

# EMPLOYMENT STANDARDS AMENDMENT ACT, 2002

## CHAPTER 42

*Assented to May 30, 2002*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

*1 Section 1 (1) of the Employment Standards Act, R.S.B.C. 1996, c. 113, is amended*

*(a) by repealing the definitions of “day” and “determination” and substituting the following:*

“day” means

- (a) a 24 hour period ending at midnight, or
- (b) in relation to an employee’s shift that continues over midnight, the 24 hour period beginning at the start of the employee’s shift;

“determination” means any decision made by the director under section 9, 22 (2), 30 (2), 37 (3), 66, 68 (3), 73, 76 (3), 79, 98, 100 or 119; ,

*(b) in the definition of “determination”, as enacted by this Act, by striking out “9,”, by striking out “37 (3),” and by striking out “98,”,*

*(c) by repealing the definition of “flexible work schedule”,*

*(d) by repealing the definition of “overtime wages” and substituting the following:*

“overtime wages” means the wages an employee is entitled to receive under section 37 (4), (5) or (6) or 40; ,

*(e) by repealing the definition of “school student”,*

*(f) by adding the following definition:*

“settlement agreement” means a settlement agreement under section 78; ,

*(g) by repealing paragraph (d) of the definition of “wages” and substituting the following:*

(d) money required to be paid in accordance with

- (i) a determination, other than costs required to be paid under section 79 (1) (f), or

(ii) a settlement agreement or an order of the tribunal, and , *and*

*(h) by repealing the definition of “week” and substituting the following:*

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“week” means a period of 7 consecutive days beginning,

- (a) for the purpose of calculating overtime, on Sunday,
- (b) for the purposes of section 37, on Sunday, and
- (c) for any other purpose, on any day; .

**2 Sections 3 and 4 are repealed and the following substituted:**

**Scope of this Act**

- 3** (1) Subject to this section, this Act applies to all employees other than those excluded by regulation.
- (2) If a collective agreement contains any provision respecting a matter set out in Column 1 of the following table, the Part or provision of this Act specified opposite that matter in Column 2 does not apply in respect of employees covered by the collective agreement:

Column 1 Matter	Column 2 Part or Provision
Hours of work or overtime	Part 4
Statutory holidays	Part 5
Annual vacation or vacation pay	Part 7
Seniority retention, recall, termination of employment or layoff	section 63

- (3) If a collective agreement contains no provision respecting a matter set out in Column 1 of the following table, the Part or provision of this Act specified opposite that matter in Column 2 is deemed to be incorporated in the collective agreement as part of its terms:

Column 1 Matter	Column 2 Part or Provision
Hours of work or overtime	Part 4 except section 37
Statutory holidays	Part 5
Annual vacation or vacation pay	Part 7
Seniority retention, recall, termination of employment or layoff	section 63

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- (4) If a collective agreement contains any provision respecting a matter set out in one of the following specified provisions of this Act, that specified provision of this Act does not apply in respect of employees covered by the collective agreement:
- section 17 *[paydays]*;
  - section 18 (1) *[payment of wages when employer terminates]*;
  - section 18 (2) *[payment of wages when employee terminates]*;
  - section 20 *[how wages are paid]*;
  - section 22 *[assignment of wages]*;
  - section 23 *[employer's duty to make assigned payments]*;
  - section 24 *[how an assignment is cancelled]*;
  - section 25 (1) or (2) *[special clothing]*;
  - section 26 *[payments by employer to funds, insurers or others]*;
  - section 27 *[wage statements]*;
  - section 28 (1) *[content of payroll records]*;
  - section 28 (2) *[payroll record requirements]*.
- (5) If a collective agreement contains no provision respecting a matter set out in a provision specified in subsection (4), the specified provision of this Act is deemed to be incorporated in the collective agreement as part of its terms.
- (6) Parts 10, 11 and 13 of this Act do not apply in relation to the enforcement of the following provisions of this Act in respect of an employee covered by a collective agreement:
- section 9 *[employment of children]*;
  - section 10 *[no charge for hiring or providing information]*;
  - section 16 *[employers required to pay minimum wage]*;
  - section 21 *[deductions]*;
  - Part 6 *[leaves and jury duty]*;
  - section 64 *[group terminations]*;
  - section 65 *[exceptions to section 64]*;
  - section 67 *[rules about notice of termination]*;
  - section 68 *[rules about payments on termination]*.
- (7) If a dispute arises respecting the application, interpretation or operation of
- (a) a Part or provision of this Act deemed by subsection (3) or (5) to be incorporated in a collective agreement, or
  - (b) a provision specified in subsection (6),
- the grievance procedure contained in the collective agreement or, if applicable, deemed to be contained in the collective agreement under section 84 (3) of the *Labour Relations Code*, applies for the purposes of resolving the dispute.
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(8) Despite subsection (6), if an arbitration board makes a decision on the merits of a matter in dispute referred to in subsection (7) and the decision is in respect of wages, the arbitration board may refer the decision to the director for the purpose of collecting the wages and, for that purpose, the director may collect the wages under sections 87 to 97 and 99 as if the decision of the arbitration board were an order of the tribunal.

