

An Overview of *Employment Standards Act* Provisions

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1. Application of the Act

The *Employment Standards Act* sets out minimum standards for employment relating to work carried out in Ontario or outside of Ontario as a continuation to Ontario work (section 3). It is not applicable to work subject to federal jurisdiction (for example, telecommunications, atomic energy, federal civil service) or to diplomatic personnel, certain crown employees with respect to certain matters, and to work related to persons in a variety of specified situations as set out in section 3 (5):

1. A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled.
2. An individual who performs work under a program approved by a college of applied arts and technology or a university.
3. A participant in community participation under the *Ontario Works Act, 1997*.
4. An individual who is an inmate of a correctional institution within the meaning of the *Ministry of Correctional Services Act*, is an inmate of a penitentiary, is being held in a detention facility within the

meaning of the *Police Services Act* or is being held in a place of temporary detention or youth custody facility under the *Youth Criminal Justice Act* (Canada), if the individual participates inside or outside the institution, penitentiary, place or facility in a work project or rehabilitation program.

5. An individual who performs work under an order or sentence of a court or as part of an extrajudicial measure under the *Youth Criminal Justice Act* (Canada).

6. An individual who performs work in a simulated job or working environment if the primary purpose in placing the individual in the job or environment is his or her rehabilitation.

7. A holder of political, religious or judicial office.

8. A member of a quasi-judicial tribunal.

9. A holder of elected office in an organization, including a trade union.

10. A police officer, except as provided in Part XVI (Lie Detectors).

11. A director of a corporation, except as provided in Part XX (Liability of Directors), Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions), Part XXVII (Regulations) and Part XXVIII (Transition, Amendment, Repeals, Commencement and Short Title).

12. Any prescribed individuals.

2. Topics dealt with

Topics dealt with in the *Employment Standards Act* include

- continuity of employment (Part IV),
- payment of wages (Part V),
- records (Part VI),
- Hours of work and eating periods (Part VII),
- overtime pay (Part VIII),
- minimum wage (Part IX),
- public holidays (Part X),
- vacation with pay (Part X1),
- leaves of absence (Part XIV),
- termination and severance (Part XV).

3. Highlights of the standards

Highlights of the standards established by the Act are as follows:

Hours of work and eating periods:

- an employee cannot be made to work more than eight hours in a day unless the employer has established a regular workday of more than eight hours .
- the above limit may be exceeded up to an agreed-upon limit where the employee has agreed to work excess hours.
- employees must be given a period free of work equal to at least 24 hours in every consecutive seven days (section 18).

Overtime pay

- employers shall pay employees overtime pay equal to 1 1/2 times the employee's *regular rate* for every hour worked in excess of 44 hours in each week (section 22).
- for hourly-rated employees the regular rate is their hourly rate. For employees who are not paid by the hour (for example, salaried employees) their *regular rate* is calculated as the amount earned in a given work week divided by the number of non-overtime hours actually worked in that week.
- subject to an agreement otherwise, the determination of overtime hours can average hours over a period of two weeks or more.

Public holidays

- an employee is entitled, unless it is otherwise prescribed, to public holiday pay for work on a public holiday, equal to the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20 (section 24) . This amount must be no less than 1 1/2 times the employee's *regular rate*.
- If a public holiday falls on a worker's ordinary working day , the employee is entitled to the day off with pay (section 26).
- And employer and an employee may agree that the employee work on a public holiday, provided a paid vacation day is provided thereafter.

Vacation with pay

- an employee is entitled to a vacation of two weeks after each vacation entitlement year completed by the employee (Section 34).
- the employer determines when the vacation will be taken, provided that the vacation is to be taken no more than 10 months after the end of the vacation entitlement year, and the vacation is taken in a two week period or in two 1-week periods unless the employee otherwise agrees in writing (section 35) .
- vacation pay is paid in a lump sum before the commencement of the vacation (section 36).
- vacation pay is equal to at least 4 % of the employees earning during the period to which the vacation relates (section 35.2).

Termination and notice

- notice of termination, or pay in lieu of notice, must be given to an employee
- notice must be given on the basis of at least one week for the first full or part year of employment increasing by length of service to a final level of eight weeks for eight or more years of service (section 57) .

Regulation 285/01 to the *Employment Standards Act*

Regulation 285/01 to the *Employment Standards Act* sets the prescribed minimum standards for a variety of matters concerning the relationship between employer and employee and terms of employment, and prescribes blanket and specific exemptions and special rules for certain occupations (for example domestic workers, agricultural workers, commission auto sales are subject to a variety of exemptions and special terms; while certain professions such as law and medicine, real estate sales, teachers, commercial fishing, recreational workers, janitor/caretakers, and construction workers are subject to blanket exemptions from specific employment standards (for example, hours of work and overtime pay)).

