
EMPLOYMENT STANDARDS ACT

CHAPTER 113

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PART 1 – INTRODUCTORY PROVISIONS**Definitions**

1 (1) In this Act:

- “**adjudicator**” means a person appointed as an adjudicator under section 102 (2) (b);
- “**assignment of wages**” includes a written authorization to pay all or part of an employee's wages to another person;
- “**collective agreement**” means the same as in the *Fishing Collective Bargaining Act*, the *Labour Relations Code*, or the *Public Service Labour Relations Act*;
- “**conditions of employment**” means all matters and circumstances that in any way affect the employment relationship of employers and employees;
- “**construction**” means the construction, renovation, repair or demolition of property or the alteration or improvement of land;
- “**day**” means a 24 hour period ending at midnight and “**working day**” means a 24 hour period beginning at the start of an employee's shift;
- “**determination**” means any decision made by the director under section 9, 22 (2), 37 (3), 66, 68 (3), 69 (6), 73, 76 (2), 78 (3), 79, 83 (2), 85 (1) (f), 98, 100 or 119;
- “**director**” means the Director of Employment Standards appointed under the *Public Service Act* and, in relation to a function, duty or power that the director has under section 117 of this Act delegated to another person, “**director**” includes that other person;
- “**domestic**” means a person who
 - (a) is employed at an employer's private residence to provide cooking, cleaning, child care or other prescribed services, and
 - (b) resides at the employer's private residence;

“employee” includes

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
- (c) a person being trained by an employer for the employer’s business,
- (d) a person on leave from an employer, and
- (e) a person who has a right of recall;

“employer” includes a person

- (a) who has or had control or direction of an employee, or
- (b) who is or was responsible, directly or indirectly, for the employment of an employee;

“employment agency” means a person who, for a fee, recruits or offers to recruit employees for employers;

“farm labour contractor” means an employer whose employees work, for or under the control or direction of another person, in connection with the planting, cultivating or harvesting of an agricultural product;

“flexible work schedule” means a work schedule under which the hours may exceed 8 hours a day or 40 hours a week;

“former Act” means the *Employment Standards Act*, S.B.C. 1980, c. 10;

“immediate family” means

- (a) the spouse, child, parent, guardian, sibling, grandchild or grandparent of an employee, and
- (b) any person who lives with an employee as a member of the employee’s family;

“insolvency Act” means the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) or the *Winding-up Act* (Canada);

“Labour Relations Board” means the board as defined in the *Labour Relations Code*;

“overtime wages” means the wages an employee is entitled to receive under section 40 or 41;

“pay period” means a period of up to 16 consecutive days of employment;

“payroll record” means a record required under section 28 to be kept by an employer;

“penalty” means a monetary penalty imposed under section 98;

“producer” means a person who engages the services of a farm labour contractor;

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“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;

“right of recall” means the right of an employee under a collective agreement to be recalled to employment within a specified period after being laid off;

“school student” means a person enrolled in a school as defined in the *School Act* or in an independent school as defined in the *Independent School Act*;

“special clothing” includes a uniform and a specified brand of clothing;

“statutory holiday” means New Year’s Day, Good Friday, Victoria Day, Canada Day, British Columbia Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and any other holiday prescribed by regulation;

“temporary layoff” means

- (a) in the case of an employee who has a right of recall, a layoff that exceeds the specified period within which the employee is entitled to be recalled to employment, and
- (b) in any other case, a layoff of up to 13 weeks in any period of 20 consecutive weeks;

“termination of employment” includes a layoff other than a temporary layoff;

“termination pay” means, for each week of notice an employee is entitled to, the amount obtained by totalling the employee’s weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work and dividing the total by 8;

“time bank” means a time bank established under section 42 at the request of an employee;

“trade union” means the same as in the *Labour Relations Code*;

“tribunal” means the Employment Standards Tribunal;

“wages” includes

- (a) salaries, commissions or money, paid or payable by an employer to an employee for work,

- (b) money that is paid or payable by an employer as an incentive and relates to hours of work, production or efficiency,
- (c) money, including the amount of any liability under section 63, required to be paid by an employer to an employee under this Act,
- (d) money required to be paid in accordance with a determination or an order of the tribunal, and
- (e) in Parts 10 and 11, money required under a contract of employment to be paid, for an employee's benefit, to a fund, insurer or other person,

but does not include

- (f) gratuities,
- (g) money that is paid at the discretion of the employer and is not related to hours of work, production or efficiency,
- (h) allowances or expenses, and
- (i) penalties;

"week" means a period of 7 consecutive days beginning,

- (a) for the purpose of calculating overtime, on Sunday, and
- (b) for any other purpose, on any day;

"work" means the labour or services an employee performs for an employer whether in the employee's residence or elsewhere.

- (2) An employee is deemed to be at work while on call at a location designated by the employer unless the designated location is the employee's residence.

Purposes of this Act

2 The purposes of this Act are as follows:

- (a) to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment;
- (b) to promote the fair treatment of employees and employers;
- (c) to encourage open communication between employers and employees;
- (d) to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act;
- (e) to foster the development of a productive and efficient labour force that can contribute fully to the prosperity of British Columbia;
- (f) to contribute in assisting employees to meet work and family responsibilities.

Scope of this Act

3 This Act applies to all employees, other than those excluded by regulation, regardless of the number of hours worked.

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Requirements of this Act cannot be waived

- 4 The requirements of this Act or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.

Promoting awareness of employment standards

- 5 The director must develop and carry out policies to promote greater awareness of this Act.

Informing employees of their rights

- 6 (1) An employer must display in each workplace, in locations where it can be read by employees, a statement of the employees' rights under this Act.
- (2) The statement must be in the form provided by the director.

Continuing review of this Act

- 7 (1) The minister may appoint a committee to review this Act and evaluate how it is functioning.
- (2) The minister may designate one of the members of the review committee as its chair.
- (3) Anyone representing the interests of employers or employees is not eligible to be designated as chair of the review committee.
- (4) The review committee may consult with employers, employees and any other persons it considers appropriate.
- (5) If a review committee is appointed, it must provide to the minister, at least every 3 years, an evaluation report that
- (a) identifies any problems that arise under this Act, and
 - (b) includes any recommendations about the need for amendments to this Act or the regulations.

PART 2 – HIRING EMPLOYEES**No false representations**

- 8 An employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting any of the following:
- (a) the availability of a position;
 - (b) the type of work;
 - (c) the wages;
 - (d) the conditions of employment.

No hiring of children under 15 without director's permission

- 9 (1) A person must not employ a child under age 15 without the director's permission.
- (2) A parent or guardian must not consent to a person employing a child under age 15 unless the person has obtained the director's permission.
- (3) On permitting the employment of a child under age 15, the director may set the conditions of employment for the child.
- (4) An employer must comply with the conditions of employment set under subsection (3).

No charge for hiring or providing information

- 10 (1) A person must not request, charge or receive, directly or indirectly, from a person seeking employment a payment for
- (a) employing or obtaining employment for the person seeking employment, or
- (b) providing information about employers seeking employees.
- (2) A person does not contravene this section by requesting, charging or receiving payment for any form of advertisement from the person who placed the advertisement.
- (3) A payment received by a person in contravention of this section is deemed to be wages owing and this Act applies to the recovery of the payment.

No fees to other persons

- 11 (1) An employment agency must not make a payment, directly or indirectly, to a person for obtaining or assisting in obtaining employment for someone else.
- (2) A farm labour contractor must not make a payment, directly or indirectly, to a person for whom the farm labour contractor's employees work.
- (3) A person does not contravene this section by paying for any form of advertisement placed by that person.

Employment agencies must be licensed

- 12 (1) A person must not operate an employment agency unless the person is licensed under this Act.
- (2) Subsection (1) does not apply to a person operating an employment agency for the sole purpose of hiring employees exclusively for one employer.

Farm labour contractors must be licensed

- 13 (1) A person must not act as a farm labour contractor unless the person is licensed under this Act.
- (2) A person who engages the services of an unlicensed farm labour contractor is deemed for the purposes of this Act to be the employer of the farm labour contractor's employees.

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Written employment contract required for domestics

- 14 (1) On employing a domestic, the employer must provide the domestic with a copy of the employment contract.
- (2) The copy of the employment contract provided to the domestic must clearly state the conditions of employment, including
- (a) the duties the domestic is to perform,
 - (b) the hours of work,
 - (c) the wages, and
 - (d) the charges for room and board.
- (3) If an employer requires a domestic to work during any pay period any hours other than those stated in the employment contract, the employer must add those hours to the hours worked during that pay period under the employment contract.

Register of employees working in residences

- 15 An employer must provide to the director, in accordance with the regulations, any information required for establishing and maintaining a register of employees working in private residences.

PART 3 – WAGES, SPECIAL CLOTHING AND RECORDS**Employers required to pay minimum wage**

- 16 An employer must pay an employee at least the minimum wage as prescribed in the regulations.