(9) In subsection (8), “**arbitration board**” has the same meaning as in Part 8 of the *Labour Relations Code*.

**Requirements of this Act cannot be waived**

- 4 The requirements of this Act and the regulations are minimum requirements and an agreement to waive any of those requirements, not being an agreement referred to in section 3 (2) or (4), has no effect.

3 *Section 6 is repealed.*

4 *Section 9 is repealed and the following substituted:*

**Employment of children**

- 9 A person must not employ a child under 15 years of age unless the conditions established by regulation under section 127 (2) (b.1) are met.

5 *Section 17 (2) is repealed and the following substituted:*

- (2) Subsection (1) does not apply to
- (a) overtime wages credited to an employee’s time bank, or
  - (b) vacation pay.

6 *Section 19 (4) and (5) is amended by striking out “Minister of Finance and Corporate Relations” and substituting “minister charged with the administration of the Financial Administration Act”.*

7 *Section 25 (2) (c) is amended by striking out “5 years” and substituting “2 years”.*

8 *Section 27 (2) and (3) is repealed and the following substituted:*

- (2) An employer may provide a wage statement to an employee electronically if the employer provides to the employee, through the workplace,
- (a) confidential access to the electronic wage statement, and
  - (b) a means of making a paper copy of that wage statement.

9 *Section 28 (2) (c) is amended by striking out “5 years” and substituting “2 years”.*

10 *Section 29 is repealed.*

**11 Section 30 is repealed and the following substituted:**

**Producer and farm labour contractor are liable for unpaid wages**

- 30** (1) 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.
- (2) Subsection (1) does not apply in respect of a producer if
- (a) the farm labour contractor is licensed under this Act at the time the producer engages the services of the farm labour contractor, and
  - (b) the producer satisfies the director that the producer paid the farm labour contractor for wages earned by each employee of the farm labour contractor for work done on behalf of the producer.

**12 Section 31 is repealed.**

**13 Section 32 (2) is amended by striking out “an employee to be available for work” and substituting “an employee to work or be available for work”.**

**14 Section 34 is repealed and the following substituted:**

**Minimum daily hours**

- 34** (1) Subject to subsections (2) and (3), if as required by an employer an employee reports for work on any day, the employer must pay the employee for a minimum of 2 hours at the regular wage whether or not the employee starts work, unless the employee is unfit to work or fails to comply with Part 3 of the *Workers Compensation Act*, or a regulation under that Part.
- (2) Whether or not the employee starts work, the employer under subsection (1) must pay the employee for a minimum of 4 hours at the employee’s regular wage if the employer had previously scheduled the employee to work for more than 8 hours that day, unless
- (a) the employee is unfit to work or fails to comply with Part 3 of the *Workers Compensation Act*, or a regulation under that Part, or
  - (b) the work is suspended for reasons completely beyond the employer’s control, including unsuitable weather conditions.
- (3) If the circumstance set out in subsection (2) (b) applies, the employer must pay the employee for a minimum of 2 hours at the employee’s regular wage.
- (4) If
- (a) the employee under subsection (1) is required to work longer than 2 hours, or
  - (b) the circumstances described in subsection (2) are applicable and the employee is required to work longer than 4 hours,

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the employer must pay the employee for the entire period the employee is required to work.