1. Employment Types which are exempt from four major employment standards

Employment Types which are exempt from four major employment standards, namely, hours of work and eating periods, overtime pay, minimum wage, public holidays, and vacation with pay are set out in section 2 of the Regulation:

Exemptions from Parts VII to XI of Act

2. (1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed,
 - (a) as a duly qualified practitioner of,
 - (i) architecture,
 - (ii) law,
 - (iii) professional engineering,
 - (iv) public accounting,
 - (v) surveying, or
 - (vi) veterinary science;
 - (b) as a duly registered practitioner of,
 - (i) chiropody,
 - (ii) chiropractic,
 - (iii) dentistry,
 - (iv) massage therapy,
 - (v) medicine,
 - (vi) optometry,
 - (vii) pharmacy,
 - (viii) physiotherapy, or
 - (ix) psychology;
 - (c) as a duly registered practitioner under the *Drugless Practitioners Act*;
 - (d) as a teacher as defined in the *Teaching Profession Act*;
 - (e) as a student in training for an occupation mentioned in clause (a), (b), (c) or (d);
 - (f) in commercial fishing;
 - (g) as a salesperson or broker, as those persons are defined by the *Real Estate and Business Brokers Act, 2002*; or

- (h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,
 - (i) relate to goods or services, and
 - (ii) are normally made away from the employer's place of business.

(2) Subject to sections 24, 25, 26 and 27 of this Regulation, Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boar and cultured fish.

2. Exemptions respecting hours of work and eating periods

Exemptions from Part VII of the Act respecting hours of work and eating periods are set out in section 4 of the Regulation:

Exemptions from Part VII of Act

4. (1) Sections 17, 18 and 19 of the Act do not apply to,
- (a) a person employed as a firefighter as defined in section 1 of the *Fire Protection and Prevention Act, 1997*;
 - (b) a person whose work is supervisory or managerial in character and who may perform non-supervisory or nonmanagerial tasks on an irregular or exceptional basis;
 - (c) a person employed as a fishing or hunting guide;
 - (d) a construction employee;
 - (e) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building; or
 - (f) a person employed as an embalmer or funeral director. O. Reg. 285/01, s. 4 (1).
- (2) Sections 17 and 19 of the Act do not apply to a person employed,
- (a) as a landscape gardener; or
 - (b) to install and maintain swimming pools. O. Reg. 285/01, s. 4 (2).
- (3) Part VII of the Act does not apply to,
- (a) a person whose employment is directly related to,
 - (i) the growing of mushrooms,
 - (ii) the growing of flowers for the retail and wholesale trade,
 - (iii) the growing, transporting and laying of sod,
 - (iv) the growing of trees and shrubs for the wholesale and retail trade,
 - (v) the breeding and boarding of horses on a farm, or
 - (vi) the keeping of furbearing mammals, as defined in the *Fish and Wildlife Conservation Act, 1997*, for propagation or the production of pelts for commercial purposes;
 - (b) an information technology professional; or
 - (c) a person employed in the recorded visual and audio-visual entertainment production industry.

3. Minimum wage standards

Generally, the minimum wage set by the Regulation is \$8.00 per hour. The specific rules for minimum wage standards are set out in section 5(1.4) and 6 of the regulation:

Minimum wage

5. (1.4) From February 1, 2007 onwards, the prescribed minimum wage is as follows:

1. For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, \$7.50 an hour.
2. For an employee who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act*, \$6.95 an hour.
3. For the services of a hunting or fishing guide, \$40.00 for less than five consecutive hours in a day and \$80.00 for five or more hours in a day whether or not the hours are consecutive.
4. For an employee who is a homemaker, 110 per cent of the amount set out in paragraph 5.
5. For any other employee, \$8.00 an hour.

(2) If the calculation under paragraph 4 of subsection (1), (1.1), (1.2), (1.3) or (1.4), as the case may be, results in an hourly minimum wage that is an amount ending in a fraction of a cent, the hourly minimum wage shall be rounded up to the nearest cent.

(3) If an employee falls within both paragraphs 1 and 4 of subsection (1), (1.1), (1.2), (1.3) or (1.4), as the case may be, the employer shall pay the employee not less than the minimum wage set out in paragraph 4.

(4) If an employer provides room or board to an employee, the following are the amounts that shall be deemed to have been paid as wages for the purposes of determining whether the minimum wage set out in subsection (1), (1.1), (1.2), (1.3) or (1.4), as the case may be, has been paid:

(5) The amount provided in subsection (4) in respect of a room shall be deemed to have been paid as wages only if the room is,

- (a) reasonably furnished and reasonably fit for human habitation;
- (b) supplied with clean bed linen and towels; and
- (c) reasonably accessible to proper toilet and wash-basin facilities.

(6) Room or board shall not be deemed to have been paid by the employer to an employee as wages unless the employee has received the meals or occupied the room.

(7) For the purpose of determining whether an employee other than a student has been paid the minimum wage set out in subsection (1), (1.1), (1.2), (1.3) or (1.4), as the case may be, the employee shall be deemed to have worked for three hours if he or she,

- (a) regularly works more than three hours a day;
- (b) is required to present himself or herself for work; and
- (c) works less than three hours. O. Reg. 285/01, s. 5 (7); O. Reg. 401/03, s. 1 (5).

