

PATHWAYS TO INDEPENDENCE

OCTOBER 27TH, 2021, 1:30PM TO 3:30PM

ZOOM VIRTUAL PEER GROUP MEETING NOTES

Hosted By:

Paul Gauthier,

Executive Director

Individualized Funding Resource Centre Society

Ruth Marzetti

Executive Director

Technology For Living

Guest Speakers:

Andres Barker



The goal of Pathways To Independence meetings are for peers to come together and share information and updates on current issues facing people with disabilities. More than ever, people with disabilities must come together as a unified group. How we support each other through crisis and every day hurdles will strengthen us as a community and as individuals. Living independently is a choice and comes with challenges. Through unification people with disabilities make a difference; each voice is important.

The October 27th, 2021, meeting was attended by approximately 80 people.

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Technology for Living Updates with Nancy Lear

Peers on Pages (POP)

Peers on Pages (POP): TFL's virtual writing workshop is beginning on Thursday, November 18th. There are still some spots left if you are interested in getting in touch with your creative side; please keep a look out in your inbox for the reminder invitation to register.

POP is a way to express yourself through print and the possibility to be published in TFL's quarterly magazine called The Balance. POP is a way to make friends as we share our stories and feedback with one another.

Website Link to Peers on Pages: [Click Here!](#)

COVID 19 Vaccine Booster: A third COVID-19 booster to the vaccination is available. The booster will be for individuals who are more at risk such as the vulnerable, indigenous persons & seniors who are 70 years of age and older. Contact your family physician that a request form for the booster is completed and submitted.

Please Note: Dr. Road is not available to sign the medical form for any PROP member wanting the booster shot. Please contact your family physician.

Update: People who are 12 years and older, will soon be invited to book their booster.

Website Link to the Province of BC, Provincewide booster dose information, [Click Here!](#)

Accessible Parks Canada: The Accessible Parks Canada project is an interdisciplinary research project being conducted by the Engineering Health Lab (part of The KITE Research Institute) and affiliated researchers and funded from Accessibility Standards Canada. Their goal is to revise guidelines for making Canada's national parks more accessible.

Accessible Parks Canada is inviting people with disabilities to complete a survey for their research study. The website page has a survey for caregivers to complete as well. As an incentive, a \$20 Amazon Gift Card will be sent to those who participate and complete the survey. The survey is very interactive, and participants will be contacted for an interview if they choose.

Website Link to Accessible Parks Canada, [Click Here!](#)

For further information contact Nancy Lear at nlear@technologyforliving.org

Questions and Answers

Q. Do we have to pay for the POP program?

A. It is a free program if you have a member or Technology for Living. You are welcome to join the group.

Community Updates

Ya Gotta Laugh, Book Launch Peer Announcement, with Michael and Barbara Alldritt

Barbara was born in Saskatchewan and raised on a farm and after she completed high school she traveled extensively with a two year trip around the world, where she met me [Michael]. We met in western Samoa, we continued traveling around the world, after which we returned to Canada and settled in Calgary. She furthered her education at the University of Calgary where she completed the program with an Honours Degree and was awarded the Faculty of General Studies Gold Medal and the Lieutenant Governor's Gold Medal as the top graduate in Alberta for 1988.

We moved to Vancouver in 1989 with the aim of continuing her education. She started her studies to get her Master's at the University of British Columbia and was awarded grants to pursue her PhD, but then Multiple Sclerosis (MS) raised its ugly head and she was forced stop her academic life and to rethink her future.

Several years ago she started writing stories about the experiences she had with MS and those stories were published in the MS newsletter, and people who read them contacted Barbara and told her their stories. She compiled their stories, wrote them for others and put them all together into a compendium of stories. All of those stories are from people in trying circumstances that always tried to find the humour when things go wrong.

Ya Gotta Laugh is a collection of the ups and downs of living with a disability. Because of Barbara's MS, I helped her walk through the self-publishing process, which is fairly arduous.



Ya Gotta Laugh, by Barbara Alldritt

Available at the following Book Stores and Internet Sites:

Amazon	Indigo
Barnes and Noble	Kindle e-books
Apple Books	Book Depository
Bookshop	Smashwords

Questions and Answers

Q. I am curious about how long it took you to write the book.

A. About two years. Getting it published was possibly six to eight months and we used a self publishing company out of Victoria called Tellwell Talent. I am very pleased to hear that you are interested because

if you have MS, that's not fun, but you are alive, you got to smile! The stories are all about things that made me smile. They are not easy, but they are funny to me.

Paul Gauthier: We need to be able to laugh about difficult circumstances.

Barbara Alldritt: Absolutely we do!

Paul Gauthier: That is what I want to read about because I think if you can take our own situations and turn it into funny moments and funny situations that's a great thing to share. Thank you for sharing that with the world.

October 14th, 2021 Provincial Health Order with Paul Gauthier

On October 14th, Provincial Health Officer Bonnie Henry released a comprehensive Order named Hospital and Community (Health Care and other Services) COVID-19 Vaccination Status information and Preventative Measures.

For the October 14th Provincial Health Order, [Click Here!](#)

This is a 25 page document, but we have pulled out some key points that you need to know. We have interpreted these key points to the best of our ability, but if you have any legal questions or wish to confirm interpretation, please refer to the original document and consult a legal professional or speak directly to the Provincial Health Office.

The order comes from the Provincial Health Officer directly and she has given the Medical Health Officer of each Health Authority the authority to administer and enforce the order.

Before I start outlining the key points, I want to recognize that the practical application of the Order has created some difficulties for some CSIL Employers. There are some questions regarding how all of this will be administered for CSIL Employers, regarding the staff that we may have, who have chosen not to take the vaccine.

There are some concerns and questions around severance pay that needs to be paid out to employees. Do we lay them off, are they terminated for noncompliance?

The other major concern is the lack of staffing as a result. I think generally, anybody who is a CSIL Employer or is getting individualized funding of any kind and doing their own recruitment have been experiencing significant challenges.

Both Chris Hofley and I have been fielding a lot of questions around the difficulties of finding staff and how the health order has made it difficult because you have had some employees that have been with you for many, many years and what are we going to do in that circumstance if they are not vaccinated?

The Association of CSIL Employers has sent an email to the Ministry of Health and Provincial Health Officer Bonnie Henry, advising them that while the CSIL Employer is in compliance with the Order and must terminate staff, the legal responsibility around severance is not clear. Is this without cause or is it with just cause? We have requested the Ministry to answer that question, and as of today, only some CSIL Employers are starting to get emails from the Health Authorities regarding this. I know that Fraser Health

Authority and Vancouver Island Health Authority had sent some information out, but I think you would agree that it is inaccurate or incomplete with regards to providing the necessary information.