**15 Section 35 is repealed and the following substituted:**

**Maximum hours of work before overtime applies**

- 35** (1) An employer must pay an employee overtime wages in accordance with section 40 if the employer requires, or directly or indirectly allows, the employee to work more than 8 hours a day or 40 hours a week.
- (2) Subsection (1) does not apply for the purposes of an employee who is working under an averaging agreement under section 37.

**16 Section 36 (1) (b) is amended by striking out "pay an employee double the regular wage" and substituting "pay an employee 1 1/2 times the regular wage".**

**17 Section 37 is repealed and the following substituted:**

**Agreements to average hours of work**

- 37** (1) Despite sections 35, 36 (1) and 40 but subject to this section, an employer and employee may agree to average the employee's hours of work over a period of 1, 2, 3 or 4 weeks for the purpose of determining the employee's entitlement, if any, to overtime wages under subsections (4) and (6) of this section and wages payable under subsection (8) or (9) (b).
- (2) An averaging agreement under subsection (1) is not valid unless
- (a) the agreement
    - (i) is in writing,
    - (ii) is signed by the employer and employee before the start date provided in the agreement,
    - (iii) specifies the number of weeks over which the agreement applies,
    - (iv) specifies the work schedule for each day covered by the agreement,
    - (v) specifies the number of times, if any, that the agreement may be repeated, and
    - (vi) provides for a start date and an expiry date for the period specified under subparagraph (iii),
  - (b) the schedule in the agreement under paragraph (a) (iv) is in compliance with subsection (3), and
  - (c) the employee receives a copy of the agreement before the date on which the period specified in the agreement begins.
- (3) A work schedule in an agreement under this section must not provide for more than the following hours of work for the employee:

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- (a) 40 hours, if the agreement specifies a 1 week period under subsection (2) (a) (iii);
    - (b) an average of 40 hours per week, if the agreement specifies more than a 1 week period under subsection (2) (a) (iii).
  - (4) An employer under this section who requires, or directly or indirectly allows, an employee to work more than 12 hours a day, at any time during the period specified in the agreement, must pay the employee double the employee's regular wage for the time over 12 hours.
  - (5) An employer under this section who requires, or directly or indirectly allows, an employee to work more than an average of 40 hours a week within the period specified in the agreement must pay the employee 1 1/2 times the employee's regular wage for the time over 40 hours.
  - (6) An employer under this section who requires, or directly or indirectly allows, an employee to work more than the hours scheduled for a day during the period of the agreement must pay the employee
    - (a) 1 1/2 times the employee's regular wage for,
      - (i) if fewer than 8 hours were scheduled for that day, any time worked over 8 hours, or
      - (ii) if 8 or more hours were scheduled for that day, any time worked over the number of hours scheduled, and
    - (b) double the employee's regular wage for any time worked over 12 hours that day.
  - (7) For the purpose of calculating average weekly hours for an employee under subsection (5),
    - (a) only the first 12 hours worked by the employee in each day are counted, no matter how long the employee works on any day of the week, and
    - (b) if subsection (6) applies, the time that the employee works beyond the scheduled hours and for which the employee is paid in accordance with that subsection, is excluded.
  - (8) Section 36 (1) applies in relation to an averaging agreement if the period specified in the agreement is 1 week.
  - (9) If the period specified in an averaging agreement is more than 1 week, the employer must either
    - (a) ensure that for each week covered by the agreement, the employee has an interval free from work of 32 consecutive hours, whether the interval is taken in the same week, different weeks or consecutively any time during the weeks covered by the agreement, or
    - (b) pay the employee 1 1/2 times the regular wage for time worked by the employee during the periods the employee would otherwise be entitled to have free from work under paragraph (a).
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- (10) At the employee's written request, the employer and employee may agree to adjust the work schedule referred to in subsection (2) (a) (iv) provided that the total number of hours scheduled in the agreement remain the same.
- (11) The parties to an averaging agreement under this section are bound by that agreement until the expiry date set out in the agreement or a later date provided in an agreement to repeat the averaging agreement, as the case may be, and the provisions of the averaging agreement apply for the purpose of determining the employee's entitlement, if any, to overtime wages under subsections (4) and (6) and wages payable under subsection (8) or (9) (b).
- (12) Subsections (2) to (11) are deemed to be incorporated in an averaging agreement under this section as terms of the agreement.
- (13) An employer must retain an averaging agreement under this section for 2 years after the employment terminates.
- (14) The application and operation of an averaging agreement under this section must not be interpreted as a waiver described in section 4.