(8) Subsection (7) does not apply if the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work.

When work deemed to be performed

6. (1) Subject to subsection (2), work shall be deemed to be performed by an employee for the employer,

- (a) where work is,
 - (i) permitted or suffered to be done by the employer, or
 - (ii) in fact performed by an employee although a term of the contract of employment expressly forbids or limits hours of work or requires the employer to authorize hours of work in advance;
- (b) where the employee is not performing work and is required to remain at the place of employment,
 - (i) waiting or holding himself or herself ready for call to work, or
 - (ii) on a rest or break-time other than an eating period.

- (2) Work shall not be deemed to be performed for an employer during the time the employee,
- (a) is entitled to,
 - (i) take time off work for an eating period,
 - (ii) take at least six hours or such longer period as is established by contract, custom or practice for sleeping and the employer furnishes sleeping facilities, or
 - (iii) take time off work in order to engage in the employee's own private affairs or pursuits as is established by contract, custom or practice;
 - (b) is not at the place of employment and is waiting or holding himself or herself ready for call to work.

4. Exemptions from the minimum wage standards

Exemptions from the minimum wage standards are set out in section 7:

Exemptions from Part IX of Act

7. Part IX of the Act does not apply to,
- (a) a person who is employed as a student in a recreational program operated by a charitable organization registered under Part I of the *Income Tax Act* (Canada) and whose work or duties are directly connected with the recreational program;
 - (b) a person employed as a student to instruct or supervise children;
 - (c) a person employed as a student at a camp for children;
 - (d) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building.

5. Exemptions from the overtime pay standards

Exemptions, most notably for supervisory and managerial employees, from the overtime pay standards are set out in section 8:

Exemptions from Part VIII of Act

8. Part VIII of the Act does not apply to,
- (a) a person employed as a firefighter as defined in section 1 of the *Fire Protection and Prevention Act, 1997*;
 - (b) a person whose work is supervisory or managerial in character and who may perform non-supervisory or nonmanagerial tasks on an irregular or exceptional basis;
 - (c) a person employed as a fishing or hunting guide;
 - (d) a person employed,
 - (i) as a landscape gardener, or
 - (ii) to install and maintain swimming pools;
 - (e) a person whose employment is directly related to,
 - (i) the growing of mushrooms,
 - (ii) the growing of flowers for the retail and wholesale trade,
 - (iii) the growing, transporting and laying of sod,
 - (iv) the growing of trees and shrubs for the retail and wholesale trade,
 - (v) the breeding and boarding of horses on a farm, or
 - (vi) the keeping of furbearing mammals, as defined in the *Fish and Wildlife Conservation Act, 1997*, for propagation or the production of pelts for commercial purposes;

- (f) a person employed as a student to instruct or supervise children;
- (g) a person employed as a student at a camp for children;
- (h) a person who is employed as a student in a recreational program operated by a charitable organization registered under Part I of the *Income Tax Act* (Canada) and whose work or duties are directly connected with the recreational program;
- (i) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building;
- (j) a person employed as a taxi cab driver;
- (k) a person employed as an ambulance driver, ambulance driver's helper or first-aid attendant on an ambulance; or
- (l) an information technology professional.

6. Exemptions from public holiday standards

Exemptions from public holiday standards are set out in section 9:

Exemptions from Part X of Act

9. (1) Part X of the Act does not apply to,

- (a) a person employed as a firefighter as defined in section 1 of the *Fire Protection and Prevention Act, 1997*;
- (b) a person employed as a fishing or hunting guide;
- (c) a person employed,
 - (i) as a landscape gardener, or
 - (ii) to install and maintain swimming pools;
- (d) a person whose employment is directly related to,
 - (i) mushroom growing,
 - (ii) the growing of flowers for the retail and wholesale trade,
 - (iii) the growing, transporting and laying of sod,
 - (iv) the growing of trees and shrubs for the retail and wholesale trade,
 - (v) the breeding and boarding of horses on a farm, or
 - (vi) the keeping of furbearing mammals, as defined in the *Fish and Wildlife Conservation Act, 1997*, for propagation or the production of pelts for commercial purposes;
- (e) a person employed as a student to instruct or supervise children;
- (f) a person employed as a student at a camp for children;
- (g) a person who is employed as a student in a recreational program operated by a charitable organization registered under Part I of the *Income Tax Act* (Canada) and whose work or duties are directly connected with the recreational program;
- (h) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building;
- (i) a person employed as a taxi cab driver;
- (j) a person who is employed as a seasonal employee in a hotel, motel, tourist resort, restaurant or tavern and provided with room and board; or
- (k) a person who is employed under an arrangement whereby he or she may elect to work or not when requested to do so.