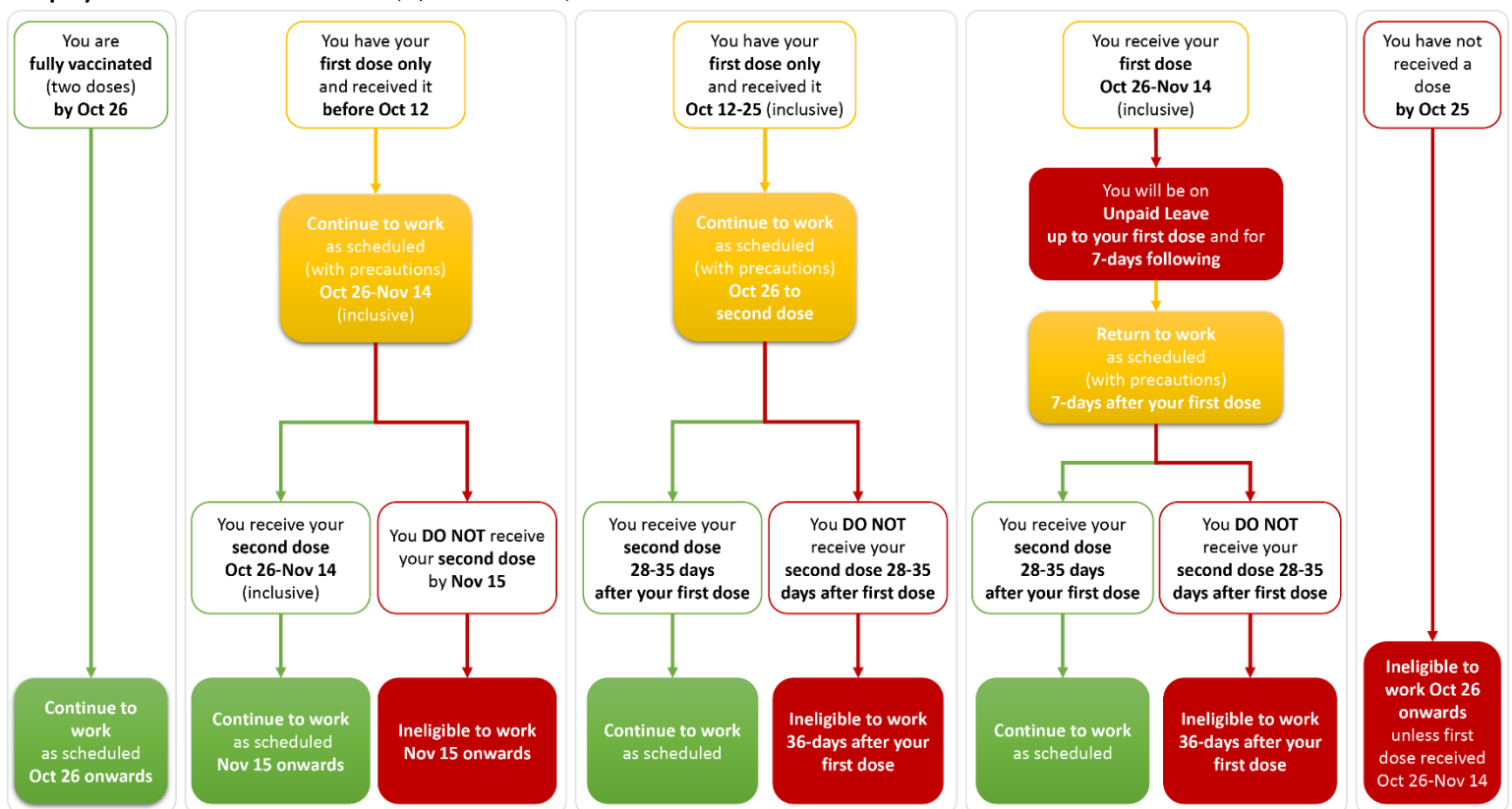
In the order, the definition of community care does include CSIL Employers;

*“community care” includes home nursing, nursing support services in schools, home support, mental health services, drug and alcohol services, continuing care services, health care or services provided under the **Choice in Supports for Independent Living program**, health care provided in an office or clinic, health care or services provided by a child development centre, supervised consumption services, overdose prevention services and public health services;”*

What we need to do is talk about is what this means for us? Healthcare workers are expected to have been vaccinated by October 26th, 2021.

Please refer to the document showing the timeline for vaccinations, below, created by the Vancouver Island Health Authority.

Employee Scenarios and Workflows (Expanded PHO Order) as at 22 Oct 2021



It is not known to what extent the Health Authorities will enforce the order with CSIL Employers, it is not clear, but it is part of the order, and you should prepare yourself. Prepare your staff vaccination information in the event it is requested by the Health Authority.

- You should have your list of your employees' names and the vaccination dates.
- If you have employees who are not vaccinated, you may want to start working on your backup staffing plans.
- An employer must request and collect proof of vaccination or an exemption from each staff member and must keep a record of that information.
- An employee must provide their employer with the proof of vaccination or an exemption on a request from their employer.
- An employer must disclose information about the vaccine status of their staff on both an aggregate and individual level to the Provincial Health Office or to the Medical Health Officer on request for the purpose of providing data, the Medical Health Officer will use when responding to the exposure. It is your responsibility to be able to provide that information to the Health Office.

Medical Deferrals

Medical deferrals are for people who are requiring an exemption from vaccination. Medical deferral request forms are completed by the family physician and is submitted to the office of the Provincial Health Officer for approval.

A doctor's letter that says the employee has been given exemption or a deferral is not valid. Only the Provincial Health Officer can make that decision to provide a person with an exemption or a deferral.

There are clear objective criteria's for determining whether a person has a medical deferral and very few people fall under this category.

Please Note: The College of Physicians and Surgeons of British Columbia has received reports of illegitimate COVID-19 vaccine exemption and deferral letters circulating in the community and are being used by British Columbians who cannot show proof of vaccine through the BC Vaccine Card.

To read the College of Physicians and Surgeons of BC notice that fraudulent medical deferral letters are circulating in the community, [Click Here!](#)

The obligation of CSIL Employers, what are our options, and what do we do here?

Employment standards has not taken a position on this because they have not yet had a case come before them.

- The best option that you would likely have right now, is to tell your employee that they cannot come to work for the duration of the Provincial Health order.
- You would not have to pay them, but they have to remain off work to be in compliance with the order.
- You would not need to pay the severance at this point, and this would give you the ability to hire someone else that is vaccinated.
- When the order is lifted, you would let the new caregiver go and bring back the old employee.