**18 Section 38 is repealed.**

**19 Section 40 is amended**

**(a) by repealing subsections (1) and (2) and substituting the following:**

- (1) An employer must pay an employee who works over 8 hours a day, and is not working under an averaging agreement under section 37,
  - (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 12 hours.
- (2) An employer must pay an employee who works over 40 hours a week, and is not working under an averaging agreement under section 37, 1 1/2 times the employee's regular wage for the time over 40 hours. , **and**

**(b) by repealing subsection (4).**

**20 Section 41 is repealed.**

**21 Section 42 (2) is amended by striking out "under section 40 or 41." and substituting "under section 37 (4), (5) or (6) or 40."**

**22 Section 43 is repealed.**

**23 Sections 44 to 47 are repealed and the following substituted:**



**Entitlement to statutory holiday**

- 44** An employer must comply with section 45 or 46 in respect of an employee who has been employed by the employer for at least 30 calendar days before the statutory holiday and has
- (a) worked or earned wages for 15 of the 30 calendar days preceding the statutory holiday, or
  - (b) worked under an averaging agreement under section 37 at any time within that 30 calendar day period.

**Statutory holiday pay**

- 45** (1) An employee who is given a day off on a statutory holiday, or is given a day off instead of the statutory holiday under section 48, must be paid an amount equal to at least an average day's pay determined by the formula

$$\text{amount paid} \div \text{days worked}$$

where

amount paid is the amount paid or payable to the employee for work that is done during and wages that are earned within the 30 calendar day period preceding the statutory holiday, including vacation pay that is paid or payable for any days of vacation taken within that period, less any amounts paid or payable for overtime, and

days worked is the number of days the employee worked or earned wages within that 30 calendar day period.

- (2) The average day's pay provided under subsection (1) applies whether or not the statutory holiday falls on the employee's regularly scheduled day off.

**If employee is required to work on statutory holiday**

- 46** 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 12 hours,
  - (b) double the employee's regular wage for any time worked over 12 hours, and
  - (c) an average day's pay, as determined using the formula in section 45 (1).

**24 Section 48 is amended**

**(a) by repealing subsection (1) and substituting the following:**

- (1) An employer may for one or more employees at a workplace substitute another day off for a statutory holiday if the employer and the employee or a majority of those employees, as the case may be, agree to the substitution. , *and*

**(b) by repealing subsection (3) and substituting the following:**

- (3) An employer must retain for 2 years records of agreements made under subsection (1).

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25 *Section 49 is repealed.*

26 *Section 50 (1) is amended by striking out "17 weeks of unpaid leave" and substituting "17 consecutive weeks of unpaid leave".*

27 *Section 51 is amended*

(a) *in subsection (1) (d) by striking out "up to 37 consecutive weeks" and substituting "up to 37 consecutive weeks of unpaid leave",*

(b) *in subsection (2) by striking out "up to 5 additional weeks" and substituting "up to an additional 5 consecutive weeks", and*

(c) *in subsection (3) (b) by striking out "subsection (1) (a) or (b)," and substituting "subsection (1) (a), (b) or (c),".*

28 *Section 58 (2) (b) is repealed and the following substituted:*

(b) on the employee's scheduled paydays, if

(i) agreed in writing by the employer and the employee, or

(ii) provided by the collective agreement.

