

Employer No: ER161-568

Head Office No: H Office: Richmond
Employer: IMAGE ENGINE DESIGN INC.
Operating Name:
Mailing Address: 15 5 AVE W
VANCOUVER, BC Canada
V5Y 1H4
Phone: (604) 874-5634
Fax:
Cell:
Email: katet@image-engine.com

Received Date	Asgn No	Asgn Officer Type	Stat	Closed Date	Resl Typ
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*** CLOSED ASSIGNMENT EMPLOYEES ONLY ***

2012/08/23	s.22	O Martel, Chantal	CLSD	2013/03/07	57
2009/06/29	s.22 s.22	CO Smale, Glen	CLSD	2009/10/13	44

DATA INFORMATION SHEET (DIS) PAGE 1 – POST November 30, 2002

**Note: Data person -- please initial after any entries

(Updated May 2006)

COMPLAINTS

EMPLOYER'S LEGAL NAME: <u>IMAGE ENGINE DESIGN INC</u>		
CARRYING ON BUSINESS AS:		
ER#: <u>161-568</u>	EE#: <u>s.22</u>	ASGN. # <u>s.22</u>
UPDATE ER. INFO <input type="checkbox"/>		UPDATE EE. INFO <input type="checkbox"/> REOPEN FILE <input type="checkbox"/>
ADD/CHANGE ADDRESS/PHONE:		TYPE OF BUSINESS: <u>TECH</u>

COMPLAINT(S) ASSIGNMENT STATUS

ASSESSMENT	<input checked="" type="checkbox"/>	DELEGATE # <u>129</u>	DATE ASSIGNED <u>Nov 9</u>
EDUCATION	<input checked="" type="checkbox"/>	DELEGATE # <u>129</u>	DATE ASSIGNED <u>Nov 9</u>
INVESTIGATION	<input type="checkbox"/>	DELEGATE #	DATE ASSIGNED
MEDIATION	<input checked="" type="checkbox"/>	DELEGATE # <u>954</u>	DATE ASSIGNED <u>Nov 23</u>
MEDIATION DATE	<u>Feb 13/13</u>	DATE MEDIATION HELD	
AJUDICATION	<input checked="" type="checkbox"/>	DELEGATE # <u>JIM</u>	DATE ASSIGNED
ADJUDICATION DATE	<u>Feb 28/13</u>	DATE ADJUDICATION HELD	
COLLECTIONS	<input type="checkbox"/>	DELEGATE #	DATE ASSIGNED

CLOSURE INFORMATION

CODE <u>ST</u>	DELEGATE# <u>954</u>	WAGE AMOUNT \$	THRU TRUST <input type="checkbox"/> OR Voluntary Payment <input checked="" type="checkbox"/>
PAYMENT DATE		DATE CLOSED <u>Feb 28</u>	

ALLEGATIONS Information Captured at or after Education Stage

<input type="checkbox"/> WAGE (Regular Wages)	<input checked="" type="checkbox"/> OVT (Overtime Wages)	<input checked="" type="checkbox"/> VAC (Vacation Pay)
<input checked="" type="checkbox"/> STAT (Statutory Holiday Pay)	<input type="checkbox"/> CLOS (Termination Pay)	<input type="checkbox"/> DDUC (Unauthorized Deduction)
<input type="checkbox"/> LEAV (Part 6 – Leaves)	<input type="checkbox"/> NSF	<input type="checkbox"/> OTHER
<input type="checkbox"/> SEC 8 (Misrepresenting Job)		

SETTLEMENT AGREEMENT INFORMATION

FULL <input type="checkbox"/> OR PARTIAL <input type="checkbox"/>	DATE OF AGREEMENT	AMOUNT: \$
Payment Schedule (SCHD) <input type="checkbox"/>	Last payment due date	
CLOSURE SA <input type="checkbox"/>	Doc #	Paid <input type="checkbox"/>

DETERMINATION UPDATE / CLOSURE STATUS

Doc Type: CFUL <input type="checkbox"/> DFUL <input type="checkbox"/>	Doc #	DATE C/J RELEASED:
Appeal: <input type="checkbox"/>	Appeal Date	Oral Hearing Date
Cancelled		
Paid <input type="checkbox"/> Varied <input type="checkbox"/> Settled <input type="checkbox"/>	Discontinued <input type="checkbox"/> NAST <input type="checkbox"/>	PREL <input type="checkbox"/> NFAR <input type="checkbox"/>
PENALTY(S) Paid <input type="checkbox"/>	List CA Code(s) Cancelled <input type="checkbox"/>	List CA Code(s) NAST <input type="checkbox"/> PREL <input type="checkbox"/>

NAST = No Assets; NFAR = No Further Action (use with closure code 41); PREL = Paid on related DOC
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Settlement Agreement

BETWEEN: Image Engine Design Inc. ("the employer")

AND: s.22

AND: The Director of Employment Standards

Re: Complaint(s) filed with the Employment Standards Branch on March 14, 2012

Pursuant to Sections 78 and 91 of the *Employment Standards Act*, R.S.B.C. 1996, c. 113, as amended, the following conditions form the terms of the settlement of the above complaint(s):

Terms of Settlement Agreement:

The employer agrees to pay the complainant the amount of s.22. The cheque is to be made out to the complainant and is to be delivered at the complainant's home address, no later than the close of business (4:30pm) on Friday, March 8, 2013.

In return for the above payment the complainant agrees to withdraw his complaint as filed with the Employment Standards Branch and confirms that this agreement constitutes full and final settlement of this matter as filed with the Employment Standards Branch.

The terms of the Settlement Agreement must be complied with by Friday, March 8, 2013.

Note: Where statutory deductions are applied to the settlement amount the employer will provide a wage statement at the time wages are paid indicating the amount and purpose of each deduction.

This Settlement Agreement is invalid or of no effect if the parties do not deliver to the Employment Standards Branch (ESB) a copy thereof bearing their original signatures

Ministry of Labour,
Citizens' Services
and Open
Government

Employment Standards
Branch

ESB Address
250-4600 Jacombs Rd.
Richmond, BC V6V 3B1

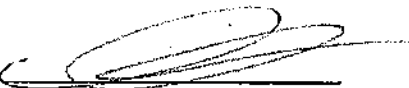
on or before March 8, 2013. In the alternative, if the terms and conditions of the agreement are met fully on or before the date that the Employment Standards Branch is to receive the signed Settlement Agreement with original signatures, the parties agree that the dispute is settled and the file closed.

This agreement contains the entire agreement between the parties in respect of the complaint(s) and replaces all other representations or agreements. This agreement comprises full and final settlement of any and all issues arising from the complaint(s). The parties to this agreement must comply with all terms of the settlement. Failure to do so may cause the Director of Employment Standards to file this settlement agreement in the British Columbia Supreme Court Registry, which will cause the agreement to be enforceable as a judgment of the Court.

Dated at Richmond, British Columbia this 28th day of February 2013.

s.22

Employer



Complainant

Andrea F. Raso Amer,
Counsel, on behalf of
Image Engine Design Inc.

Delegate of the Director of Employment Standards



Chantal Martel


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EMPLOYMENT STANDARDS ACT PART 1 – INTRODUCTORY PROVISIONS

ESA Section 1 - Definitions - Regular Wage

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[Policy Interpretation](#)

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Summary

This section contains definitions for terms used throughout the Employment Standards Act and its Regulation.


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Text of Legislation

"regular wage" means

- (a) if an employee is paid by the hour, the hourly wage,
- (b) if an employee is paid on a flat rate, piece rate, commission or other incentive basis, the employee's wages in a pay period divided by the employee's total hours of work during that pay period,
- (c) if an employee is paid a weekly wage, the weekly wage divided by the lesser of the employee's normal or average weekly hours of work,
- (d) if an employee is paid a monthly wage, the monthly wage multiplied by 12 and divided by the product of 52 times the lesser of the employee's normal or average weekly hours of work, and
- (e) if an employee is paid a yearly wage, the yearly wage divided by the

product of 52 times the lesser of the employee's normal or average weekly hours of work

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Policy Interpretation

To determine an employee's entitlements, the Act requires compensation to be converted to an hourly rate, regardless of the method of payment.

Subsection (a)

Where an employee is paid an hourly wage, this is considered to be the "regular wage" for purposes of the Act.

Subsection (b)

Where an employee is paid on a flat rate, piece rate, commission or other incentive basis, regular wage is determined by dividing an employee's wages by the employee's total hours of work during the same pay period.

Regardless of the calculation, the regular wage cannot be less than minimum wage.

Commission Sales

Refer to Employment Standards Regulation s. 37.14 for information on the application of legislation to a salesperson paid entirely or partly by commission.

Example – Flat Rate

A worker in a transmission repair shop is paid a book or "flat rate" for fixing a transmission in a car. The book states that the job should take 10 hours. The employer agrees to pay the employee 10 hours @ \$25 per hour to do the job or a flat rate of \$250, regardless of the actual hours of work. This does not make the employee's rate of pay \$25 per hour. If the employee completes the job in 6 hours he is paid \$250.00. There is no overtime payable as the actual hours worked to do the job were not more than 8.

If the employee takes 20 hours to do the job, (two 10-hour days), and that was all the work performed in the pay period, the employee's rate of pay would be \$250 divided by 20 hours = \$12.50 per hour. The employee would be entitled to be paid:

16 hours @ \$12.50 per hour =	\$200.00
4 hours @ \$18.75 per hour (\$12.50 x 1.5) =	\$75.00 (Overtime wages)
Total straight time and overtime wages =	\$275.00
Total wages payable: \$275.00 - \$250 (Flat rate paid) =	\$25.00

Example – Piece Rate

A factory worker who is paid on a piece rate basis works one 10-hour day in the pay period. The employee packages nuts and bolts and is paid for each sealed package as follows

Large bolts - 200 @ \$0.40	\$80.00
Small bolts - 150 @ \$0.30	\$45.00
Total piece rate wages	\$125.00

Regular wage rate = \$125.00 divided by 10 hours = \$12.50 an hour. The employee would be entitled to be paid:

8 hours @ \$12.50 per hour	\$100.00
2 hours @ \$18.75 per hour (\$12.50 x 1.5)	\$37.50 (Overtime wages)
Total wages payable:	\$137.50

Example - Commission

The regular wage of an employee earning a commission paid on a bi-weekly basis is calculated according to the following formula: In the 2-week pay period the employee received \$1,645.00 and worked 8 hours a day, 6 days a week totaling 96 hours during the pay period. The regular wage is calculated in the following manner:

\$1,645 divided by 96 hours = \$17.14 per hour is the regular wage. **The employee would be entitled to be paid:**

80 hours @ \$17.14 per hour =	\$1371.20
16 hours @ \$25.71 per hour (\$17.14 x 1.5) =	\$411.36 (Overtime wages)
Total straight time and overtime wages: =	\$1,782.56
Total wages payable: \$1,782.56 - \$1,645.00 (Wages paid) =	\$137.56

Note: Refer to Employment Standards Regulation s. 37.14 for information on the application of legislation to salespersons paid in whole or in part by commission.

Subsection (c)

When an employee is paid a **weekly** wage:

Weekly wage *divided by* lesser of normal or average weekly hours of work.

Subsection (d)

When an employee is paid a **monthly** wage:

Monthly wage X 12 *divided by* 52 times lesser of normal or average weekly hours

Example:

Tom works in a downtown office as a receptionist and has a monthly salary of \$3,000/month. Tom's daily working schedule is 8:00 am to 5:00 pm with a one hour unpaid lunch break for a total of 8 hours worked per day, 5 days per week, for a total of 40 hours per week. Based on his monthly salary, regular wage would be calculated as follows:

\$3,000 X 12 months = \$36,000/year divided by 52 weeks =	\$692.31/week
\$692.31/week divided by 40 hours per week =	\$17.31/hour regular wage

Subsection (e)

When an employee is paid a **yearly** wage:

Yearly wage divided by 52 times lesser of normal or average weekly hours of work.

Example:

A sales manager in a car dealership has a yearly salary of \$60,000/year. His weekly working schedule is 48 hours per week. Based on the yearly salary, the regular wage would be calculated as follows:

\$60,000 divided by (52 weeks X 48 hours. per week = 2496) = **\$24.04/hour regular wage**

"Normal" or "Average" weekly hours of work

Establishing "normal" or "average" weekly hours of work is determined by the circumstances of each employment situation.

"Normal" weekly hours are the weekly hours an employee is regularly expected to work. "Normal" weekly hours refers to a circumstance in which the employee has a consistent schedule of hours of work from week to week as part of their conditions of employment and those hours usually do not fluctuate from week to week.

Where "normal" weekly hours of work cannot be established, such as when hours of work fluctuate, "average" weekly hours of work will be used.

The period in which to determine "average" weekly hours of work is not provided by statute. Therefore, the director will use the period of employment up to 6 months before the earlier of the date of the complaint or termination of employment. Where a complaint has not been filed, the director will use the period of employment up to 6 months before the director first told the employer of the investigation.

Related Information

Employment Standards Tribunal Decisions

RAP-ID Paper Vancouver Ltd. (BC EST #D182/96)

McIver's Appliance Sales & Service Ltd. (BC EST #D526/98)

Master Pool Coatings Inc. (BC EST #D569/98)

Related sections of the Act or Regulation

ESA

- s.1, Definition "pay period"
- s.1, Definition "payroll record "
- s.1, Definition "termination pay "
- s.1, Definition "wages"
- s.1, Definition "week"
- s.16, Employers required to pay minimum wage

- [s.27, Wage statements](#)
- [s.28, Payroll records](#)
- [s.37, Agreements to average hours of work](#)
- [s.40, Overtime wages for employees not working under an averaging agreement](#)
- [s.45, Statutory holiday pay](#)

ESR

- [Part 4,. Minimum Wages](#)
- [ESR s. 37.6 Oil and gas field workers – salary and bonus compensation](#)

Other

See www.labour.gov.bc.ca/esb/facshts/

Factsheets

[Minimum Wage](#)

[High Technology Professionals](#)

[Hours of work and Overtime Rules](#)

[Keeping Records](#)

[Silviculture workers](#)

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Withheld pursuant to/removed as

s.22



ESI DATE	
ER No.	161-512
ASSIGN No.	s.22
EE No.	
DATE ASSIGN	
OFFICER	

Office Copy

Date of complaint submission:
August 23, 2012

Confirmation # 018933XIA

I have used the Employment Standards self-help kit and the problem has not been resolved.

Employer Information		
Name of Employer: Image Engine Design Inc.		
Mailing Address of employer: 15 West 5th Avenue	City/town, Province, Country: Vancouver, BC, Canada	Postal Code: V5Y 1H4
Telephone Number: 604-874-5634	Fax Number: 604-708-8433	Type of business: Visual Effects for Film & Television
Name of supervisor: s.22	Name and home phone number of owner: corporation. Greg Holmes, Robin Hackl, others ()	
Address of place where you worked if different from above		
Street Address:	City/town, Province, Country:	Postal Code:
Is your employer bankrupt or in receivership? No		
Employers' bank:	Employers bank branch:	
Is your employer still in business? Yes	When did your employer go out of business?	

Information About You			
Your Last Name: s.22	Your first or given name: s.22	Middle Initial(s):	SIN: s.22
Mailing (street) Address: s.22	City/town, Province, Country: s.22	Postal Code: s.22	
Your home phone number: s.22	Message Number:	Fax Number:	
Date of Birth: s.22	Email Address: s.22		
Are you in BC under a foreign worker program? s.22			
Are you covered by a collective agreement (union contract): s.22			
Union's Name:			
Union Rep's Name:	Union Rep's Phone Number:		

Your work history with this employer			
Your job title: s.22		Date you started work for this employer: s.22	Last day you worked for this employer: s.22
Your rate of pay: s.22		Employment status: s.22	
How often are you paid? s.22			
Are your hours of work regular? s.22	Hours worked per day: s.22	Number of days worked per week: s.22	Total Hours per week: s.22
Do you have a record of the hours worked for this employer: s.22			

Work history continued. What do you believe you are owed?			
	From date	To date	Estimated amounts
<input type="checkbox"/> Regular wages			\$0
<input type="checkbox"/> Overtime	s.22		
<input type="checkbox"/> Annual vacation pay			
<input checked="" type="checkbox"/> Statutory holiday pay			
<input type="checkbox"/> Deductions from wage	Specify:		\$0
<input type="checkbox"/> NSF Cheques			\$0
<input type="checkbox"/> Pregnancy/Parental or other leave			\$0
<input type="checkbox"/> Compensation for length of service (termination pay)			\$0
<input type="checkbox"/> Other	Specify:		\$0
Estimated Total you are owed:			s.22

Details of your complaint s.22


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EMPLOYMENT STANDARDS REGULATION - PART 7 - VARIANCES AND EXCLUSIONS ESR Section 37.8 - Exclusions - high technology companies

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[Text of Legislation](#)
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Summary

This section defines "high technology professional" and "high technology company" and explains which parts and sections of the Act do not apply to high technology professionals. The section also explains how certain employees of high technology companies can enter into an averaging agreement.

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Text of Legislation

37.8. (1) In this section:

"high technology company" means a company where more than 50 percent of employees meet the definition of a high technology professional, are managers of persons meeting the definition of a high technology professional or are employed in an executive capacity.