Paydays

- 17 (1) At least semimonthly and within 8 days after the end of the pay period, an employer must pay to an employee all wages earned by the employee in a pay period.
- (2) Subsection (1) does not apply to
- (a) overtime wages credited to an employee's time bank,
 - (b) statutory holiday pay credited to an employee's time bank, or
 - (c) vacation pay.

If employment is terminated

- 18 (1) An employer must pay all wages owing to an employee within 48 hours after the employer terminates the employment.
- (2) An employer must pay all wages owing to an employee within 6 days after the employee terminates the employment.

If employee cannot be located

- 19** (1) If an employer cannot locate an employee to pay the employee's wages, the employer must pay the wages to the director within 60 days after the wages became payable.
- (2) The director must give an employer a receipt for any wages received from the employer under subsection (1).
- (3) The director's receipt for wages is proof that the employer's liability for payment of the wages is discharged to the extent of the amount stated in the receipt.

How wages are paid

- 20** An employer must pay all wages
- (a) in Canadian currency,
 - (b) by cheque, draft or money order, payable on demand, drawn on a savings institution, or
 - (c) by deposit to the credit of an employee's account in a savings institution, if authorized by the employee in writing or by a collective agreement.

Deductions

- 21** (1) Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.
- (2) An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.
- (3) Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of an employee's gratuities, and this Act applies to the recovery of those wages.

Assignments

- 22** (1) An employer must honour an employee's written assignment of wages
- (a) to a trade union in accordance with the *Labour Relations Code*,
 - (b) to a charitable or other organization, or a pension or superannuation or other plan, if the amounts assigned are deductible for income tax purposes under the *Income Tax Act* (Canada),
 - (c) to a person to whom the employee is required under a maintenance order, as defined in the *Family Maintenance Enforcement Act*, to pay maintenance,
 - (d) to an insurance company for insurance or medical or dental coverage, and
 - (e) for a purpose authorized under subsection (2).
- (2) The director may authorize an assignment of wages for a purpose that the director considers is for the employee's benefit.

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- (3) An employer must honour an assignment of wages authorized by a collective agreement.
- (4) An employer may honour an employee's written assignment of wages to meet a credit obligation.

Employer's duty to make assigned payments

- 23** An employer who deducts an amount from an employee's wages under an assignment of wages must pay the amount
- (a) according to the terms of that assignment, or
 - (b) within one month after the date of the deduction,
- whichever is sooner.

How an assignment is cancelled

- 24** To cancel an assignment of wages, an employee must notify in writing
- (a) the employer, and
 - (b) the person to whom the wages were assigned.

Special clothing

- 25** (1) An employer who requires an employee to wear special clothing must, without charge to the employee,
- (a) provide the special clothing, and
 - (b) clean and maintain it in a good state of repair, unless the employee is bound by an agreement made under subsection (2).
- (2) If an employer and the majority of the affected employees at a workplace agree that the employees will clean their own special clothing and maintain it in a good state of repair,
- (a) the agreement binds all employees at that workplace who are required to wear special clothing,
 - (b) the employer must reimburse, in accordance with the agreement, each employee bound by the agreement for the cost of cleaning and maintaining the special clothing, and
 - (c) the employer must retain for 7 years records of the agreement and the amounts reimbursed.
- (3) The following are deemed to be wages owing and this Act applies to their recovery:
- (a) money received or deducted by an employer from an employee for providing, cleaning or maintaining special clothing;
 - (b) money an employer fails to reimburse under subsection (2).

Payments by employer to funds, insurers or others

- 26** An employer who agrees under an employment contract to pay an amount on behalf of an employee to a fund, insurer or other person must pay the amount in accordance with the contract.

Wage statements

- 27** (1) On every payday, an employer must give each employee a written wage statement for the pay period stating all of the following:
- (a) the employer's name and address;
 - (b) the hours worked by the employee;
 - (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 employee's overtime wage rate;
 - (e) the hours worked by the employee at the overtime wage rate;
 - (f) any money, allowance or other payment the employee is entitled to;
 - (g) the amount of each deduction from the employee's wages and the purpose of each deduction;
 - (h) if the employee is paid other than by the hour or by salary, how the wages were calculated for the work the employee is paid for;
 - (i) the employee's gross and net wages;
 - (j) how much money the employee has taken from the employee's time bank and how much remains.
- (2) If requested in writing by an employee or by a trade union representing an employee, a wage statement may be provided electronically to the employee.
- (3) To cancel a request made under subsection (2), an employee or trade union must notify the employer in writing.
- (4) If a wage statement would be the same as the wage statement given for the previous pay period, another wage statement need not be given until a change occurs.

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;

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- (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 7 years after the employment terminates.

Producer to receive farm labour contractor's payroll records

- 29
- (1) A farm labour contractor must provide to a producer, at the time required by subsection (2), a copy of the payroll records of each employee of the farm labour contractor who does work for the producer.
 - (2) The payroll records must be provided by the earlier of the following:
 - (a) on each payday;
 - (b) the day the farm labour contract with the producer is completed.
 - (3) A producer must keep copies of all records provided under subsection (2) for 7 years after the records were required to be provided.

Producer and farm labour contractor are liable for unpaid wages

- 30
- A producer and a farm labour contractor are jointly and separately liable for wages earned by an employee of the farm labour contractor for work done on behalf of the producer.

PART 4 – HOURS OF WORK AND OVERTIME**Hours-of-work notices**

- 31
- (1) An employer must display hours-of-work notices in each workplace in locations where the notices can be read by all employees.
 - (2) An hours-of-work notice must include
 - (a) when work starts and ends,
 - (b) when each shift starts and ends, and
 - (c) the meal breaks scheduled during the work period.

-
- (3) An employer must give an employee 24 hours' notice of a change in shift unless
- (a) as a result of the change the employee will be entitled to overtime wages, or
 - (b) the shift is extended before it ends.

Meal breaks

- 32 (1) An employer must ensure
- (a) that no employee works more than 5 consecutive hours without a meal break, and
 - (b) that each meal break lasts at least a 1/2 hour.
- (2) An employer who requires an employee to be available for work during a meal break must count the meal break as time worked by the employee.

Split shifts

- 33 An employer must ensure that an employee working a split shift completes the shift within 12 hours of starting work.

Minimum daily hours

- 34 (1) If an employee reports for work on any day as required by an employer, the employer must pay the employee for
- (a) at least the minimum hours for which the employee is entitled to be paid under this section, or
 - (b) if longer, the entire period the employee is required to be at the workplace.
- (2) An employee is entitled to be paid for a minimum of
- (a) 4 hours at the regular wage, if the employee starts work unless the work is suspended for a reason completely beyond the employer's control, including unsuitable weather conditions, or
 - (b) 2 hours at the regular wage, in any other case unless the employee is unfit to work or fails to comply with the Industrial Health and Safety Regulation of the Workers' Compensation Board.
- (3) Despite subsection (2) (a), a school student reporting for work on a school day is entitled to be paid for a minimum of 2 hours at the regular wage in the circumstances described in that subsection.

Maximum hours of work

- 35 An employer must pay overtime wages in accordance with section 40 or 41 if the employer requires or, directly or indirectly, allows an employee to work
- (a) over 8 hours a day or 40 hours a week, or
 - (b) if the employee is on a flexible work schedule adopted under section 37 or 38, an average over the employee's shift cycle of over 8 hours a day or 40 hours a week.

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Hours free from work

- 36 (1) An employer must either
- (a) ensure that an employee has at least 32 consecutive hours free from work each week, or
 - (b) pay an employee double the regular wage for time worked by the employee during the 32 hour period the employee would otherwise be entitled to have free from work.
- (2) An employer must ensure that each employee has at least 8 consecutive hours free from work between each shift worked.
- (3) Subsection (2) does not apply in an emergency.

Flexible work schedules for employees not covered by collective agreement

- 37 (1) An employer may adopt a flexible work schedule for employees not covered by a collective agreement if
- (a) the schedule is prescribed in the regulations and is for a period of at least 26 weeks,
 - (b) the employer has followed the procedure in the regulations,
 - (c) at least 65% of all employees who will be affected by the schedule approve of it, and
 - (d) within 7 days after the date of approval by the employees, the employer has provided the director with a copy of the schedule.
- (2) An employer may at any time cancel a flexible work schedule.
- (3) The director may cancel a flexible work schedule if
- (a) an employee affected by the schedule complains in writing to the director, and
 - (b) the director is satisfied that the employer has not complied with subsection (1) (b) or has unduly influenced, intimidated or coerced any employees to persuade them to approve the schedule.
- (4) Unless cancelled under subsection (2) or (3), a flexible work schedule expires 2 years after it is approved under subsection (1) (c) but it may be renewed with the approval of at least 65% of the affected employees.
- (5) An employer must retain for 7 years after the date of approval all records relating to the approval of a flexible work schedule.

Flexible work schedules for employees covered by collective agreement

- 38 An employer may adopt a flexible work schedule for employees covered by a collective agreement if the flexible work schedule

- (a) is for a period of at least 26 weeks,
- (b) consists of a shift cycle of days at work and days off work that repeats over a period of up to 8 consecutive weeks,
- (c) allows each employee affected by the schedule to work during each shift cycle, an average of at least 35 and not more than 40 hours per week at the employee's regular wage, and
- (d) has been approved by a trade union representing the affected employees.