29 *Section 61 is repealed.*

30 *Section 63 is amended*

(a) *in subsection (3) (b) by striking out "notice and money" and substituting "written notice under subsection (3) (a) and money", and*

(b) *in subsection (5) by striking out "For the purpose of determining the termination date," and substituting "For the purpose of determining the termination date under this section,".*

31 *Section 64 (5) is repealed and the following substituted:*

(5) The notice and termination pay requirements of this section are in addition to the employer's liability, if any, to the employee in respect of individual termination under section 63 or under the collective agreement, as the case may be.

32 *Section 65 (1) (e) is amended by striking out "employed at a construction site" and substituting "employed at one or more construction sites".*

33 *Section 67 (1) (a) is amended by striking out "leave, strike or lockout" and substituting "leave, temporary layoff, strike or lockout".*

34 *Section 69 is repealed.*

35 *Section 70 is repealed.*

**36 Section 72 is amended**

**(a) by repealing paragraph (d) and substituting the following:**

(d) section 33 (split shifts);, **and**

**(b) by repealing paragraph (h) and substituting the following:**

(h) section 40 (overtime wages for employees not working under an averaging agreement);

(h.1) a period specified in section 37 (1) (number of weeks covered by an agreement to average hours of work);.

**37 Section 73 is amended**

**(a) by repealing subsection (1) (b) and substituting the following:**

(b) the variance is not inconsistent with the purposes of this Act set out in section 2., **and**

**(b) by adding the following subsection:**

(1.1) The application and operation of a variance under this Part must not be interpreted as a waiver described in section 4.

**38 Section 74 is amended by adding the following subsection:**

(3.1) Subsection (3) applies to an employee whose employment is terminated following a temporary layoff and, for that purpose, the last day of the temporary layoff is deemed to be the last day of employment referred to in subsection (3).

**39 Section 76 is repealed and the following substituted:****Investigations**

- 76** (1) Subject to subsection (3), the director must accept and review a complaint made under section 74.
- (2) The director may conduct an investigation to ensure compliance with this Act and the regulations, whether or not the director has received a complaint.
- (3) The director may refuse to accept, review, mediate, investigate or adjudicate a complaint or may stop or postpone reviewing, mediating, investigating or adjudicating a complaint if
- (a) the complaint is not made within the time limit specified 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) the employee has not taken the requisite steps specified by the director in order to facilitate resolution or investigation of the complaint,
  - (e) there is not enough evidence to prove the complaint,

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- (f) a proceeding relating to the subject matter of the complaint has been commenced before a court, a tribunal, an arbitrator or a mediator,
- (g) a court, a tribunal or an arbitrator has made a decision or an award relating to the subject matter of the complaint,
- (h) the dispute that caused the complaint may be dealt with under section 3 (7), or
- (i) the dispute that caused the complaint is resolved.

**40 Section 78 is repealed and the following substituted:****Settlement agreements**

- 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 agreement under paragraph (a);
  - (c) receive on behalf of an employee or other person any amount to be paid as a result of a settlement agreement under paragraph (a).
- (2) The director must pay money received under subsection (1) (c) to the person on whose behalf the money was received.
- (3) A person who is a party to a settlement agreement under subsection (1) (a) must comply with the terms of the settlement agreement.
- (4) If a person fails to comply with the terms of a settlement agreement under subsection (1) (a), the director may file the settlement agreement under section 91.
- (5) The application and operation of a settlement agreement under this section must not be interpreted as a waiver described in section 4.