"high technology professional" means any of the following:

- (a) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to investigate, analyze, design, develop, or engineer an information system that is based on computer and related technologies, or a prototype of such a system, but does not include a person employed to provide basic operational technical support;

(b) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to investigate, analyze, design, develop, engineer, integrate or implement a scientific or technological product, material, device or process or a prototype of such a product, material, device or process, but does not include a person employed to provide basic operational technical support;

(c) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to carry out scientific research and experimental development as defined in section 248 (1) of the Income Tax Act (Canada);

(d) an employee who is engaged as a sales or marketing professional in relation to

- (i) a service or system described in paragraph (a),
- (ii) a product, material, device or process described in paragraph (b), or
- (iii) scientific research or experimental development described in paragraph (c),

but does not include a person employed in the retail sale of any of these things

(2) The following provisions do not apply to high technology professionals:

(a) Part 4, other than section 39, of the Act;

(b) Part 5 of the Act.

(3) An employee of a high technology company who is not a high technology professional may enter into an averaging agreement with his or her employer under section 37 of the Act if the employer and employee also agree in writing that the scheduling requirement under section 37 (2) (a) (iv) of the Act does not apply.

(4) If an employee and an employer enter into the averaging agreement referred to in subsection (3) of this section,

(a) section 37 (2) (b), (3), (6), (10) and (12) of the Act does not apply to that averaging agreement, and

(b) section 37 (2) (a) (i) to (iii), (v) and (vi), (2) (c), (4), (5), (7) to (9), (11), (13) and (14) of the Act are deemed to be incorporated into the averaging agreement as terms of the agreement.

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Policy Interpretation

Subsection (1)

The definition of "high technology company" only applies to an employee who is not a

"high technology professional" as noted in s.37.8(3) and (4).

An employee, to be defined as a "high technology professional", is not dependent on the employee working for a "high technology company".

Subsection (1)(a)

In this sub paragraph:

"primarily": the main purpose of an employee's work activity, where 75% of work time is spent on the activities listed in the definition. This can be determined by matching the work activities performed by the employee to the employment activities specified in the regulation, including reviewing:

- the time spent performing each work activity (An employee who performs work specified in the regulation incidental to the main purpose of their work will not be considered a "high technology professional".)
- a job description and employment contract (These are useful if they confirm the actual work behaviour of the employee)
- the main purpose of the business (An employer whose business conforms to the work activity in the regulation is more likely to employ a "high technology professional")

"specialized knowledge and professional judgment" is applied by an employee who:

- possess a high degree of knowledge and understanding of highly specialized technological and/or scientific fields; and
- has the ability to practically apply that knowledge and understanding to highly specialized technological and/or scientific fields; and
- consistently exercises discretion and independent decision making in the application of their special knowledge as opposed to performing purely mechanical or routine tasks; and
- engages in work that is varied in character as opposed to work that routinely is mental, manual, mechanical, or physical.

"specialized knowledge and professional judgment" is used specifically in conjunction with investigate, analyze, design, develop or engineer

"investigate": To make a detailed exploratory inquiry or systematic examination of an information system.

"analyze": To examine methodically or consider in detail by separating into parts and studying their interrelations in order to discover essential features or meaning of an information system.

"design": The creation and formulation of a plan with an anticipated outcome.

Example: The creation of a computer program that allows for the categorizing, storing, retrieving and the systematic analyzing of end user or customer data.

"Design" may include technology commissioning as a process for verifying and documenting that the installation and performance of systems meet the needs of the end user. Commissioning begins during project planning and ensures:

- All technology systems, subsystems, equipment, controls and components interface with each other, and other building systems are installed properly.
- A system complies with a contract and is within the scope of design and installation requirements.
- All technical-support personnel, faculty and staff are instructed properly to operate and maintain technology systems efficiently.
- All required training, manuals and documentation regarding the systems installed have been received.

"develop": To make a design operational through a succession of work activities that include investigation, analysis, diagnosis, research or testing. Also may include combining or linking independent and /or component technologies together so they work seamlessly.

Example: Functional performance testing may cover every item within the technology package — all hardware, software, wiring and interfaces shall be tested and evaluated to determine if they are consistent with performance data in the contract documents.

"engineer": To use scientific or technical knowledge to solve practical problems. This typically includes the process of problem diagnosis, investigation, analysis, and testing. This work activity may occur during the development of the information system, at the time of its implementation or as operational technical support including complex problem solving.

"information systems": The processing, storing or transmitting of data. Also includes a group of interacting components or related technologies, or a network of related computer software, hardware, and data transmission devices.

"computer and related technologies": the activity of designing and constructing and programming computers and includes related technologies such as, chemical, optical, mechanical and electrical.

"prototype": Full or partial scale forms of new designs or technologies, used to test or demonstrate functionality or illustrate ideas.

"basic operational technical support": refers to an employee with computer analysis experience and/or training on technical systems allowing for the limited exercising of professional judgment. An employee engaged in "basic operational technical support" typically:

- follows regularly a standard procedure to resolve computer related problems.
- utilizes diagnosis when problem solving however will usually follow standard procedures or regular systematic activities.

By way of example, an employee in response to a customer's inquiry may perform remote or on-site diagnostic work. However, the main purpose of the work is to assess the problem and either utilize prescribed computer programming instructions or refer the problem to a more highly experienced or technically trained person capable of resolving the problem.

The functions related to **"basic operational technical support"** also include the first point of contact for the customer. Typically an employee will search a database to confirm:

- that the person calling is in fact a customer
- what kind of equipment / system the customer has
- that the customer has a contractual entitlement to the service they are asking for.

Also they may:

- do a simple scripted assessment with the customer,
 - order parts and if the problem isn't fixed they create a service order
- and escalate the call to a technical support person.

"basic operational technical support" would not apply to employees who:

- (a) possess a high degree of knowledge and understanding of highly specialized technological and/or scientific fields; and
- (b) have the ability to practically apply that knowledge and understanding to highly specialized technological and/or scientific fields; and
- (c) consistently exercises discretion and independent decision making in the application of their special knowledge as opposed to performing purely mechanical or routine tasks; and
- (d) engage in work that is varied in character as opposed to work that routinely is mental, manual, mechanical, or physical; and
- (e) investigate, analyze, and resolve practical problems, including technically complex problems, with the use of scientific or technical knowledge

Occupation examples include:

- computer systems analyst
- internet development professional
- computer programmer
- computer science professional

Subsection (1)(b)

See above 37.8 (1) (a) policy interpretation for "primarily", "specialized knowledge and

professional judgment", and "prototype".

"investigate": To make a detailed exploratory inquiry or systematic examination. In scientific research, "investigation" refers to inquiry into unfamiliar areas. It includes work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes. Such work includes incremental improvements to existing technology.

"analyze": To examine methodically or consider in detail by separating into parts and studying their interrelations in order to discover their essential features or meaning.

"design": The creation and formulation of a plan with an anticipated outcome.
Example: The creation of a plan to develop a chemical catalyst process.

"Design" may include technology commissioning. (See policy interpretation below for **"implement"**)

"develop": To make a design operational through a succession of work activities that include investigation, analysis, diagnosis, research or testing.

Example: Functional performance testing may cover every item within the technology package — all hardware, software, wiring and interfaces shall be tested and evaluated to determine if they are consistent with performance data in the contract documents.

"engineer": To use scientific or technical knowledge to solve practical problems. This typically will include the process of problem diagnosis, investigation, analysis, and testing. This work activity may occur during the development of the scientific or technological product, material, device or process, at the time of its implementation or as operational technical support including complex problem solving.

"integrate": combining or linking independent and or component technologies together so that they work seamlessly. Systems integration may be part of a larger project or a project in itself.

"implement": to confirm the initial installation of a product, material, device or process is operational. This will include technology commissioning as a process for verifying and documenting that the installation and performance of systems meet the needs of the end user. Commissioning begins during project planning and may continue through at least the first year of operation.

Commissioning should ensure that:

- All technology systems, subsystems, equipment, controls and components interface with each other, and other building systems are installed properly.
- A system complies with a contract and is within the scope of design and installation requirements.
- All technical-support personnel, faculty and staff are instructed properly to operate and maintain technology systems efficiently.
- All required training, manuals and documentation regarding the systems installed have been received.

"Scientific or technological product, material, device or process": may include low volume specialty items such as microscopes and measurement devices for research and lab applications such as chromatographs and spectrometers as well as commercially marketed products such as games software, drugs and medical devices. In the process of conducting research and development, researchers may create products such as a new chemical catalyst process, or a commercial product such as an electronic sensor device.

Scientific research includes work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes. Such work includes incremental improvements to existing technology.

Occupation examples include:

- manufacturing engineer
- materials engineer
- electronic engineer
- multimedia professional
- computer animator
- software engineer
- software tester
- quality control professional
- applied bioscience professional

Subsection (1) (c)

See 37.8(1)(a) policy interpretation for "primarily", and "specialized and professional judgment".

See s.248(1) of the *Income Tax Act* (Canada), commonly known as 'SRED tax exemption', for meaning of "scientific research and experimental development".

Section 248(1) refers to "scientific research and experimental development" as "systematic investigation or research that is carried out in a field of science or technology by means of experiment or analysis". This section further elaborates on this definition.

Occupation examples include:

- scientific technical
- scientific technologist
- applied bioscience professional
- research scientists

Subsection (1)(d)

"sales or marketing professional" is a person who:

- possess a high degree of knowledge and understanding of highly specialized technological and/or scientific fields; and
- has the ability to practically apply that knowledge and understanding to highly specialized technological and/or scientific fields for the purposes of sales and marketing; and
- consistently exercises discretion and independent decision making in the sales or marketing of a service or system, product, material, device or process, or application, as noted in (a), (b), and (c) above as opposed to performing purely mechanical or routine tasks; and
- engages in work that is varied in character as opposed to work that routinely is mental, manual, mechanical, or physical.

Occupation examples include:

- Technology sales professional

A person employed in the **retail sales** of an information system or service, a scientific or technological product, material, device, or process, and scientific research or experimental development is not a "high technology professional".

Subsection (2)

An employee performing the work of a "high technology professional" as defined in 37.8(1) is excluded from all of Part 4 Hours of Work and Overtime, except s.39, and Part 5, Statutory Holidays of the Act.

Subsection (3)

All provisions of the Act except those noted in 37.8(3) and (4) cover an employee working for a "high technology company" who is not a "high technology professional".

Example:

A receptionist working for a "high technology company" is entitled to full coverage under the Act.

However, if the receptionist signs an averaging agreement under s.37 of the Act the receptionist will be excluded from those sections of the Act referred to in s.37(1) of the Act.

This subsection also allows the receptionist and employer to agree in writing that the daily schedule of hours required in an agreement in s.37(2)(a) (iv) of the Act do not apply. (See subsection 37.8(4) below)

Subsection (4)

- If the employee of a "high technology company" and employer agree in writing that the daily schedule of hours required in an agreement in s.37(2)(a) (iv) of the Act do not apply then the following provisions of s.37 do not apply to the agreement:
 - a. The requirement to limit a work schedule in an agreement to 40 hours or an

average of 40 hours a week

- b. Daily overtime applies to non-scheduled hours over 8 in a day
- c. The employee's written request to adjust the work schedule

Under s.37.8 (4) daily overtime only applies to time worked over 12 hours.

- Before 37.8(4) of this Regulation can apply to section 37 of the Act the employee and employer must sign two agreements; one as required in 37.8(3) of this Regulation and the second as required under section 37(2)(a) of the Act.

Examples

- If an employee and employer enter into a written agreement under s.37 of the Act without signing a written agreement as noted in 37.8(3) then 37.8(4) has no effect and all provisions of s.37 apply.
- If an employee and employer enter into a written agreement under s.37.8(3) without signing a written agreement under s.37 of the Act, s.37 has no effect and ss.35, 36(1), and 40 of the Act apply to determine overtime and rest period entitlements and pay.

 **Top**

Related Information

Related sections of the Act or Regulation

ESA

- Part 4 – Hours of work and overtime
- Part 5 – Statutory holidays

Other

Income Tax Act (Canada)

 **Top**

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Cancel



Fraser Milner Casgrain LLP
20TH Floor, 250 Howe Street
Vancouver, BC, Canada V6C 3R8

MAIN 604 687 4460
FAX 604 683 5214

February 1, 2013

DELIVERED VIA FAX (604-713-0450)

Employment Standards Branch
2nd Floor - 4600 Jacombs Road
Richmond, BBC V6V 3B1

Attention: Chantal Martel

Dear Sirs/Mesdames:

Re: **A complaint by s.22 under the *Employment Standards Act* against Image Engine Design Inc.**

Please be advised that we are still in the process of gathering information. We will provide you with documents that we intend to rely on at the hearing as soon as they are prepared.

Yours truly,
Fraser Milner Casgrain LLP

Faye Modelo
Legal Assistant

~~By~~ Andrea Raso Amer

ARA/fm

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FEB 01 2013

EMPLOYMENT STANDARDS
BRANCH - LOWER MAINLAND

Feb 19/13 - If msg re status of docs.



Fraser Milner Casgrain LLP
20TH Floor, 250 Howe Street
Vancouver, BC, Canada V6C 3R8

MAIN 604 687 4460
FAX 604 683 5214

FAX

DATE:
February 1, 2013

FILE #
544557-2

COMPANY	ATTENTION	FAX NUMBER	TIME SENT/JOB NUMBER
Employment Standards Branch	Chantel Martel	604-713-0450	
FROM	ID	DIRECT	
Andrea Raso Amer	s.22	604 622 5152	
EMAIL			# OF PAGES (INC. COVER)
andrea.rasoamer@fmc-law.com			2

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COMMENTS

Please see attached document.

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FEB 01 2013

EMPLOYMENT STANDARDS
BRANCH - LOWER MAINLAND

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NAME OF FAX OPERATOR

Faye Modelo

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fmc-law.com

REGISTERED MAIL TRACE SHEET

MINISTRY OF LABOUR, CITIZENS' SERVICES AND OPEN GOVERNMENT
BRANCH: Employment Standards Branch
Lower Mainland Region

ADDRESS: #250 - 4600 Jacombs Road
Richmond, BC V6V 3B1

TELEPHONE: (604) 660-4946
FAX: (604) 713-0450

Name of officer:

Chantal Martel

Date:

January 14, 2013

s.22

*eR 161-568
notice of hearing*

RW 728 319 969 CA

s.22

*161-568
notice of hearing
demand for records*

RW 728 319 986 CA

IMAGE ENGINE DESIGN INC.
155 AVE W
VANCOUVER, BC V5Y 1H4

*161-568
notice of hearing
demand*

RW 728 319 907 CA

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JAN 14 2013

EMPLOYMENT STANDARDS
BRANCH - LOWER MAINLAND

Jiyobu, Greg J LBR:EX

From: Raso Amer, Andrea [Andrea.RasoAmer@fmc-law.com]
Sent: Thursday, November 22, 2012 2:33 PM
To: Jiyobu, Greg J LBR:EX
Cc: 'katet@image-engine.com'
Subject: RE: Employment Standards Complaint - s.22

Mr. Jiyobu,

We are available on December 11, 2012 at 9:30 am for the mediation in the above-noted matter.

We look forward to your confirmation of this date.

Regards,

Andrea Raso Amer, Partner

Fraser Milner Casgrain LLP | www.fmc-law.com

T 604 622 5152 | F 604 683 5214

E andrea.rasoamer@fmc-law.com

20th Floor, 250 Howe Street, Vancouver BC, V6C 3R8

Bio | [vCard](#) | [Occupational Health and Safety Blog](#)

From: Jiyobu, Greg J LBR:EX [mailto:Greg.Jiyobu@gov.bc.ca]
Sent: Thursday, November 22, 2012 7:51 AM
To: Raso Amer, Andrea
Cc: 'katet@image-engine.com'
Subject: Employment Standards Complaint - s.22
Importance: High

Ms. Raso Amer:

After speaking with the complainant, I am now requesting that you confirm a date for a Mediation Session.

Thank you.

MINISTRY OF JOBS, TOURISM AND SKILLS TRAINING
and MINISTER RESPONSIBLE FOR LABOUR
EMPLOYMENT STANDARDS BRANCH

Greg Jiyobu
P: (604) 713-0405
F: (604) 713-0450

From: Jiyobu, Greg J LBR:EX
Sent: Wednesday, November 21, 2012 1:59 PM
To: 'Raso Amer, Andrea'
Subject: RE: Employment Standards Complaint - s.22
Importance: High

Ms. Raso Amer:

Please advise me on the company position regarding statutory holidays in the last 6-months of employment ie. Oct 8/11, Nov 11, Dec 25 & Jan 1/12.

In the event the complainant wishes to proceed with the complaint process, please choose a date from December 10-21 (excluding Dec 13), Monday through Friday at either 9:30 or 1:00.

Thank you.

MINISTRY OF JOBS, TOURISM AND SKILLS TRAINING
and MINISTER RESPONSIBLE FOR LABOUR
EMPLOYMENT STANDARDS BRANCH

Greg Jiyobu
P: (604) 713-0405
F: (604) 713-0450

From: Raso Amer, Andrea [<mailto:Andrea.RasoAmer@fmc-law.com>]
Sent: Wednesday, November 21, 2012 1:10 PM
To: Jiyobu, Greg J LBR:EX
Cc: Kate Tarbard
Subject: Employment Standards Complaint - s.22
Importance: High

Mr. Jiyobu,

I am counsel for Image Engine with respect to the attached complaint of s.22 . As requested in your email below to my client Kate Tarbard, attached please find a copy of the correspondence sent to s.22 on August 20, 2012 in response to his July 31, 2012 Request For Payment form.