No excessive hours

- 39** Despite any provision of this Part, an employer must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee's health or safety.

Overtime wages for employees not on a flexible work schedule

- 40** (1) An employer must pay an employee who works over 8 hours a day and is not on a flexible work schedule adopted under section 37 or 38
- (a) 1 1/2 times the employee's regular wage for the time over 8 hours, and
 - (b) double the employee's regular wage for any time over 11 hours.
- (2) An employer must pay an employee who works over 40 hours a week and is not on a flexible work schedule adopted under section 37 or 38
- (a) 1 1/2 times the employee's regular wage for the time over 40 hours, and
 - (b) double the employee's regular wage for any time over 48 hours.
- (3) For the purpose of calculating weekly overtime under subsection (2), only the first 8 hours worked by an employee in each day are counted, no matter how long the employee works on any day of the week.
- (4) If a week contains a statutory holiday that is given to an employee in accordance with Part 5,
- (a) the references to hours in subsection (2) (a) and (b) are reduced by 8 hours for each statutory holiday in the week, and
 - (b) the hours the employee works on the statutory holiday are not counted when calculating the employee's overtime for that week.

Overtime wages for employees on a flexible work schedule

- 41** An employer must pay an employee who is on a flexible work schedule and who works more than an average over the shift cycle of 8 hours a day or 40 hours a week
- (a) overtime wages as prescribed in the regulations, if the schedule was adopted under section 37, or
 - (b) overtime wages as required by the collective agreement, if the schedule was adopted under section 38.

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Banking of overtime wages

- 42
- (1) At the written request of an employee, an employer may establish a time bank for the employee and credit the employee's overtime wages to the time bank instead of paying them to the employee within the time required under section 17.
 - (2) Overtime wages must be credited to a time bank at the rates required under section 40 or 41.
 - (3) If a time bank is established, the employee may at any time request the employer to do one or more of the following:
 - (a) pay the employee all or part of the overtime wages credited to the time bank;
 - (b) allow the employee to use the credited overtime wages to take time off with pay at a time agreed by the employer and the employee;
 - (c) close the time bank.
 - (4) The employer must ensure that all overtime wages credited to an employee's time bank are paid to the employee, or taken as time off with pay, within 6 months after the overtime wages were earned.
 - (5) On termination of employment or on receiving the employee's written request to close the time bank, the employer must pay the employee any amount credited to the time bank.
 - (6) An employer may set a common date for paying out employees' overtime wages under subsection (4) so long as the common date does not result in an extension of the 6 month period for any employee.

Standards for those covered by collective agreement

- 43
- (1) If the hours of work, overtime and special clothing provisions of a collective agreement, when considered together, meet or exceed the requirements of this Part and section 25 when considered together, those provisions replace the requirements of this Part and section 25 for the employees covered by the collective agreement.
 - (2) If the hours of work, overtime and special clothing provisions of a collective agreement, when considered together, do not meet or exceed the requirements of this Part and section 25 when considered together,
 - (a) the requirements of this Part and section 25 are deemed to form part of the collective agreement and to replace those provisions, and
 - (b) the grievance provisions of the collective agreement apply for resolving any dispute about the application or interpretation of those requirements.

PART 5 – STATUTORY HOLIDAYS

Entitlement to statutory holiday

- 44** After 30 calendar days of employment, an employer must either
- (a) give an employee a day off with pay on each statutory holiday; or
 - (b) comply with section 46.

Statutory holiday pay

- 45** An employee who is given a day off on a statutory holiday or instead of a statutory holiday must be paid the following amount for the day off:
- (a) if the employee has a regular schedule of hours and the employee has worked or earned wages for at least 15 of the last 30 days before the statutory holiday, the same amount as if the employee had worked regular hours on the day off;
 - (b) in any other case, an amount calculated in accordance with the regulations.

If employee is required to work on statutory holiday

- 46** (1) An employee who works on a statutory holiday must be paid for that day
- (a) 1 1/2 times the employee's regular wage for the time worked up to 11 hours, and
 - (b) double the employee's regular wage for any time worked over 11 hours.
- (2) In addition, the employer must give the employee a working day off with pay according to section 45.
- (3) The employee may choose to have the pay for the day off credited to the employee's time bank, if one has been established.
- (4) The employer must schedule the day off with pay
- (a) before the employee's annual vacation,
 - (b) before the date the employment terminates, or
 - (c) if the pay for the day off is credited to the employee's time bank, within 6 months after the date of the statutory holiday,
- whichever is earliest.

If statutory holiday falls on a day off

- 47** If a statutory holiday falls on a non-working day for an employee, section 46 (2) to (4) applies.

Substituting another day for a statutory holiday

- 48** (1) An employer may substitute another day off for a statutory holiday if
- (a) the substitution is agreed to in a collective agreement that binds the employer, or

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- (b) the employer and a majority of the affected employees at a workplace agree to the substitution.
- (2) Any employees affected by the substitution of another day for a statutory holiday have the same rights under this Act and their employer has the same duties under this Act as if the other day were a statutory holiday.
- (3) An employer must retain for 7 years records of agreements made under subsection (1) (b).

Standards for those covered by collective agreement

- 49**
- (1) If the statutory holiday provisions of a collective agreement, when considered together, meet or exceed the requirements of this Part when considered together, those provisions replace the requirements of this Part for the employees covered by the collective agreement.
 - (2) If the statutory holiday provisions of a collective agreement, when considered together, do not meet or exceed the requirements of this Part when considered together,
 - (a) the requirements of this Part are deemed to form part of the collective agreement and to replace those provisions, and
 - (b) the grievance provisions of the collective agreement apply for resolving any dispute about the application or interpretation of those requirements.

PART 6 – LEAVES AND JURY DUTY**Pregnancy leave**

- 50**
- (1) A pregnant employee who requests leave under this section is entitled to up to 18 consecutive weeks of unpaid leave
 - (a) beginning no earlier than 11 weeks before the expected birth date, and
 - (b) ending no earlier than 6 weeks after the actual birth date unless the employee requests a shorter period.
 - (2) An employee who requests leave under this section after the birth of a child or the termination of a pregnancy is entitled to up to 6 consecutive weeks of unpaid leave beginning on the date of the birth or of the termination of the pregnancy.
 - (3) An employee is entitled to up to 6 additional consecutive weeks of unpaid leave if, for reasons related to the birth or the termination of the pregnancy, she is unable to return to work when her leave ends under subsection (1) or (2).
 - (4) A request for leave must
 - (a) be given in writing to the employer,
 - (b) if the request is made during the pregnancy, be given to the employer at least 4 weeks before the day the employee proposes to begin leave, and

- (c) if required by the employer, be accompanied by a medical practitioner's certificate stating the expected or actual birth date or the date the pregnancy terminated or stating the reasons for requesting additional leave under subsection (3).
- (5) A request for a shorter period under subsection (1) (b) must
- (a) be given in writing to the employer at least one week before the date the employee proposes to return to work, and
 - (b) if required by the employer, be accompanied by a medical practitioner's certificate stating the employee is able to resume work.

Parental leave

- 51 (1) An employee who requests parental leave under this section is entitled to up to 12 consecutive weeks of unpaid leave beginning,
- (a) for a birth mother, immediately after the end of the leave taken under section 50 unless the employer and employee agree otherwise,
 - (b) for a birth father, after the child's birth and within 52 weeks after that event, and
 - (c) for an adopting parent, within 52 weeks after the child is placed with the parent.
- (2) If the child has a physical, psychological or emotional condition requiring an additional period of parental care, the employee is entitled to up to 5 additional weeks of unpaid leave, beginning immediately after the end of the leave taken under subsection (1).
- (3) A request for leave must
- (a) be given in writing to the employer,
 - (b) if the request is for leave under subsection (1) (a) or (b), be given to the employer at least 4 weeks before the employee proposes to begin leave, and
 - (c) if required by the employer, be accompanied by a medical practitioner's certificate or other evidence of the employee's entitlement to leave.
- (4) An employee's combined entitlement to leave under section 50 and this section is limited to 32 weeks plus any additional leave the employee is entitled to under section 50 (3) or subsection (2) of this section.

Family responsibility leave

- 52 An employee is entitled to up to 5 days of unpaid leave during each employment year to meet responsibilities related to
- (a) the care, health or education of a child in the employee's care, or
 - (b) the care or health of any other member of the employee's immediate family.

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Bereavement leave

- 53 An employee is entitled to up to 3 days of unpaid leave on the death of a member of the employee's immediate family.

Duties of employer

- 54 (1) An employer must give an employee who requests leave under this Part the leave to which the employee is entitled.
- (2) An employer must not, because of an employee's pregnancy or a leave allowed by this Part,
- (a) terminate employment, or
 - (b) change a condition of employment without the employee's written consent.
- (3) As soon as the leave ends, the employer must place the employee
- (a) in the position the employee held before taking leave under this Part, or
 - (b) in a comparable position.
- (4) If the employer's operations are suspended or discontinued when the leave ends, the employer must, subject to the seniority provisions in a collective agreement, comply with subsection (3) as soon as operations are resumed.