(2) Part X of the Act does not apply to a construction employee who works in the construction industry and receives 7.3 per cent or more of his or her hourly rate or wages for vacation pay or holiday pay.

7. Retail business exemptions regarding Sunday work

A retail business exemption regarding Sunday work is set out in section 10:

Application of s. 73 of Act

10. (1) Despite section 73 of the Act, an employee in a retail business establishment shall not refuse to work on a Sunday if he or she agreed, at the time of being hired, to work on Sundays.

Religious observance.

(2) Subsection (1) does not apply to an employee who declines to work on a Sunday for reasons of religious belief or religious observance.

(3) The employer shall not make an employee's agreement to work on Sundays a condition of being hired if the condition would be contrary to section 11 of the *Human Rights Code*.

8. Special rules

Special rules are set out in sections 11 to 29. The special rules are applicable to homemakers (section 11 & 12), road building, hotel/hospitality, fruit and vegetable processing, sewer and water main construction, local Cartage, and highway transport (with respect to overtime pay, sections 13 to 18), domestic workers (section 19), residential care workers (section 20 to 23), fruit and vegetable and tobacco harvesters, (section 24 to 27), commission automobile sector (section 28), elective employment (section 29).

Employment Standards Act, 2000
S.O. 2000, CHAPTER 41

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**PART I
DEFINITIONS**

Definitions

1. (1) In this Act,
- “agent” includes a trade union that represents an employee in collective bargaining; (“mandataire”)
- “alternative vacation entitlement year” means, with respect to an employee, a recurring 12-month period that begins on a date chosen by the employer, other than the first day of the employee’s employment; (“année de référence différente”)
- “arbitrator” includes,
- (a) a board of arbitration, and
 - (b) the Board, when it is acting under section 133 of the *Labour Relations Act, 1995*; (“arbitre”)
- “benefit plan” means a benefit plan provided for an employee by or through his or her employer; (“régime d’avantages sociaux”)
- “Board” means the Ontario Labour Relations Board; (“Commission”)
- “building services” means services for a building with respect to food, security and cleaning and any prescribed services for a building; (“services de gestion d’immeubles”)
- “building services provider” or “provider” means a person who provides building services for a premises and includes the owner or manager of a premises if the owner or manager provides building services for premises the person owns or manages; (“fournisseur de services de gestion d’immeubles”, “fournisseur”)
- “business” includes an activity, trade or undertaking; (“entreprise”)
- “collector” means a person, other than an employment standards officer, who is authorized by the Director to collect an amount owing under this Act; (“agent de recouvrement”)
- “continuous operation” means an operation or that part of an operation that normally continues 24 hours a day without cessation in each seven-day period until it is concluded for that period; (“exploitation à fonctionnement ininterrompu”)
- “Director” means the Director of Employment Standards; (“directeur”)
- “employee” includes,
- (a) a person, including an officer of a corporation, who performs work for an employer for wages,
 - (b) a person who supplies services to an employer for wages,
 - (c) a person who receives training from a person who is an employer, as set out in subsection (2), or
 - (d) a person who is a homeworker,
- and includes a person who was an employee; (“employé”)
- “employer” includes,
- (a) an owner, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it, and
 - (b) any persons treated as one employer under section 4, and includes a person who was an employer; (“employeur”)
- “employment contract” includes a collective agreement; (“contrat de travail”)
- “employment standard” means a requirement or prohibition under this Act that applies to an employer for the benefit of an employee; (“norme d’emploi”)
- “establishment”, with respect to an employer, means a location at which the employer carries on business but, if the employer carries on business at more than one location, separate locations constitute one establishment if,
- (a) the separate locations are located within the same municipality, or
 - (b) one or more employees at a location have seniority rights that extend to the other location under a written employment contract whereby the employee or employees may displace another employee of the same employer; (“établissement”)
- “homeworker” means an individual who performs work for compensation in premises occupied by the individual primarily as residential quarters but does not include an independent contractor; (“travailleur à domicile”)
- “hospital” means a hospital as defined in the *Hospital Labour Disputes Arbitration Act*; (“hôpital”)