**41 Section 79 is repealed and the following substituted:****Determinations and consequences**

- 79** (1) If satisfied that a person has contravened a requirement of this Act or the regulations, the director may require the person to do one or more of the following:
- (a) comply with the requirement;
  - (b) remedy or cease doing an act;
  - (c) post notice, in a form and location specified by the director, respecting
    - (i) a determination, or
    - (ii) a requirement of, or information about, this Act or the regulations;
  - (d) pay all wages to an employee by deposit to the credit of the employee's account in a savings institution;

- (e) employ, at the employer's expense, a payroll service for the payment of wages to an employee;
  - (f) pay any costs incurred by the director in connection with inspections under section 85 related to investigation of the contravention.
- (2) In addition to subsection (1), if satisfied that an employer has contravened a requirement of section 8 or 83 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.
- (3) In addition to subsection (1), if satisfied that an employer has contravened section 39, the director may require the employer to limit hours of work of employees to the hours or schedule specified by the director.
- (4) The director may make a requirement under subsection (1), (2) or (3) subject to any terms and conditions that the director considers appropriate.
- (5) The director must serve an employer with notice of a requirement imposed under subsection (1), (2) or (3), including any terms and conditions imposed under subsection (4).
- (6) A person on whom the director imposes a requirement under this section must comply with that requirement.
- (7) If the director requires a person to pay costs referred to in subsection (1) (f), the amount required to be paid is a debt due to the government and may be collected by the director in the same manner as wages.
- (8) If satisfied that the requirements of this Act and the regulations have not been contravened, the director must dismiss a complaint.

**42 Section 80 (1) (a) and (b) and (2) (a) (i) and (ii) is amended by striking out "24 months" and substituting "6 months".**

**43 Section 81 is amended**

**(a) by repealing subsection (1) (a), and**

**(b) by adding the following subsections:**

- (1.1) A person named in a determination under subsection (1) may request from the director written reasons for the determination.

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(1.2) A request under subsection (1.1) must be in writing and delivered to the director within 7 days of the person being served with the copy of the determination under subsection (1).

(1.3) On receipt of a request under and in accordance with subsections (1.1) and (1.2), the director must provide the person named in the determination with written reasons for that determination.

**44 Section 83 (2) is repealed.**

**45 Section 87 is amended**

(a) **in subsection (1) by striking out** “in a determination or order,” **and substituting** “in a determination, a settlement agreement or an order,”

(b) **in subsection (1.1) by striking out** “in a determination or order” **and substituting** “in a determination, a settlement agreement or an order”, **and**

(c) **in subsection (5) by striking out** “of a determination or an order of the tribunal,” **and substituting** “of a determination, a settlement agreement or an order of the tribunal,”.

**46 Section 88 is amended**

(a) **in subsection (2) by striking out** “date a determination is made under section 79” **and substituting** “date a determination is made under section 79 or a settlement agreement is made under section 78”, **and**

(b) **in subsection (5) by striking out** “payable by the Minister of Finance and Corporate Relations,” **and substituting** “payable by the minister charged with the administration of the *Financial Administration Act*,”.

**47 Section 89 is amended**

(a) **by repealing subsection (1) and substituting the following:**

(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, a settlement agreement or 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, settlement agreement or order, all or part of the money otherwise payable to the other person.,

(b) **in subsection (3) by striking out** “determination or under the order of the tribunal” **and substituting** “determination or settlement agreement or under the order of the tribunal”, **and**

(c) **in subsection (4) by striking out** “determination or under an order of the tribunal” **and substituting** “determination or settlement agreement or under an order of the tribunal”.

48 *Section 90 (2) is amended by striking out “determination or under an order of the tribunal,” and substituting “determination, a settlement agreement or an order of the tribunal.”*

49 *Section 91 is amended*

(a) *by repealing subsection (1) and substituting the following:*

(1) The director may at any time file in a Supreme Court registry a determination, a settlement agreement or an order of the tribunal, , *and*

(b) *by adding the following subsection:*

(3.1) A settlement agreement filed under this section 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 settlement agreement.

50 *Section 92 is repealed and the following substituted:*

#### **Seizure of assets**

92 (1) The director may seize as much of the assets owned or possessed by a person who is required to pay under a determination, a settlement agreement or 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, settlement agreement or order, and
- (b) the costs of seizure.