Jury duty

- 55 If an employee is required to attend court as a juror, the employer has the same duties under section 54 (2) to (4) in relation to the employee as if that employee were on leave under this Part.

Employment deemed continuous while employee on leave or jury duty

- 56 (1) The services of an employee who is on leave under this Part or is attending court as a juror are deemed to be continuous for the purposes of
- (a) calculating annual vacation entitlement and entitlement under sections 63 and 64, and
 - (b) any pension, medical or other plan beneficial to the employee.
- (2) In the following circumstances, the employer must continue to make payments to a pension, medical or other plan beneficial to an employee as though the employee were not on leave or attending court as a juror:
- (a) if the employer pays the total cost of the plan;
 - (b) if both the employer and the employee pay the cost of the plan and the employee chooses to continue to pay his or her share of the cost.
- (3) The employee is entitled to all increases in wages and benefits the employee would have been entitled to had the leave not been taken or the attendance as a juror not been required.
- (4) Subsection (1) does not apply if the employee has, without the employer's consent, taken a longer leave than is allowed under this Part.

PART 7 – ANNUAL VACATION**Entitlement to annual vacation**

- 57** (1) An employer must give an employee an annual vacation of
- (a) at least 2 weeks, after 12 consecutive months of employment, or
 - (b) at least 3 weeks, after 5 consecutive years of employment.
- (2) An employer must ensure an employee takes an annual vacation within 12 months after completing the year of employment entitling the employee to the vacation.
- (3) An employer must allow an employee who is entitled to an annual vacation to take it in periods of one or more weeks.
- (4) An annual vacation is exclusive of statutory holidays that an employee is entitled to.

Vacation pay

- 58** (1) An employer must pay an employee the following amount of vacation pay:
- (a) after 5 calendar days of employment, at least 4% of the employee's total wages during the year of employment entitling the employee to the vacation pay;
 - (b) after 5 consecutive years of employment, at least 6% of the employee's total wages during the year of employment entitling the employee to the vacation pay.
- (2) Vacation pay must be paid to an employee
- (a) at least 7 days before the beginning of the employee's annual vacation, or
 - (b) on the employee's scheduled pay days, if agreed by the employer and the employee or by collective agreement.
- (3) Any vacation pay an employee is entitled to when the employment terminates must be paid to the employee at the time set by section 18 for paying wages.

Other payments or benefits do not affect vacation rights

- 59** (1) An employer must not reduce an employee's annual vacation or vacation pay because the employee
- (a) was paid a bonus or sick pay, or
 - (b) was previously given a longer annual vacation than the minimum required under section 57.
- (2) Despite subsection (1) (b), an employer may reduce an employee's annual vacation or vacation pay because at the written request of the employee the employer allowed the employee to take an annual vacation in advance.

Common date for calculating vacation entitlement

- 60** An employer may use a common date for calculating the annual vacation entitlement of all employees under sections 57 and 58, so long as this does not result in a reduction of any employee's rights under those sections.

Standards for those covered by collective agreement

- 61** (1) If the annual vacation and vacation pay provisions of a collective agreement, when considered together, meet or exceed the requirements of this Part when considered together, those provisions replace the requirements of this Part for the employees covered by the collective agreement.
- (2) If the annual vacation and vacation pay provisions of a collective agreement, when considered together, do not meet or exceed the requirements of this Part when considered together,
- (a) the requirements of this Part are deemed to form part of the collective agreement and to replace those provisions, and
 - (b) the grievance provisions of the collective agreement apply for resolving any dispute about the application or interpretation of those requirements.

PART 8 – TERMINATION OF EMPLOYMENT**Definition**

- 62** In this Part, “**week of layoff**” means a week in which an employee earns less than 50% of the employee's weekly wages, at the regular wage, averaged over the previous 8 weeks.

Liability resulting from length of service

- 63** (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.
- (2) The employer's liability for compensation for length of service increases as follows:
- (a) after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;
 - (b) after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.
- (3) The liability is deemed to be discharged if the employee
- (a) is given written notice of termination as follows:
 - (i) one week's notice after 3 consecutive months of employment;
 - (ii) 2 weeks' notice after 12 consecutive months of employment;

- (iii) 3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;
 - (b) is given a combination of notice and money equivalent to the amount the employer is liable to pay, or
 - (c) terminates the employment, retires from employment, or is dismissed for just cause.
- (4) The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by
- (a) totalling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,
 - (b) dividing the total by 8, and
 - (c) multiplying the result by the number of weeks' wages the employer is liable to pay.
- (5) For the purpose of determining the termination date, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff.

Group terminations

- 64** (1) If the employment of 50 or more employees at a single location is to be terminated within any 2 month period, the employer must give written notice of group termination to all of the following:
- (a) each employee who will be affected;
 - (b) a trade union certified to represent, or recognized by the employer as the bargaining agent of, any affected employees;
 - (c) the minister.
- (2) The notice of group termination must specify all of the following:
- (a) the number of employees who will be affected;
 - (b) the effective date or dates of the termination;
 - (c) the reasons for the termination.
- (3) The notice of group termination must be given as follows:
- (a) at least 8 weeks before the effective date of the first termination, if 50 to 100 employees will be affected;
 - (b) at least 12 weeks before the effective date of the first termination, if 101 to 300 employees will be affected;
 - (c) at least 16 weeks before the effective date of the first termination, if 301 or more employees will be affected.

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- (4) If an employee is not given notice as required by this section, the employer must give the employee termination pay instead of the required notice or a combination of notice and termination pay.
- (5) If an employee is not covered by a collective agreement, the notice and termination pay requirements of this section are in addition to the employer's liability to the employee under section 63.
- (6) This section applies whether the employment is terminated by the employer or by operation of law.

Exceptions

- 65
- (1) Sections 63 and 64 do not apply to an employee
 - (a) employed under an arrangement by which
 - (i) the employer may request the employee to come to work at any time for a temporary period, and
 - (ii) the employee has the option of accepting or rejecting one or more of the temporary periods,
 - (b) employed for a definite term,
 - (c) employed for specific work to be completed in a period of up to 12 months,
 - (d) employed under an employment contract that is impossible to perform due to an unforeseeable event or circumstance other than receivership, action under section 427 of the *Bank Act* (Canada) or a proceeding under an insolvency Act,
 - (e) employed at a construction site by an employer whose principal business is construction, or
 - (f) who has been offered and has refused reasonable alternative employment by the employer.
 - (2) If an employee who is employed for a definite term or specific work continues to be employed for at least 3 months after completing the definite term or specific work, the employment is
 - (a) deemed not to be for a definite term or specific work, and
 - (b) deemed to have started at the beginning of the definite term or specific work.
 - (3) Section 63 does not apply to
 - (a) a teacher employed by a board of school trustees, or
 - (b) an employee covered by a collective agreement who
 - (i) is employed in a seasonal industry in which the practice is to lay off employees every year and to call them back to work,
 - (ii) was notified on being hired by the employer that the employee might be laid off and called back to work, and

(iii) is laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation.

- (4) Section 64 does not apply to an employee who
- (a) is offered and refuses alternative work or employment made available to the employee through a seniority system,
 - (b) is laid off or terminated as a result of the normal seasonal reduction, suspension or closure of an operation, or
 - (c) is laid off and does not return to work within a reasonable time after being requested to do so by the employer.

Director may determine employment has been terminated

- 66** If a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated.

Rules about notice

- 67** (1) A notice given to an employee under this Part has no effect if
- (a) the notice period coincides with a period during which the employee is on annual vacation, leave, strike or lockout or is unavailable for work due to a strike or lockout or medical reasons, or
 - (b) the employment continues after the notice period ends.
- (2) Once notice is given to an employee under this Part, the employee's wage rate, or any other condition of employment, must not be altered without the written consent of
- (a) the employee, or
 - (b) a trade union representing the employee.

Rules about payments

- 68** (1) A payment made under this Part does not discharge liability for any other payment the employee is entitled to receive under this Act.
- (2) The termination pay requirements of section 64 apply whether or not the employee has obtained other employment or has in any other way realized or recovered any money for the notice period.
- (3) If an employee is not covered by a collective agreement, the director may determine that a payment made to the employee in respect of termination of employment, other than money paid under section 64, discharges, to the extent of the payment, the employer's liability to the employee under section 63.

Standards for those covered by collective agreement

- 69** (1) If the provisions of a collective agreement relating to an individual termination of employment, including the layoff and right of recall provisions, when considered together, meet or exceed an employee's entitlement under section 63,

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those provisions replace section 63 for the employees covered by the collective agreement.