- “labour relations officer” means a labour relations officer appointed under the *Labour Relations Act, 1995*; (“agent des relations de travail”)
- “Minister” means the Minister of Labour; (“ministre”)
- “Ministry” means the Ministry of Labour; (“ministère”)
- “overtime hour”, with respect to an employee, means,
- if one or more provisions in the employee’s employment contract or in another Act that applies to the employee’s employment provides a greater benefit for overtime than Part VIII (Overtime Pay), an hour of work in excess of the overtime threshold set out in that provision, and
 - otherwise, an hour of work in excess of the overtime threshold under this Act that applies to the employee’s employment; (“heure supplémentaire”)
- “person” includes a trade union; (“personne”)
- “premium pay” means an employee’s entitlement for working on a public holiday as described in subsection 24 (2); (“salaire majoré”)
- “prescribed” means prescribed by the regulations; (“prescrit”)
- “public holiday” means any of the following:
1. New Year’s Day.
 2. Good Friday.
 3. Victoria Day.
 4. Canada Day.
 5. Labour Day.
 6. Thanksgiving Day.
 7. Christmas Day.
 8. December 26.
 9. Any day prescribed as a public holiday; (“jour férié”)
- “public holiday pay” means an employee’s entitlement with respect to a public holiday as determined under subsection 24 (1); (“salaire pour jour férié”)
- “regular rate” means, subject to any regulation made under paragraph 10 of subsection 141 (1),
- for an employee who is paid by the hour, the amount earned for an hour of work in the employee’s usual work week, not counting overtime hours,
 - otherwise, the amount earned in a given work week divided by the number of non-overtime hours actually worked in that week; (“taux horaire normal”)
- “regular wages” means wages other than overtime pay, public holiday pay, premium pay, vacation pay, termination pay and severance pay and entitlements under a provision of an employee’s contract of employment that under subsection 5 (2) prevail over Part VIII, Part X, Part XI or Part XV; (“salaire normal”)
- “regular work day”, with respect to an employee who usually works the same number of hours each day, means a day of that many hours; (“journée normale de travail”)
- “regular work week”, with respect to an employee who usually works the same number of hours each week, means a week of that many hours but not including overtime hours; (“semaine normale de travail”)
- “regulations” means the regulations made under this Act; (“règlements”)
- “standard vacation entitlement year” means, with respect to an employee, a recurring 12-month period that begins on the first day of the employee’s employment; (“année de référence normale”)
- “statutory notice period” means,
- the period of notice of termination required to be given by an employer under Part XV, or
 - where the employer provides a greater amount of notice than is required under Part XV, that part of the notice period ending with the termination date specified in the notice which equals the period of notice required under Part XV; (“délai de préavis prévu par la loi”)

“stub period” means, with respect to an employee for whom the employer establishes an alternative vacation entitlement year that starts on or after the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force,

- (a) if the employee’s first alternative vacation entitlement year begins before the completion of his or her first 12 months of employment, the period that begins on the first day of employment and ends on the day before the start of the alternative vacation entitlement year,
- (b) if the employee’s first alternative vacation entitlement year begins after the completion of his or her first 12 months of employment, the period that begins on the day after the day on which his or her most recent standard vacation entitlement year ended and ends on the day before the start of the alternative vacation entitlement year; (“période tampon”)

“trade union” means an organization that represents employees in collective bargaining under any of the following:

1. The *Labour Relations Act, 1995*.
2. The *Crown Employees Collective Bargaining Act, 1993*.
3. Part X.1 of the *Education Act*.
4. Part IX of the *Fire Protection and Prevention Act, 1997*.
5. The *Colleges Collective Bargaining Act*.
6. Any prescribed Acts or provisions of Acts; (“syndicat”)

“vacation entitlement year” means an alternative vacation entitlement year or a standard vacation entitlement year; (“année de référence”)

“wages” means,

- (a) monetary remuneration payable by an employer to an employee under the terms of an employment contract, oral or written, express or implied,
 - (b) any payment required to be made by an employer to an employee under this Act, and
 - (c) any allowances for room or board under an employment contract or prescribed allowances,
- but does not include,
- (d) tips and other gratuities,
 - (e) any sums paid as gifts or bonuses that are dependent on the discretion of the employer and that are not related to hours, production or efficiency,
 - (f) expenses and travelling allowances, or
 - (g) subject to subsections 60 (3) or 62 (2), employer contributions to a benefit plan and payments to which an employee is entitled from a benefit plan; (“salaire”)

“work week” means,

- (a) a recurring period of seven consecutive days selected by the employer for the purpose of scheduling work, or
- (b) if the employer has not selected such a period, a recurring period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine de travail”) 2000, c. 41, s. 1 (1); 2001, c. 9, Sched. I, s. 1 (1); 2002, c. 18, Sched. J, s. 3 (1, 2).

Person receiving training

(2) For the purposes of clause (c) of the definition of “employee” in subsection (1), an individual receiving training from a person who is an employer is an employee of that person if the skill in which the individual is being trained is a skill used by the person’s employees, unless all of the following conditions are met:

1. The training is similar to that which is given in a vocational school.
2. The training is for the benefit of the individual.
3. The person providing the training derives little, if any, benefit from the activity of the individual while he or she is being trained.
4. The individual does not displace employees of the person providing the training.
5. The individual is not accorded a right to become an employee of the person providing the training.
6. The individual is advised that he or she will receive no remuneration for the time that he or she spends in training. 2000, c. 41, s. 1 (2).

Agreements in writing

(3) Unless otherwise provided, a reference in this Act to an agreement between an employer and an employee or to an employer and an employee agreeing to something shall be deemed to be a reference to an agreement in writing or to their agreeing in writing to do something. 2000, c. 41, s. 1 (3).

Exception

(4) Nothing in subsection (3) requires an employment contract that is not a collective agreement to be in writing. 2000, c. 41, s. 1 (4).