I recognize that the mandatory orders sound horrific for some. How am I going to make that happen and find someone else during that period of time? Ultimately the order is clear that we are technically not able to keep that employee. The issue right now is can we terminate them? This is where things are not clear, and I do not know if we are going to get that cleared up for you today or not.

Andres Barker

We are all speculating as to what's going to happen. It is pretty clear that government organizations are not really coming out one way or the other, which is pretty common. They come up with this policy, they tell employers "you have to do this" but then they don't tell you what a potential liability or follow up is if you do it the wrong way.

From what I am reading, I think a lot of people are getting the feeling that if the employees are not going to get vaccinated that you may be entitled to dismiss them and that it might be with Just Cause dismissal or some form of dismissal where you would not be liable to pay them severance, but that is still a live issue.

That is something that needs to be looked at cautiously. I do know that from what I have read in the Vancouver Sun, the Health Employers Association of BC (they do all the collective bargaining for all the Health Authorities), it sounds like the Health Authorities and the related care homes are all going to be dismissing employees who don't get vaccinated. It does look like that their approach for most employers is probably not going to be to put them on unpaid leave until COVID is over but to actually dismiss them.

I do not expect that they are going to be paying all these individual severances. I think they are going to be saying that it is a requirement of the job, per the Provincial Health Authority that they get vaccinated and that if they are not going to get vaccinated, they are unable to perform the job.

I.e., if you are a taxi driver and you lose your license, the employer is not necessarily required to hold your job for a year until you get your license back. If you can't do the job, you can't do the job, so it might fall into that category.

Caution does need to be exercised because at this point, I don't think anyone can actually give a reliable answer that this is what you should do and you're safe to do this or not safe to do this. There is going to be all kinds of litigation that will eventually come out of this.

Some unions will probably challenge a termination at arbitration and there will be employment standards complaints where people say they are entitled to severance. My own sort of non-committal non legal advice, opinion on this is that probably in the long run, courts and the Employment Standards branch aren't going to be too sympathetic to employees if they don't get vaccinated, so you are probably fine to dismiss them without severance, but that is certainly going to be a live issue.

Paul Gauthier: The liability concern is huge. We are just following the Provincial Health Order. If there is going to be a case put against a CSIL Employer with regards to terminating a position without severance, we are hoping the the Ministry of Health will provide a direct to the Health Authorities to pay the severance amounts. I think Andres is right, the odds of an employee being able to have a victory with regards to the severance pay side of it, would be unlikely but we do not know yet. That is the non-committal components.

Andres Barker: It sounds like Service Canada is saying that people who are terminated for not getting the vaccine are not going to be able to get E.I., and if that ends up being the case, it would give you some further comfort or further idea that these are not Without Cause dismissals if you have to let someone go for not getting the vaccination.

Paul Gauthier: I brought this up through our community updates because by the time we decided to put the agenda together, this has come out and has become an issue facing some CSIL Employers.

Question: I have employees, one of them has had two shots but two employees are refusing to get the shots.

Paul Gauthier: All I can tell you at this point, is based on the PoH Order, if you are a CSIL Employer with employees, which you are, it means that officially the order states that employees should not be working in your home in the community.

At this point, you have the ability to stop them from working in your home. I recognize this is also a problem for some people because they may not have other staff and that is another issue altogether. I am happy to take your situation and have some discussions with you afterwards to brainstorm. From a perspective today with regards to the law at this point, the law has come forward and as an employer, you are to act in this way.

Question: I do have a home support worker who is non vaccinated. She did work yesterday but I have canceled the rest of her shifts for this week until the meeting today. I am assuming that I don't have the choice to keep her unvaccinated, that she has to go.

Paul Gauthier: That is based on the Health order and the CSIL program has been named under the Health order. As a CSIL Employer, the law is saying yes to that. We have posed some questions to the Ministry of Health around some issues that this is presenting.

Question: I heard somebody say if you do not follow the order, you lose your funding. I do not know how true that is, but I assume it could be a possibility.

Paul Gauthier: We do not know how the Health Authorities will enforce or not enforce. We are starting to see the emails which the Health Authorities are sending out to CSIL Employers, letting them know that it is expected that they are following the order.

Comment: I want say as encouragement to anyone else, I put an ad on Craigslist. I have a support worker going back to school in January. The first three people answered were absolutely appropriate. I started to orientate one this week and I have only hired one until I hear if I have to let the other employee go because she is with me three days a week.

Paul Gauthier: Thank you for sharing that; it is hopeful to hear that maybe people are starting to apply again through these ads.

Question follow up: We do have to let her go?

Paul Gauthier: According to the health order, you can let them know that they cannot come to work at this time. If you want to continue with them down the road, I think you will be in a similar position to everyone else. It is hard to keep a position open if you are trying to hire someone else to take over that position. This is a decision that you have to make. Trying to hire temporary caregivers is very difficult.

Andres Barker: I think that is true, people are often going to be reluctant to apply for a job when you cannot tell them how long they are going to be employed for.

Question: In the graph in the last column, it says ineligible to work October 25th onwards, unless first dose would be October 26th to November 14th. What happens if they received the first dose after

November 14th? There is no guidance about that. Are they not allowed to work ever again, even though they are getting their vaccine?

Paul Gauthier: My understanding is that if it happens after November 14th, then I think that they are allowed to come back to work at a certain point. There is a process that they can come back to work, but I do not know off the top of my head.

Note: It is possible that the formula used for the dates, as demonstrated in the graph, may be duplicated for the next period. We recommend you contact the Public Health Office to request confirmation.

Question Follow up: For an order like this, which I imagine is just a mandate and not a law, isn't an email sufficient? Or should the Health Authorities be sending a registered letter, because I might want to see the email and I might not look at my email for weeks.

Paul Gauthier: This is a really good point and something that we have brought forward to the Ministry as well that CSIL Employers have not received, however as an employer there are mandates like this that come out by the Provincial Health Officer that you as an employer need to be aware of by law.

Chris Hofley: I want to confirm that it is not a mandate, as of yesterday it is a law. It is not them telling us that we need to do it; it is our responsibility. If they come back to us and it is not done, then we could face repercussions.

Paul Gauthier: There are penalties for not following the law. Thank you for being open to discuss those things because I know it is not easy to bring those concerns forward.

Andres Barker: I want to make sure that people are communicating with their caregivers, in terms of what their intentions are before you make any decisions. Even if you decide that you are going to dismiss somebody who is not vaccinated, make sure you talk to them first about what their intentions are and communicate in writing before you take any kind of action.

Important Update: Provincial Health Order – Mandatory Vaccines for Health Care Workers

After the Association of CSIL Employers requested guidance from the Ministry of Health, on November 3rd the Health Authorities began to email the following directives to CSIL Employers. We are providing you with the Vancouver Coastal Health Authority directive for your reference.