I look forward to hearing from you with respect to suggested dates for mediation.

Regards,
Andrea

Andrea Raso Amer, Partner
Fraser Milner Casgrain LLP | www.fmc-law.com
T 604 622 5152 | F 604 683 5214
E andrea.rasoamer@fmc-law.com
20th Floor, 250 Howe Street, Vancouver BC, V6C 3R8
Bio | [vCard](#) | [Occupational Health and Safety Blog](#)

From: Jiyobu, Greg J LBR:EX [<mailto:Greg.Jiyobu@gov.bc.ca>]
Sent: Monday, November 19, 2012 12:39 PM
To: Kate Tarbard
Subject: Employment Standards Complaint -s.22
Importance: High

Dear Madam:

As per our conversation, please find attached a scanned copy of the complaint from s.22 , who is alleging that wages remain outstanding. I have also included informational material for your reference.

There is a definition of "high technology professional" in Section 37.8 of the Employment Standards Regulations. Typically, these type of employees are excluded from the overtime and statutory holidays provisions under the Act. However, it does also mention that "a person employed to provide basic operational technical support" is not included in the definition.

In regards to s.22

, I have already advised s.22 that this is not addressable by the Branch as the issue is out of time. As to the claim for overtime and statutory holiday pay, only a 6-month period of time may be investigated, from s.22

I am requesting that you forward me a copy of the response letter drafted by the company lawyer and also the written contract of employment.

Since the company wishes to choose option #2 from the list below, I will be contacting your legal counsel to arrange a Mediation Session, at either 9:30 or 1:00.

Typically, the following options are made available to resolve the dispute:

1. Make a 'without prejudice' payment of an amount deemed to be owed
2. Mediation – if you wish to dispute the claim in its' entirety, proceed to this informal meeting between a signatory of the company, the complainant and an Employment Standards Officer – Please confirm a date from the next 3-weeks at either 9:30 or 1:00
3. Adjudication – a formal oral hearing which requires the attendance of both parties to give affirmed testimony and enter documents into evidence. A written decision called a Determination will be rendered to rule on the matter. Please note that if the company is found to be out of compliance with the legislation, there is a mandatory \$500 penalty issued for each contravention of the Employment Standards Act and Regulations.

Thank you.

Copy of complaint

ESR Section 37.8 - Exclusions - high technology companies
<http://www.labour.gov.bc.ca/esb/igm/esr-part-7/esr-s37-8.htm>

ESA Section 80 - Limit on amount of wages required to be paid
<http://www.labour.gov.bc.ca/esb/igm/esa-part-10/igm-esa-s-80.htm>



MINISTRY OF JOBS, TOURISM AND SKILLS TRAINING
and MINISTER RESPONSIBLE FOR LABOUR
EMPLOYMENT STANDARDS BRANCH

Greg Jiyobu
250 - 4600 Jacombs Road
Richmond, BC V6V 3B1

P: (604) 713-0405 | F: (604) 713-0450
Email: greg.jiyobu@gov.bc.ca



Fraser Milner Casgrain LLP
20TH Floor, 250 Howe Street
Vancouver, BC, Canada V6C 3R8

MAIN 604 687 4460
FAX 604 683 5214

August 20, 2012

DELIVERED VIA EMAIL

Attention: s.22

Andrea Raso Amer
Andrea.RasoAmer@FMC-Law.com
DIRECT 604 622 5152
File No.: 544557-2

Dear s.22

RE: B.C. *Employment Standards Act* Complaint

We are counsel for Image Engine Design Inc. ("Image Engine"). We have received your Request for Payment ("Request") signed by you and dated July 31, 2012.

Image Engine denies your request for payment for the reasons that follow.

ALLEGED OVERTIME WAGES

Your Request indicates that overtime wages are owed from s.22

You were paid all overtime owing to you between s.22 on a s.22 basis. Nothing further is owing to you for this time period, being 6 months and 5 days.

Your claim for overtime pay for the period of s.22 is out of time. Section 80 of the B.C. *Employment Standards Act* states:

"The amount of wages an employer may be required by a determination to pay an employee is limited to the amount that became payable in the period beginning...6 months before the earlier of the date of the complaint or the termination of employment..."

As stated above, you were paid overtime wages for a period of over 6 months before the date of your termination from employment. Any further overtime wages earned (which are not admitted but denied) are statute barred.

In any event, no overtime wages are owed to you for the period of s.22 to on or about s.22 of Image Engine. You are also not owed any overtime wages for the period of s.22 to s.22

Accordingly, if you now want wages s.22 you owe the Company the wages you were paid s.22 which you performed no services for the Company. This would simply put the parties back in the position we are now in

Moreover, your claim for ^{s.22} unpaid hours is excessive. This equates to approximately ^{s.22} hours, every day, throughout the ^{s.22} claimed. There is no evidence that suggests that you put in these hours during your employment with Image Engine.

ALLEGED STATUTORY PAY OWING

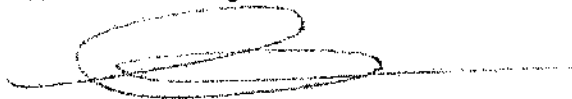
For the reasons set out in the penultimate paragraph under "Alleged Overtime Wages", your claim for holiday pay from ^{s.22} is unsustainable.

ALLEGED VACATION PAY OWING

For the reasons set out in the penultimate paragraph under "Alleged Overtime Wages", your claim for vacation pay from ^{s.22} is unsustainable.

On the basis of the foregoing, your Request is denied.

Yours truly,
Fraser Milner Casgrain LLP



Andrea Raso Amer
Partner
ARA/fm

Page 031 to/à Page 032

Withheld pursuant to/removed as

s.3

Jim

Issues stat/OT/VP/Hyhtech +^{s.22}

- issue

re OT

s.22

- ER has pd OT from

- VP is beyond 30 min period

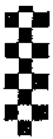
- EE "emphased" by high tech definition

may not qualify. & ^{s.22}

s.22

ways for ^{s.22} in day

- also see FMC's letter ^{s.22} dated Aug 20/12
& details of list pg



Date: December 11, 2012

Number of Pages: 4

To: Kate Tarbard

Company Name: Image Engine

Fax Number: 604-7130450

From: GREG HERBERT

Company Name: IMAGE ENGINE DESIGN INC.

Voice Phone Number: 604-874-5634

Fax Number: 604-874-1407

Subject:

Notes: Dear Sir / Madam, Please provide the following 3 page fax to our employee Kate Tarbard. Regards, Greg Herbert, CFO Image Engine Design INC.

Page 035 to/à Page 036

Withheld pursuant to/removed as

s.22



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Employment Standards Branch

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Interpretation Guidelines Manual British Columbia *Employment Standards Act* and Regulations

EMPLOYMENT STANDARDS REGULATION - PART 7 - VARIANCES AND EXCLUSIONS ESR Section 37.8 - Exclusions - high technology companies

Contents:

- [Summary](#)
- [Text of Legislation](#)
- [Policy Interpretation](#)
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Summary

This section defines "high technology professional" and "high technology company" and explains which parts and sections of the Act do not apply to high technology professionals. The section also explains how certain employees of high technology companies can enter into an averaging agreement.

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Text of Legislation

37.8. (1) In this section:

"**high technology company**" means a company where more than 50 percent of employees meet the definition of a high technology professional, are managers of persons meeting the definition of a high technology professional or are employed in an executive capacity.

"**high technology professional**" means any of the following:

- (a) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to investigate, analyze, design, develop, or engineer an information system that is based on computer and related technologies, or a prototype of such a system, but does not include a person employed to provide basic operational technical support;
- (b) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to investigate, analyze, design, develop, engineer, integrate or implement a scientific or technological product, material, device or process or a prototype of such a product, material, device or process, but does not include a person employed to provide basic operational technical support;
- (c) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to carry out scientific research and experimental development as defined in section 248 (1) of the Income Tax Act (Canada);
- (d) an employee who is engaged as a sales or marketing professional in relation to

- (i) a service or system described in paragraph (a),
- (ii) a product, material, device or process described in paragraph (b), or
- (iii) scientific research or experimental development described in paragraph (c),

but does not include a person employed in the retail sale of any of these things

(2) The following provisions do not apply to high technology professionals:

- (a) Part 4, other than section 39, of the Act;
- (b) Part 5 of the Act.

(3) An employee of a high technology company who is not a high technology professional may enter into an averaging agreement with his or her employer under section 37 of the Act if the employer and employee also agree in writing that the scheduling requirement under section 37 (2) (a) (iv) of the Act does not apply.

(4) If an employee and an employer enter into the averaging agreement referred to in subsection (3) of this section,

- (a) section 37 (2) (b), (3), (6), (10) and (12) of the Act does not apply to that averaging agreement, and
- (b) section 37 (2) (a) (i) to (iii), (v) and (vi), (2) (c), (4), (5), (7) to (9), (11), (13) and (14) of the Act are deemed to be incorporated into the averaging agreement as terms of the agreement.

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Policy Interpretation

Subsection (1)

The definition of "high technology company" only applies to an employee who is not a "high technology professional" as noted in s.37.8(3) and (4).

An employee, to be defined as a "high technology professional", is not dependent on the employee working for a "high technology company".

Subsection (1)(a)

In this sub paragraph:

"primarily": the main purpose of an employee's work activity, where 75% of work time is spent on the activities listed in the definition. This can be determined by matching the work activities performed by the employee to the employment activities specified in the regulation, including reviewing:

- the time spent performing each work activity (An employee who performs work specified in the regulation incidental to the main purpose of their work will not be considered a "high technology professional".)
- a job description and employment contract (These are useful if they confirm the actual work behaviour of the employee)
- the main purpose of the business (An employer whose business conforms to the work activity in the regulation is more likely to employ a "high technology professional")

"specialized knowledge and professional judgment" is applied by an employee who:

- possess a high degree of knowledge and understanding of highly specialized technological and/or scientific fields; and
- has the ability to practically apply that knowledge and understanding to highly specialized technological and/or scientific fields; and

- consistently exercises discretion and independent decision making in the application of their special knowledge as opposed to performing purely mechanical or routine tasks; and
- engages in work that is varied in character as opposed to work that routinely is mental, manual, mechanical, or physical.

"specialized knowledge and professional judgment" is used specifically in conjunction with investigate, analyze, design, develop or engineer

"investigate": To make a detailed exploratory inquiry or systematic examination of an information system.

"analyze": To examine methodically or consider in detail by separating into parts and studying their interrelations in order to discover essential features or meaning of an information system.

"design": The creation and formulation of a plan with an anticipated outcome.

Example: The creation of a computer program that allows for the categorizing, storing, retrieving and the systematic analyzing of end user or customer data.

"Design" may include technology commissioning as a process for verifying and documenting that the installation and performance of systems meet the needs of the end user. Commissioning begins during project planning and ensures:

- All technology systems, subsystems, equipment, controls and components interface with each other, and other building systems are installed properly.
- A system complies with a contract and is within the scope of design and installation requirements.
- All technical-support personnel, faculty and staff are instructed properly to operate and maintain technology systems efficiently.
- All required training, manuals and documentation regarding the systems installed have been received.

"develop": To make a design operational through a succession of work activities that include investigation, analysis, diagnosis, research or testing. Also may include combining or linking independent and /or component technologies together so they work seamlessly.

Example: Functional performance testing may cover every item within the technology package — all hardware, software, wiring and interfaces shall be tested and evaluated to determine if they are consistent with performance data in the contract documents.

"engineer": To use scientific or technical knowledge to solve practical problems. This typically includes the process of problem diagnosis, investigation, analysis, and testing. This work activity may occur during the development of the information system, at the time of its implementation or as operational technical support including complex problem solving.

"information systems": The processing, storing or transmitting of data. Also includes a group of interacting components or related technologies, or a network of related computer software, hardware, and data transmission devices.

"computer and related technologies": the activity of designing and constructing and programming computers and includes related technologies such as, chemical, optical, mechanical and electrical.

"prototype": Full or partial scale forms of new designs or technologies, used to test or demonstrate functionality or illustrate ideas.

"basic operational technical support": refers to an employee with computer analysis experience and/or training on technical systems allowing for the limited exercising of professional judgment. An employee engaged in "basic operational technical support" typically:

- follows regularly a standard procedure to resolve computer related problems.
- utilizes diagnosis when problem solving however will usually follow standard

procedures or regular systematic activities.

By way of example, an employee in response to a customer's inquiry may perform remote or on-site diagnostic work. However, the main purpose of the work is to assess the problem and either utilize prescribed computer programming instructions or refer the problem to a more highly experienced or technically trained person capable of resolving the problem.

The functions related to **"basic operational technical support"** also include the first point of contact for the customer. Typically an employee will search a database to confirm:

- that the person calling is in fact a customer
- what kind of equipment / system the customer has
- that the customer has a contractual entitlement to the service they are asking for.

Also they may:

- do a simple scripted assessment with the customer,
 - order parts and if the problem isn't fixed they create a service order
- and escalate the call to a technical support person.

"basic operational technical support" would not apply to employees who:

(a) possess a high degree of knowledge and understanding of highly specialized technological and/or scientific fields; and

(b) have the ability to practically apply that knowledge and understanding to highly specialized technological and/or scientific fields; and

(c) consistently exercises discretion and independent decision making in the application of their special knowledge as opposed to performing purely mechanical or routine tasks; and

(d) engage in work that is varied in character as opposed to work that routinely is mental, manual, mechanical, or physical; and

(e) investigate, analyze, and resolve practical problems, including technically complex problems, with the use of scientific or technical knowledge

Occupation examples include:

- computer systems analyst
- internet development professional
- computer programmer
- computer science professional

Subsection (1)(b)

See above 37.8 (1) (a) policy interpretation for "primarily", "specialized knowledge and professional judgment", and "prototype".

"investigate": To make a detailed exploratory inquiry or systematic examination. In scientific research, "investigation" refers to inquiry into unfamiliar areas. It includes work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes. Such work includes incremental improvements to existing technology.

"analyze": To examine methodically or consider in detail by separating into parts and studying their interrelations in order to discover their essential features or meaning.

"design": The creation and formulation of a plan with an anticipated outcome. Example: The creation of a plan to develop a chemical catalyst process.

"Design" may include technology commissioning. (See policy interpretation below for **"implement"**)

"develop": To make a design operational through a succession of work activities that include investigation, analysis, diagnosis, research or testing.

Example: Functional performance testing may cover every item within the technology package — all hardware, software, wiring and interfaces shall be tested and evaluated to determine if they are consistent with performance data in the contract documents.

"engineer": To use scientific or technical knowledge to solve practical problems. This typically will include the process of problem diagnosis, investigation, analysis, and testing. This work activity may occur during the development of the scientific or technological product, material, device or process, at the time of its implementation or as operational technical support including complex problem solving.

"integrate": combining or linking independent and or component technologies together so that they work seamlessly. Systems integration may be part of a larger project or a project in itself.

"implement": to confirm the initial installation of a product, material, device or process is operational. This will include technology commissioning as a process for verifying and documenting that the installation and performance of systems meet the needs of the end user. Commissioning begins during project planning and may continue through at least the first year of operation.

Commissioning should ensure that:

- All technology systems, subsystems, equipment, controls and components interface with each other, and other building systems are installed properly.
- A system complies with a contract and is within the scope of design and installation requirements.
- All technical-support personnel, faculty and staff are instructed properly to operate and maintain technology systems efficiently.
- All required training, manuals and documentation regarding the systems installed have been received.

"Scientific or technological product, material, device or process": may include low volume specialty items such as microscopes and measurement devices for research and lab applications such as chromatographs and spectrometers as well as commercially marketed products such as games software, drugs and medical devices. In the process of conducting research and development, researchers may create products such as a new chemical catalyst process, or a commercial product such as an electronic sensor device.

Scientific research includes work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes. Such work includes incremental improvements to existing technology.

Occupation examples include:

- manufacturing engineer
- materials engineer
- electronic engineer
- multimedia professional
- computer animator
- software engineer
- software tester
- quality control professional
- applied bioscience professional

Subsection (1) (c)

See 37.8(1)(a) policy interpretation for "primarily", and "specialized and professional judgment".

See s.248(1) of the *Income Tax Act* (Canada), commonly known as 'SRED tax exemption', for meaning of "scientific research and experimental development".

Section 248(1) refers to "scientific research and experimental development" as "systematic investigation or research that is carried out in a field of science or technology by means of experiment or analysis". This section further elaborates on this definition.

Occupation examples include:

- scientific technical
- scientific technologist
- applied bioscience professional
- research scientists

Subsection (1)(d)

"sales or marketing professional" is a person who:

- possess a high degree of knowledge and understanding of highly specialized technological and/or scientific fields; and
- has the ability to practically apply that knowledge and understanding to highly specialized technological and/or scientific fields for the purposes of sales and marketing; and
- consistently exercises discretion and independent decision making in the sales or marketing of a service or system, product, material, device or process, or application, as noted in (a), (b), and (c) above as opposed to performing purely mechanical or routine tasks; and
- engages in work that is varied in character as opposed to work that routinely is mental, manual, mechanical, or physical.

