

BC Forestry Revitalization Trust
Employee Mitigation Guidelines

**Guidelines for major licensees and contractors with respect to
severance of employees as a direct result of Forestry Revitalization
Act Timber Reallocation:**

The Province specifically denies any legal obligation to provide compensation to workers affected by the *Forestry Revitalization Act* (FRA) Timber Reallocation provisions. However, the Province has created the BC Forestry Revitalization Trust (BCFRT) as a matter of policy to consider, among other things, the potential of providing mitigation for certain claims of forest workers employed by licensees or contractors with replaceable contracts that are directly impacted by the FRA. This policy approach does not extend beyond the BCFRT and does not limit or affect the position that the Province has taken, or may take, in court or any other legal proceeding, or any position that it may take in assessing the impacts of future government decisions on forest workers.

The BCFRT is a discretionary trust. No specific person has any right or entitlement to receive any funds from the BCFRT unless and until the Trustee decides to make a payment to that specific person. Compliance with the guidelines does not guarantee receipt of any payment from the BCFRT. The guidelines are issued to assist applicants. However, the Trustee reserves the right to consider other factors not mentioned in the guidelines. Those other factors may include the amount of funds available for distribution.

The intention of these guidelines is to enable each of the major licensees and replaceable contractors that have to sever staff as a result of timber reallocation pursuant to the FRA to determine the amount of mitigation payments that may be covered by the BCFRT.

Once the Ministry of Forests and the major licensees affected by the FRA have agreed upon the areas to be relinquished by the major licensees, the major licensees will go through a process with their contractors to determine which contractors and or company crews will be affected by the timber reallocation. It will then be up to the licensees and contractors to determine which, if any, of their employees will need to be severed as a result of the decrease in available work. Licensees and contractors will need to be guided by existing contractual obligations when deciding which, if any, employees will be severed.

The employer, either the licensee or the contractor as appropriate, will be responsible to conclude any negotiations regarding employee severance with their employees and/or the employees' union. No contract buy-out payments will be made to contractors until any of the contractor's employees that will be severed have been identified. However, the BCFRT will not fund any severance payments unless and until the employee is actually severed. Further, the severance has to be as a direct result of the loss of access to fibre caused by the 20% take-back mandated by the FRA.

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The following guidelines will apply to employee severance mitigated by the BCFRT:

Note: In the context of these guidelines, an **affiliate** is any corporation or business entity controlling, controlled by or under common control with the contractor or licensee. The **effective date of severance** is the date the employer ceased to use the services of the severed employee as a direct result of the *Forestry Revitalization Act* timber reallocation. A potentially eligible **employee** is a forestry worker as defined in the BCFRT Trust Deed. A copy of the Trust Deed can be viewed at www.bcfirt.com.

1. The number of employees severed by either a replaceable contractor or a major licensee should be consistent with industry averages as determined by PricewaterhouseCoopers in its studies of the BC Forest Sector. This suggests that in the logging and forestry sector, including hourly, contract, and salaried employees, the Trustee would expect a maximum of approximately 0.5 employee positions lost per thousand cubic metres of lost logging opportunity on the Coast, and 0.3 employee positions lost per thousand cubic metres of lost logging opportunity in the interior.
2. In most cases the number of severed employees will be less than the maximums noted above because there is no overall allowable annual cut (AAC) reduction, and the affected contractors may find replacement contracts. In the case of company crews, the licensee will be expected to try to find alternate employment for displaced forestry workers within other company operations. Where a contractor has more than one operation, the contractor will be expected to try to find alternate employment for displaced forestry workers within affiliated operations.
3. Mitigation payments will be determined as follows:
 - a. On the Coast and in the Interior, 10 days of regular day's pay for each full year of continuous service, plus 10/12 of a regular day's pay for each additional completed month of continuous service, with continuous service ending on the effective date of severance.
 - b. A regular day's pay for the purposes of severance shall include daily overtime or other premiums or add-ons. However, where alternate shifts are in effect (e.g. 10 or 12 hour shifts) the severance pay available shall not exceed the maximum severance pay based on an eight-hour shift equivalent.
 - c. In the case of employees that are approaching retirement age, either as defined by their contract or as a result of company policy, the BCFRT will mitigate the lesser of severance as calculated above, or an amount equal to the amount the employee would have earned if they continued to be employed from the effective date of severance to their retirement. In the absence of evidence to the contrary, it will be assumed that the employee would retire on their 65th birthday.
 - i. The annual amount the employee would have expected to earn between the effective date of severance and their retirement will be assumed to be the average of their gross wages as reported on their T-4 slips for 2001 and 2002, plus the net value of the lost pension benefits caused by the loss of employment.

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This amount will then be prorated over the number of days between the effective date of severance and the date they would have retired if they had not been severed.