(2) The director must safely keep the assets under seizure until the earlier of the following, as applicable:

- (a) the determination, settlement agreement or order of the tribunal is filed in court under section 91 and a writ of seizure and sale has been executed;
- (b) in the case of a determination or an order of the tribunal, the determination or order is cancelled under section 86, 115, 116 or 119 (9).

51 *Section 93 is amended by striking out “a determination or under an order of the tribunal.” and substituting “a determination, a settlement agreement or an order of the tribunal.”*

52 *Section 94 (2) is amended by striking out “the determination or under the order of the tribunal.” and substituting “the determination, settlement agreement or order of the tribunal.”*

53 *Section 95 (b) is amended by striking out “a determination or in an order of the tribunal,” and substituting “a determination, a settlement agreement or an order of the tribunal.”*

54 *Section 96 (2) is repealed and the following substituted:*

(2) Despite subsection (1), a person who was a director or an officer of a corporation is not personally liable for

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- (a) any liability to an employee under section 63, termination pay or money payable in respect of individual or group terminations, if the corporation is in receivership,
- (b) any liability to an employee for wages, if the corporation is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act,
- (c) vacation pay that becomes payable after the director or officer ceases to hold office, or
- (d) money that remains in an employee's time bank after the director or officer ceases to hold office.

**55 Section 98 (1) is repealed and the following substituted:**

- (1) In accordance with the regulations, a person in respect of whom the director makes a determination and imposes a requirement under section 79 is subject to a monetary penalty prescribed by the regulations.
- (1.1) A penalty imposed under this section is in addition to and not instead of any requirement imposed under section 79.
- (1.2) A determination made by the director under section 79 must include a statement of the applicable penalty.

**56 Section 99 is amended****(a) by repealing subsections (1) to (3) and substituting the following:**

- (1) Subject to section 78 (2), the director must pay to the minister charged with the administration of the *Financial Administration Act* all money received by the director under this Act, including money to be held in trust for the persons named in a determination, a settlement agreement or an order of the tribunal.
- (2) Money received by the minister charged with the administration of the *Financial Administration Act* in respect of a determination, a settlement agreement or an order of the tribunal must be attributed
  - (a) first, to any wages required to be paid by the determination, settlement agreement or order,
  - (b) second, to any other amount, other than interest or penalties, required to be paid by the determination, settlement agreement or order,
  - (c) third, to interest required to be paid by the determination, settlement agreement or order, and
  - (d) last, to any penalties required to be paid by the determination or order.
- (3) The minister charged with the administration of the *Financial Administration Act* must pay, according to the direction of the director, to the persons named in a determination, a settlement agreement or an order of the tribunal, money received in trust for those persons. ,



- (b) *in subsection (4) by striking out “the determination or order” wherever it appears and substituting “the determination, settlement agreement or order”,*
- (c) *in subsection (7) by striking out “a determination or an order of the tribunal.” and substituting “a determination, a settlement agreement or an order of the tribunal.”, and*
- (d) *by repealing subsection (8) and substituting the following:*

(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 settlement agreement 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 settlement agreement or under the order.

**57 Section 108 is repealed and the following substituted:**

**Appeal and inquiry powers**

**108** For the purposes of an appeal or a reconsideration, 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*.

**58 Section 109 (1) is amended**

- (a) *by repealing paragraph (a),*
- (b) *in paragraph (c) by striking out “and about the steps to be followed before making recommendations under paragraph (a)”, and*
- (c) *by repealing paragraph (e) and substituting the following:*
  - (e) inspect any records that may be relevant to an appeal or a reconsideration; .