Occupation examples include:

- Technology sales professional

A person employed in the **retail sales** of an information system or service, a scientific or technological product, material, device, or process, and scientific research or experimental development is not a "high technology professional".

Subsection (2)

An employee performing the work of a "high technology professional" as defined in 37.8(1) is excluded from all of Part 4 Hours of Work and Overtime, except s.39, and Part 5, Statutory Holidays of the Act.

Subsection (3)

All provisions of the Act except those noted in 37.8(3) and (4) cover an employee working for a "high technology company" who is not a "high technology professional".

Example:

A receptionist working for a "high technology company" is entitled to full coverage under the Act.

However, if the receptionist signs an averaging agreement under s.37 of the Act the receptionist will be excluded from those sections of the Act referred to in s.37(1) of the Act.

This subsection also allows the receptionist and employer to agree in writing that the daily schedule of hours required in an agreement in s.37(2)(a) (iv) of the Act do not apply. (See subsection 37.8(4) below)

Subsection (4)

- If the employee of a "high technology company" and employer agree in writing that the daily schedule of hours required in an agreement in s.37(2)(a) (iv) of the Act do not apply then the following provisions of s.37 do not apply to the agreement:

- a. The requirement to limit a work schedule in an agreement to 40 hours or an average of 40 hours a week
- b. Daily overtime applies to non-scheduled hours over 8 in a day
- c. The employee's written request to adjust the work schedule

Under s.37.8 (4) daily overtime only applies to time worked over 12 hours.

- Before 37.8(4) of this Regulation can apply to section 37 of the Act the employee and employer must sign two agreements; one as required in 37.8(3) of this Regulation and the second as required under section 37(2)(a) of the Act.

Examples

- If an employee and employer enter into a written agreement under s.37 of the Act without signing a written agreement as noted in 37.8(3) then 37.8(4) has no effect and all provisions of s.37 apply.
- If an employee and employer enter into a written agreement under s.37.8(3) without signing a written agreement under s.37 of the Act, s.37 has no effect and ss.35, 36(1), and 40 of the Act apply to determine overtime and rest period entitlements and pay.

 [Top](#)

Related Information

Related sections of the Act or Regulation

ESA

- [Part 4 – Hours of work and overtime](#)
- [Part 5 – Statutory holidays](#)

Other

Income Tax Act (Canada)

 [Top](#)

 [Top](#)

Jiyobu, Greg J LBR:EX

From: Jiyobu, Greg J LBR:EX
Sent: Wednesday, November 21, 2012 1:54 PM
To: s.22
Subject: Employment Standards Complaint - Imagine Engine Design Inc.
Importance: High

s.22

The company lawyer provided the attached document below. It indicates that you were paid overtime for the period of
s.22 Please advise me on what your response is to this.

To re-iterate, the Employment Standards Branch is unable to address your claim for unpaid vacation pay from s.22
s.22 as it is out of time. The same is true for any overtime worked prior to s.22. We
may address the statutory holidays that occur on Oct 8/11, Nov 11, Dec 25 and Jan 1/12.

Please either respond to this e-mail or phone me.

Thank you.

s.22



MINISTRY OF JOBS, TOURISM AND SKILLS TRAINING
and MINISTER RESPONSIBLE FOR LABOUR
EMPLOYMENT STANDARDS BRANCH

Greg Jiyobu
250 - 4600 Jacombs Road
Richmond, BC V6V 3B1

P: (604) 713-0405 | F: (604) 713-0450
Email: greg.jiyobu@gov.bc.ca

Page 045

Withheld pursuant to/removed as

s.22



Ministry of Labour,
Citizens' Services and
Open Government

Employment Standard Branch

FAX

To: **Image Engine Design Inc.**

ATTN: Payroll, H/R or Gino Rosario

Phone: (604) 874-5634

Fax: (604) 708-8433

CC:

Date: **November 19, 2012**

Number of pages including cover sheet: **1**

From: **Greg Jiyobu**

Phone: (604) 713-0405

Fax: (604) 713-0450

E-Mail: Greg.Jiyobu@gov.bc.ca

REMARKS:

☐ Urgent

☐ For your review

☒ Reply ASAP

☐ Please comment

I left a message for Gino Rosario on November 14 but have not received a return call. Please have him or another representative phone me to discuss a complaint received from a former employee who is alleging unpaid wages.

Thank you.

Ministry of Jobs, Tourism
and Skills Training
and Minister Responsible
for Labour

Employment Standards
Branch

Mailing Address:

250 - 4600 Jacombs Rd
Richmond, BC V6V 3B1

Telephone: (604) 660-4946
Facsimile: (604) 713-0450

Web site: www.labour.gov.bc.ca/esb

EMPLOYMENT STANDARDS BRANCH WORKFLOW SHEET



GREG JIYOBU

DELEGATE

ER# 161-568 Name: IMAGE ENGINE DESIGN INC.		
Employer Telephone: (604) 874-5634	Employer Fax: (604) 708-8433	E-mail: katet@image-engine.com
Employer Contact: KATE TARBARD, H/R	Contact Telephone: (604)	
Complainant s.22	EE Phone: s.22	E-mail: s.22

CONTACTS MADE

DATE	METHOD	PERSON	TIME	METHOD CODE		PERSON CODE
				P In Person LT Letter to LF Letter from FT Fax to FF Fax from	TT Telephone Call to TF Telephone Call from TMT Telephone Message to TMF Telephone Message from EMT Email Message to EMF Email Message from	ER Employer EE Employee A Accountant/Bookkeeper L Lawyer O Other
INITIAL CHECKS				ESB jurisdiction? Y – VISUAL EFFECTS FOR TV ER still in business? Y Filed within 6-months? Y – LAID OFF EE under collective agreement? N EE an independent contractor? N – SENIOR SYSTEMS ADMIN EE exclusions? ? – ESR S(37.8) SHK used? Y EE info (address) confirmed? Y ER info (legal name, coba, address) confirmed? Y ER contact has case knowledge and/or signing authority? Y / Y 6-month period of time ESB can investigate? SEP 24 – MAR 23/12		
ISSUES				COMMENTS		
O/T: s.22 VAC: s.22 STAT: s.22				ONLY THE LAST 6-MONTHS s.22 IS OUT OF TIME OCT 10, NOV 11, DEC 25 & JAN 1		
NOV 9	TT	EE		<ul style="list-style-type: none"> ▪ DISCUSSED THE DEFINITION OF A HIGH TECH PROFESSIONAL ("HTP"); APPEARS THAT EE s.22 s.22 <ul style="list-style-type: none"> ○ REVIEWED THE EXCLUSIONS IN THE REGS (O/T & STAT) FOR AN HTP ▪ STAFF LOG ONTO A WEB SITE WHICH KEEPS TRACK OF ATTENDANCE; EE WORKED s.22 -HRS/DAY; s.22 MAY HAVE WORKED ON STATS, BUT WAS UNSURE <ul style="list-style-type: none"> ○ ADVISED THE DAYS IN QUESTION ARE s.22 		

				& s.22 ▪ EE CONFIRMED THAT s.2 WASN'T PAID 4% ON GROSS WAGES EARNED FROM s.22 ◦ ADVISED THIS PERIOD IS OUT OF TIME AND ESB CANNOT ADDRESS IT; s.2 UNDERSTOOD ▪ DISCUSSED MED, ADJ, PEN – AVAILABLE M-F IF GIVEN SUFFICIENT NOTICE
				s.22
NOV 14	TMT	ER	1:41	▪ LEFT A MSG FOR GINO ROSARIO
NOV 19	FT	ER	12:08	▪ REQUEST FOR PAYROLL, H/R OR ROSARIO TO PHONE ME
	TF	ER		▪ I SPOKE WITH KATE TARBARD, H/R MANAGER ▪ ER CONFIRMED THE LEGAL NAME AND ADDRESS; HER E-MAIL ADDRESS IS: KATET@IMAGE-ENGINE.COM ▪ SHE REQUESTED THAT I CONTACT LEGAL COUNSEL, WHO SENT EE A LETTER OF RESPONSE; ER DOES NOT BELIEVE ANY WAGES ARE OWED s.22 AND THEREFORE WISHES TO DISPUTE CLAIM ▪ DISCUSSED MED, ADJ, PEN
	EMT	ER	12:39	▪ SENT A SCANNED COPY OF THE COMPLAINT (WITH PERSONAL INFO WHITED OUT), FACT SHEETS ON COMPLAINT RESOLUTION, PAYING WAGES, HOURS OF WORK & O/T, STAT HOLIDAYS/DATES, ESR S(37.8) AND OPTIONS: PAY, MED, ADJ; REVIEWED PENALTY PROVISIONS
NOV 21	EMF	L	1:10	▪ RESPONSE RECEIVED
	TT	EE	1:43	▪ NO ANSWER; NO VOICEMAIL
	EMT	EE	1:43	▪ PROVIDED ER'S LETTER AND ASKED s.22 RESPONSE FOR THEIR CLAIM THAT s.2 WAS PAID O/T IN THE LAST 6-MONTHS OF EMPLOYMENT; RE-ITERATED THAT ESB IS UNABLE TO ADDRESS s.22 VAC CLAIM AS IT'S OUT OF TIME BUT STATS CAN BE INVESTIGATED
	EMT	L	1:58	▪ ASKED ABOUT ER'S RESPONSE REGARDING STATS IN THE LAST 6-MONTHS OF EMPLOYMENT ▪ ALSO REQUESTED TO CONFIRM A DATE FROM DEC 10-21 (EXCLUDING DEC 13)
	TF	EE	3:24	▪ EE DID NOT AGREE THAT s.2 WAS PAID CORRECTLY FOR OVERTIME IN THE LAST 6-MONTHS AS TIME SHOULD HAVE BEEN LOGGED AND IT WASN'T CLEARLY INDICATED ON WAGE STATEMENTS ▪ DISCUSSED MED – AVAILABLE M-F
NOV 22	EMF	ER	2:33	▪ ER AVAILABLE DEC 11 AT 9:30
	TT	EE	2:40	▪ EE ACKNOWLEDGED DATE
	EMT	ER EE		▪ SENT MED NOTICE TO ER & EE ▪ FACT SHEETS: MED, ADJ, PEN, COMPLAINT RESOLUTION, PAYING WAGES, ESB DIRECTIONS
				SCHEDULED A MEDIATION FOR DEC 11 AT 9:30 MEDIATOR IS CHANTAL MARTEL



Notice of Complaint Hearing

January 10, 2013

File # 161-568
Registered Mail & Regular Mail

To: IMAGE ENGINE DESIGN INC.
15 5 AVE W
VANCOUVER, BC V5Y 1H4

s.22

Address deleted for privacy purposes

FILE COPY

In the matter of:

A complaint by s.22 under the *Employment Standards Act*
against IMAGE ENGINE DESIGN INC.

Issue: compliance with the *Employment Standards Act*.

The Director of Employment Standards has appointed a Branch Adjudicator to conduct a hearing into the issue(s). The hearing will take place:

Date: Thursday, February 28, 2013
Time: 9:00 am
Place: 250-4600 Jacombs Rd., Richmond, BC

The Branch Adjudicator may make a Determination based on information before them, even if you choose not to participate or be represented at the hearing.

For additional information on the hearing process, please refer to the *Adjudication Hearings* factsheet attached. Please provide a copy of the attached *Being a Witness* factsheet to any witnesses you intend to call.

Production of Records

Before the adjudication hearing, the parties must:

- Send the Branch two copies of any documents they intend to rely on by **February 1, 2013**;

- Provide a list of people they intend to call as witnesses with a brief summary of the relevant evidence those witnesses are expected to give; and
- Provide all documents required in the Demand for Employer Records, if one was issued.

It is the responsibility of both the Employer and the Complainant to ensure that any records or evidence they intend to produce and/or rely on at the hearing have been submitted to the Branch at least 14 days prior to the hearing. These records must be exchanged with the other party, which will be done by the Branch, allowing enough time for all parties to review prior to the hearing.

Adjournment of Hearings

In extraordinary circumstances the Branch Adjudicator may grant adjournments. Requests for adjournments should be in writing, include reasons, and be delivered to the Branch Adjudicator at least one week before the scheduled date of hearing.

Additional information is available at: <http://www.labour.gov.bc.ca/esb/> or contact the Information Line at 1-800-663-3316



Chantal Martel
Delegate of the Director of
Employment Standards

Attachment

Copy:
Andrea Raso Amer
Fraser Milser Casgrain
20-250 Howe St.
Vancouver, BC V6C 3R8



Demand for Employer Records

January 10, 2013

File: 161-568
Registered Mail

To: IMAGE ENGINE DESIGN INC.
15 5 AVE W
VANCOUVER, BC, V5Y 1H4

Pursuant to section 85 of the Employment Standards Act (the "Act"), IMAGE ENGINE DESIGN INC. is required to disclose, produce and deliver all employment records for:

Name: Period:
s.22 s.22

The payroll records required are:

1. any and all payroll records relating to wages, hours of work and conditions of employment as specified in section 28 of the Employment Standards Act
2. any and all documents relating to the termination of the above named employee(s), including any and all documents that the employer relies on to establish just cause to terminate the employee, as well as a copy of the Record of Employment.

You are required to disclose, produce and deliver the records specified in this Demand on or before:

February 1, 2013

at the office of the Ministry of Jobs, Tourism and Skills Training and Minister Responsible for Labour, Employment Standards Branch. The records may be delivered in person or by mail to 2nd Floor - 4600 Jacombs Road, Richmond BC V6V 3B1. Alternatively, the records may be delivered by fax to 604 713-0450.

Failure to produce these records as required will result in a Determination being issued. Where a contravention is found in a Determination an escalating administrative penalty will be imposed under Section 29 and 46 of the Employment Standards Regulation (minimum \$500.00).

Chantal Martel
Delegate of the Director of
Employment Standards
604 713-0456

Ministry of Jobs, Tourism
and Skills Training and
Minister Responsible for
Labour

Employment Standards
Branch

Mailing Address:

2nd Floor - 4600 Jacombs Road
Richmond, B.C. V6V 3B1

www.labour.gov.bc.ca/esb

Telephone: (Office Tel#)
Facsimile: 604 713-0450

EMPLOYMENT STANDARDS ACT

(excerpts)

Entry and inspection powers

- 85 (1) For the purposes of ensuring compliance with this Act and the regulations, the director may do one or more of the following:
- (a) enter during regular working hours any place, including any means of conveyance or transport, where
 - (i) work is or has been done or started by employees,
 - (ii) an employer carries on business or stores assets relating to that business,
 - (iii) a record required for the purposes of this Act is kept, or
 - (iv) anything to which this Act applies is taking place or has taken place;
 - (b) inspect, and question a person about, any work, material, appliance, machinery, equipment or other thing in the place;
 - (c) inspect any records that may be relevant to an investigation under this Part;
 - (d) on giving a receipt for a record examined under paragraph (c), remove the record to make copies or extracts;
 - (e) require a person to disclose, either orally or in writing, a matter required under this Act and require that the disclosure be under oath or affirmation;
 - (f) require a person to produce, or to deliver to a place specified by the director, any records for inspection under paragraph (c).
- (2) Despite subsection (1), the director may enter a place occupied as a private residence only with the consent of the occupant or under the authority of a warrant issued under section 120.

Payroll records

- 28 (1) For each employee, an employer must keep records of the following 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.
- (2) Payroll records must
- (a) be in English,
 - (b) be kept at the employer's principal place of business in British Columbia, and
 - (c) be retained by the employer for 2 years after the employment terminates.

EMPLOYMENT STANDARDS REGULATIONS

(excerpts)

Production of records

- 46(1) A person who is required under section 85 (1) (f) of the Act to produce or deliver records to the director must produce or deliver the records as and when required.

Administrative penalties

- 29 (1) Subject to section 81 of the Act and any right of appeal under Part 13 of the Act, the following monetary penalties are prescribed for the purposes of section 98(1) of the Act:

- (a) a fine of \$500 if the director determines that a person has contravened a requirement under the Act, unless paragraph (b) or (c) applies;

- (b) a fine of \$2 500 if

- (i) after the date of a determination under paragraph (a), the director determines that the person contravened the requirement referred to in that paragraph subsequent to the determination under paragraph (a), and
- (ii) that subsequent contravention occurs within 3 years after the date of the most recent contravention of the same requirement in relation to which there has been a determination under paragraph (a),

unless paragraph (c) applies;

- (c) a fine of \$10 000 if

- (i) after the date of a determination under paragraph (b), the director determines that the person contravened the requirement referred to in that paragraph subsequent to the determination under paragraph (b), and
- (ii) that subsequent contravention occurs within 3 years after the date of the most recent contravention of the same requirement in relation to which there has been a determination under paragraph (b).

- (1.1) For the purposes of subsection (1), an act or omission of an employer constituting a contravention of a requirement under the Act is deemed to be a single contravention regardless of the number of employees affected by the contravention.