To view and/or download this document, [Click Here!](#)

Health Authority Mandatory Vaccines for Health Care Workers, Directives; Vancouver Coastal Health Authority

Record keeping and Reporting

- *CSIL employers must determine COVID-19 vaccination status for each employee and provide this information to the health authority if asked to do so.*

Applicability

- *Paid family members are considered CSIL employees and are required to comply with this Order.*

- *This order also applies to CSIL employees who are not in direct contact with the CSIL employer and perform tasks such as meal prep, grocery shopping, and transportation.*
- *Both clients and their representatives (unless the representatives are paid to provide care) are considered employers and are not required to be vaccinated under this Order.*

Process

- *CSIL employees who are not fully vaccinated can continue to work but they must have received at least one dose of COVID-19 vaccine by October 26, 2021 and get their second dose within 28 to 35 days after their first dose. Which means:*
 - o *If they received one dose before October 12, 2021, they must receive their second dose by November 15, 2021.*
 - o *If they received one dose between October 12 and October 25, 2021, they must receive their second dose 28 to 35 days after their first dose.*
 - o *If they are off work after October 26, 2021 because they are not vaccinated, and they get one dose before November 15, 2021, they can return to work seven days after their first dose. However, they must get the second dose 28 to 35 days later.*
 - o *Staff who are not fully vaccinated must comply with the preventative measures in Part D of the Order.*

Staggered approach

- *When a CSIL employer is not able to confirm the vaccination status of an employee, the employee is sent a letter by the CSIL employer alerting them to the situation. The letter informs the employee:*
 - o *That their record does not show proof of COVID vaccination.*
 - o *That there is a Public Health Order which requires proof of vaccination to work in the health care setting.*
 - o *Of the PHO orders requiring proof of vaccination to work in their setting of care.*
 - o *The dates by which vaccination doses are required.*
 - o *Who to contact if they have a pending medical exemption request.*
 - o *How to arrange a vaccination appointment and resources regarding vaccine safety and efficacy.*
 - o *The employment impacts in relation to vaccination deadlines laid out in the Order should they choose to not submit proof of vaccination, up to and including termination of employment.*
- *Employees that refuse to submit proof of vaccination are placed on an unpaid leave of absence for two weeks.*
- *These employees are informed they are subject to termination of employment should they not submit proof of vaccination in this period.*
 - o *If employees indicate they have no intent to be vaccinated following the two- week period, they are advised that the employee will be deemed ineligible for their position.*
- *Over the two-week period, employers should meet with the employee and determine whether the employee intends to become vaccinated.*

Termination

- *If employees continue to indicate they will not be vaccinated, they are advised that their employment will be terminated at the conclusion of their two-week unpaid leave.*
- *Employees that remain unvaccinated at the conclusion of their two week unpaid leave are sent a termination letter by their employer. This letter outlines:*
 - o *The requirement for vaccination.*

- o *The steps taken to inform the employee of the requirement.*
- o *The support provided to the employee to become vaccinated.*
- o *The employee's continued refusal to provide proof of vaccination and resulting termination.*
- o *Contact information for employment options with the employer should the employee choose to become fully vaccinated at a future date.*
- *Under this circumstance, no severance is required for terminated employees. To provide employees with every opportunity to be vaccinated, CSIL employers are encouraged to follow the sequence of events listed above.*

Medical Exemption

- *Any CSIL employee who wishes to request a medical exemption should refer to the [COVID-19 Vaccination Requirements- Guidelines for Request for Reconsideration \(Exemption\) Process](#) for more information.*
 - o *Once a decision has been made by the Office of the Provincial Health Officer or the local medical health officer, if an exemption is granted the employee may be recommended to take risk reduction measures. The individual will be notified in writing of the exemption and will be provided with written instructions and direction as appropriate.*
 - o *The employer will be informed of the outcome of the staff's exemption request directly by the Office of the Provincial Health Officer or the local medical health officer, including the required risk reduction measures.*
 - o *If the medical exemption is granted, an unvaccinated staff member is required to wear a medical mask covering their nose and mouth when at work, except in instances when consuming food or beverage. Employees will be required to follow infection prevention and control protocols, as outlined in Part D of the Order.*

Compliance

- *CSIL employers must request and collect proof of vaccination from their employees and keep record of the information.*
- *On request by the Office of the Provincial Health Officer or their regional medical health officer, for the purpose of preventing, or responding to, exposures to, or clusters or outbreaks of, COVID-19 in a care location, CSIL employers must disclose the collected information on both an aggregate and individual level.*
- *Compliance with this order is mandatory. Any violations of this order are an offence under section 99(1)(k) of the Public Health Act and could result in a fine.*

Employment Topics with Andres Barker

Paul Gauthier

Andres Barker has been a lawyer with over 10 years of experience in Administrative Law, Discrimination, Freedom of Information, Worker's Compensation, General Practice, Civil and Human Rights, Employment, Labour Law, Wrongful Termination and Employment Contracts.

Andres did not attend Pathways in a legal capacity, but to discuss issues commonly faced by CSIL Employers in relation to the *BC Employment Standards Act*. In the past, Andres was instrumental in helping with a number of cases related to CSIL Employers going through very difficult circumstances around Employment Standards and was successful in solving some of the issues.

Andres will be volunteering some of his time to work with the Association of CSIL Employers and the IFRC around Employment issues in an information capacity. Having someone with such a valuable depth of experience will help us all.

Andres Barker

Before I was a lawyer, I worked at the Employment Standards Branch and dealt with employers and employees around issues related to the *BC Employment Standards Act (ESA)*, and Employers and Employees, rights and obligations underneath that piece of Legislation.

The basis of the presentation is essentially the top 5 important employment issues and is intended to give a general overview of some employment related considerations that are relevant to CSIL Employers and other funded employers.

I do want to clarify, it is not legal advice and part of the reason why I emphasize that is because in my current professional role, I am a neutral, impartial adjudicator with the Labour Relations Board. As part of that role, I do not need to maintain a full law license. I am what they call non-practicing, but I am certainly still allowed to provide volunteer assistance. That is the capacity in which I am working with right now with the Association of CSIL Employers and the IFRC, which is providing information and assistance.

Employee Definitions:

"employee" includes a person receiving or entitled to wages for work performed for another, and someone an employer allows to perform work normally performed by an employee. This includes trainees.

"employer" includes a person who has control or direction of an employee, or who is directly or indirectly responsible for the employment of an employee.