- ii. The calculation in 3. (c) (i) will only be performed if:
 1. The severance is not caused by a permanent closure of the operation; and
 2. The employee in question is within 2 years of retirement. In the absence of evidence to the contrary, it will be assumed that the employee is within 2 years of retirement on their 63rd birthday.
4. In order for the BCFRT to mitigate severance payments, workers receiving severance must have been employed full time by a major licensee or contractor in the harvesting side of the forest industry in British Columbia on March 31, 2003, or been on temporary lay-off, but worked full time for a portion of the previous year, and still have been on the seniority list on March 31, 2003. Employers seeking mitigation will have to demonstrate to the satisfaction of the Trustee an ongoing, long-term attachment to the employee being severed. The Trustee will consider increasing the recognized years of service in special cases where an employee has a longer-term attachment to the industry than to the current employer but, because of the closure or downsizing of other operation(s), lost their previous job(s), and did not receive severance pay for that job loss. In either case, the employee must lose or have already lost their jobs as a result of the *Forestry Revitalization Act* timber reallocation.
5. Severance that cannot be directly linked to *Forestry Revitalization Act* timber reallocation will not be mitigated by the BCFRT.
6. There need not be a permanent closure of the entire operation for the BCFRT to mitigate severance payments.
7. If employees obtain re-employment with their previous employer at an alternate location, or with an affiliate of their previous employer, within 6 months of the effective date of severance from their previous position, and continue to work in a similar capacity, severance would not be mitigated by the BCFRT. However, mitigation may be available in respect of workers who are moved by their employer to an alternate location or to an affiliate and work at a significantly lower wage. The amount of the mitigation will be based on the actual loss to the worker as a result of the *Forestry Revitalization Act* timber reallocation. It will be negotiated between the Trustee, the employer, the worker and, if applicable, the worker's union.
8. Mitigation payments may be available for workers who are moved by their employer to an alternate location or to an affiliate as a result of the *Forestry Revitalization Act* timber reallocation within 6 months of the effective date of severance from their previous position, and subsequently lose their jobs as a result of their lower seniority through no fault of their own, within three years of the date of transfer. Except in extenuating circumstances, mitigation in respect of transferred employees will be reduced by 3% per month of

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employment that the transferred worker receives after the date of transfer. Actual mitigation will be negotiated between the Trustee, the employer, the worker and, if applicable, the worker's union.

9. In order for the BCFRT to mitigate any specific severance payment, the employer must actually sever the employee in question. The severed employee cannot be rehired by the same employer or an affiliate to work in the same or similar capacity, at the same or similar wage, within 6 months of the effective date of severance, unless there is a material change in circumstance for the employer. Such a material change could be a contractor receiving access to significantly more fibre, or the contractor or licensee needing to replace someone who died, quit or retired subsequent to the worker in question receiving severance.
10. If the BCFRT mitigates a severance payment in respect of an employee who is re-employed by the contractor or licensee or an affiliate within six months from the effective date of severance, the contractor or licensee will be required to refund the full mitigation payment to the BCFRT, unless there is a material change in circumstances for the employer, as set out in Section 9. This restriction is required to discourage the payment of severance for what may be a normal seasonal lay-off.
11. In the case of a reduction of an operation, severance need not be offered only to the employees with the lowest seniority. Rather, the company, the employees and/or the union can negotiate to determine which employees will receive severance payments.
12. If the result of these negotiations is that more senior employees receive severance payments, and those payments are higher than if junior employees had been severed, the higher severance payments will still be eligible for mitigation in accordance with paragraph 3 based on years of service of the employees who are actually severed.
13. Senior employees that could have relied on their seniority to retain their jobs, but chose to receive voluntary severance so that more junior employees can retain their jobs, will be expected to give up their preferential hiring rights and sign a release in the form attached to these guidelines. Junior employees that had no choice about whether or not they would be severed will still have to sign a release, but will not have to give up any preferential hiring rights they may have.
14. Owner operators that receive contract buy-out payments will not be eligible for severance payments as well. However, if an owner operator has worked exclusively for one employer for a number of years, and if an appropriately calculated severance payment would provide better mitigation than a contract buy-out, then the contractor may choose to receive severance instead of a contract buy-out.

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Sample Employee release form:

Employer letterhead

Date: _____

I, _____, hereby accept the (voluntary) severance pay offered to me and in exchange (voluntarily) terminate my employment with _____ (the company) effective _____ (*the effective date of severance, which is the date the employer ceased to use the services of the severed employee as a direct result of the Forestry Revitalization Act timber reallocation.*). I further acknowledge that I am accepting this (voluntary) payment in full and final satisfaction of any claims, statutory or otherwise, that may arise out of my employment and the termination of employment after the signing of this agreement.

I acknowledge that I cannot be re-employed by the company or an affiliate of the company in the same or similar capacity and at the same or similar compensation for a period of 6 months from the effective date of severance unless either:

1. I return 100% of the severance payment to the company, so that the company can return the severance payment to the BC Forestry Revitalization Trust; or
2. There is a material change in circumstance for the company. Such a material change could be the company receiving access to significantly more fibre, or the company needing to replace someone who died, quit or retired subsequent to my receipt of this severance pay.

Plus the following sentence if this is a voluntary severance. A voluntary severance is one in which the employee being severed could have relied on his or her seniority to retain their job, but chose to receive severance and allow a more junior person to retain their job.

I acknowledge that by accepting this payment I relinquish any rights I may have for preferential hiring by the company.

Signed: _____
Employee signature

Note: Severance will be considered to be voluntary if accepted by an employee that could have relied on their seniority to remain employed in the case of a partial reduction of an operation, but chose instead to receive severance in order to allow a person with less seniority to retain their job.