**FAILURE TO COMPLY WITH THIS DEMAND WILL RESULT IN A PENALTY
AGAINST YOU WITHOUT FURTHER NOTICE.**

REGISTERED MAIL TRACE SHEET

MINISTRY OF LABOUR, CITIZENS' SERVICES AND OPEN GOVERNMENT
BRANCH: Employment Standards Branch
Lower Mainland Region

ADDRESS: #250 - 4600 Jacombs Road
Richmond, BC V6V 3B1

TELEPHONE: (604) 660-4946
FAX: (604) 713-0450

Name of officer: Chantal Martel Date: January 11, 2013

s.22

ER 161-568
notice of hearing



RW 728 319 969 CA

s.22

161-568
notice of hearing
demand for records



RW 728 319 986 CA

IMAGE ENGINE DESIGN INC.
15 5 AVE W
VANCOUVER, BC V5Y 1H4

161-568
notice of hearing
demand



RW 728 319 907 CA

Jiyobu, Greg J LBR:EX

From: Jiyobu, Greg J LBR:EX
Sent: Friday, November 23, 2012 8:50 AM
To: 'Andrea.RasoAmer@fmc-law.com'
Cc: 'katet@image-engine.com'
Subject: Employment Standards Mediation

Importance: High

Ms. Raso Amer:

Please ensure that payroll records for the last 6-months of employment are brought to the meeting in order to substantiate the position of the company.

Thank you.



Notice of Mediation Session

November 23, 2012

File #161-568
E-mail

To: Image Engine Design Inc.
15 West 5th Avenue
Vancouver, BC V5Y 1H4

s.22

Address deleted for privacy purposes

In the matter of:

A complaint by s.22 **under the *Employment Standards Act* against Image Engine Design Inc.**

Issue: Compliance with the *Employment Standards Act*.

Mediation Services

The Director of Employment Standards provides mediation services in an effort to assist the parties to resolve alleged contraventions of the *Employment Standards Act*. The Director has appointed a mediator to meet with the parties as follows:

In Person:

Date: December 11, 2012
Time: 9:30 AM
Place: 250 – 4600 Jacombs Road
Richmond, BC

Mediation provides an opportunity for the parties to discuss their issues in a neutral environment and come to a resolution acceptable to both of them.

For additional information, please refer to the *Mediation* factsheet attached.

What to Bring

You should bring any documents that will help to resolve the issues in dispute, such as payroll records or pay stubs, calendars, time sheets, letters etc. These documents will be made available to the other party and the mediator at the time of mediation.

Additional information is available at: www.labour.gov.bc.ca/esb/ or by phone at 1-800-663-3316 or (250) 612-4100 in Prince George

Greg Jiyobu
Delegate of the Director of
Employment Standards

Attachments



mediation.pdf



Complaint
Resolution.pdf.pdf



paying-wages.pdf



Adjudication-Hearings.pdf



enforcement.pdf



high-tech.pdf



statutory-holidays
.pdf



Stat Holidays
2011-2014.pdf

ESA Section 80 - Limit on amount of wages required to be paid
<http://www.labour.gov.bc.ca/esb/igm/esa-part-10/igm-esa-s-80.htm>

Directions to our office



ESB Directions.pdf

Jiyobu, Greg J LBR:EX

From: Jiyobu, Greg J LBR:EX
Sent: Friday, November 23, 2012 8:51 AM
To: s.22
Subject: Employment Standards Mediation
Importance: High



Notice of Mediation Session

November 23, 2012

File #161-568
E-mail

To:	Image Engine Design Inc. 15 West 5 th Avenue Vancouver, BC V5Y 1H4	s.22 Address deleted for privacy purposes
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In the matter of:

A complaint by s.22 under the *Employment Standards Act* against Image Engine Design Inc.

Issue: Compliance with the *Employment Standards Act*.

Mediation Services

The Director of Employment Standards provides mediation services in an effort to assist the parties to resolve alleged contraventions of the *Employment Standards Act*. The Director has appointed a mediator to meet with the parties as follows:

In Person:

Date:	December 11, 2012
Time:	9:30 AM
Place:	250 – 4600 Jacombs Road Richmond, BC

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What to Bring

You should bring any documents that will help to resolve the issues in dispute, such as payroll records or pay stubs, calendars, time sheets, letters etc. These documents will be made available to the other party and the mediator at the time of mediation.

Additional information is available at: www.labour.gov.bc.ca/esb/ or by phone at 1-800-663-3316 or (250) 612-4100 in Prince George

Greg Jiyobu
Delegate of the Director of
Employment Standards

Attachments



mediation.pdf



Complaint
Resolution.pdf



paying-wages.pdf



Adjudication-Hea
rings.pdf



enforcement.pdf



high-tech.pdf



statutory-holidays
.pdf



Stat Holidays
2011-2014.pdf

ESA Section 80 - Limit on amount of wages required to be paid
<http://www.labour.gov.bc.ca/esb/igm/esa-part-10/igm-esa-s-80.htm>

Directions to our office



ESB Directions.pdf

Jiyobu, Greg J LBR:EX

From: Jiyobu, Greg J LBR:EX
Sent: Monday, November 19, 2012 12:39 PM
To: 'katet@image-engine.com'
Subject: Employment Standards Complaint - s.22

Importance: High

Dear Madam:

As per our conversation, please find attached a scanned copy of the complaint from s.22, who is alleging that wages remain outstanding. I have also included informational material for your reference.

There is a definition of "high technology professional" in Section 37.8 of the Employment Standards Regulations. Typically, these type of employees are excluded from the overtime and statutory holidays provisions under the Act. However, it does also mention that "a person employed to provide basic operational technical support" is not included in the definition.

In regards to s.22 claim for outstanding vacation pay from s.22, I have already advised s.22 that this is not addressable by the Branch as the issue is out of time. As to the claim for overtime and statutory holiday pay, only a 6-month period of time may be investigated, from s.22

I am requesting that you forward me a copy of the response letter drafted by the company lawyer and also the written contract of employment.

Since the company wishes to choose option #2 from the list below, I will be contacting your legal counsel to arrange a Mediation Session, at either 9:30 or 1:00.

Typically, the following options are made available to resolve the dispute:

1. Make a 'without prejudice' payment of an amount deemed to be owed
2. Mediation – if you wish to dispute the claim in its' entirety, proceed to this informal meeting between a signatory of the company, the complainant and an Employment Standards Officer – Please confirm a date from the next 3-weeks at either 9:30 or 1:00
3. Adjudication – a formal oral hearing which requires the attendance of both parties to give affirmed testimony and enter documents into evidence. A written decision called a Determination will be rendered to rule on the matter. Please note that if the company is found to be out of compliance with the legislation, there is a mandatory \$500 penalty issued for each contravention of the Employment Standards Act and Regulations.

Thank you.

Copy of complaint



20121119121853.p
df



Complaint
Resolution.pdf.pdf



paying-wages.pdf hours_overtime.p
df



Stat Holidays
2011-2014.pdf



statutory-holidays
.pdf

ESR Section 37.8 - Exclusions - high technology companies

<http://www.labour.gov.bc.ca/esb/igm/esr-part-7/esr-s37-8.htm>

ESA Section 80 - Limit on amount of wages required to be paid

<http://www.labour.gov.bc.ca/esb/igm/esa-part-10/igm-esa-s-80.htm>



The Best Place on Earth

MINISTRY OF JOBS, TOURISM AND SKILLS TRAINING
and MINISTER RESPONSIBLE FOR LABOUR
EMPLOYMENT STANDARDS BRANCH

Greg Jiyobu
250 - 4600 Jacombs Road
Richmond, BC V6V 3B1

P: (604) 713-0405 | F: (604) 713-0450
Email: greg.jiyobu@gov.bc.ca


**BRITISH
COLUMBIA**

ESI DATE	
ER No.	161-560
ASSIGN No.	s.22
EE No.	
DATE ASSIGN	
OFFICER	

FILE
Office Copy
Date of complaint submission:
August 23, 2012

Confirmation # 018933XIA

I have used the Employment Standards self-help kit and the problem has not been resolved.

Employer Information		
Name of Employer: Image Engine Design Inc.		
Mailing Address of employer: 15 West 5th Avenue	City/town, Province, Country: Vancouver, BC, Canada	Postal Code: V5Y 1H4
Telephone Number: 604-874-5634	Fax Number: 604-708-8433	Type of business: Visual Effects for Film & Television
Name of supervisor: s.22	Name and home phone number of owner: corporation. Greg Holmes, Robin Hackl, others ()	
<i>Address of place where you worked if different from above</i>		
Street Address:	City/town, Province, Country:	Postal Code:
Is your employer bankrupt or in receivership? No		
Employers' bank:	Employers bank branch:	
Is your employer still in business? Yes	When did your employer go out of business?	

Information About You			
Your Last Name: s.22	Your first or given name: s.22	Middle Initial(s):	SIN:
Mailing (street) Address:	City/town, Province, Country:		Postal Code:
Home phone number:	Message Number:	Fax Number:	
Date of Birth:	Email Address:		
Are you in BC under a foreign worker program? s.22			
Are you covered by a collective agreement (union contract): s.22			
Union's Name:			
Union Rep's Name:	Union Rep's Phone Number:		



February 4, 2013

Image Engine Design Inc.
15 West 5th Avenue
Vancouver, BC
V5Y 1H4

Dear Sir/Madam:

Re: Complaint Hearing of s.22

Please refer to the above hearing scheduled for February 28, 2013.

Enclosed are copies of documents that s.22 has provided to the branch that s.22 intends to use at the hearing.

If you have any questions, please call me at 604-664-7833 to discuss.

Yours truly,

Victor Lee
Delegate of the Director of Employment Standards

**Ministry of Jobs, Tourism and
Skills Training and Minister
Responsible for Labour**

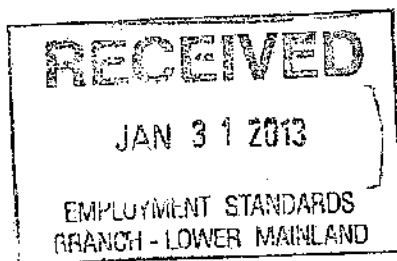
Employment Standards Branch

**250 - 4600 Jacombs Road
Richmond, BC V6V 3B1**

**Telephone: 604-664-7833
Fax: 604-713-0450
Web site: www.labour.gov.bc.ca/esb**

Document list

1. Statement of my complain
2. Complain Submission
3. Job contract 1
4. Job contract 2
5. Job contract 3
6. Job contract 4
7. Work hours log
8. Record Of Employment 1
9. Record Of Employment 2
10. A payroll of a month
11. An email that requested work 10 hours a day.



Page 064

Withheld pursuant to/removed as

s.22

Confirmation # 018933XIA

I have used the Employment Standards self-help kit and the problem has not been resolved.

Employer Information		
Name of Employer: Image Engine Design Inc.		
Mailing Address of employer: 15 West 5th Avenue	City/town, Province, Country: Vancouver, BC, Canada	Postal Code: V5Y 1H4
Telephone Number: 604-874-5634	Fax Number: 604-708-8433	Type of business: Visual Effects for Film & Television
Name of supervisor: s.22	Name and home phone number of owner: corporation. Greg Holmes, Robin Hackl, others ()	
<i>Address of place where you worked if different from above</i>		
Street Address:	City/town, Province, Country:	Postal Code:
Is your employer bankrupt or in receivership? No		
Employers' bank:	Employers bank branch:	
Is your employer still in business? Yes	When did your employer go out of business?	

Information About You			
Your Last Name: s.22	Your first or given name: s.22	Middle Initial(s):	SIN: s.22
Mailing (street) Address: s.22	City/town, Province, Country: s.22	Postal Code: s.22	
Your home phone number: s.22	Message Number:	Fax Number:	
Date of Birth: s.22	Email Address: s.22		
Are you in BC under a foreign worker program? s.22			
Are you covered by a collective agreement (union contract):			

Union's Name:

Union Rep's Name:

Union Rep's Phone Number:

Your work history with this employer

Your job title:

s.22

Date you started work
for this employer:

s.22

Last day you worked for this
employer:

Your rate of pay:

s.22

Employment status:

s.22

How often are you paid?

s.22

Are your hours of
work regular?

s.22

Hours worked per
day:

s.22

Number of days
worked per week:

s.22

Total Hours per week:

s.22

Do you have a record of the hours worked for this employer:

s.22

Work history continued. What do you believe you are owed?

	From date	To date	Estimated amounts
Regular wages	s.22		\$0
✓ Overtime			
✓ Annual vacation pay			
✓ Statutory holiday pay			
Deductions from wage	Specify:		\$0
NSF Cheques			\$0
Pregnancy/Parental or other leave			\$0
Compensation for length of service (termination pay)			\$0
Other	Specify:		\$0
Estimated Total you are owed:			s.22

Details of your complaint

s.22

Close

Page 068 to/à Page 092

Withheld pursuant to/removed as

s.22

From: Kate Tarbard
Sent: Wednesday, February 16, 2011 4:52 PM
To: All Mailing List
Subject: Working Hours at Image Engine

Hi All,

As we are now in full swing of production on 'The Thing' and you have all been tasked with work, can you please make sure you are in the building no later than 9:30am.

If you are going to be late please make sure you call Zuzana by 9am so that she can add you to the absense/late list.

The Thing Production Team has also requested that you aim for a 10 hour work day. Any questions or concerns, please email me directly.

Many Thanks

Kate



Fraser Milner Casgrain LLP
20TH Floor, 250 Howe Street
Vancouver, BC, Canada V6C 3R8

MAIN 604 687 4460
FAX 604 683 5214

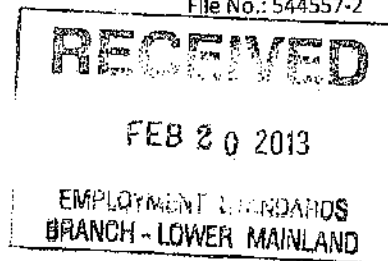
February 20, 2013

VIA SAME-DAY COURIER

Employment Standards Branch
2nd Floor - 4600 Jacombs Road
Richmond, BBC V6V 3B1

Attention: Chantal Martel

Andrea Raso Amer
andrea.rasoamer@fmc-law.com
DIRECT 604 622 5152
File No.: 544557-2



Dear Sirs/Mesdames:

Re: A complaint by s.22 under the *Employment Standards Act* against Image
Engine Design Inc.

Enclosed please find the documents upon which Image Engine intends to rely in the hearing in the above-noted matter scheduled for February 28, 2013.

We reserve the right to rely on further and other documents in order to respond to any evidence raised by s.22 at the hearing.

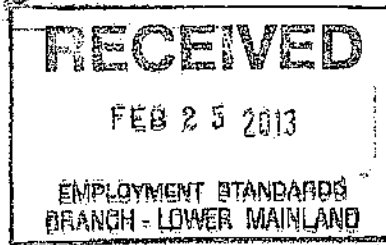
Yours truly,
Fraser Milner Casgrain LLP

Andrea Raso Amer

ARA/fm



Fraser Milner Casgrain LLP
20TH Floor, 250 Howe Street
Vancouver, BC, Canada V6C 3R8



February 25, 2013

VIA SAME-DAY COURIER

MAIN 604 687 4460
FAX 604 683 5214

Andrea Raso Amer
andrea.rasoamer@fmc-law.com
DIRECT 604 622 5152
File No.: 544557-2

Employment Standards Branch
2nd Floor - 4600 Jacombs Road
Richmond, BC V6V 3B1

Attention: Victor Lee

Dear Sirs/Mesdames:

Re: **A complaint by s.22 under the *Employment Standards Act* against Image Engine Design Inc.**

Further to our letter to Chantal Martel dated February 20, 2013, enclosed please find additional documents upon which we intend to rely at the hearing in the above-noted matter scheduled for February 28, 2013.

Please note that I did not receive the documents of s.22 until Thursday, February 21, as they were sent to my client who I assumed I had already received a copy. Please ensure that all further communication in this matter are sent to me directly.

Many thanks for your cooperation.

Yours truly,
Fraser Milner Casgrain LLP

Andrea Raso Amer

ARA/fm

INDEX

Tab	Document
1.	Employment Contracts
2.	Personnel File Update for s.22
3.	Record of Employment of
4.	s.22 Time Logs
5.	s.22 Time Logs

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Withheld pursuant to/removed as

s.22

INDEX

Tab	Document
1.	Employment Contracts
2.	Personnel File Update for s.22
3.	Record of Employment of
4.	s.22 Time Logs
5.	s.22 Time Logs
6.	Network Design by s.22
7.	Risk Assessment with cover email message
8.	Network Diagram with cover email message
9.	Case 4637737042 with cover email message
10.	Curriculum vitae of Gino del Rosario

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Withheld pursuant to/removed as

s.21

Modelo, Faye

From: s.22
Sent: 24-Nov-11 6:32 PM
To: Terry Bates; IT Mailing List
Subject: RE: Risk Assessment Spreadsheet
Attachments: riskAssessment.xls

Here is mine.

s.22

From: Terry Bates
Sent: Wednesday, November 23, 2011 5:33 PM
To: IT Mailing List
Subject: Risk Assessment Spreadsheet

Gentlemen,

I have added the items discussed yesterday and inserted some upgrade cost levels after discussions with Herbie. I would like to break up the tasks between y'all and noted who is completing the info for each service/server.

I've attached the spreadsheet four you to complete. I can compile the lists after.

Thanks,

Terry

B. Terry Bates
Head of Systems
Image Engine Design Inc.
15 West 5th Avenue, Vancouver, BC, Canada, V5Y 1H4
E: terry@image-engine.com | P: 604.874.5634
F: 604.708.8433 | W: www.image-engine.com

Computers have lots of memory but no imagination.

