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LAI-D-OFF EMPLOYEES' RIGHTS IN THE TIME OF COVID

By Izzy Dehler-Hyde

Seven months since the Government of BC ordered shutdowns of many industries and businesses to slow down the spread of COVID-19, laid-off workers are still facing uncertainty about their rights. The government extended the temporary lay-off provisions in the *Employment Standards Act* twice, to a total of 24-



weeks. This provided employers with the flexibility to temporarily lay-off their employees until the end of August. This meant that employers did not have to terminate their employees and could avoid the possibility of paying compensation for length of service (often referred to as severance or termination pay) and employees could stay continuously employed without seeing any impact to their employment conditions (pay rate, vacation time, benefits, etc.). With August long gone and the temporary lay-off period over, many employees are still not back to work and are rightfully concerned and confused about their rights. We have compiled answers to some of the most common questions we have been hearing and we're disheartened to say that you will find that the answers show the very few protections provided for employees whose jobs were lost due to COVID-19.

Together
Against
Poverty
Society

When I was laid off, I was told it was temporary, but my boss still hasn't hired me back. What should I do?

While hard to hear, it is important to keep in mind that, in this situation, unless

(See Laid-off Employees, page 6)

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OUR SERVICES FOR INDIGENOUS PEOPLES

IF YOU LIVE ON A RESERVE:

- Indigenous status applications
- Indigenous health benefits issues
- Band applications
- Housing issues
- Income security issues
- Employment standards issues for employers under provincial legislation
- Income taxes

IF YOU LIVE IN THE URBAN COMMUNITY:

The same services as covered on Reserves, plus:

- Income assistance issues
- PWD applications
- Residential tenancy issues
- Employment standards/EI/CERB issues

TAPS' TAX SERVICES

While TAPS' tax clinic is not running during the COVID-19 crisis, we are still able to complete your tax return for you, either by phone, e-mail or drop-off. If you need to get your taxes done, contact us at 250-361-3521 or tax@tapsbc.ca, or drop by our office at 828 View Street. TAPS' tax project runs year-round, except for the month of August.



TAPS STAFF UPDATE

With a heavy heart we say farewell to legal advocate Megan Billings, who has been such a caring advocate for TAPS' clients and such a wonderful colleague to work with in both our income assistance and tenancy projects.

Megan began at TAPS in 2016 as a volunteer disability advocate. She came back to TAPS as a Social Work practicum student in 2017, and we were thrilled when she returned again in 2019 as a staff advocate. Megan is heading off for new life adventures (if she can ever catch a flight), and we wish her all the best.

The start of school has also brought a couple more changes to our team. Thanks to a generous grant from the Law Foundation of BC, we were able to hire Irene McGee as TAPS' articling student. Irene is working with our staff lawyer and providing advocacy in our tenancy project. We also welcome Meaghan Hermansson, a practicum student from Uvic, who is now helping in our Volunteer Disability Advocacy Project.

Last, but certainly not least, we are happy to

(See TAPS Update, page 3)

Together Against Poverty Society

Annual General Meeting

All welcome

5:30 p.m.

Thursday

December 10, 2020

At TAPS' office, 828 View Street

TAPS STAFF

Doug King
Executive Director

Izzy Dehler-Hyde
Employment Standards
Legal Advocate

Daniel Jackson
Staff Lawyer

Antonia Mah
Tenant Legal Advocate

Hannah Mang-Wooley
Tenant Legal Advocate

Thea McDonagh
Director of Advocacy and
Income Assistance Legal
Advocate

Irene McGee
Articling Lawyer

Madyson Powell
Income Assistance Legal
Advocate

Sharifa Riddett
Coordinator of the Tax
Project

Emily Rogers
Income Assistance Legal
Advocate

Caitlin Wright
Office Coordinator and
Coordinator of the
Volunteer Disability
Advocacy Project

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Artist: Joan Stiebel

(Cont'd from TAPS Update, page 2)

announce that in September TAPS hired Antonia Mah, a long-time volunteer and, this past summer, practicum student from the UVic School of Social Work, as our new tenant legal advocate. On top of her experience at TAPS, Antonia has worked at Cool Aid's Sandy Merriman House, and we are excited see the perspective she brings to her advocacy role. Welcome to the TAPS team, Antonia!

Doug King,
Executive Director



WRITE FOR TAPROOT

Taproot welcomes articles, stories, and poetry from readers. Share your opinions, experiences, outrage, ideas and creativity. You can submit your writing by e-mail to volunteers@tapsbc.ca, or by mail to 828 View Street, Victoria, V8W 1K2. Or drop your submission off in person at our office. If possible, include a phone number, e-mail address, or street address where we can reach you.

