

Article 56

Article 56 - Payment of Wages

Related Articles: 45.06, 61, 62, 63

Interpretation Guidelines:

1. Employers must pay employee's wages in accordance with:
 - a. the wage schedule classifications set out in Article 61;
 - b. the wage schedules in Article 62; and
 - c. the wage provisions set out in Article 63.
2. Employers are required to pay employees on the shifts specified in Article 56.03 Pay Days either by cheque or direct deposit.
3. The Employer has the right to require all employees to participate in a direct deposit system. In other words, where the Employer uses direct deposit, they are not required to provide paper cheques to individual employees who decline to participate in the direct deposit system.
4. Employers are required to provide a wage statement containing all the information set out in Article 56.04 Statement of Wages.
5. New in 2004: Where a direct deposit system is used, the **Employer can choose to provide the wage statement through electronic means** rather than a paper copy. The following requirements apply:
 - a. The Employer must ensure the information on the wage statements is transmitted in a secure manner in keeping with the requirements of the **Freedom of Information and Protection of Privacy Act of B.C. (FIOPPA)**.
 - b. The Employer is required to provide information to employees on how to access their wage statements. For example: discussed during bargaining was providing secure access at the worksite using a unique employee identifier).
 - c. Employees who are away from the worksite for 2 or more consecutive pay periods may request in writing to have a paper wage statement mailed to their home.
6. Employers are prohibited from making unilateral deductions for overpayments from an employee's pay cheque. For example if an overpayment is made on your paycheque by the Employer, the Employer cannot unilaterally withhold payment of that amount on your next pay cheque.

The interpretations in this manual are provided on a *without prejudice, errors and omissions basis* to any position Unions in the Nurses' Association of Bargaining Agents may take in any arbitral proceeding or any other forum.

Article 56

- The purpose of the **Employment Standards Act** is to ensure that employees receive the full measure of wages to which they are entitled and Section 21 safeguards this purpose by restricting the circumstances in which an employer may deduct monies from an employee's pay. Section 21 says clearly that "*an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose*".

This restriction on an Employer's common law rights and equitable claims against its employee's wages was confirmed by the **Arbitration Award: Vancouver Hospital and Health Sciences Centre and BCNU**, (GAD), December 16, 2002 (Gordon) and was later upheld by the **Court of Appeal for British Columbia**, June 23, 2005 (Chief Justice Finch, Madame Justice Ryan, Mr. Justice Braidwood, Mr. Justice McKenzie and Mr. Justice Thackray). The key points of the original arbitration decision are:

- Section 21 of the **Employment Standards Act** prohibits Employer self-help and places the onus of establishing legal authority on the Employer **before** the recovery of any alleged overpayment of wages.
 - In order to establish legal authority to recover overpayments, the Employer must find authority in a statute, the provisions of the collective agreement, or the consent of the affected employee.
 - An Employer who has a monetary claim must provide proof of that claim.
 - If the Employer reaches the conclusion it has overpaid an employee's wages in error, the Employer may file a grievance under the collective agreement. The grievance procedure provides the opportunity for disclosure and discussion of the merits of the Employer's claim along with an effective forum for the informal resolution of disputes prior to the referral to arbitration.
7. Following changes to the Income Tax Act in 2000, if you received a retroactive lump sum payments for eligible income in the current tax year, parts of it which were for previous years after 1977, you have to include the whole payment on the appropriate line of your current Income Tax return. Examples of those impacted by this change, are employees who receive lump sum payments as a result of a grievance settlement or an arbitration award and employees in receipt of retroactive pay as a result of the negotiation of a new collective agreement [See **General Income Tax and Benefit Guide**].
 8. Strike pay is not considered taxable income even if you perform picketing duty as a requirement of membership [See **General Income Tax and Benefit Guide**].

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Additional References:

Legislation:

Employment Standards Act Section 21. A copy of the **Act** can be obtained from an Employment Standards branch office or through the website:

www.gp.gov.bc.ca/statreg/reg/E/EmployStand/396_95.htm

General Income Tax and Benefit Guide - Canada Revenue Agency re: retroactive payments. See website address:

www.cra-arc.gc.ca the Guide can be found by clicking on "frequently requested" on the menu page.

Freedom of Information and Protection of Privacy Act of B.C. (FIOPPA) - the website of the Office of the Information and Privacy Commissioner is: www.oipcbc.org

Arbitration Awards:

HEABC (Vancouver Hospital and Health Sciences Centre) and BCNU (GAD), December 16, 2002 (Gordon) - Employers are prohibited from unilaterally deducting overpayments from an employee's pay cheque.

Court of Appeal of British Columbia:

HEABC (Vancouver Hospital and Health Sciences Centre) and BCNU, June 23, 2005 (Chief Justice Finch, Madame Justice Ryan, Mr. Justice Braidwood, Mr. Justice McKenzie and Mr. Justice Thackray) - the Court unanimously upheld the above the above noted decision.