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Withheld pursuant to/removed as

s.22;s.21

Modelo, Faye

From: s.22
Sent: 9-Dec-11 3:09 PM
To: Gino del Rosario
Cc: IT Mailing List; s.22
Subject: RE: Network Diagram
Attachments: IE_Network_diagram.pdf

Hello s.22

Attachment is our network diagram. Let me know if you need additional information.

s.22

From: Gino del Rosario
Sent: Friday, December 09, 2011 2:56 PM
To: s.22
Cc: IT Mailing List; s.22
Subject: Network Diagram

Hi s.22

Can you please send s.22 an updated network diagram that shows all links plus equipment? Do you think we can get that to him by mid next week?

Thanks,

--

Gino del Rosario
Head of Technology
Image Engine
P: 604-874-5634 X 2228
F: 604-708-8433
E: ginodr@image-engine.com
15 West 5th Avenue
Vancouver, BC V5Y 1H4 Canada
www.image-engine.com

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Withheld pursuant to/removed as

s.21

Modelo, Faye

From: s.22
Sent: 31-Jan-12 2:10 PM
To: Gino del Rosario; 'My Networking'; IT Mailing List
Cc: Tony Schoemaker
Subject: RE: Case: 4637737042
Attachments: Screenshot-1.jpg; Screenshot-2.jpg

Hi Tony,

Thank you for your call. Attachment screenshot may give you more information about this. Screenshot-2 is what I'm trying to do. Screenshot-1 is the error.

s.22

From: Gino del Rosario
Sent: Tuesday, January 31, 2012 1:18 PM
To: 'My Networking'; IT Mailing List
Cc: Tony Schoemaker (tony.schoemaker@scalar.ca)
Subject: RE: Case: 4637737042

Tony,

Can one of your network guys help^{s.22} out with this?

-Gino

From: My Networking [<mailto:hpnetworking@hp.com>]
Sent: Tuesday, January 31, 2012 12:18 PM
To: IT Mailing List
Subject: Case: 4637737042

A case has been successfully logged. Your case number is: 4637737042

First name IT
Last name IE
Email it@image-engine.com
Telephone 604-874-5634
Company name Image Engine
Company address
HP s.21
Networking support ID
Serial number
Software

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Withheld pursuant to/removed as

s.21

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Withheld pursuant to/removed as

s.22


**BRITISH
COLUMBIA**

OFFICE	
ESI DATE	
ER No.	161-568
ASSIGN No.	s.22
EE No.	
DATE ASSIGN	
OFFICER	

FILE
Office Copy
Date of complaint submission:
August 23, 2012

Confirmation # 018933XIA

I have used the Employment Standards self-help kit and the problem has not been resolved.

Employer Information

Name of Employer:

Image Engine Design Inc.

Mailing Address of employer:
15 West 5th Avenue

City/town, Province, Country:
Vancouver, BC, Canada

Postal Code:
V5Y 1H4

Telephone Number:
604-874-5634

Fax Number:
604-708-8433

Type of business:
Visual Effects for Film &
Television

Name of supervisor:
s.22

Name and home phone number of owner:
corporation. Greg Holmes, Robin Hackl, others ()

Address of place where you worked if different from above

Street Address:

City/town, Province, Country:

Postal Code:

Is your employer bankrupt or in receivership?
No

Employers' bank:

Employers bank branch:

Is your employer still in
business?
Yes

When did your employer go out of business?

Information About You

Your Last Name:
s.22

Your first or given name:
s.22

Middle
Initial(s):

SIN:

Mailing (street) Address:

City/town, Province, Country:

Postal Code:

Your home phone number:

Message Number:

Fax Number:

Date of Birth:

Email Address:

Are you in BC under a foreign worker program?
s.22

Are you covered by a collective agreement (union contract):
s.22

Union's Name:

Union Rep's Name:

Union Rep's Phone Number:



February 4, 2013

Image Engine Design Inc.
15 West 5th Avenue
Vancouver, BC
V5Y 1H4

Dear Sir/Madam:

Re: Complaint Hearing of s.22

Please refer to the above hearing scheduled for February 28, 2013.

Enclosed are copies of documents that s.22 has provided to the branch that s.2 intends to use at the hearing.

If you have any questions, please call me at 604-664-7833 to discuss.

Yours truly,

Victor Lee
Delegate of the Director of Employment Standards

**Ministry of Jobs, Tourism and
Skills Training and Minister
Responsible for Labour**

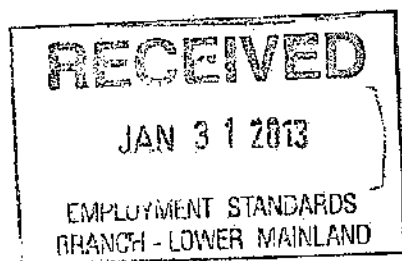
Employment Standards Branch

**250 - 4600 Jacombs Road
Richmond, BC V6V 3B1**

**Telephone: 604-664-7833
Fax: 604-713-0450
Web site: www.labour.gov.bc.ca/esb**

Document list

1. Statement of my complain
2. Complain Submission
3. Job contract 1
4. Job contract 2
5. Job contract 3
6. Job contract 4
7. Work hours log
8. Record Of Employment 1
9. Record Of Employment 2
10. A payroll of a month
11. An email that requested work 10 hours a day.



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Withheld pursuant to/removed as

s.22



Date of complaint submission:
August 23, 2012

Confirmation # 018933XIA

I have used the Employment Standards self-help kit and the problem has not been resolved.

Employer Information		
Name of Employer: Image Engine Design Inc.		
Mailing Address of employer: 15 West 5th Avenue	City/town, Province, Country: Vancouver, BC, Canada	Postal Code: V5Y 1H4
Telephone Number: 604-874-5634	Fax Number: 604-708-8433	Type of business: Visual Effects for Film & Television
Name of supervisor: s.22	Name and home phone number of owner: corporation. Greg Holmes, Robin Hackl, others ()	
<i>Address of place where you worked if different from above</i>		
Street Address:	City/town, Province, Country:	Postal Code:
Is your employer bankrupt or in receivership? No		
Employers' bank:	Employers bank branch:	
Is your employer still in business? Yes	When did your employer go out of business?	

Information About You			
Your Last Name: s.22	Your first or given name: s.22	Middle Initial(s):	SIN: s.22
Mailing (street) Address: s.22	City/town, Province, Country: s.22	Postal Code: s.22	
Your home phone number: s.22	Message Number:	Fax Number:	
Date of Birth: s.22	Email Address: s.22		
Are you in BC under a foreign worker program? s.22			
Are you covered by a collective agreement (union contract):			

s.22

Union's Name:

Union Rep's Name:

Union Rep's Phone Number:

Your work history with this employer

Your job title:

s.22

Date you started work
for this employer:

s.22

Last day you worked for this
employer:

Your rate of pay:

s.22

Employment status:

How often are you paid?

s.22

Are your hours of
work regular?

s.22

Hours worked per
day:

s.22

Number of days
worked per week:

s.22

Total Hours per week:

s.22

Do you have a record of the hours worked for this employer:

s.22

Work history continued. What do you believe you are owed?

	From date	To date	Estimated amounts
Regular wages			\$0
<input checked="" type="checkbox"/> Overtime	s.22		
<input checked="" type="checkbox"/> Annual vacation pay			
<input checked="" type="checkbox"/> Statutory holiday pay			
Deductions from wage	Specify:		\$0
NSF Cheques			\$0
Pregnancy/Parental or other leave			\$0
Compensation for length of service (termination pay)			\$0
Other	Specify:		\$0
Estimated Total you are owed:			s.22

Details of your complaint

s.22

s.22

Close

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Withheld pursuant to/removed as

s.22

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Withheld pursuant to/removed as

DUPLICATE

Employer No: ER161-568

Head Office No: H Office: Richmond
Employer: IMAGE ENGINE DESIGN INC.
Operating Name:
Mailing Address: 15 5 AVE W
VANCOUVER, BC Canada
V5Y 1H4
Phone: (604) 874-5634
Fax:
Cell:
Email: katet@image-engine.com

Received Date	Asgn No	Asgn Officer Type	Stat	Closed Date	Resl Typ
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*** CLOSED ASSIGNMENT EMPLOYEES ONLY ***

2012/08/23 ^{s.22}		O Martel, Chantal		CLSD 2013/03/07	57
2009/06/29 ^{s.22}		CO Smale, Glen		CLSD 2009/10/13	44

DATA INFORMATION SHEET (DIS) PAGE 1 – POST November 30, 2002

**Note: Data person – please initial after any entries

COMPLAINTS

(Updated May 2006)

EMPLOYER'S LEGAL NAME: <u>Image Engine Design Inc.</u>	
CARRYING ON BUSINESS AS: _____	
ER#: <u>161-568</u> s.22	EE#: _____
TYPE OF BUSINESS: <u>Movie Industry</u>	
UPDATE ER. INFO <input type="checkbox"/>	UPDATE EE. INFO <input type="checkbox"/> REOPEN FILE <input type="checkbox"/>
ADD/CHANGE ADDRESS/PHONE: _____	

COMPLAINT(S) ASSIGNMENT STATUS

ASSESSMENT	<input checked="" type="checkbox"/>	DELEGATE # <u>132</u>	DATE ASSIGNED <u>07/08/09</u>
EDUCATION	<input type="checkbox"/>	DELEGATE # _____	DATE ASSIGNED _____
INVESTIGATION	<input type="checkbox"/>	DELEGATE # _____	DATE ASSIGNED _____
MEDIATION	<input type="checkbox"/>	DELEGATE # _____	DATE ASSIGNED _____
MEDIATION DATE _____		DATE MEDIATION HELD _____	
AJUDICATION <input type="checkbox"/>		DELEGATE # _____	DATE ASSIGNED _____
ADJUDICATION DATE _____		DATE ADJUDICATION HELD _____	
COLLECTIONS <input type="checkbox"/>		DELEGATE # _____	DATE ASSIGNED _____

CLOSURE INFORMATION

CODE 44 DELEGATE# 132 WAGE AMOUNT \$ _____ THRU TRUST ☐ Payment from ER ☐

PAYMENT DATE _____ DATE CLOSED 10/07/09

ALLEGATIONS Information Captured at or after Education Stage

<input type="checkbox"/> WAGE (Regular Wages)	<input checked="" type="checkbox"/> OVT (Overtime Wages)	<input type="checkbox"/> VAC (Vacation Pay)
<input type="checkbox"/> STAT (Statutory Holiday Pay)	<input type="checkbox"/> CLOS (Termination Pay)	<input type="checkbox"/> DDUC (Unauthorized Deduction)
<input type="checkbox"/> LEAV (Part 6 – Leaves)	<input type="checkbox"/> NSF	<input type="checkbox"/> OTHER
		<input type="checkbox"/> SEC 8 (Misrepresenting Job)

SETTLEMENT AGREEMENT INFORMATION

FULL <input type="checkbox"/> OR PARTIAL <input type="checkbox"/>	DATE OF AGREEMENT _____	AMOUNT: _____
Payment Schedule (SCHD) <input type="checkbox"/>	Last payment due date _____	
CLOSURE SA <input type="checkbox"/>	Doc # _____	Paid <input type="checkbox"/>

DETERMINATION UPDATE / CLOSURE STATUS

Doc Type: CFUL <input type="checkbox"/> DFUL <input type="checkbox"/>	Doc #: _____	DATE C/J RELEASED: _____
Appeal <input type="checkbox"/> Appeal Date _____	Oral Hearing Date _____	
Paid <input type="checkbox"/> Varied <input type="checkbox"/> Settled <input type="checkbox"/> Canceled <input type="checkbox"/>	Discontinued <input type="checkbox"/> NAST <input type="checkbox"/> PREL <input type="checkbox"/> NFAR <input type="checkbox"/>	
PENALTY(S) Paid <input type="checkbox"/>	Canceled <input type="checkbox"/> List CA Code(s) _____	NAST <input type="checkbox"/> PREL <input type="checkbox"/>

NAST = No Assets; NFAR = No Further Action (use with closure code 41); PREL = Paid on related DOC

More Next Page

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Withheld pursuant to/removed as

s.22;s.13

Smale, Glen LBR:EX

To: s.22

Subject: Your Confidential Employment Standards Complaint. August 4, 2009.

s.22 I've not received the requested information as per my July 20, 2009 attached e-mail. Please send it as soon as possible. Thank you. Glen Smale, Delegate of the Director of Employment Standards.



Your Confidential
Employment,S...

Smale, Glen LBR:EX

To: s.22
Subject: Your Confidential Employment Standards Complaint. July 20, 2009.

s.22 before contacting the employers I would appreciate you providing me with some of the required information found in our standardized Complaint and Information Form, namely:

1. Your mailing address, city of residence, postal code and your fax number if you have one.
2. Your job title, when you commenced employment and with what company (Image Engine or MPC).
3. Your rate of pay, hours of work (per day and per week) and a copy of your contract of employment.

You can e-mail and scan the requested information, fax it to (604) 275-3946 or mail it to my attention to #210- 4946 Canada Way Burnaby, BC V5G 4J6. Thank you.

Glen Smale, Delegate for the Director of Employment Standards.



The Best Place on Earth

Ministry of Labour and Citizens' Services
Employment Standards Branch

Complaint and Information Form

For office use only:

Office	
ESI Date	
ER No.	
Assign No.	
EE No.	
D. Assig.	
Officer	

Date Stamp Here

Before the Employment Standards Branch takes any action on your complaint, you must complete the SELF-HELP KIT. It is available from any Employment Standards Office and on the Internet at www.labour.gov.bc.ca/esb. Except under very unusual circumstances, the Branch will not process complaints unless the SELF-HELP KIT has been used.

PLEASE INDICATE WHICH STATEMENT APPLIES BEFORE CONTINUING.

- ☐ I have used the Employment Standards self-help kit and the problem has not been resolved.
- ☐ I have been advised by the Employment Standards Branch not to use the self-help kit for the following reason: _____
- ☐ I am within one month of the six-month time limit for filing an employment standards complaint. If I do not contact the Employment Standards Branch within 30 days to confirm I have used the self-help kit, the Director of Employment Standards will consider my complaint withdrawn. I am aware that my complaint will not be reviewed during this time.

The information on this form is collected under the authority of the *Employment Standards Act*. The information provided will be used to process your complaint against an employer with respect to wages or any other matter you have specified. You must give us your complaint no later than six months after the end of your employment with this employer, or, if your complaint concerns ss 8, 10 or 11 of the Act, we must receive your complaint no later than six months after the date of the alleged contravention. If you have questions about the collection and use of this information, please contact the Office of the Director of Employment Standards, Ministry of Labour and Citizens' Services, PO Box 9570 Stn Prov Govt, Victoria BC V8W 9K1. Telephone: 250 387-3300.

PLEASE PRINT CLEARLY - COMPLETE BOTH PAGES

SECTION A: INFORMATION ABOUT YOUR EMPLOYER

Name of Employer (name of company or business): _____

Street address of employer: _____

City/town and province: _____

Postal Code: _____

Mailing address of employer: _____

City/town and province: _____

Postal Code: _____

Telephone number: _____

Fax number: _____

Type of Business: _____

Name of your supervisor: _____

Home phone number of owner: _____

Address of place where you worked if different from above: _____

Is your employer bankrupt or in receivership?

☐ YES

☐ NO

Is your employer still in business? ☐ YES

If NO, when did your employer go out of business? _____

☐ NO

Employer's bank: _____

Employer's bank branch: _____

SECTION B: INFORMATION ABOUT YOU

Your last name: _____

Your first or given name: _____

Middle Initial(s): _____

Social Insurance Number: _____

Your mailing address: _____

City/town: _____

Postal Code: _____

Your home phone number: _____

A phone number where a message can be left: _____

Your fax number (if you have one): _____

Date of Birth: _____

Email address: _____

Are you in BC under a Foreign Worker Program?

☐ YES

☐ NO

Are you covered by a collective agreement (union contract)? ☐ YES ☐ NO

Union's Name: _____

Continued on Page 2

SECTION C: YOUR WORK HISTORY WITH THIS EMPLOYER

Your job title: _____ Date you started work for this employer: _____ Last day you worked for this employer: _____
 Your rate of pay: _____ ☐ Still employed ☐ Quit ☐ Fired ☐ Laid off ☐ Other (Please explain below in Section D)
 Are your hours of work regular? ☐ YES ☐ NO Hours worked per day: _____ Number of days worked per week: _____ Total hours per week: _____
 How often were you paid? ☐ Daily ☐ Weekly ☐ Every two weeks ☐ Twice a month ☐ Other: _____
 Do you have a record of the hours worked for this employer that are relevant to your claim?
☐ YES ☐ NO If YES, attach records to this form.
 Attach a photocopy of your pay cheque, pay statements, Record of Employment, if available.

WHAT DO YOU BELIEVE YOU ARE OWED?

