

More information on remedies

Reinstatement to employment — section 50(2)(b) of the Act

Reinstatement is a remedy available for a worker whose employment has been terminated. However, it is not automatically granted, particularly where the worker can be “made whole” through other means. In many cases, reinstatement is not appropriate for reasons such as:

- The deterioration of personal relationships between the worker and the employer, or other workers, or where the employer’s operation is so small that face-to-face contact between disputing individuals would be unavoidable;
- The relationship of trust between an employer and worker no longer exists;
- The worker does not believe that reinstatement is appropriate;
- The worker’s physical inability to start work immediately;
- The abolition of the job held by the worker at the time of the dismissal;
- Other events subsequent to the worker’s dismissal that would make reinstatement impossible, such as closure of the place of employment, bankruptcy or layoffs.

Payment of wages — section 50(2)(c) of the Act

In assessing an appropriate wage-loss payment for a dismissed worker, the primary objective is to make the worker whole (the “make-whole principle”). As set out in Board policy, the object of the make-whole principle is to put the worker in the same position that he or she would have been in had the discriminatory action not occurred. If the evidence establishes that the employer would likely have continued to employ the worker, the Compliance Section will consider paying the worker wage loss until such time as he or she has secured new employment. This is, of course, subject to the worker’s obligation to make reasonable efforts to find new employment in order to reduce or eliminate the loss.

In cases where the evidence establishes a likelihood that the worker’s employment would not have continued until such time as new employment was found (for example, the worker would likely have been dismissed in any event, or the business closed), the Compliance Section will consider ordering the employer to pay the worker until such time as his or her employment would likely have ended, if the discriminatory action had not occurred.

In order for the Compliance Section to award the worker for lost wages, the worker must provide the Compliance Section with evidence of his or her earnings. When assessing wage loss, the Compliance Section must deduct any benefits that the employer paid to the worker following dismissal, such as severance, and payments made pursuant to the *Employment Standards Act*, upon termination of employment.

Out-of-pocket expenses

Section 50(2)(f) of the Act refers to those expenses that a worker reasonably incurs to find new employment, such as postage or facsimile charges for sending resumes.

Interest

Section 50(2)(g) of the Act refers to WorkSafeBC's authority to order " the employer or union [to] do any other thing that the Board considers necessary to secure compliance with the OHS provisions and the regulations." This means that WorkSafeBC can award interest on wage loss payments.