If someone is an employee under the ESA, they are entitled to all the benefits and protections of the act, including (but not limited to!):

- Minimum wage
- Overtime
- Severance pay
- Statutory holiday pay
- Unpaid leaves where you must hold their job (including maternity leave)

Relevant employee definitions:

Live-in home support worker excluded from "Part 4" of ESA which includes:

- Overtime provisions
- Meal breaks
- Split shift rules
- No excessive hours
- Hours free from work

Defined as:

"live-in home support worker" means a person who

(a) is employed by an agency, business or other employer providing, through a government funded program, home support services for anyone with an acute or chronic illness or disability not requiring admission to a hospital and

(b) provides those services on a 24 hour per day live-in basis without being charged for room and board

“Live-in” does not mean permanently resides – it means they stay at the workplace during their shift
Live in Home Support Workers

From the BC Employment Standards website:

“Live-In”

“Live-in” does not mean permanently resides at the workplace. It is considered to mean that the employee stays at the workplace during their shift schedule, much like a municipal fire fighter.

Example: Three nights a week, an individual stays at the residence of mentally disabled person and provides care for that person. The individual’s wage is primarily funded by Veteran’s affairs to provide home support services, and partially from other sources. While at the residence, room and board are provided free of charge.

This individual is a live-in home support worker because the majority of their wages are from a government funded program, they are not charged room and board, they care for a mentally disabled person and when working, they live in the residence on a 24-hour per day basis.”

- Entitled to minimum daily pay for a live-in home support worker is \$113.50
- Applies even if employee only works part of the day (even a staff meeting would trigger this provision as a staff meeting is work)

If you unknowingly make a false assumption that somebody is a “Live-in Home Support Worker,” and it turns out you are wrong, and they are actually an hourly employee, and they file a complaint with the Employment Standards Branch, they can come back and argue that they are entitled to all those things that you were not giving them such as the overtime pay and there can be fines from the Employment Standards Branch that you get, as well as an order to pay.

Currently, employees can go back two years so it is very important that if you are going to proceed on the assumption that somebody is a “Live-In Home Support Worker” that you make sure that they definitely are a “Live-In Home Support Worker.”

Live-in does not mean permanently resides; it is considered to mean that they stay at the workplace during their shift schedule. The example they give is three nights a week; an individual stays at the residents and provides care. ESA states this individual is a live-in home support worker because the majority of their wages are from a government funded program.

They are not charged room and board; they care for the person with a disability and are working. They live in the residence on a 24-hour per day basis.

Night Attendant

Night Attendants are excluded from:

- Overtime provisions
- Meal breaks
- Split shift rules
- No excessive hours
- Hours free from work

Defined in the ESA Act as a person who:

“(a) is provided with sleeping accommodation in a private residence owned or leased or otherwise occupied by a disabled person or by a member of the disabled person's family, and

(b) is employed in the private residence, for periods of 12 hours or less in any 24 hour period, primarily to provide the disabled person with care and attention during the night,

but does not include a person employed in a hospital or nursing home or in a facility designated as a community care facility under the Community Care Facility Act or as a Provincial mental health facility under the Mental Health Act or in a facility operated under the Continuing Care Act;”

Example from the BC Employment Standards website:

“An employee works in the private home of a disabled person for periods of 9 hours per night. Their primary duties while at the residence include assisting the disabled person with their personal needs. They are paid for their services by the disabled person’s family, and are provided with a room in the residence to sleep.

This person is a night attendant because they work for periods of less than 12 hours in 24 overnight at the residence, are provided with somewhere to sleep and their primary duties are to provide the disabled person with care and attention during the night.”

Homecare Workers

Effective October 15th, a new category has been added to the Employment Standards Act called Homecare Workers.

Homecare Workers are excluded from the entire ESA.

“A Homecare Worker is a person who is employed in a private residence solely to provide care for an adult but it does not include any of the following:

- (a) a nurse,*
- (b) a therapist,*
- (c) a live-in home support worker*
- (d) employee of a business that provides home care services.”*

“A home care worker includes any personal care giver who, in a private residence, provides the service of attending to another person, regardless of the nature of the responsibilities. They work for an average of 15 hours or less per week in any 4-week period. The duties of a home care worker typically include bathing, dressing, feeding, lifting from chair to bed, tidying up, accompanying on outings, and generally being there

to help if an emergency arises. The duties could also include more specialized care and require training, such as trachea care, suctioning, bowel care and catheterization.”

(the above is taken from the “Guide to the Employment Standards Act and Regulation” on the website for the Employment Standards Branch”)

Employee Contracts:

- General principles of contract law
- Terms
- Dismissal and severance terms
- Ambiguity (how clear is the language? Can it be interpreted multiple ways?)
- Signature
- Fixed term

A contract is formed when:

- Offer of employment is made
- Acceptance of offer

Offer, acceptance and contract can all be oral or written

Common terms:

- Duties
- Confidentiality
- Work Location
- Salary or hourly wage, and benefits
- Overtime

Ambiguity:

- Contracts are generally interpreted against the person who did the drafting
- For that reason it is important any agreement you have is written in plain language (just say what you mean)

Signatures:

When it comes to a signature, an employee needs to sign any written contracts before they start work. If they don't, the terms of the contract might not be enforceable. A signature is not a strict requirement, but if you can prove that somebody received the contract before they started working and agreed to the terms, that is enough, and avoids confusion.

Having them sign the contract before they begin work is important because if there are terms in there that you put in that are good for you or protect you, but you neglected to have it signed before they started to work, they might not be enforceable.

Fixed Term:

- Fixed term contracts define the exact period that work will be performed for
- Can be used if you know the exact period of time you need to hire someone

- If someone is dismissed early they may be entitled to pay for the balance of the contract unless you put in language to the contrary
- Independent Contractor vs Employee
- Courts and government bodies (like CRA and the Employment Standards Branch) use various criteria to decide if someone is an employee or an independent contractor. But each test is essentially a variation on the same idea: is the worker fundamentally in business for themselves or are they working for someone else?

As an example, you have a much different relationship with an occupational therapist than you do with your caregivers.

The factors used to consider whether someone is an independent contractor or an employee may include the following:

- Who controls what work is done and how it is done?
- Who owns the tools used to do the work?
- Is there a chance of profit or a risk of loss to the worker?
- How long is the relationship (e.g. to complete a single job or indefinite?)

Keep in mind: CSIL employers are not permitted to hire a caregiver as a contractor. If you use an agency (in an emergency) that must be pre-approved.

The Severance Limiting Clause is another good example where if somebody starts working, and then you have them sign a contract afterwards, that says you only have to pay them a minimum severance under the Employment Standards Act. You might not be able to enforce that later.

They might be entitled to more severance, so it is important you give them a written contract. Usually, you do with the offer letter, you say I am prepared to offer you employment and these are the terms that I am prepared to offer you. You can do it by email as well. It does not have to be a formal letter, you can send an email saying I am prepared to offer you employment, this is the contract if you agree, please sign the contract and return it back to me.