- (2) If the provisions of a collective agreement relating to an individual termination of employment, including the layoff and right of recall provisions, when considered together, do not meet or exceed an employee's entitlement under section 63, that section is deemed to form part of the collective agreement and to replace those provisions.
- (3) An employee's entitlement, under a collective agreement or under this section, on group termination of employment is in addition to the employee's entitlement on an individual termination of employment.
- (4) The grievance provisions of a collective agreement apply for resolving any dispute about the application or interpretation of a provision deemed by this section to form part of the collective agreement.
- (5) Subsections (1) and (2) do not operate to provide any remedies that would not be otherwise available under the grievance provisions of a collective agreement.
- (6) If an employer is in receivership or is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act, subsections (1) to (5) do not apply and the employee is entitled to the greater, as determined by the director, of
 - (a) the amount payable for an individual termination under the collective agreement, and
 - (b) the amount payable to the employee under section 63.

Individual layoff under collective agreement

- 70**
- (1) If an employee is covered by a collective agreement that includes individual termination and right of recall provisions and the employee is laid off, the employee must choose
 - (a) to be paid the amount the employee is entitled to receive for an individual termination under the collective agreement, or
 - (b) to maintain the employee's right of recall under the collective agreement.
 - (2) If the employee chooses to be paid the amount referred to in subsection (1) (a), the employer must pay that amount within 48 hours.
 - (3) If the employee chooses to maintain the right of recall or does not after 13 weeks of layoff make a choice, the employer must pay the amount referred to in subsection (1) (a) to the director, in trust, within 48 hours after
 - (a) the choice is made under subsection (1), or
 - (b) the end of the 13 weeks.
 - (4) An amount received in trust by the director earns interest at the prescribed rate from the date the amount is deposited in a savings institution to the date of payment to the person entitled.

-
- (5) The director must pay the amount received under this section, plus interest earned on that amount,
 - (a) to the employer, if the employee accepts employment made available under the right of recall, or
 - (b) to the employee, if the employee renounces the right of recall or is not recalled to employment within the period specified in the collective agreement.
 - (6) On accepting money paid under this section, the employee is deemed to have abandoned
 - (a) any right to be recalled to employment by that employer, and
 - (b) any right to displace an employee of another employer covered by the same collective agreement as the employer who made the payment.
 - (7) On accepting employment under the right of recall, the employee is deemed to have abandoned the right to payment under this section.

Adjustment committee

- 71**
- (1) If an employer is required to give notice under section 64, the minister may require the employer to establish an adjustment committee.
 - (2) The adjustment committee is to consist of
 - (a) an equal number of representatives of the employer and of the affected employees, and
 - (b) anyone else the minister considers suitable for appointment to the committee.
 - (3) The purpose of the adjustment committee is to develop, by cooperation, an adjustment program
 - (a) to eliminate the need for terminating the employment of the affected employees, or
 - (b) to minimize the impact of terminating their employment and to help them obtain other employment.
 - (4) The adjustment committee may require any of the following to provide it with any information necessary for carrying out its purpose:
 - (a) the employer;
 - (b) the representatives of the employer and the affected employees;
 - (c) any other member of the adjustment committee.

PART 9 – VARIANCES**Application for variance**

- 72 An employer and any of the employer's employees may, in accordance with the regulations, join in a written application to the director for a variance of any of the following:
- (a) a time period specified in the definition of "temporary layoff";
 - (b) section 17 (1) (paydays);
 - (c) section 25 (special clothing);
 - (d) section 31 (3) (notice of a change in shift);
 - (e) section 34 (minimum daily hours);
 - (f) section 35 (maximum hours of work);
 - (g) section 36 (hours free from work);
 - (h) section 40 (overtime wages for employees not on a flexible work schedule);
 - (i) section 64 (notice and termination pay requirements for group terminations).

Power to grant variance

- 73 (1) The director may vary a time period or requirement specified in an application under section 72 if the director is satisfied that
- (a) a majority of the employees who will be affected by the variance are aware of its effect and approve of the application, and
 - (b) the variance is consistent with the intent of this Act.
- (2) In addition, if the application is for a variance of a time period or a requirement of section 64 the director must be satisfied that the variation will facilitate
- (a) the preservation of the employer's operations,
 - (b) an orderly reduction or closure of the employer's operations, or
 - (c) the short term employment of employees for special projects.
- (3) The director may
- (a) specify that a variance applies only to one or more of the employer's employees,
 - (b) specify an expiry date for a variance, and
 - (c) attach any conditions to a variance.
- (4) On being served with a determination on a variance application, the employer must display a copy of the determination in each workplace, in locations where the determination can be read by any affected employees.

PART 10 – COMPLAINTS, INVESTIGATIONS AND DETERMINATIONS**Complaint and time limit**

- 74 (1) An employee, former employee or other person may complain to the director that a person has contravened
- (a) a requirement of Parts 2 to 8 of this Act, or
 - (b) a requirement of the regulations specified under section 127 (2) (l).
- (2) A complaint must be in writing and must be delivered to an office of the Employment Standards Branch.
- (3) A complaint relating to an employee whose employment has terminated must be delivered under subsection (2) within 6 months after the last day of employment.
- (4) A complaint that a person has contravened a requirement of section 8, 10 or 11 must be delivered under subsection (2) within 6 months after the date of the contravention.

If complainant requests identity be kept confidential

- 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 section 45 (2) and (3) of that Act.

Investigation after or without a complaint

- 76 (1) Subject to subsection (2), the director must investigate a complaint made under section 74.
- (2) The director may refuse to investigate a complaint or may stop or postpone investigating a complaint if
- (a) the complaint is not made within the time limit in section 74 (3) or (4),
 - (b) this Act does not apply to the complaint,
 - (c) the complaint is frivolous, vexatious or trivial or is not made in good faith,
 - (d) there is not enough evidence to prove the complaint,
 - (e) a proceeding relating to the subject matter of the complaint has been commenced before a court, tribunal, arbitrator or mediator,
 - (f) a court, tribunal or arbitrator has made a decision or award relating to the subject matter of the complaint, or
 - (g) the dispute that caused the complaint is resolved.

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- (3) Without receiving a complaint, the director may conduct an investigation to ensure compliance with this Act.

Opportunity to respond

- 77 If an investigation is conducted, the director must make reasonable efforts to give a person under investigation an opportunity to respond.

Settlements

- 78 (1) The director may do one or more of the following:
- (a) assist in settling a complaint or a matter investigated under section 76;
 - (b) arrange that a person pay directly to an employee or other person any amount to be paid as a result of a settlement;
 - (c) receive on behalf of an employee or other person any amount to be paid as a result of a settlement.
- (2) The director must pay money received under subsection (1) (c) to the person on whose behalf the money was received.
- (3) If a person fails to comply with the terms of a settlement, the settlement is void and the director may
- (a) determine the amount the person would have been required to pay under section 79 had the settlement not been made, and
 - (b) require the person to pay that amount.

Determination

- 79 (1) On completing an investigation, the director may make a determination under this section.
- (2) If satisfied that the requirements of this Act and the regulations have not been contravened, the director must dismiss a complaint.
- (3) If satisfied that a person has contravened a requirement of this Act or the regulations, the director may do one or more of the following:
- (a) require the person to comply with the requirement;
 - (b) require the person to remedy or cease doing an act;
 - (c) impose a penalty on the person under section 98.
- (4) In addition, if satisfied that an employer has contravened a requirement of section 8 or Part 6, the director may require the employer to do one or more of the following:
- (a) hire a person and pay the person any wages lost because of the contravention;
 - (b) reinstate a person in employment and pay the person any wages lost because of the contravention;
 - (c) pay a person compensation instead of reinstating the person in employment;

- (d) pay an employee or other person reasonable and actual out of pocket expenses incurred by him or her because of the contravention.
- (5) If satisfied that an employer has contravened section 39, the director may require the employer to limit hours of work of employees to
 - (a) 8 in a day or 40 in a week, or
 - (b) if the employer has adopted a flexible work schedule under section 37 or 38, an average over the shift cycle of 8 in a day or 40 in a week.
- (6) If satisfied that an employer has contravened a requirement under subsection (5), the director may require the employer to vary the overtime wages payable to employees for the period of the contravention and any later period.

Limit on amount of wages required to be paid

- 80** 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
- (a) in the case of a complaint, 24 months before the earlier of the date of the complaint or the termination of the employment, and
 - (b) in any other case, 24 months before the director first told the employer of the investigation that resulted in the determination,
- plus interest on those wages.

Notifying others of determination

- 81** (1) On making a determination under this Act, the director must serve any person named in the determination with a copy of the determination that includes the following:
- (a) the reasons for the determination;
 - (b) if an employer or other person is required by the determination to pay wages, compensation, interest, a penalty or another amount, the amount to be paid and how it was calculated;
 - (c) if a penalty is imposed, the nature of the contravention and the date by which the penalty must be paid;
 - (d) the time limit and process for appealing the determination to the tribunal.
- (2) On being served with a determination requiring the employer to limit the hours of work of employees, an employer must display a copy of the determination in each workplace in locations where the determination can be read by any affected employees.

No other proceedings

- 82** Once a determination is made requiring payment of wages, an employee may commence another proceeding to recover them only if
- (a) the director has consented in writing; or
 - (b) the director or the tribunal has cancelled the determination.