**PART II
POSTING OF INFORMATION CONCERNING RIGHTS AND OBLIGATIONS**

Minister to prepare poster

2. (1) The Minister shall prepare and publish a poster providing such information about this Act and the regulations as the Minister considers appropriate. 2004, c. 21, s. 1.

If poster not up to date

(2) If the Minister believes that the poster prepared under subsection (1) has become out of date, he or she shall prepare and publish a new poster. 2004, c. 21, s. 1.

Material to be posted

(3) Every employer shall post and keep posted in at least one conspicuous place in every workplace of the employer where it is likely to come to the attention of employees in that workplace a copy of the most recent poster published by the Minister under this section. 2004, c. 21, s. 1.

Where majority language not English

(4) If the majority language of a workplace of an employer is a language other than English, the employer shall make enquiries as to whether the Minister has prepared a translation of the poster into that language, and if the Minister has done so, the employer shall post and keep posted a copy of the translation next to the copy of the poster. 2004, c. 21, s. 1.

**PART III
HOW THIS ACT APPLIES**

To whom Act applies

3. (1) Subject to subsections (2) to (5), the employment standards set out in this Act apply with respect to an employee and his or her employer if,

- (a) the employee's work is to be performed in Ontario; or
- (b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario. 2000, c. 41, s. 3 (1).

Exception, federal jurisdiction

(2) This Act does not apply with respect to an employee and his or her employer if their employment relationship is within the legislative jurisdiction of the Parliament of Canada. 2000, c. 41, s. 3 (2).

Exception, diplomatic personnel

(3) This Act does not apply with respect to an employee of an embassy or consulate of a foreign nation and his or her employer. 2000, c. 41, s. 3 (3).

Exception, Crown employees

(4) Only the following provisions of this Act apply with respect to an employee and his or her employer if the employer is the Crown, a Crown agency or an authority, board, commission or corporation all of whose members are appointed by the Crown:

1. Part IV (Continuity of Employment).
2. Section 14.
3. Part XII (Equal Pay for Equal Work).
4. Part XIII (Benefit Plans).
5. Part XIV (Leaves of Absence).
6. Part XV (Termination and Severance of Employment).
7. Part XVI (Lie Detectors).

8. Part XVIII (Reprisal), except for subclause 74 (1) (a) (vii) and clause 74 (1) (b).
9. Part XIX (Building Services Providers). 2000, c. 41, s. 3 (4).

Other exceptions

(5) This Act does not apply with respect to the following individuals and any person for whom such an individual performs work or from whom such an individual receives compensation:

1. A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled.
2. An individual who performs work under a program approved by a college of applied arts and technology or a university.
3. A participant in community participation under the *Ontario Works Act, 1997*.
4. An individual who is an inmate of a correctional institution within the meaning of the *Ministry of Correctional Services Act*, is an inmate of a penitentiary, is being held in a detention facility within the meaning of the *Police Services Act* or is being held in a place of temporary detention or youth custody facility under the *Youth Criminal Justice Act* (Canada), if the individual participates inside or outside the institution, penitentiary, place or facility in a work project or rehabilitation program.
5. An individual who performs work under an order or sentence of a court or as part of an extrajudicial measure under the *Youth Criminal Justice Act* (Canada).
6. An individual who performs work in a simulated job or working environment if the primary purpose in placing the individual in the job or environment is his or her rehabilitation.
7. A holder of political, religious or judicial office.
8. A member of a quasi-judicial tribunal.
9. A holder of elected office in an organization, including a trade union.
10. A police officer, except as provided in Part XVI (Lie Detectors).
11. A director of a corporation, except as provided in Part XX (Liability of Directors), Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions), Part XXVII (Regulations) and Part XXVIII (Transition, Amendment, Repeals, Commencement and Short Title).
12. Any prescribed individuals. 2000, c. 41, s. 3 (5); 2006, c. 19, Sched. D, s. 7.

Dual roles

(6) Where an individual who performs work or occupies a position described in subsection (5) also performs some other work or occupies some other position and does so as an employee, nothing in subsection (5) precludes the application of this Act to that individual and his or her employer insofar as that other work or position is concerned. 2000, c. 41, s. 3 (6).

Separate persons treated as one employer

4. (1) Subsection (2) applies if,
 - (a) associated or related activities or businesses are or were carried on by or through an employer and one or more other persons; and
 - (b) the intent or effect of their doing so is or has been to directly or indirectly defeat the intent and purpose of this Act. 2000, c. 41, s. 4 (1).

Same

(2) The employer and the other person or persons described in subsection (1) shall all be treated as one employer for the purposes of this Act. 2000, c. 41, s. 4 (2).

Businesses need not be carried on at same time

- (3) Subsection (2) applies even if the activities or businesses are not carried on at the same time. 2000, c. 41, s. 4 (3).