Employment Standards Act

- Definition of work
- Minimum wage
- Live-in home support workers
- Overtime, averaging agreements, and variances
- Meal breaks
- Split shifts
- Hours free from work
- Statutory Holidays
- Leaves
- Vacations
- Variance
- Wages statements and records
- Termination pay

- Questions and Answers

“Work” may include:

- Travel required as part of the job
- Time when an employee is on call at a designated location
- Time required to shop for employer
- Training

Overtime Requirements:

Side agreements are not permitted. Employers cannot avoid the overtime requirements

Time and a half

- 8 hours per day
- 40 hours per week

Double Time

- 12 hours per day

Minimum Wage:

\$15.20 per hour

\$113.50 daily minimum for live-in home support workers

Averaging Agreements

Employer and employee may agree to average employee’s hours over a period of weeks.

Agreement must:

- Be in writing
- Be signed by both parties before start date
- Specify duration
- Specify work schedule
- If one of these conditions isn’t met, the agreement may be void and overtime payable

Variances

- Employment Standards Branch can provide a “Variance” to certain requirements within the act
- Requires a trade off between the rights of the employee and the benefits to the employer
- Clearest example is compressed work weeks (e.g. the employee works four ten hour shifts without receiving overtime and has three days off)
- Requires a set schedule – cannot be when convenient

Meal Breaks

- 30 minute meal break at least once every 5 hours
- Unpaid, unless employee is required to work or be available for work during the break

Split Shifts

Shifts separated by a number of hours off

- Example: caregiver begins shift at 7am, works until 9am, then has 3 hours off before being required to return for the balance of shift
- Must be completed within 12 hours of start

Hours Free from Work and Maximum Hours

Employee entitled to:

- At least 32 consecutive hours free from work each week (or time and a half for time worked during the 32 hour period)
- 8 hours off between shifts unless required to work because of emergency

Employer must not require or allow employees to work excessive hours or hours detrimental to health and safety

Statutory Holidays

- Employee must be employed for at least 30 days before the statutory holiday in order to receive pay.
- Employee must have worked or earned wages for 15 of the 30 calendar days preceding the statutory holiday.
- If working under an Averaging Agreement, worked any time within that 30 calendar day period.

If employee required to work on statutory holiday, employee is entitled to receive time and a half for up to 12 hours, and double time for over 12 hours.

Leaves of Absence

- Illness or injury: 3 days
- Pregnancy: 17 consecutive weeks of unpaid leave (may be entitled to additional 6 weeks for health-related reasons)
- Parental: if pregnancy leave is taken, up to an additional 61 consecutive weeks, and if not, up to 62 consecutive weeks
- Family: 5 days of unpaid leave (to care for child or immediate family)
- Compassionate care: 27 weeks of unpaid leave (for family member with serious medical condition and significant risk of death)
- Bereavement: 3 days of unpaid leave (for death of immediate family member)

Also additional leaves for:

- Critical illness or injury in relation to care and support for family member
- COVID-19 related illness or caregiver responsibilities (up to 3 days paid in certain circumstances)
- Various others including but not limited to jury duty

Vacation

- Entitlement – at least 2 weeks after 12 consecutive months, and at least 3 weeks after 5 consecutive years.
- Vacation pay – after 5 days of employment the employee is entitled to at least 4% of total wages, and after 5 consecutive years of employment the employee is entitled to at least 6% of total wages.
- Can provide employees leave in their first year or wait until they have completed one year of employment

- Can pay on each pay cheque if employee provides written permission to do so – but employee is still required to take the time off

Wage Statements (Pay Stubs)

Must be provided every pay day

Includes (in part):

- Employer's name and address
- Hours worked by the employee
- Employee's wage rate
- Amount of Deductions
- Gross and net wages

If you are doing it yourself it is a very good idea to review that section of the Employment Standards Act to make sure that you have all of that information on there. The reason this is important is because sometimes somebody will file a complaint and even if the complaint is unfounded, if Employment Standards see that you are not keeping records the way you are supposed to, they can still fine you so it is important to make sure that you are following it just so there's never any adverse consequences.

Wage Statements (pay stubs). You have to make sure that you are providing Wage Statements [pay stubs] to employees every pay period. The information on a Wage Statement will include but won't be limited to, employer's name and address, hours worked by the employee, employee's wage rate, the amount of deductions and gross and net wages.

If you are doing it yourself it is a very good idea to review that section of the Employment Standards Act to make sure that you have all of that information on there. The reason this is important is because sometimes somebody will file a complaint and even if the complaint is unfounded, if Employment Standards see that you are not keeping records the way you are supposed to, they can still fine you so it is important to make sure that you are following it just so there's never any adverse consequences.

Records required to keep

Records must be kept in English, at the place of business, for four (4) years

Records information:

- (a) the employee's name, date of birth, occupation, telephone number and residential address;
- (b) the date employment began;
- (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;
- (d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;
- (e) the benefits paid to the employee by the employer;
- (f) the employee's gross and net wages for each pay period;
- (g) each deduction made from the employee's wages and the reason for it;
- (h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;
- (i) the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;

- (j) how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.

Termination of Employment

- After 3 months = 1 week's wages
- After 12 consecutive months = 2 weeks' wages After 3 consecutive years = 3' weeks wages
- One week per additional year to a maximum of 8 weeks' wages Employer can provide either working notice or pay in lieu of notice
- To be paid within 48 hours (if employer terminates employment) or within 6 days (if employees resigns)

Please Note BC Employment Standards: Employees must take time off for annual vacation and receive vacation pay

"Vacation must be taken within 12 months of being earned. Employees cannot skip taking vacation time and just receive vacation pay.

Annual vacation is scheduled in periods of one week or more unless the employee asks for a shorter amount of time. Employers can schedule vacation time according to business needs as long as employees are able to take their vacation days within twelve months of earning them.

Employees can ask to take vacation days before earning them. If an employer allows this, it does not affect an employee's vacation entitlement later on, unless the employer clearly explains that at the time. The employer must require the employee to submit their request in writing. If the employer allows them to take the vacation days in advance, the employer can deduct the number of vacation days they took in advance from their vacation entitlement once they have actually earned it."