Employee not to be mistreated because of complaint or investigation

83. (1) An employer must not
- (a) refuse to employ or refuse to continue to employ a person,
 - (b) threaten to dismiss or otherwise threaten a person,
 - (c) discriminate against or threaten to discriminate against a person with respect to employment or a condition of employment, or
 - (d) intimidate or coerce or impose a monetary or other penalty on a person,
- because a complaint or investigation may be or has been made under this Act or because an appeal or other action may be or has been taken or information may be or has been supplied under this Act.
- (2) If satisfied that a person has contravened subsection (1), the director may make any determination authorized by section 79 (3) or (4).

Director's investigative powers and protections

- 84 For the purposes of this Act, the director has the power and authority of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

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.

Power to reconsider

- 86 The director may vary or cancel a determination.

PART 11 – ENFORCEMENT**Lien for unpaid wages**

- 87 (1) Despite any other Act, unpaid wages constitute a lien, charge and secured debt in favour of the director, dating from the time the wages were earned, against all the real and personal property of the employer or other person named in a determination or order, including money due or accruing due to the employer or other person from any source.
- (2) Unpaid wages set out in a decision or order filed under section 30 of the *Industrial Relations Act*, R.S.B.C. 1979, c. 212, or under section 102 or 135 of the *Labour Relations Code* constitute a lien, charge and secured debt in favour of the persons named in the decision or order against all the real and personal property of the employer or other person named in the decision or order.
- (3) Despite any other Act but subject to subsection (5), the amount of a lien, charge and secured debt referred to in subsections (1) and (2) is payable and enforceable in priority over all liens, judgments, charges and security interests or any other claims or rights, including the following:
- (a) any claim or right of the government including, but not limited to, the claims and rights of the Workers' Compensation Board;
 - (b) any claim or right arising through contract, account receivable, insurance claim or sale of goods;
 - (c) any security interest within the meaning of the *Personal Property Security Act*.
- (4) Subsection (3) (c) applies whether the lien, judgment, charge, security interest, claim or right was perfected within the meaning of the *Personal Property Security Act*, or was created or made, before or after
- (a) the date the wages were earned, or
 - (b) the date a payment for the benefit of an employee became due.
- (5) The lien, charge and secured debt referred to in subsections (1) and (2) has priority over a mortgage of, or debenture charging, land, that was registered in a land title office before registration against that land of a certificate of judgment obtained on the filing, under section 91, of a determination or an order of the tribunal, but only with respect to money advanced under the mortgage or debenture after the certificate of judgment was registered.

Section 88

Payment of interest

- 88 (1) If an employer fails to pay wages or another amount to an employee, the employer must pay interest at the prescribed rate on the wages or other amount from the earlier of
- (a) the date the employment terminates, and
 - (b) the date a complaint about the wages or other amount is delivered to the director
- to the date of payment.
- (2) No interest accumulates under subsection (1) from the date a determination is made under section 79 requiring payment of the wages or other amount until 23 days after that date.
- (3) Interest payable under subsection (1) is deemed to be wages and this Act applies to the recovery of those wages.
- (4) Subsection (1) applies whether or not the wages or other amount became payable before this section comes into force, but the date from which the interest is calculated must not be earlier than the date this section comes into force.
- (5) An amount collected under this Part, or deposited under section 113, earns interest at the prescribed rate, payable by the Minister of Finance and Corporate Relations, from the date the amount is deposited in a savings institution to the date of payment to the person entitled.
- (6) Subsection (5) does not apply to any security provided or bond posted under section 100.

Demand on third party

- 89 (1) If the director has reason to believe that a person is or is likely to become indebted to another who is required to pay money under a determination or under an order of the tribunal, the director may demand in writing that the person pay to the director, on account of the other's liability under the determination or order, all or part of the money otherwise payable to the other person.
- (2) A person on whom a demand is made under this section must, if indebted to the other person, pay to the director or to someone specified by the director the amount demanded, within 15 days after the later of
- (a) the date the demand is served, and
 - (b) the date the person named in the demand becomes indebted to the other person.
- (3) The director's receipt for money paid by a person in response to a demand is proof that the person's liability to the person required to pay under the determination or under the order of the tribunal is discharged to the extent of the amount stated in the receipt.

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- (4) For the purposes of this section, a savings institution is indebted to a person required to pay under a determination or under an order of the tribunal for money or a beneficial interest in money in the savings institution
 - (a) on deposit to the credit of that person when a demand is served,
 - (b) held in trust by a depositor for that person when a demand is served, or
 - (c) deposited to the credit of that person after a demand is served.
 - (5) A demand made under this section continues in effect until it is satisfied or until it is cancelled by the director.

Failure to comply with demand

- 90**
- (1) If a person on whom a demand is made under section 89 does not comply with the demand,
 - (a) the director may enforce recovery of the amount stated in the demand as if it were unpaid wages, and
 - (b) this Act applies to the recovery of that amount.
 - (2) If a person on whom a demand is made under section 89 denies indebtedness to anyone required to pay under a determination or under an order of the tribunal, the director may require that person to produce information the director considers necessary to establish that there is no indebtedness.

Determination or order may be filed and enforced as judgment

- 91**
- (1) The director may at any time file a determination or an order of the tribunal in a Supreme Court registry.
 - (2) Unless varied, cancelled or suspended under section 86, 113, 115, 116 or 119 a filed determination is enforceable in the same manner as a judgment of the Supreme Court in favour of the director for the recovery of a debt in the amount stated in the determination.
 - (3) Unless varied or cancelled by the tribunal under section 116, a filed order of the tribunal is enforceable in the same manner as a judgment of the Supreme Court in favour of the director for the recovery of a debt in the amount stated in the order.
 - (4) If a determination or order filed under this section is varied, cancelled or suspended, the director must promptly withdraw the determination or order from filing in the Supreme Court registry.

Seizure of assets

- 92**
- (1) The director may seize as much of the assets owned or possessed by a person required to pay under a determination or under an order of the tribunal, or used in or incidental to that person's business, as is necessary to satisfy
 - (a) the amount stated in the determination or order, and
 - (b) the costs of seizure.

Section 93

- (2) The director must safely keep the assets under seizure until
 - (a) the determination or the order of the tribunal is filed in court under section 91 and a writ of seizure and sale has been executed, or
 - (b) the determination or order is cancelled under section 86, 115, 116 or 119.

Release of assets

- 93** The director must release an asset seized under section 92 if satisfied that the asset is owned by someone other than a person required to pay under a determination or under an order of the tribunal.

Wrongful removal of seized assets

- 94** (1) A person must not remove, damage or dispose of assets seized under section 92 except in accordance with this Act, a writ of seizure and sale or a court order.
- (2) In addition to any other penalty, a person who contravenes subsection (1) is liable for the amount owed by the person required to pay under the determination or under the order of the tribunal.
- (3) This Act applies to the recovery of an amount a person is liable for under subsection (2).

Associated corporations

- 95** If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,
- (a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and
 - (b) if so, they are jointly and separately liable for payment of the amount stated in a determination or in an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them.

Corporate officer's liability for unpaid wages

- 96** (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.
- (2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for
- (a) any liability to an employee under section 63, termination pay or money payable under a collective agreement in respect of individual or group terminations, if the corporation is in receivership or is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act,

- (b) vacation pay that becomes payable after the director or officer ceases to hold office, or
 - (c) money that remains in an employee's time bank after the director or officer ceases to hold office.
- (3) This Act applies to the recovery of the unpaid wages from a person liable for them under subsection (1).

Sale of business or assets

- 97 If all or part of a business or a substantial part of the entire assets of a business is disposed of, the employment of an employee of the business is deemed, for the purposes of this Act, to be continuous and uninterrupted by the disposition.

Monetary penalties

- 98 (1) If the director is satisfied that a person has contravened a requirement of this Act or the regulations or a requirement imposed under section 100, the director may impose a penalty on the person in accordance with the prescribed schedule of penalties.
- (2) If a corporation contravenes a requirement of this Act or the regulations, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the contravention is also liable to the penalty.
- (3) A person on whom a penalty is imposed under this section must pay the penalty whether or not the person
- (a) has been convicted of an offence under this Act or the regulations, or
 - (b) is also liable to pay a fine for an offence under section 125.
- (4) A penalty imposed under this Part is a debt due to the government and may be collected by the director in the same manner as wages.

If money is paid to director

- 99 (1) Subject to section 78 (2), the director must pay to the Minister of Finance and Corporate Relations all money received by the director under this Act, including money to be held in trust for the persons named in a determination or in an order of the tribunal.
- (2) Money received by the Minister of Finance and Corporate Relations in respect of a determination or an order of the tribunal must be attributed
- (a) first, to any wages required to be paid by the determination or order,
 - (b) next, to any other amount, other than interest or penalties, required to be paid by the determination or order,
 - (c) next, to interest required to be paid by the determination or order, and
 - (d) last, to any penalties required to be paid by the determination or order.