		DATE	DATE	ESTIMATED AMOUNTS
<input type="checkbox"/>	Regular Wages	From	To	
<input type="checkbox"/>	Overtime	From	To	
<input type="checkbox"/>	Annual Vacation Pay	From	To	
<input type="checkbox"/>	Statutory Holiday Pay	Specify Dates:		
<input type="checkbox"/>	Deductions from wages	Specify Dates:		
<input type="checkbox"/>	NSF Cheques (Attach original, or copies if available)			
<input type="checkbox"/>	Pregnancy/Parental/or Other Leave			
<input type="checkbox"/>	Compensation for Length of Service (sometimes called Termination Pay)			
<input type="checkbox"/>	Other (Specify):			
				ESTIMATED TOTAL

SECTION D: DETAILS OF YOUR COMPLAINT: (Please note this part of the form may be made available to your employer.)

use additional pages if necessary

Please Note: In order to process your complaint as quickly as possible, attach all available information relating to your claim - i.e. copies of your cheque stubs, daily time records, and your Record of Employment. For us to contact you for information, investigate your complaint, or pay money that we may collect for you, it is important that you tell us about any changes in your mailing address or telephone number. You should also be aware that, once a decision has been made and a determination issued regarding your complaint, no further action should be taken by you to enforce your claim without the written consent of the Director of Employment Standards.

I, _____ certify that all information I am providing is true and correct to the best of my
knowledge, and I agree to my name being used in an investigation, mediation or adjudication.

Print Name

Signature _____ Date 16/07/09

Smale, Glen LBR:EX

From: s.22
Sent: Thursday, July 16, 2009 12:03 PM
To: Smale, Glen LBR:EX
Subject: RE: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.

s.22 I have read section 37.8 and can confirm that none of the work in either company fall under this section. Please proceed as discussed yesterday.

s.22

Subject: RE: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.
Date: Thu, 16 Jul 2009 11:04:56 -0700
From: Glen.Smale@gov.bc.ca
To: s.22

s.22 , you've just highlighted an example of the difficult process ahead of you and this one is the production and exchange of documents. It's your complaint and you have to produce the evidence to support it. s.22

s.22 Before proceeding I strongly suggest you review our Interpretation Guideline Section -- Regulation Section 37.8. I spoke with one of the senior officers who was our high tech. expert and I was told that even if there is a hint of the work being done being included in any of the definitions or examples that they would be considered as high tech. and therefore excluded from overtime. Since I have very little information at this point I suggest you review the material therein and be absolutely certain that the definition doesn't apply before contacting me and prior to my contacting the employer. Thank you. Glen Smale.

From: s.22
Sent: Thursday, July 16, 2009 9:42 AM
To: Smale, Glen LBR:EX
Subject: RE: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.

Glen if you read the second line of my email s.22

s.22

Subject: RE: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.
Date: Thu, 16 Jul 2009 09:26:49 -0700
From: Glen.Smale@gov.bc.ca
To: s.22

July 16, 2009. s.22 , I didn't receive the attachment s.22 I with your e-mail. Are you mailing it or sending it by fax [(604) 275-3946]? Thank you. Glen.

From: s.22
Sent: Wednesday, July 15, 2009 5:12 PM
To: Smale, Glen LBR:EX
Subject: RE: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.

Thanks Glen for taking the time to discuss this matter.

s.22

s.22

s.22

Subject: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.
Date: Tue, 14 Jul 2009 12:31:02 -0700
From: Glen.Smole@gov.bc.ca
To: s.22

I am the officer recently assigned to investigate your confidential complaints received by the Employment Standards Branch on June 29, 2009. The role of the Delegate of the Director of Employment Standards is one of impartiality or neutrality. That is, I do not act as an advocate (representative) on behalf of either the employer or the employee. I apply the evidence received to the relevant provisions of the Employment Standards Act ("Act") and its Regulation and may render a written decision or Determination based on the facts and the balance of probabilities or 'what most likely occurred' within a given situation. Appeal rights are provided within this process and are set out in summary form in the Determination itself. Wherever possible and with the co-operation of the parties involved I try to expedite the process by encouraging the employer and the employee to settle their differences with my assistance. When that no longer becomes a viable option the above Determination process is used.

For reference to the various issues raised, I refer you to the Branch's web site at www.labour.gov.bc.ca/esb. You may wish to review the fact sheet section for general information (for example, hours of work and overtime) or proceed to the Interpretations Guideline Manual section which will provide you with a more in-depth review of the interpretation and application of the various sections of the Act and its Regulation. The relevant sections that may well relate to your complaint are Sections 40 and 75 of the Act. Our toll free information line at 1 (800) 663-3316 may also prove of further assistance to you.

As I understand your complaints as of the date of filing, you are not employed by either of the two companies but have been offered a contract that will pay you a daily rate but will only pay overtime after 10 hours of work and no overtime for work on Saturdays and Sundays. Technically then there are no contraventions of the Act with respect to you ^{s.22}

s.22 At this juncture there is not enough information for me to state that the named employers are contravening the Act because some employers will include overtime rates of pay in their calculations of the daily hours of work and the pay rate for same. Also the Act does not stipulate that overtime rates of pay apply for work performed on Saturdays or Sundays but rather after 40 hours worked in a week commencing on a Sunday. There are also variances to the hours of work and overtime sections of the Act and provisions under Section 37

of the Act that allow flexibility in applying overtime rates of pay. Therefore, at this juncture there is not enough information provided to the Branch that warrants a call or letter to these two employers.

You have filed a confidential complaint and therefore I ask that you review Section 75 of the Act before I consider proceeding further as it may become necessary to disclose your name in future proceedings. Also I have no idea of the size of the employer's labour force so were you to accept employment with them maintaining confidence in a smaller group of new or easily identifiable employees is really not practical and may result in negative consequences for some or all of those employees. For example, the provisions of Section 63 of the Act permit an employer to terminate the services of an employee immediately and without penalty if that employee has fewer than 3 months of service. For all others, all that is required is the appropriate written notice or payment in lieu of that notice s.22

After reviewing some of my initial comments you may decide to proceed or not, just let me know.

If you have any questions or concerns about the contents of this letter you can reach me by phone at (604) 275-3257. Should I not hear from you on or before July 29, 2009 I will conclude that you have abandoned your complaint and your file with us will then be closed. Thank you.

Sincerely, Glen Smale Delegate of the Director of Employment Standards

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Smale, Glen LBR:EX

To: s.22
Subject: RE: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.

s.22 you've just highlighted an example of the difficult process ahead of you and this one is the production and exchange of documents. It's your complaint and you have to produce the evidence to support it. s.22

s.22 Before proceeding I strongly suggest you review our Interpretation Guideline Section – Regulation Section 37.8. I spoke with one of the senior officers who was our high tech. expert and I was told that even if there is a hint of the work being done being included in any of the definitions or examples that they would be considered as high tech. and therefore excluded from overtime. Since I have very little information at this point I suggest you review the material therein and be absolutely certain that the definition doesn't apply before contacting me and prior to my contacting the employer. Thank you. Glen Smale.

From: s.22
Sent: Thursday, July 16, 2009 9:42 AM
To: Smale, Glen LBR:EX
Subject: RE: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.

Glen if you read the second line of my email s.22
s.22

Subject: RE: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.
Date: Thu, 16 Jul 2009 09:26:49 -0700
From: Glen.Smale@gov.bc.ca
To: s.22

July 16, 2009. s.22 , I didn't receive the attachment s.22) with your e-mail. Are you mailing it or sending it by fax [(604) 275-3946]? Thank you. Glen.

From: s.22
Sent: Wednesday, July 15, 2009 5:12 PM
To: Smale, Glen LBR:EX
Subject: RE: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.

Thanks Glen for taking the time to discuss this matter.

s.22

s.22

s.22

s.22

Subject: Your Confidential Complaints filed with the Employment Standards Branch. July 14, 2009.
Date: Tue, 14 Jul 2009 12:31:02 -0700
From: Glen.Smale@gov.bc.ca
To: s.22

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As I understand your complaints as of the date of filing, you are not employed by either of the two companies but have been offered a contract that will pay you a daily rate but will only pay overtime after 10 hours of work and no overtime for work on Saturdays and Sundays. Technically then there are no contraventions of the Act with respect to you s.22

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You have filed a confidential complaint and therefore I ask that you review Section 75 of the Act before I consider proceeding further as it may become necessary to disclose your name in future proceedings. Also I have no idea of the size of the employer's labour force so were you to accept employment with them maintaining confidence in a smaller group of new or easily identifiable employees is really not practical and may result in negative consequences for some or all of those employees. For example, the provisions of Section 63 of the Act permit an employer to terminate the services of an employee immediately and without penalty if that employee has fewer than 3 months of service. For all others, all that is required is the appropriate written notice or payment in lieu of that notice. s.22

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Interpretation Guidelines Manual

British Columbia *Employment Standards Act* and Regulations

Employment Standards Act Part 10 - Complaints, Investigations and Determinations

ESA Section 75 - If complainant requests identity be kept confidential

Contents:

- [Summary](#)
- [Text of Legislation](#)
- [Policy Interpretation](#)
- [Related Information](#)

Summary

This section confirms that, if requested, a complainant's identity will remain confidential (when possible) and outlines the circumstances when disclosure of the complainant's identity is necessary.

[Top](#)**Text of Legislation**

75. (1) If requested in writing by a complainant, the director must not disclose any identifying information about the complainant unless

(a) the disclosure is necessary for the purposes of a proceeding under this Act, or

(b) the director considers the disclosure is in the public interest.

(2) Subsection (1) applies despite any provision of the Freedom of Information and Protection of Privacy Act other than s.45 (2) and (3) of that Act.

[Top](#)**Policy Interpretation**

A person may file a confidential complaint.

If a complainant wishes to remain confidential, they must state it on the complaint form.

The director will inform complainants if confidentiality is not possible in their case. While this section provides the director with the ability to disclose an individual's identity, this would only be done in rare cases. For example, the complainant may be the only person able to provide the information needed in order to issue a determination.

Disclosure of the complainant's identity may be necessary if the matter is brought before the Employment Standards Tribunal. Since complaints can be very specific or unique, the director

can usually determine in advance whether the identity of the complainant must be disclosed in order to obtain relevant information depending on the nature of the complaint; for example, where the complaint was for compensation for length of service, and the employer contended the complainant had quit.

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Related Information

Related sections of the Act or Regulation

ESA

- [s.74, Complaint and time limit](#)
- [s.76, Investigations](#)
- [s.77, Opportunity to respond](#)
- [s.83, Employee not to be mistreated because of a complaint or investigation](#)
- [s.84, Director's investigative powers and protections](#)
- [s.85, Entry and inspection powers](#)

ESR

- [s.47, Complaints of contraventions of this regulation](#)

Other

[Freedom of Information and Protection of Privacy Act](#)

[Inquiry Act](#) (ss.12, 15 and 16)

See www.labour.gov.bc.ca/esb/facshts/

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[Complaint Resolution and the Employment Standards Act](#)

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ESR Section 37.8 - Exclusions - high technology companies

Interpretation Guidelines Manual British Columbia *Employment Standards Act* and Regulations

Employment Standards Regulation - Part 7 - Variances and Exclusions

ESR Section 37.8 - Exclusions - high technology companies

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Summary

This section defines "high technology professional" and "high technology company" and explains which parts and sections of the Act do not apply to high technology professionals. The section also explains how certain employees of high technology companies can enter into an averaging agreement.

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Text of Legislation

37.8. (1) In this section:

"high technology company" means a company where more than 50 percent of employees meet the definition of a high technology professional, are managers of persons meeting the definition of a high technology professional or are employed in an executive capacity.

"high technology professional" means any of the following:

- (a) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to investigate, analyze, design, develop, or engineer an information system that is based on computer and related technologies, or a prototype of such a system, but does not include a person employed to provide basic operational technical support;

(b) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to investigate, analyze, design, develop, engineer, integrate or implement a scientific or technological product, material, device or process or a prototype of such a product, material, device or process, but does not include a person employed to provide basic operational technical support;

(c) an employee who is primarily engaged in applying his or her specialized knowledge and professional judgment to carry out scientific research and experimental development as defined in section 248 (1) of the Income Tax Act (Canada);

(d) an employee who is engaged as a sales or marketing professional in relation to

- (i) a service or system described in paragraph (a),
- (ii) a product, material, device or process described in paragraph (b), or
- (iii) scientific research or experimental development described in paragraph (c),

but does not include a person employed in the retail sale of any of these things

(2) The following provisions do not apply to high technology professionals:

- (a) Part 4, other than section 39, of the Act;
- (b) Part 5 of the Act.

(3) An employee of a high technology company who is not a high technology professional may enter into an averaging agreement with his or her employer under section 37 of the Act if the employer and employee also agree in writing that the scheduling requirement under section 37 (2) (a) (iv) of the Act does not apply.

(4) If an employee and an employer enter into the averaging agreement referred to in subsection (3) of this section,

- (a) section 37 (2) (b), (3), (6), (10) and (12) of the Act does not apply to that averaging agreement, and
- (b) section 37 (2) (a) (i) to (iii), (v) and (vi), (2) (c), (4), (5), (7) to (9), (11), (13) and (14) of the Act are deemed to be incorporated into the averaging agreement as terms of the agreement.

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Policy Interpretation

Subsection (1)

The definition of "high technology company" only applies to an employee who is not a "high technology professional" as noted in s.37.8(3) and (4).

An employee, to be defined as a "high technology professional", is not dependent on the employee working for a "high technology company".

Subsection (1)(a)

In this sub paragraph:

"primarily": the main purpose of an employee's work activity, where 75% of work time is spent on the activities listed in the definition. This can be determined by matching the work activities performed by the employee to the employment activities specified in the regulation, including reviewing:

- the time spent performing each work activity (An employee who performs work specified in the regulation incidental to the main purpose of their work will not be considered a "high technology professional".)
- a job description and employment contract (These are useful if they confirm the actual work behaviour of the employee)
- the main purpose of the business (An employer whose business conforms to the work activity in the regulation is more likely to employ a "high technology professional")

"specialized knowledge and professional judgment" is applied by an employee who:

- possess a high degree of knowledge and understanding of highly specialized technological and/or scientific fields; and
- has the ability to practically apply that knowledge and understanding to highly specialized technological and/or scientific fields; and
- consistently exercises discretion and independent decision making in the application of their special knowledge as opposed to performing purely mechanical or routine tasks; and
- engages in work that is varied in character as opposed to work that routinely is mental, manual, mechanical, or physical.

"specialized knowledge and professional judgment" is used specifically in conjunction with investigate, analyze, design, develop or engineer

"investigate": To make a detailed exploratory inquiry or systematic examination of an information system.

"analyze": To examine methodically or consider in detail by separating into parts and studying their interrelations in order to discover essential features or meaning of an information system.

"design": The creation and formulation of a plan with an anticipated outcome.

Example: The creation of a computer program that allows for the

categorizing, storing, retrieving and the systematic analyzing of end user or customer data.

"Design" may include technology commissioning as a process for verifying and documenting that the installation and performance of systems meet the needs of the end user. Commissioning begins during project planning and ensures:

- All technology systems, subsystems, equipment, controls and components interface with each other, and other building systems are installed properly.
- A system complies with a contract and is within the scope of design and installation requirements.
- All technical-support personnel, faculty and staff are instructed properly to operate and maintain technology systems efficiently.
- All required training, manuals and documentation regarding the systems installed have been received.

"develop": To make a design operational through a succession of work activities that include investigation, analysis, diagnosis, research or testing. Also may include combining or linking independent and /or component technologies together so they work seamlessly.

Example: Functional performance testing may cover every item within the technology package — all hardware, software, wiring and interfaces shall be tested and evaluated to determine if they are consistent with performance data in the contract documents.

"engineer": To use scientific or technical knowledge to solve practical problems. This typically includes the process of problem diagnosis, investigation, analysis, and testing. This work activity may occur during the development of the information system, at the time of its implementation or as operational technical support including complex problem solving.

"information systems": The processing, storing or transmitting of data. Also includes a group of interacting components or related technologies, or a network of related computer software, hardware, and data transmission devices.

"computer and related technologies": the activity of designing and constructing and programming computers and includes related technologies such as, chemical, optical, mechanical and electrical.

"prototype": Full or partial scale forms of new designs or technologies, used to test or demonstrate functionality or illustrate ideas.

"basic operational technical support": refers to an employee with computer analysis experience and/or training on technical systems allowing for the limited exercising of professional judgment. An employee engaged in "basic operational technical support" typically:

- follows regularly a standard procedure to resolve computer related problems.
- utilizes diagnosis when problem solving however will usually follow standard

procedures or regular systematic activities.

By way of example, an employee in response to a customer's inquiry may perform remote or on-site diagnostic work. However, the main purpose of the work is to assess the problem and either utilize prescribed computer programming instructions or refer the problem to a more highly experienced or technically trained person capable of resolving the problem.

The functions related to **"basic operational technical support"** also include the first point of contact for the customer. Typically an employee will search a database to confirm:

- that the person calling is in fact a customer
- what kind of equipment / system the customer has
- that the customer has a contractual entitlement to the service they are asking for.

Also they may:

- do a simple scripted assessment with the customer,
- order parts and if the problem isn't fixed they create a service order

and escalate the call to a technical support person.

"basic operational technical support" would not apply to employees who:

- (a) possess a high degree of knowledge and understanding of highly specialized technological and/or scientific fields; and
- (b) have the ability to practically apply that knowledge and understanding to highly specialized technological and/or scientific fields; and
- (c) consistently exercises discretion and independent decision making in the application of their special knowledge as opposed to performing purely mechanical or routine tasks; and
- (d) engage in work that is varied in character as opposed to work that routinely is mental, manual, mechanical, or physical; and
- (e) investigate, analyze, and resolve practical problems, including technically complex problems, with the use of scientific or technical knowledge

Occupation examples include:

- computer systems analyst
- internet development professional
- computer programmer
- computer science professional

Subsection (1)(b)

See above 37.8 (1) (a) policy interpretation for "primarily", "specialized knowledge and professional judgment", and "prototype".