Exception, individuals

(4) Subsection (2) does not apply with respect to a corporation and an individual who is a shareholder of the corporation unless the individual is a member of a partnership and the shares are held for the purposes of the partnership. 2000, c. 41, s. 4 (4).

Joint and several liability

(5) Persons who are treated as one employer under this section are jointly and severally liable for any contravention of this Act and the regulations under it and for any wages owing to an employee of any of them. 2000, c. 41, s. 4 (5).

No contracting out

5. (1) Subject to subsection (2), no employer or agent of an employer and no employee or agent of an employee shall contract out of or waive an employment standard and any such contracting out or waiver is void. 2000, c. 41, s. 5 (1).

Greater contractual or statutory right

(2) If one or more provisions in an employment contract or in another Act that directly relate to the same subject matter as an employment standard provide a greater benefit to an employee than the employment standard, the provision or provisions in the contract or Act apply and the employment standard does not apply. 2000, c. 41, s. 5 (2).

Settlement by trade union binding

6. A settlement made on an employee's behalf by a trade union that represents the employee is binding on the employee. 2000, c. 41, s. 6.

Agents

7. An agreement or authorization that may lawfully be made or given by an employee under this Act may be made or given by his or her agent and is binding on the employee as if it had been made or given by the employee. 2000, c. 41, s. 7.

Civil proceedings not affected

8. (1) Subject to section 97, no civil remedy of an employee against his or her employer is affected by this Act. 2000, c. 41, s. 8 (1).

Notice

(2) Where an employee commences a civil proceeding against his or her employer under this Act, notice of the proceeding shall be served on the Director on a form approved by the Director on or before the date the civil proceeding is set down for trial. 2000, c. 41, s. 8 (2).

PART IV CONTINUITY OF EMPLOYMENT

Sale, etc., of business

9. (1) If an employer sells a business or a part of a business and the purchaser employs an employee of the seller, the employment of the employee shall be deemed not to have been terminated or severed for the purposes of this Act and his or her employment with the seller shall be deemed to have been employment with the purchaser for the purpose of any subsequent calculation of the employee's length or period of employment. 2000, c. 41, s. 9 (1).

Exception

(2) Subsection (1) does not apply if the day on which the purchaser hires the employee is more than 13 weeks after the earlier of his or her last day of employment with the seller and the day of the sale. 2000, c. 41, s. 9 (2).

Definitions

(3) In this section, "sells" includes leases, transfers or disposes of in any other manner, and "sale" has a corresponding meaning. 2000, c. 41, s. 9 (3).

Predecessor Acts

(4) For the purposes of subsection (1), employment with the seller includes any employment attributed to the seller under this section or a provision of a predecessor Act dealing with sales of businesses. 2000, c. 41, s. 9 (4).

New building services provider

10. (1) This section applies if the building services provider for a building is replaced by a new provider and an employee of the replaced provider is employed by the new provider. 2000, c. 41, s. 10 (1).

No termination or severance

(2) The employment of the employee shall be deemed not to have been terminated or severed for the purposes of this Act and his or her employment with the replaced provider shall be deemed to have been employment with the new provider for the purpose of any subsequent calculation of the employee's length or period of employment. 2000, c. 41, s. 10 (2).

Exception

(3) Subsection (2) does not apply if the day on which the new provider hires the employee is more than 13 weeks after the earlier of his or her last day of employment with the replaced provider and the day on which the new provider began servicing the premises. 2000, c. 41, s. 10 (3).

Predecessor Acts

(4) For the purposes of subsection (2), employment with the replaced provider includes any employment attributed to the replaced provider under this section or under a provision of a predecessor Act dealing with building services providers. 2000, c. 41, s. 10 (4).

**PART V
PAYMENT OF WAGES**

Payment of wages

11. (1) An employer shall establish a recurring pay period and a recurring pay day and shall pay all wages earned during each pay period, other than accruing vacation pay, no later than the pay day for that period. 2000, c. 41, s. 11 (1).

Manner of payment

- (2) An employer shall pay an employee's wages,
- (a) by cash;
 - (b) by cheque payable only to the employee; or
 - (c) in accordance with subsection (4). 2000, c. 41, s. 11 (2).

Place of payment by cash or cheque

(3) If payment is made by cash or cheque, the employer shall ensure that the cash or cheque is given to the employee at his or her workplace or at some other place agreeable to the employee. 2000, c. 41, s. 11 (3).

Direct deposit

- (4) An employer may pay an employee's wages by direct deposit into an account of a financial institution if,
- (a) the account is in the employee's name;
 - (b) no person other than the employee or a person authorized by the employee has access to the account; and
 - (c) unless the employee agrees otherwise, an office or facility of the financial institution is located within a reasonable distance from the location where the employee usually works. 2000, c. 41, s. 11 (4).

If employment ends

(5) If an employee's employment ends, the employer shall pay any wages to which the employee is entitled to the employee not later than the later of,

- (a) seven days after the employment ends; and
- (b) the day that would have been the employee's next pay day. 2000, c. 41, s. 11 (5).