Section 100

- (3) The Minister of Finance and Corporate Relations must pay, according to the direction of the director, to the persons named in a determination or in an order of the tribunal, money received in trust for them.
- (4) Money attributed to wages under subsection (2) must be attributed proportionally among the employees or former employees named in the determination or order according to the amount owing as shown on the determination or order.
- (5) The money attributed to an employee under subsection (4) must then be paid according to the following priority:
 - (a) to a person who is a holder for value of an uncashed cheque or money order for the employee's wages;
 - (b) to a person the employee assigned the wages to;
 - (c) to the employee or, if deceased,
 - (i) to the employee's estate, or
 - (ii) under the *Estate Administration Act*;
 - (d) to a fund, insurer or other person to whom payment is to be made under section 26.
- (6) If there is not enough money to pay everyone entitled under a paragraph in subsection (5), the money available under that paragraph must be divided among them in proportion to the amount each of them is entitled to.
- (7) Subsections (4) to (6) apply also to interest required to be paid on wages by a determination or an order of the tribunal.
- (8) Despite subsections (5) and (7), if money is received for wages or interest owing to an employee who owes money under another determination or under an order of the tribunal, the director may direct that the amount received be used to pay the claims of anyone entitled to payment under the other determination or the order.

Security to ensure compliance

- 100**
- (1) To ensure compliance with this Act or the regulations, the director may require an employer who has at any time contravened a requirement relating to the payment of wages under this Act, the former Act or the regulations under either Act
 - (a) to provide an irrevocable letter of credit or other security satisfactory to the director, or
 - (b) to post a bond under the *Bonding Act*.
 - (2) Subsection (1) applies whether or not
 - (a) a penalty has been imposed on the employer under this Act, or
 - (b) the employer has been convicted of an offence under this Act, the former Act or the regulations under either Act.

Publication of violators' names

- 101** (1) The director may compile information relating to contraventions of this Act or the regulations, including information identifying the persons who, according to a determination or an order of the tribunal, committed the contraventions.
- (2) Despite the *Freedom of Information and Protection of Privacy Act*, the director may
- (a) publish information compiled under subsection (1), and
 - (b) make that information available for public inspection during regular business hours at offices of the Employment Standards Branch.

PART 12 – EMPLOYMENT STANDARDS TRIBUNAL**Establishment of tribunal**

- 102** (1) The Employment Standards Tribunal is established.
- (2) The tribunal consists of the following members:
- (a) a chair appointed by the Lieutenant Governor in Council;
 - (b) as many adjudicators appointed by the chair as the chair considers necessary;
 - (c) any members appointed by the minister under subsection (3).
- (3) The minister may appoint members representative of the interests of employees and an equal number of members representative of the interests of employers.
- (4) The members of the tribunal hold office for the term set by the person who appointed them, and they may be reappointed for successive terms.

Compensation and expenses of members

- 103** (1) The members of the tribunal
- (a) are to be paid compensation directed by the minister, and
 - (b) are entitled to be reimbursed for actual and reasonable travelling and out of pocket expenses incurred by them in performing their duties.
- (2) The minister may determine the conditions of service of members of the tribunal.

Authority of chair

- 104** (1) The chair may
- (a) carry out any duty, power or function of the tribunal or a member of the tribunal,
 - (b) delegate to an adjudicator a function, duty or power of the chair, and
 - (c) authorize an adjudicator to act as chair in the chair's absence.
- (2) While acting as chair, the adjudicator has the power and authority of the chair.

Employees

- 105** (1) Despite the *Public Service Act*, the tribunal may employ a registrar and other employees it considers necessary for the purposes of this Act.
- (2) The registrar may be appointed under section 102 (2) as an adjudicator.
- (3) The *Labour Relations Code*, the *Public Service Act* and the *Public Service Labour Relations Act* do not apply to the tribunal's employees.

Organization of tribunal

- 106** (1) The chair may establish one or more panels of the tribunal.
- (2) Two or more panels may proceed with separate matters at the same time.
- (3) The chair may refer matters that are before the tribunal to a panel or a matter that is before a panel to the tribunal or another panel.
- (4) A panel may consist of
- (a) the chair,
 - (b) one adjudicator,
 - (c) 3 adjudicators,
 - (d) the chair and either 2 or 4 adjudicators,
 - (e) the chair, one member representative of employers and one member representative of employees, or
 - (f) the chair, members representative of employers and an equal number of members representative of employees.
- (5) The chair may terminate an appointment to a panel and may fill a vacancy on a panel.
- (6) A panel has the power and authority of the tribunal in appeals assigned to the panel under this section or matters coming before it under the rules made by the tribunal under section 109 (1) (c).
- (7) If a panel consists of more than one member, the finding of the majority is the tribunal's finding, but if there is no majority the finding of the member chairing the panel is the tribunal's finding.

Proceedings

- 107** Subject to any rules made under section 109 (1) (c), the tribunal may conduct an appeal or other proceeding in the manner it considers necessary and is not required to hold an oral hearing.

Appeal and inquiry powers

- 108** (1) For the purposes of an appeal, reconsideration or recommendation, the tribunal and each member of it has the power and authority of a commissioner under sections 12, 15 and 16 of the *Inquiry Act*.

- (2) The tribunal may decide all questions of fact or law arising in the course of an appeal or review.

Other powers of tribunal

- 109** (1) In addition to its powers under section 108 and Part 13, the tribunal may do one or more of the following:
- (a) make recommendations to the Lieutenant Governor in Council about the exclusion of classes of persons from all or part of this Act or the regulations;
 - (b) extend the time period for requesting an appeal even though the period has expired;
 - (c) make, with the approval of the minister, rules about how appeals and reconsiderations are to be conducted and about the steps to be followed before making recommendations under paragraph (a);
 - (d) 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,
 - (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;
 - (e) inspect any records that may be relevant to an appeal, reconsideration or recommendation;
 - (f) on giving a receipt for a record examined under paragraph (e), remove the record to make copies or extracts;
 - (g) require a person to disclose, either orally or in writing, a matter required under this Act and require the disclosure to be made under oath or affirmation;
 - (h) order a person to produce, or to deliver to a place specified by the tribunal, any records for inspection under paragraph (e).
- (2) Despite subsection (1), the tribunal 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.

Finality of tribunal's decisions and orders

- 110** A decision or order of the tribunal under this Act or the regulations on any matter in which it has jurisdiction is final and conclusive and is not open to question or review in a court on any grounds.

Publication of decisions

- 111** The chair must ensure that all orders made by the tribunal on appeals and reconsiderations and all recommendations made by the tribunal on exclusions are available in writing for publication.

PART 13 – APPEALS**Right to appeal director's determination**

- 112** (1) Any person served with a determination may appeal the determination to the tribunal by delivering to its office a written request that includes the reasons for the appeal.
- (2) The request must be delivered within
- (a) 15 days after the date of service, if the person was served by registered mail, and
 - (b) 8 days after the date of service, if the person was personally served or served under section 122 (3).
- (3) The filing of a determination under section 91 does not prevent the determination being appealed.
- (4) This section does not apply to a determination made under section 119.

Director's determination may be suspended

- 113** (1) A person who appeals a determination may request the tribunal to suspend the effect of the determination.
- (2) The tribunal may suspend the determination for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either
- (a) the total amount, if any, required to be paid under the determination, or
 - (b) a smaller amount that the tribunal considers adequate in the circumstances of the appeal.

After an appeal is requested

- 114** (1) The tribunal may dismiss an appeal without a hearing of any kind if satisfied after examining the request that
- (a) the appeal has not been requested within the time limit in section 112 (2),
 - (b) the appeal is not within the tribunal's jurisdiction, or
 - (c) the appeal is frivolous, vexatious or trivial or is not brought in good faith.
- (2) Before considering an appeal, the tribunal may
- (a) refer the matter back to the director for further investigation, or
 - (b) recommend that an attempt be made to settle the matter.

Tribunal's orders

- 115** (1) After considering the appeal, the tribunal may, by order,
- (a) confirm, vary or cancel the determination under appeal, or
 - (b) refer the matter back to the director.

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- (2) The tribunal must make a written copy of its order with reasons available to
 - (a) the person who requested the appeal, and
 - (b) the persons who under the tribunal's rules were notified of the appeal.

Reconsideration of orders and decisions

- 116**
- (1) On application under subsection (2) or on its own motion, the tribunal may
 - (a) reconsider any order or decision of the tribunal, and
 - (b) cancel or vary the order or decision or refer the matter back to the original panel.
 - (2) The director or a person named in a decision or order of the tribunal may make an application under this section.
 - (3) An application may be made only once with respect to the same order or decision.

PART 14 – GENERAL PROVISIONS

Director's power to delegate

- 117**
- (1) Subject to subsection (2), the director may delegate to any person any of the director's functions, duties or powers under this Act, except the power to delegate under this section.
 - (2) The director may not delegate to the same person both the function of conducting investigations into a matter under section 76 and the power to impose penalties in relation to that matter.
 - (3) If the director personally investigates a matter under section 76, the director must delegate the director's power to impose penalties in relation to that matter.
 - (4) A delegation under this section
 - (a) may be cancelled,
 - (b) does not, subject to subsection (3), prevent the director carrying out the delegated function, duty or power, and
 - (c) may be made subject to the terms the director considers appropriate.
 - (5) If the director ceases to hold office, a delegation made under this section continues in effect
 - (a) as long as the delegate continues in office, or
 - (b) until cancelled by a succeeding director.
 - (6) A person who claims to be carrying out a function, duty or power delegated by the director under this section must, on request, produce evidence of the delegation.