**59 Section 112 is repealed and the following substituted:**

**Appeal of director's determination**

- 112** (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
- (a) the director erred in law;
  - (b) the director failed to observe the principles of natural justice in making the determination;
  - (c) evidence has become available that was not available at the time the determination was being made.
- (2) A person who wishes to appeal a determination to the tribunal under subsection (1) must, within the appeal period established under subsection (3),
- (a) deliver to the office of the tribunal
    - (i) a written request specifying the grounds on which the appeal is based under subsection (1), and

- (ii) payment of the appeal fee, if any, prescribed by regulation, and
  - (b) deliver a copy of the request under paragraph (a) (i) to the director.
- (3) The appeal period referred to in subsection (2) is
  - (a) 30 days after the date of service of the determination, if the person was served by registered mail, and
  - (b) 21 days after the date of service of the determination, if the person was personally served or served under section 122 (3).
- (4) If, after an appeal is made by a person in accordance with subsections (2) and (3), the determination that is the subject of the appeal is varied by the director under section 86, the person, within 7 days of being notified of the variation,
  - (a) may amend the request for appeal under subsection (2) (a) (i) and deliver it to the tribunal, and
  - (b) if the request for appeal is amended, must deliver a copy of the amended request to the director.
- (5) On receiving a copy of the request under subsection (2) (b) or amended request under subsection (4) (b), the director must provide the tribunal with the record that was before the director at the time the determination, or variation of it, was made, including any witness statement and document considered by the director.
- (6) The filing of a determination under section 91 does not prevent the determination being appealed.
- (7) This section does not apply to a determination made under section 119.

**60 Section 114 (1) is repealed and the following substituted:**

- (1) The tribunal may dismiss an appeal without a hearing of any kind if satisfied that
  - (a) one or more of the requirements of section 112 (2) have not been met,
  - (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.

**61 Section 115 (1) is amended by striking out "After considering the appeal," and substituting "After considering whether the grounds for appeal have been met,".**

**62 Section 116 (1) (b) is amended by striking out "cancel or vary the order" and substituting "confirm, vary or cancel the order".**

**63 Section 117 (2) and (3) is repealed.**

**64 Section 127 (2) is amended**

**(a) by adding the following paragraph:**

- (a.1) providing that, in respect of an employee covered by a collective agreement,
  - (i) all or part of a regulation under this Act does not apply, or

- (ii) Parts 10, 11 and 13 of this Act do not apply in relation to the enforcement of all or part of a regulation under this Act and that if a dispute arises respecting the application, interpretation or operation of all or part of that regulation, the grievance procedure contained in the collective agreement or, if applicable, deemed to be contained in the collective agreement under section 84 (3) of the *Labour Relations Code*, applies for the purposes of resolving the dispute; ,

**(b) by adding the following paragraphs:**

- (b.1) establishing conditions that must be met before a person may employ a child under 15 years of age and establishing different conditions for different industries or classes of industries;
- (b.2) delegating authority to the director to impose, on the basis of prescribed criteria, conditions of employment in relation to children under 15 years of age;
- (b.3) prohibiting the employment of children under 12 years of age, providing for exceptions to the prohibition in respect of children employed in a prescribed industry and prescribing an industry for that purpose; ,

**(c) by repealing paragraph (h),**

**(d) in paragraph (m) by striking out “sections 70 (5) and 88” and substituting “section 88”,**

**(e) by adding the following paragraph:**

- (m.1) respecting steps the director may specify be taken by an employee under section 76 (3) (d); ,

**(f) by repealing paragraph (n) and substituting the following:**

- (n) prescribing penalties or schedules of penalties for determinations in respect of contraventions of a requirement of this Act or the regulations or a requirement imposed under section 100, which penalties or schedules of penalties may
- (i) vary according to the nature or frequency of the contraventions or the number of employees affected by any contravention, and
- (ii) provide for greater penalties for a second contravention and for third or subsequent contraventions in a 3 year period or any other period that may be prescribed; , and

**(g) by adding the following paragraph:**

- (n.1) prescribing an appeal fee for the purposes of section 112 (2) (a) (ii); .

**Transitional – repeal of flexible work schedules**

- 65** On the date that section 17 [*averaging agreements*] comes into force, a flexible work schedule under section 37 of the *Employment Standards Act*, as it read before that date, is cancelled.

Section 66

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**Commencement**

- 66** Sections 1 (b) to (d) and (h), 4, 5, 15 to 17, 19 to 21, 23, 36 (b), 55, 59 to 61 and 64 (b), (c) and (f) come into force by regulation of the Lieutenant Governor in Council.

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