WORKING IN THE TIME OF COVID



By Hilary L. Marks

In early 2020 I was working full time in a transitional shelter. Life was pretty normal and structured. All that changed in mid-March when COVID arrived. I decided to go on medical leave because of the high-risk occupation I'm in and the risks I face due to my asthma and age. I applied for medical Employment Insurance (EI) online, and because of COVID the medical EI converted directly into the Canadian Emergency Response Benefit (CERB). The \$2,000 a month was clearly a godsend, but it was less than what I had been earning.

I am also someone with Person With Disabilities status (PWD) with the Ministry of Social Development and Poverty Reduction (MSDPR). As such I am allowed to earn money up to a yearly limit of \$12,000, at which point I no longer receive PWD money, but I retain PWD status, the

transportation allowance, and access to medical benefits covered by the Ministry.

At the time the CERB was brought in, I heard the Ministry was going to claw back any CERB money PWD recipients received. That policy would affect my income and the incomes of others who were on PWD and also qualified for CERB. Being an advocate and a social justice warrior, I knew I had to do something about this.

I contacted the office of Shane Simpson, Minister of Social Development and Poverty Reduction, and requested that CERB money not be deducted from people's PWD cheques. This is an unusual time, I said, and it would be unacceptable to punish the poor during a pandemic (not that it is acceptable to punish the poor in any situation.)

It turned out that I wasn't the only one asking for "no clawback" of the CERB. Those who phoned, wrote and emailed the Minister to voice their concerns were successful, and in May Shane Simpson announced that there would be no clawback of CERB money for those on PWD. I collected the CERB until May, when I returned to work.

But there was one other thing: the Ministry's \$300 COVID benefit. The Minister announced that "everyone" on IA and PWD would receive the benefit. The thing is, he never mentioned anything about the people on PWD who were working and whose earnings were more than \$12,000 for the

PERSONS WITH DISABILITIES

TAPS has advocates who can help you apply for Person With Disabilities status (PWD) through the Ministry of Social Development and Poverty Reduction. TAPS can also help you with an appeal if you have been denied. Call us at 250-361-3521 for more information. If you are at the appeal stage, get in touch with us as soon as possible after receiving your letter of denial, and tell the receptionist you are calling about a disability denial.

(Cont'd from Working in the Time of COVID, Page 4)

year. My annualized earnings exemption just happened to reach \$12,000 in August. That month I received no money from MSDPR except the \$52 transportation allowance, and continued access to MSDPR medical benefits. Because I was no longer receiving PWD income, I was not eligible to receive the COVID benefit, even though I continued to have PWD status.

I thought about challenging this Ministry decision. For me it was a matter of principle. As I considered what to do, I had conversations with several people, including some advocates at TAPS. Sometimes embarking on challenges to the Ministry makes me feel low, undeserving, and very frustrated. So, I have decided not to pursue it.

I am so grateful to be back at work, doing what I love. I would like to thank TAPS, with whom I have volunteered for over 10 years, for the space in the Taproot to express how social injustices happen all the time! Please stand up for what you believe in, or write about it if that is safer. I believe with each voice and each experience, we let those who govern know how it really is! Don't give up. Together in the fight! ■

FEDERAL DISABILITY

TAPS can help you with your reconsideration request and appeal if you have applied for CPP-Disability and been denied. We are not, at present, able to help with the CPP-Disability application itself.

If you would like to speak with an advocate, call 250-361-3521.



BECOME A TAPS MEMBER!

Want to support TAPS? Why not become a member! We are happy to waive the fee, so it doesn't have to cost you anything. You will get the Taproot mailed or e-mailed to you.

Together Against Poverty Society Membership Registration 2020

Together Against Poverty Society, 828 View Street, Victoria, BC, V8W 1K2

Annual Membership Fees: Unwaged \$5 (we are happy to waive this fee)

Waged \$20 Organization \$80

Method of payment: Cash Check N/A

Date: _____

Name: _____

Address: _____ Postal Code: _____

Phone: _____ e-mail: _____

I would like to join TAPS' mailing list to receive: E-mails from TAPS about its work

Taproot—TAPS' newsletter

>>> by e-mail by postal mail

(Cont'd from Laid off Employees, page 1)

you have a collective agreement or an employment contract that guarantees the right to recall (the right to be called back into your employment position if it is within a pre-specified period), your employer has no legal obligation to hire you back.

With that in mind, it is still worth having a conversation with your employer about your job. If they still have intentions of hiring you back but are not in a position to do so yet, they could submit an application to the Employment Standards Branch for another extension to the temporary lay-off period. This process is called a variance. If they no longer have intentions of hiring you back, depending on your relationship with your employer, it may be worth negotiating with them a payment for compensation for length of service if you are eligible for it.

Am I entitled to compensation for length of service (also called severance or termination pay) for my COVID lay-off?