Right to sue preserved

- 118** Subject to section 82, nothing in this Act or the regulations affects a person's right to commence and maintain an action that, but for this Act, the person would have had the right to commence and maintain.

Extraprovincial certificates

- 119** (1) If satisfied that reciprocal provisions will be made by another jurisdiction in or outside of Canada for enforcing determinations of the director, the Lieutenant Governor in Council may
- (a) declare that jurisdiction to be a reciprocating jurisdiction, and
 - (b) designate the designated statutory authority of that jurisdiction for the purpose of this section.
- (2) If a designated statutory authority obtains an order, judgment or payment-of-wages certificate, the authority may apply to the director to enforce that order, judgment or certificate.
- (3) The application must include a copy of the order, judgment or payment-of-wages certificate certified
- (a) by the court in which the order, judgment or certificate is registered, or
 - (b) by the designated statutory authority as a true copy, if there is no provision in the reciprocating jurisdiction for registering the order, judgment or certificate in a court.
- (4) If satisfied on receiving the application that the wages set out in the order, judgment or certificate are still owing, the director may make a determination requiring payment of those wages and may file the determination in a Supreme Court registry.
- (5) A determination filed under subsection (4) is enforceable by the director in the same manner and with the same priorities as are provided in this Act for wages owing.
- (6) Any person served under section 81 with a determination made under this section, may appeal the determination to the Supreme Court within
- (a) 15 days after the date of service, if the person was served by registered mail, or
 - (b) 8 days after the date of service, if the person was personally served or served under section 122 (3).
- (7) The Rules of Court apply to an appeal under subsection (6) to the extent they are consistent with this section.
- (8) The Supreme Court has the same power that the tribunal has under section 113 to suspend the determination on application.

- (9) After hearing the appeal, the Supreme Court may confirm, vary or cancel the determination under appeal or refer the matter back to the director.

Warrant to carry out inspection powers

- 120** If satisfied by evidence given under oath or affirmation that there is reason to believe there are in a private residence records or other things that are relevant for the purposes of an investigation or appeal under this Act, a justice may issue a warrant authorizing the person named in the warrant to enter the private residence in accordance with the warrant in order to exercise the powers referred to in section 85 (1) (b) to (d) or 109 (1) (e) or (f).

Director cannot be required to give evidence in other proceedings

- 121** Except for a prosecution under this Act or an appeal to the Employment Standards Tribunal, the director or a delegate of the director must not be required by a court, board, tribunal or person to give evidence or produce records relating to information obtained for the purposes of this Act.

Service of determinations and demands

- 122** (1) A determination or demand that is required to be served on a person under this Act is deemed to have been served if
- (a) served on the person, or
 - (b) sent by registered mail to the person's last known address.
- (2) If service is by registered mail, the determination or demand is deemed to be served 8 days after the determination or demand is deposited in a Canada Post Office.
- (3) At the request of a person on whom a determination or demand is required to be served, the determination or demand may be transmitted to the person electronically or by fax machine.
- (4) A determination or demand transmitted under subsection (3) is deemed to have been served when the director receives an acknowledgment of the transmission from the person served.

Irregularities

- 123** A technical irregularity does not invalidate a proceeding under this Act.

Limitation period

- 124** No proceeding for an offence under this Act may be commenced in any court more than 2 years after the facts on which the proceeding is based first come to the director's knowledge.

Offences

- 125** (1) A person who contravenes a requirement of Parts 2 to 8 commits an offence.

Section 126

- (2) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence commits an offence.
- (3) Subsection (2) applies whether or not the corporation is prosecuted for the offence.
- (4) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Evidence and burden of proof

- 126
- (1) The production of a cheque, bill of exchange or order to pay on which is marked "Pursuant to clearing rules, this item must not be cleared again unless certified", or other words signifying that payment was not made by a savings institution, is evidence that payment was not made.
 - (2) A copy of a document issued under this Act by the minister or the director, and certified by the director as a true copy, is, without proof of the director's appointment or signature,
 - (a) evidence of the document, and
 - (b) evidence that the person issuing the document was authorized to do so.
 - (3) Subsection (2) applies also in respect of a copy of a document issued under this Act by the tribunal and certified by the registrar of the tribunal as a true copy.
 - (4) The burden is on the employer to prove
 - (a) that an employee is age 15 or older, or
 - (b) that an employee's pregnancy, a leave allowance by this Act or court attendance as a juror is not the reason for terminating the employment or for changing a condition of employment without the employee's consent.

Power to make regulations

- 127
- (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
 - (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
 - (a) excluding, on any conditions, for any periods, and in any circumstances that are considered advisable, a class of persons from all or part of this Act or the regulations;
 - (b) establishing conditions of employment for employees or classes of employees, whether or not they have been excluded from a part of this Act;
 - (c) respecting the licensing of employment agencies and farm labour contractors and the suspension or cancellation of their licences;
 - (d) respecting the duties of employment agencies and farm labour contractors;
 - (e) prescribing a form of employment contract that must be used by employers when employing domestics;

- (f) prescribing the information employers, or different classes of employers, must provide for the purpose of establishing and maintaining a register of employees working in private residences and the time limits for providing that information;
- (g) establishing minimum wages for employees or classes of employees;
- (h) respecting flexible work schedules;
- (i) governing time banks;
- (j) designating days as statutory holidays and respecting calculation of statutory holiday pay;
- (k) respecting applications for variances or renewal of variances;
- (l) specifying requirements of the regulations contravention of which may be the subject of a complaint under section 74;
- (m) prescribing interest rates for the purposes of sections 70 (5) and 88 and providing for different rates for different purposes;
- (n) prescribing a schedule of penalties that may vary according to the number of employees affected by a contravention of this Act or the regulations or the nature or frequency of the contraventions;
- (o) providing for appeals from determinations to a person or body other than the tribunal in cases involving the tribunal as an employer and providing for the enforcement of decisions on those appeals;
- (p) governing the payment of fees for licences issued or other things done under this Act;
- (q) governing the production and inspection of employers' records;
- (r) defining any word or expression used but not defined in this Act.

PART 15 – TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

Transition from former Act

- 128 (1) Despite the repeal of the former Act, an order, certificate, registration, licence, variance, authorization or referral issued or made under that Act remains in force until it expires or is suspended or cancelled under that Act.
- (2) If, before November 1, 1995, a decision was made by the director, an authorized representative of the director or an officer on a complaint made under the former Act, the remedy, review, appeal, enforcement and other provisions of that Act continue, despite the repeal of that Act, to apply to the complaint and to all subsequent proceedings in respect of the decision.
- (3) If, before November 1, 1995, no decision was made by the director, an authorized representative of the director or an officer on a complaint made under the former Act, the complaint is to be treated for all purposes, including section 80 of this Act, as a complaint made under this Act.

Section 129

- (4) Subject to subsections (5) and (6), section 63 applies to an employee whose employment began before November 1, 1995 and is terminated on or after that date.
- (5) An employer is liable to pay to an employee referred to in subsection (4), as compensation for length of service, an amount equal to the greater of the following:
 - (a) the number of weeks' wages the employee would have been entitled to under section 42 (3) of the former Act if the employment had been terminated without compliance with section 42 (1) of that Act;
 - (b) the amount the employee is entitled to under section 63 of this Act.
- (6) The employer's liability to an employee referred to in subsection (4) for compensation for length of service is deemed to be discharged if the employee is given notice according to section 42 (1) of the former Act or according to section 63 (3) of this Act, whichever entitles the employee to the longer notice period.

Transitional regulations

- 129**
- (1) The Lieutenant Governor in Council may make regulations considered necessary or advisable for the purpose of more effectively bringing into operation the provisions of this Act and to obviate any transitional difficulties encountered in doing so.
 - (2) Without limiting subsection (1), a regulation may suspend for the period the Lieutenant Governor in Council specifies the operation of a provision of an enactment if that provision would impede the effective operation of this Act.
 - (3) Unless earlier repealed, a regulation made under this section is repealed one year after it is enacted.

EMPLOYMENT STANDARDS — HISTORICAL TABLE

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EXPLANATORY NOTE

Amendments Not in Force: If there are any legislative changes to the Act that are not in force as of December 31, 1996, these are identified in *italics* at the beginning of the historical table. The “Section” column identifies the affected provisions of the Act. The “Citation” column identifies the amending legislation by its citation in the 1996 Statute Revision Supplement.

Legislative History: The second part of the table provides a legislative history of each section of the Act between the 1979 Statute Revision and the 1996 Statute Revision. The “Section” column identifies all sections of the Act in force on December 31, 1996. The “History” column for each section begins with the citation of the section immediately before the 1996 Statute Revision. This is followed by a list of citations for the legislation that enacted or amended the section between the 1979 Statute Revision and the 1996 Statute Revision (if a section was repealed and replaced during that period, these last citations begin at the most recent replacement).

Legislative citations have the format of “year-chapter-section”.

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