum age should not be less than the age of completing compulsory schooling, and in no event less than 15 years of age. Countries whose economy and educational facilities are insufficiently developed may initially fix the age of admission to employment at 14.
- (2) A higher minimum age of 18 is set for hazardous work “which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons”. It is left to the individual countries to determine which these are, after consultation with employers’ and workers’ organizations. The Recommendation gives guidance on the criteria that should be applied in determining what hazardous work is.
- (3) A lower minimum age for light work, i.e. work which is not likely to be harmful to children’s health or development or to prejudice their attendance at school may be set at 13. For a country that initially sets a minimum age of 14, the minimum age for light work may be set at 12.

¹⁰ ILO, C138 - Minimum Age Convention, 1973 (No. 138) Convention concerning Minimum Age for Admission to Employment https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138