"Vacation pay must be paid at least seven days before an employee starts their annual vacation time. If the employee and employer agree in writing, it can be paid out on every pay cheque instead. Any vacation pay received by an employee becomes part of the total wages paid in that year"

Source, [Click Here!](#)

Human Rights in the Workplace

Topics:

- BC Human Rights Code
- Duty to accommodate
- Requests for medical information
- Pregnancy leave
- Sexual harassment

BC Human Rights Code (s. 13):

Section 13 of the BC Human Rights Code prohibits an employer from dismissing or discriminating against an employee on the basis of:

Race	Religion	Sexual Orientation
Colour	Marital status	Age
Ancestry	Family status	Criminal conviction unrelated to employment
Place of origin	Physical or mental disability	Political belief
Sex		

Duty to Accommodate to the Point of Undue Hardship:

Employers are required to provide employees with time off or modify their job duties up to the point of “undue hardship”

What counts as undue hardship may vary between different job types and industries

Requests for medical information:

Employers can and should ask for all relevant information regarding the employee including:

- Prognosis for recovery
- Estimated return to work date
- Ability to perform job duties
- Capabilities to perform alternate work
- Requirements for accommodations at the workplace

Employers should not ask for diagnosis (although many employees will volunteer this)

Pregnancy leave:

In addition to the ESA leave provisions, there is a duty to accommodate under the Human Rights Code. This generally means hiring a replacement until the worker returns.

Sexual harassment:

Includes unwelcome sexual/romantic attention

Dismissal and Severance Terms

- Severance requirements – ESA and common law
- Just Cause for dismissal
- Resignation

Severance requirements – ESA and common law:

Severance is generally payable where an employer terminates the employment of someone not on a fixed-term contract.

Where the employer has decided to dismiss the worker for lack of work or because they are no longer needed (or even because they would simply prefer to not continue employing the person), this is called a “without cause” termination.

Severance (Pay in lieu of notice):

A reminder that the minimums are as follows:

- More than 3 months employment = 1 week notice/severance
- More than 1 year employment = 2 weeks notice/severance
- After 3 years employment, 1 week notice/severance per year
- 8 week maximum

Severance – Common Law:

Bardal v The Globe and Mail Ltd. [1960] [ruling to determine common law]

- Nature of employee's job
- Length of employment
- Employee's age
- Availability of similar employment given experience, training, qualifications

Severance – Employment Contract:

- Some employers will define the amount of notice or severance to be paid out in an employment contract
- This amount can be the ESA minimums or higher

Just Cause:

If an employee's misconduct or incompetence constitutes a serious breach of the employment contract, the employer may dismiss the employee immediately, i.e. without notice or severance (pay in lieu of notice).

The degree of employee misconduct which gives the employer just cause for termination depends on the facts of each case. One thing to be considered is whether the employee behaved in a manner that was not consistent with the continuation of employment.

Sometimes a single act of misconduct may constitute just cause. The misconduct must be serious, deliberate and intentional, and fundamentally breach the employment contract.

Examples of workplace misconduct:

- Wilful misconduct
- Gross incompetence
- Theft
- Fraud
- Conflict of interest
- Dishonesty
- Serious disobedience
- Assault
- Sexual harassment
- Serious undermining of the Corporate Culture
- Serious breach of employer's rules and policies
- Failure to respond appropriately to corrective discipline

British Columbia Court of Appeal has recently affirmed on several occasions that employees in positions requiring trust and honesty can be terminated for cause where their actions undermine the employer's ability to trust the employee.

For performance issues, you are required to provide progressive discipline:

- Let the employee know what they are doing wrong
- Clearly identify the appropriate standard
- Give them the time and support to improve
- Clearly advise that failure to meet the standard will result in increased discipline, including potentially termination

Resignation:

- An employer can ask for a certain amount of notice from the employee prior to them resigning
- Two weeks is a typical amount but more can be requested
- However, it is difficult to enforce should someone give less than what is required (usually only done where someone's failure to give notice causes a company financial damage)

When it comes to dismissal and severance terms, an employment contract can contain a term that defines the severance you are going to pay somebody when you terminate the contract. If you are going to put one of those terms into the contract, it needs to be very clear and not open to different interpretations.

The clause must:

Be clear and not open to different interpretations

Comply with the minimum statutory requirements in the ESA

For anyone reading it, they need to understand exactly what you mean when you say you are going to pay someone X amount of money or give them X much notice, and it also has to comply with the minimum statutory requirements in the Employment Standards Act.

If you are going to put something in a contract that says what you will pay them when you let them go, it cannot be less than that statutory minimum under the Employment Standards Act. That is where a lot of people get into trouble. You will often see a contract that says I will give you two week's notice, or I will give you 30 day's notice. Once you do that, that clause essentially becomes void, and the person could potentially be entitled to a lot more severance.

Q. We have a caregiver who takes six weeks off for vacation; it is for my sister and I look after her during that period of time. Because that is in excess of what the vacation entitlement is, would that reset the clock for how long they work for you, would that be like an informal resignation for a period of time?

A. No, that is just a minimum in the Employment Standards Act, and they have even changed it the Employment Standards Branch and will enforce a higher amount of vacation taken by the employee if everyone's agreed, or accepted the six weeks.

Q. What if you are just sort of told that is what is happening? I didn't exactly agree with that. She comes and tells me she's leaving, and she will be back on a certain day. She was only supposed to go for her allowed time, but she went much more beyond that time, and it turned into six weeks.

Paul Gauthier: What do you do with somebody who says I am leaving for six weeks? You give me my two weeks vacation, but I am also telling you I am gone for six weeks. Could that be perceived that she has

resigned from her position if she is not coming back within the two weeks vacation time if the employer did not approve that amount of time?

Andres Barker: Not if you let her do it. If an employee has not been approved for that length of leave, then you communicate in writing, and an email is fine, that their leave is not approved, that they don't have that amount of vacation time, and that if they do not come back by the proper date, you are going to interpret it as job abandonment or alternatively, consider it Just Cause for dismissal.

An employee may argue that you've allowed it in the past, but when she's back from her vacation, have a conversation with her and set out the expectation for moving forward. A written communication should follow that meeting, so it's been documented that you addressed the issue with the employee. The letter should outline your expectations and state that vacation time is per BC Employment Standards.

Question: I am worried that she will leave permanently, and the situation works well, for the balance of the year. I am thinking in terms of if we were to terminate the arrangement would her severance go back to all the years she has worked even though she has taken these breaks in between?

Andres Barker: Yes, the service would be considered continuous. Severance is based upon hire date. The severance amount would only change if she had left your employ at some point where you issued a Record of Employment, and she came back to work for you again.

Question: I don't give vacation pay on every paycheque; I save it to once a year. I am assuming they can take vacation in three months if we both agree. If they say I am going away for the week, is that okay?

Andres Barker. Many employers accrue vacation pay, and they will pay the person their full vacation pay with the understanding it leaves the employee with no further funds from that year of work.

Paul Gauthier: There is a point you can do vacation pay on every cheque. Can you also choose to say, "I want my vacation pay today?"

Andres Barker: Not technically. The way the ACT is constructed is that when a person goes on vacation, that is when you pay out their vacation pay. Keep in mind that all these rules are designed to make sure the person is getting the time off that they are entitled to and the pay that they are entitled to.