Possibly, but this is a rather tricky question to answer without all your specific details. There are some exceptions for termination pay unrelated to COVID-19. For example, if you worked for the company for less than three months; were hired on a short-term contract; worked on a construction site; turned down a reasonable offer to alternative work; or were fired for just cause, you are not entitled to compensation for length of service.

There is also a COVID-specific consideration as to whether you are entitled to termination pay for your layoff. Under section 65(d) of the *Employment Standards Act*, there is an exception to the requirement for termination pay if “an employment contract is impossible to perform due to an unforeseeable event or circumstance.” Your employer will likely try to argue that the COVID-19 pandemic and the resulting public health orders impacting businesses made it impossible to maintain your employment contract. In this case, your employer will have to demonstrate that it was impossible to keep you employed beyond a simple reduction in business. “Impossibility” is a high bar and business losses or reduced profits alone are not enough to waive an employer’s responsibility to provide termination pay to laid-off employees who are otherwise entitled to it. However, an impossible circumstance that the employer had no control over, for example, a public health order has shut down the business

(See Laid-off Employees, page 7)

BECOME A MONTHLY TAPS DONOR!

With your support, individuals and families living in poverty in our region will have access to critical legal advocacy and educational services. TAPS’ services are unique in their design and delivery, and offer knowledge, empowerment and, in many cases, a new sense of hope.

Select a monthly amount that’s affordable to you, and TAPS will automatically deduct it from your checking account each month. You’ll never have to write a check, buy a stamp or find an envelope again.

Monthly donors receive the following benefits:

- Updates on TAPS programs
- Annual tax receipt for all your donations during the year
- Taproot delivered to your e-mail.

See the monthly donor form on page 8 of this newsletter.

(Cont'd from Laid-off Employees, page 6)

beyond the temporary layoff period, would likely absolve the employer of their requirement to pay termination pay. In any circumstance, it is worth getting legal advice to understand your options.

How much compensation for length of service could I be entitled to for my COVID lay-off?

An employer can choose to provide notice, compensation for length of service, or a combination of the two. As most employees did not receive notice of their COVID layoff, they could be entitled to termination pay. Termination pay is calculated based on how long you have worked for a company and what you typically made in a week in regular wages.

Years worked for the company	Weeks of notice or compensation needed
Over 3 months up to 12 months	1 week
Over 12 months up to 3 years	2 weeks
Over 3 years	3 weeks, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice

When is my deadline to file a complaint to the Employment Standards Branch for compensation for length of service for my COVID lay-off?

If you were initially temporarily laid off but then later not called back to work, your deadline to file a complaint is February 28, 2021. If you were permanently laid off from the get-go, your deadline to file a complaint is 6 months from your last day of work. If you have missed your deadline for reasons related to the pandemic, the Branch does have the discretion to accept those complaints. You should explain in your complaint form why the pandemic (or related reasons) left you unable to file on time.

If you live in the Capital Regional District, have been laid off from your job, and want to know whether you could be entitled to compensation for length of service, please contact TAPS at 250-361-3521 or employment@tapsbc.ca. If you live outside the CRD area, you can contact the Employment Standards Branch at 1-833-236-3700. ■

SUN SHADE FILM SYSTEMS

We would like to give a big THANK YOU to Ken at Sun Shade Film Systems for his generous donation of window film and for installing the film on TAPS' office windows free of charge, a value of around \$1000. Sun Shade Film Systems is a local, family owned window film business serving residents and businesses of greater Victoria and Vancouver Island for 20 years.



ABOUT TAPS

TAPS was established and registered as a society in 1989. We provide legal information and representation on issues relating to income assistance, provincial and federal disability benefits, residential tenancy, and employment standards to people in the Greater Victoria area. We also provide public legal education in these areas and on broader poverty issues.

You can reach us between 9:30 a.m. and 4:30 p.m., Monday to Friday, by phone at 250-361-3521 or in person at 828 View Street. The office is closed daily for lunch between noon and 1:00 pm and is closed to walk-in clients on Monday and Friday mornings.

TAPS IS FUNDED BY



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Thank You for Supporting TAPS' Legal Advocacy!

The best way to support TAPS is by becoming a monthly donor! Please submit this form and your voided check to: Together Against Poverty Society, 828 View Street, Victoria, BC, V8W 1K2

Date: _____

Please debit my bank account (attach VOID cheque):

\$10 \$25 \$35 \$50 \$100 Other amount \$_____ (please specify)

I would like this donation debit to be processed through my account on the 25th of each month.

Signature: _____

Donor Name: _____

Address: _____ Postal Code: _____

Phone: _____ e-mail: _____

This donation is made on behalf of: an individual a business

A tax receipt for your total monthly donations will be sent to you at the end of the calendar year.

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