"investigate": To make a detailed exploratory inquiry or systematic examination. In scientific research, "investigation" refers to inquiry into unfamiliar areas. It includes work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes. Such work includes incremental improvements to existing technology.

"analyze": To examine methodically or consider in detail by separating into parts and studying their interrelations in order to discover their essential features or meaning.

"design": The creation and formulation of a plan with an anticipated outcome.
Example: The creation of a plan to develop a chemical catalyst process.

"Design" may include technology commissioning. (See policy interpretation below for **"implement"**)

"develop": To make a design operational through a succession of work activities that include investigation, analysis, diagnosis, research or testing.

Example: Functional performance testing may cover every item within the technology package — all hardware, software, wiring and interfaces shall be tested and evaluated to determine if they are consistent with performance data in the contract documents.

"engineer": To use scientific or technical knowledge to solve practical problems. This typically will include the process of problem diagnosis, investigation, analysis, and testing. This work activity may occur during the development of the scientific or technological product, material, device or process, at the time of its implementation or as operational technical support including complex problem solving.

"integrate": combining or linking independent and or component technologies together so that they work seamlessly. Systems integration may be part of a larger project or a project in itself.

"implement": to confirm the initial installation of a product, material, device or process is operational. This will include technology commissioning as a process for verifying and documenting that the installation and performance of systems meet the needs of the end user. Commissioning begins during project planning and may continue through at least the first year of operation.

Commissioning should ensure that:

- All technology systems, subsystems, equipment, controls and components interface with each other, and other building systems are installed properly.
- A system complies with a contract and is within the scope of design and installation requirements.
- All technical-support personnel, faculty and staff are instructed properly to operate and maintain technology systems efficiently.
- All required training, manuals and documentation regarding the systems installed

have been received.

"Scientific or technological product, material, device or process": may include low volume specialty items such as microscopes and measurement devices for research and lab applications such as chromatographs and spectrometers as well as commercially marketed products such as games software, drugs and medical devices. In the process of conducting research and development, researchers may create products such as a new chemical catalyst process, or a commercial product such as an electronic sensor device.

Scientific research includes work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing, materials, devices, products or processes. Such work includes incremental improvements to existing technology.

Occupation examples include:

- manufacturing engineer
- materials engineer
- electronic engineer
- multimedia professional
- computer animator
- software engineer
- software tester
- quality control professional
- applied bioscience professional

Subsection (1) (c)

See 37.8(1)(a) policy interpretation for "primarily", and "specialized and professional judgment".

See s.248(1) of the *Income Tax Act* (Canada), commonly known as 'SRED tax exemption', for meaning of "scientific research and experimental development".

Section 248(1) refers to "scientific research and experimental development" as "systematic investigation or research that is carried out in a field of science or technology by means of experiment or analysis". This section further elaborates on this definition.

Occupation examples include:

- scientific technical
- scientific technologist
- applied bioscience professional
- research scientists

Subsection (1)(d)

"sales or marketing professional" is a person who:

- possess a high degree of knowledge and understanding of highly specialized technological and/or scientific fields; and
- has the ability to practically apply that knowledge and understanding to highly specialized technological and/or scientific fields for the purposes of sales and marketing; and
- consistently exercises discretion and independent decision making in the sales or marketing of a service or system, product, material, device or process, or application, as noted in (a), (b), and (c) above as opposed to performing purely mechanical or routine tasks; and
- engages in work that is varied in character as opposed to work that routinely is mental, manual, mechanical, or physical.

Occupation examples include:

- Technology sales professional

A person employed in the **retail sales** of an information system or service, a scientific or technological product, material, device, or process, and scientific research or experimental development is not a "high technology professional".

Subsection (2)

An employee performing the work of a "high technology professional" as defined in 37.8(1) is excluded from all of Part 4 Hours of Work and Overtime, except s.39, and Part 5, Statutory Holidays of the Act.

Subsection (3)

All provisions of the Act except those noted in 37.8(3) and (4) cover an employee working for a "high technology company" who is not a "high technology professional".

Example:

A receptionist working for a "high technology company" is entitled to full coverage under the Act.

However, if the receptionist signs an averaging agreement under s.37 of the Act the receptionist will be excluded from those sections of the Act referred to in s.37(1) of the Act.

This subsection also allows the receptionist and employer to agree in writing that the daily schedule of hours required in an agreement in s.37(2)(a) (iv) of the Act do not apply. (See subsection 37.8(4) below)

Subsection (4)

- If the employee of a "high technology company" and employer agree in writing that the daily schedule of hours required in an agreement in s.37(2)(a) (iv) of the Act do not apply then the following provisions of s.37 do not apply to the

agreement:

- a. The requirement to limit a work schedule in an agreement to 40 hours or an average of 40 hours a week
- b. Daily overtime applies to non-scheduled hours over 8 in a day
- c. The employee's written request to adjust the work schedule

Under s.37.8 (4) daily overtime only applies to time worked over 12 hours.

- Before 37.8(4) of this Regulation can apply to section 37 of the Act the employee and employer must sign two agreements; one as required in 37.8(3) of this Regulation and the second as required under section 37(2)(a) of the Act.

Examples

- If an employee and employer enter into a written agreement under s.37 of the Act without signing a written agreement as noted in 37.8(3) then 37.8(4) has no effect and all provisions of s.37 apply.
- If an employee and employer enter into a written agreement under s.37.8(3) without signing a written agreement under s.37 of the Act, s.37 has no effect and ss.35, 36(1), and 40 of the Act apply to determine overtime and rest period entitlements and pay.

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Related Information

Related sections of the Act or Regulation

ESA

- [Part 4 – Hours of work and overtime](#)
- [Part 5 – Statutory holidays](#)

Other

Income Tax Act (Canada)

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[Labour Intranet Home](#) > [ESB](#) > [SOPS](#) > [Book 1 Tab 2](#)Ministry of
Labour

I N T R A N E T

Book 1 Tab 2 Review of a Complaint

General

- [Role](#)
- [Timelines](#)

Procedure

- [Completeness – what to do if information is missing](#)
- [SHK – not required, required but not used](#)
- [Timeliness – what to do if the complaint is out of time or jurisdiction](#)
- [Jurisdiction – Federal v Provincial, what to do if the complaint is not in our jurisdiction](#)

ROLE

- Any delegate may do this initial review.

[P:\List Directories & File Mgmt Forms\2004 Delegation Matrix.XLS](#)

TIMELINES

- Complaints should be reviewed within 48 hours of receipt.

COMPLETENESS

- Review the complaint to ensure the following information has been provided:
- Complainant's name;
- Complainant's contact information;
- Employer's name;
- Employer's contact information;
- Allegations or details of the complaint are identified;
- Dates of employment, particularly the last day worked or termination date; and
- Whether the complainant is an adult or a minor (under the age of 19).
- If information is missing that is necessary or pertinent to proceeding with the dispute resolution process, the complainant should be contacted by telephone to gather the necessary information. This must be recorded on the file notes and must not be recorded on the complaint itself. If unable to contact by telephone, a letter should be sent to the complainant requesting the information.

SELF HELP KIT (SHK)

A complainant need only declare that the SHK was used. A complainant is not required to produce a copy of the SHK.

If a complainant demonstrates that other means of trying to resolve the dispute have been attempted in writing, such as sending a letter or e-mail to the employer, a SHK is not required.

SHK Not Required

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In certain situations the Director may accept a complaint without the employee having first used the SHK to resolve workplace issues. These are outlined in the IGM.

[ESA Section 74 - Complaint and time limit](#)

[ESA Section 75 - If complainant requests identity be kept confidential](#)

Delegates should assist a person to the point that he/she is able to understand and complete the SHK on their own.

SHK Required But not Used

If a complainant has not followed the SHK process, the Branch will accept the complaint but will not proceed until the SHK process is completed. The complainant must be contacted and advised to use a SHK. This may be done by telephone, in-person or by sending a letter.

The complainant should be asked to contact the Branch if the SHK resolves the issue(s). If the complainant advises the Branch that the matter is resolved the file will be closed (voluntary payment).

[P:\ESA Complaint Resolution Documents\Letter Templates & Forms\Letter Complainant No SHK used.doc](#)

[Book 1 Tab 11 Voluntary Payments](#)

Otherwise the file should proceed through the dispute resolution process.

[Book 1 Tab 3 Deciding the Resolution Method.doc](#)  [Top](#)

If the complainant refuses to use the SHK discuss with the Regional Manager prior to deciding how to proceed.


TIMELINESS

Review the complaint information to ensure that the complaint was filed within the time limits stated in the Act.

[ESA Section 74 - Complaint and time limit](#)

If the complaint appears to have been filed outside of the time limits contact the complainant and confirm the dates.

If you cannot contact the complainant by telephone, send a letter notifying the complainant that there is a timeliness issue, and request that the complainant confirm the dates.

If no response is received or the complainant confirms that the complaint was filed  [Top](#)

out of time the file must be referred to an ESA or an officer.

JURISDICTION

There are a number of jurisdictional issues that must be considered when initially reviewing a complaint.

1. Whether the complainant was covered by a collective agreement and therefore the complaint is outside the scope of the Act under section 3.

[ESA Section 3 - Scope of this Act](#)

2. Whether there are any exemptions or exclusions in the Act or Regulations that apply to the complaint.

[ESA Section 65 - Exceptions](#)

[Employment Standards Regulation Part 7](#)

3. Whether the issue(s) identified by the complainant are covered by the Act (e.g. the complaint solely relates to discrimination/harassment, taxation issues, record of employment, worksafe, or other issues not covered by the Act).
4. Whether the work was performed in a jurisdiction outside of BC or whether the employer falls under federal jurisdiction.

 [Top](#)

[ESA Section 3 - Scope of this Act](#)

5. Whether another proceeding has been commenced or a decision issued by another jurisdiction for the same subject matter as the complaint (e.g. the complainant has already filed a civil suit or a complaint with human rights).
6. Whether the issue has already been resolved (e.g. the complainant signed release for the employer).

[ESA Section 76 - Investigations](#)

Where it appears there is a jurisdictional issue the delegate should discuss this with the complainant. If the complainant agrees to withdraw the complaint the file can be closed.

[Book 1 Tab 12 Withdrawals](#)

If the complainant provides argument or evidence challenging the jurisdictional issue the complaint should be referred to an ESA or officer for further consideration. The delegate may then make a determination as to whether the Branch will proceed with the investigation of the complaint.

[ESA Section 76 - Investigations](#)

In a case where it appears that the complaint falls under either another provincial jurisdiction or federal jurisdiction the complainant should also be advised to file a complaint with the other jurisdiction.

The Branch may offer to fax/mail a copy of the complaint to the appropriate jurisdiction on behalf of the complainant. If so, the complainant should be advised (preferably in writing) that this has been done and provided with the contact information for

 [Top](#)

the appropriate jurisdiction. The complainant should be advised to follow-up with the appropriate jurisdiction to ensure their complaint has been received. For a directory of other Canadian jurisdictions see:

[Book 3 Tab 4 Searches](#)

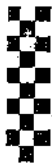
[P:\List Directories & File Mgmt Forms\Provincial-Federal Labour Standards Offices.doc](#)

In the case where the complaint appears to fall under federal jurisdiction, the Branch should hold the complaint in abeyance until a ruling is made by Labour Canada with respect to jurisdiction.

[P:\ESA Complaint Resolution Documents\Letter Templates & Forms\Letter to Labour Canada re Jurisdiction.doc](#)

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This page was last modified: June 25, 2008



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ESI DATE	
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EE No.	
DATE ASSIGN	
OFFICER	

EMPLOYMENT STANDARDS VIOLATION COMPLIANT

PLEASE TREAT AS CONFIDENTIAL

Complaint made by: s.22

Company Violating Act: MPC (Moving Picture Company)

contact within company:

Marina Shamashevich

VFX Recruiter

MPC Vancouver

604-689-1090

s.15,s.22

RECEIVED

JUN 29 2009

EMPLOYMENT STANDARDS
BRANCH - LOWER MAINLAND

Brief history on MPC: MPC vfx used to be Technicolor vfx, they are owned by the same company. a year and a half ago MPC opened a branch within the technicolor building. s.15,s.22

s.15,s.22

Since then a new manager has taken over and Technicolor vfx is being taken over by MPC. s.15,s.22

s.22

s.22

s.22

s.22

s.22 are causing other companies to go out of business or rethink their contracts to compete.

Vancouver visual effects schools train hundreds of students every year to do these jobs yet these companies do not create opportunities for graduates and instead bring in overseas artists who do not understand BC law.

Name of additional company who consistently breaks BC employment acts and illegally contacted MPC to discuss pay scales and contracts:

Image engine
15 West 5th Avenue
Vancouver, BC V5Y 1H4, Canada
(604) 874-5634

s.22

Please contact me if I can help you in any way, thank you for your time, and please keep my name confidential.

s.22

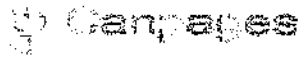
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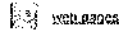
LOCAL NEWS

WEATHER Cloudy 12.9°C Forecast

Print Preview

Image Engine Design Inc

Contact (604) 874-5634



Address 5413 Ave W

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Categories

- Video Production Services
- Computer Graphics & Animation
- Motion Picture Experiences & Studios

Underpins Listing

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OFFICIAL DIRECTORY OF



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Withheld pursuant to/removed as

s.3

DATA INFORMATION SHEET (DIS) PAGE 1 – POST November 30, 2002

**Note: Data person – please initial after any entries

COMPLAINTS

(Updated May 2006)

EMPLOYER'S LEGAL NAME: _____			
CARRYING ON BUSINESS AS: _____			
ER#: _____	EE#: _____	ASGN. #: _____	TYPE OF BUSINESS: _____
UPDATE ER. INFO <input type="checkbox"/>	UPDATE EE. INFO <input type="checkbox"/>	REOPEN FILE <input type="checkbox"/>	
ADD/CHANGE ADDRESS/PHONE: _____			

COMPLAINT(S) ASSIGNMENT STATUS

ASSESSMENT	<input type="checkbox"/>	DELEGATE # _____	DATE ASSIGNED _____
EDUCATION	<input type="checkbox"/>	DELEGATE # _____	DATE ASSIGNED _____
INVESTIGATION	<input type="checkbox"/>	DELEGATE # _____	DATE ASSIGNED _____
MEDIATION	<input type="checkbox"/>	DELEGATE # _____	DATE ASSIGNED _____
MEDIATION DATE _____			DATE MEDIATION HELD _____
AJUDICATION <input type="checkbox"/>		DELEGATE # _____	DATE ASSIGNED _____
ADJUDICATION DATE _____			DATE ADJUDICATION HELD _____
COLLECTIONS <input type="checkbox"/>		DELEGATE # _____	DATE ASSIGNED _____

CLOSURE INFORMATION

CODE _____	DELEGATE# _____	WAGE AMOUNT \$ _____	THRU TRUST <input type="checkbox"/>	OR Voluntary Payment <input type="checkbox"/>
PAYMENT DATE _____		DATE CLOSED _____		

ALLEGATIONS Information Captured at or after Education Stage

<input type="checkbox"/> WAGE (Regular Wages)	<input type="checkbox"/> OVT (Overtime Wages)	<input type="checkbox"/> VAC (Vacation Pay)
<input type="checkbox"/> STAT (Statutory Holiday Pay)	<input type="checkbox"/> CLOS (Termination Pay)	<input type="checkbox"/> DDUC (Unauthorized Deduction)
<input type="checkbox"/> LEAV (Part 6 – Leaves)	<input type="checkbox"/> NSF	<input type="checkbox"/> OTHER
<input type="checkbox"/> SEC 8 (Misrepresenting Job)		

SETTLEMENT AGREEMENT INFORMATION

FULL <input type="checkbox"/>	OR PARTIAL <input type="checkbox"/>	DATE OF AGREEMENT _____	AMOUNT: \$ _____
Payment Schedule (SCHD) <input type="checkbox"/>	Last payment due date _____		
CLOSURE SA <input type="checkbox"/>	Doc # _____	Paid <input type="checkbox"/>	

DETERMINATION UPDATE / CLOSURE STATUS

Doc Type: CFUL <input type="checkbox"/>	DFUL <input type="checkbox"/>	Doc #: _____	DATE C/J RELEASED: _____
Appeal <input type="checkbox"/>	Appeal Date _____	Oral Hearing Date _____	
Cancelled			
Paid <input type="checkbox"/>	Varied <input type="checkbox"/>	Settled <input type="checkbox"/>	Discontinued <input type="checkbox"/>
NAST <input type="checkbox"/>	PREL <input type="checkbox"/>	NFAR <input type="checkbox"/>	
PENALTY(S) Paid <input type="checkbox"/>	List CA Code(s) _____	Cancelled <input type="checkbox"/>	List CA Code(s) _____
NAST <input type="checkbox"/>	PREL <input type="checkbox"/>		

NAST = No Assets; NFAR = No Further Action (use with closure code 41); PREL = Paid on related DOC

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