Please be aware that Employment standards Branch does not condone side agreements,

Question: The first question is about the variances. If the variance is agreed upon by the employee and the employer is that still allowed? If the employer wants the staff to stay two hours one night and then get off two hours earlier the next night if it's agreed upon by two people?

Andres Barker: That is not allowed because you must make a formal application to the Employment Standards Branch and that application will be approved based on a set schedule. You will tell them this is the schedule you are going to work, three on, four off or whatever it happens to be. Assuming both parties agree then they will approve it, but you cannot do it on a one-time basis.

That is some of the ways people get themselves in trouble, they do these casual arrangements, everyone seems fine with it and then one day someone is not fine with it. Then suddenly you are paying two years of overtime for these two hours here and there.

Question: The second question is if an employee asked for two weeks off and it was granted but the employee never returned to work, what is the timeline for issuing an ROE?

Andres Barker: Record of employment has to be issued within five days of interruption of earnings. That would mean five days from the time they didn't come back. It would be a good idea in that case to make

sure that you are reaching out to the person [via email so it's in writing] to find out what is happening and if you can say that if you do not hear from them by X date, you'll assume that they have resigned from your employment.

Question: Last question, you mentioned termination Without Cause, do you have to prove that there was without cause?

Andres Barker: Without cause means that you are not placing any blame on them for the termination. You are separating the contract but there is no specific reason. You just don't need them anymore, so you are letting them go.

If it's a Just Cause termination you are saying they have done something so bad, that you are entitled to terminate them on the spot, and you must be in the position of having to prove that case.

Question: I have a caregiver who only works weekends and is always calling in sick on short notice. Can I let her go?

Andres Barker: Two things. First of all, you can let somebody go at any time without cause by paying them out the severance that they are entitled to.

If someone is always calling on such short notice you need to be aware of the fact that they are doing that because they have some form of medical condition that requires accommodation. You need to make sure you are not getting yourself in trouble. It is not a bad idea if employers think that there is something that needs some inquiry there.

Contact the Employee and say you're calling to discuss that they have been calling in sick a lot, so is there some sort of medical issue you need to be aware of in relation to you calling in sick?

If they are just calling in sick all the time, they say no, no, nothing wrong at all, then you might be safer moving ahead with a termination. Keep in mind that is not necessarily going to get you cause. You might still have to pay severance.

Paul Gauthier: One of the things we are talking about with Andres is a possible law clinic which Andres is going to help us create; potentially with other lawyers who would be able to support individuals with disabilities, in dealing with the issues around employment standards and other related matters.

Open Floor Discussion

Question: I was wanted to ask if anybody had received their truth and reconciliation funding for this September 30th Stat pay?

Kim Ho: I received an email from the Vancouver Coastal Health Authority in Richmond stating it will be included in the funding for December.

Question: Is there any news on possibly trying to increase the hourly rate for CSIL Employers? It's a serious problem with everybody and with the rate of everything going up and not able to get the hours that we need. I was just wondering if anything's going on with that.

Paul Gauthier: Others are asking that same question as well. Last month, I reported that the Association of CSIL Employers is now meeting on a quarterly basis with the Ministry of Health. The two main agenda items of our November 30th meeting is related to both the hourly rate and also the assessment of hours.

Comment and Question: The presentation today was awesome, great, excellent review. It underlines the fact that what we all need to do is have very clearly written out policies and guidelines for our employees. If they violate them at all, you need to have written notice in a paper trail from any little thing, just a gentle reminder. Basically, if ever, it gets to a heated dispute, and there has to be a termination, you have a paper trail: that's what you need.

I am basically fighting with the Provincial Government or Health Authority. Though the Health Authority has been kind of nice and acknowledged the issue, from the start of COVID, the government stated that they would make all reasonable efforts to support those most vulnerable. They were supposed to be prioritizing those most vulnerable to support during the time of COVID and here they are raising wages to health care workers making these incentives clear and all these rewards basically for health care workers. Believe me, we all appreciate health care workers and no offense to them, but they have made absolutely no advances to help us and if we are not vulnerable, who is?

I am thinking we need to make a mass human rights complaint to The Human Rights Tribunal. I called the Tribunal probably a year ago or something, grumbling about this, and they said that there are a few things you have to do before you can bring it to the attention of the tribunal. What are your thoughts on that?

Paul Gauthier: I think it's a great idea. I think that you need to try to think through what exactly you would be putting forward and you have got some outline there.

The Association of CSIL Employers, is to try to find out the Home Support wages in the Health Authorities and agencies.

If we can see that there has been increases, without us getting those increases then that is a form of proof. We know that nurses and care facility health care workers have been getting increases but we have not. I am sure that is happening in the community setting as well, but we need proof of that so that when we take something like this forward, you have got it.

Frontline workers through the CSIL program only received the temporary pandemic pay. We didn't get it as a permanent increase. By having this information, ACE can have informed discussions with the Ministry of Health, in an effort to ensure that CSIL Employees receive comparable wages. This is just one of multiple concerns that ACE will be working with the Ministry of Health and the Health Authorities about.

Comment: A few days ago, there was a local business hiring a dishwasher for \$25 an hour. How can we compete with that?

Comment: I just got a letter from the WCB changing the rates and increasing it quite significantly. I would not mind knowing in general what category we are supposed to be using for WCB because I am not sure I'm even in the right category.

Paul Gauthier: I received an email from another family member really concerned about this as well. I will be happy to see what we can find that out. We are hearing that it is going to go up quite a bit, I have not seen the document.

Hillary Currie: There are at least two categories that I know of that WorkSafe is putting CSIL Employers in, because they fit in both, but they don't both have the same rates.

Action Item: To review WorkSafe BC Categories to determine usage and premium differences.

Upcoming Pathway Meeting

Date & Time

Wednesday, November 24th, 1:30pm until 3:30pm

Agenda

1. Technology for Living Updates
2. Wills & Estate Planning with Ken Kramer, Q.C., founder and principal of KMK Law
3. Health Authority CSIL Employer November 2021 Communications
 - a. Compliance Form from Fraser Health Authority
 - b. The Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures Order
 - i. CSIL Employer's guidance around
 1. Obtaining employee proof of vaccination
 2. Written Request to CSIL Employees for Information
 3. Unpaid two week leave
 4. Just Cause Termination

Peers are reminded that if they have a topic idea for a future meeting, to please send an email to pathways@ifrcsociety.org

Pathways To Independence Peer Group Meeting Notes and pertinent documents are uploaded to <https://www.ifrcsociety.org/pathways>

THANK YOU FOR YOUR ATTENDANCE AND CONTINUED CONTRIBUTION TO THE MEETING!