Statement re wages

- 12.** (1) On or before an employee's pay day, the employer shall give to the employee a written statement setting out,
- (a) the pay period for which the wages are being paid;
 - (b) the wage rate, if there is one;
 - (c) the gross amount of wages and, unless the information is provided to the employee in some other manner, how that amount was calculated;
 - (d) REPEALED: 2002, c. 18, Sched. J, s. 3 (3).
 - (e) the amount and purpose of each deduction from wages;
 - (f) any amount with respect to room or board that is deemed to have been paid to the employee under subsection 23 (2); and
 - (g) the net amount of wages being paid to the employee. 2001, c. 9, Sched. I, s. 1 (2); 2002, c. 18, Sched. J, s. 3 (3).
- (2) REPEALED: 2002, c. 18, Sched. J, s. 3 (4).

Electronic copies

(3) The statement may be provided to the employee by electronic mail rather than in writing if the employee has access to a means of making a paper copy of the statement. 2000, c. 41, s. 12 (3).

Statement re wages on termination

12.1 On or before the day on which the employer is required to pay wages under subsection 11 (5), the employer shall provide the employee with a written statement setting out,

- (a) the gross amount of any termination pay or severance pay being paid to the employee;
- (b) the gross amount of any vacation pay being paid to the employee;
- (c) unless the information is provided to the employee in some other manner, how the amounts referred to in clauses (a) and (b) were calculated;
- (d) the pay period for which any wages other than wages described in clauses (a) or (b) are being paid;
- (e) the wage rate, if there is one;
- (f) the gross amount of any wages referred to in clause (d) and, unless the information is provided to the employee in some other manner, how that amount was calculated;
- (g) the amount and purpose of each deduction from wages;
- (h) any amount with respect to room or board that is deemed to have been paid to the employee under subsection 23 (2); and
- (i) the net amount of wages being paid to the employee. 2002, c. 18, Sched. J, s. 3 (5).

Deductions, etc.

13. (1) An employer shall not withhold wages payable to an employee, make a deduction from an employee's wages or cause the employee to return his or her wages to the employer unless authorized to do so under this section. 2000, c. 41, s. 13 (1).

Statute or court order

(2) An employer may withhold or make a deduction from an employee's wages or cause the employee to return them if a statute of Ontario or Canada or a court order authorizes it. 2000, c. 41, s. 13 (2).

Employee authorization

(3) An employer may withhold or make a deduction from an employee's wages or cause the employee to return them with the employee's written authorization. 2000, c. 41, s. 13 (3).

Exception

(4) Subsections (2) and (3) do not apply if the statute, order or written authorization from the employee requires the employer to remit the withheld or deducted wages to a third person and the employer fails to do so. 2000, c. 41, s. 13 (4).

Same

- (5) Subsection (3) does not apply if,
 - (a) the employee's authorization does not refer to a specific amount or provide a formula from which a specific amount may be calculated;
 - (b) the employee's wages were withheld, deducted or required to be returned,
 - (i) because of faulty work,
 - (ii) because the employer had a cash shortage, lost property or had property stolen and a person other than the employee had access to the cash or property, or
 - (iii) under any prescribed conditions; or
 - (c) the employee's wages were required to be returned and those wages were the subject of an order under this Act. 2000, c. 41, s. 13 (5).

Priority of claims

14. (1) Despite any other Act, wages shall have priority over and be paid before the claims and rights of all other unsecured creditors of an employer, to the extent of \$10,000 per employee. 2000, c. 41, s. 14 (1).

Exception

(2) Subsection (1) does not apply with respect to a distribution made under the *Bankruptcy and Insolvency Act* (Canada) or other legislation enacted by the Parliament of Canada respecting bankruptcy or insolvency. 2001, c. 9, Sched. I, s. 1 (3).

PART VI RECORDS

Records

15. (1) An employer shall record the following information with respect to each employee, including an employee who is a homemaker:

1. The employee's name and address.
2. The employee's date of birth, if the employee is a student and under 18 years of age.
3. The date on which the employee began his or her employment.
4. The number of hours the employee worked in each day and each week.
5. The information contained in each written statement given to the employee under subsection 12 (1), section 12.1 and clause 36 (3) (b).
6. REPEALED: 2002, c. 18, Sched. J, s. 3 (7).

2000, c. 41, s. 15 (1); 2002, c. 18, Sched. J, s. 3 (6, 7).

Homeworkers

(2) In addition to the record described in subsection (1), the employer shall maintain a register of any homeworkers the employer employs showing the following information:

1. The employee's name and address.
2. The information that is contained in all statements required to be provided to the employee described in clause 12 (1) (b).
3. Any prescribed information. 2000, c. 41, s. 15 (2).

Exception

(3) An employer is not required to record the information described in paragraph 4 of subsection (1) with respect to an employee who is paid a salary if,

- (a) the employer records the number of hours in excess of those in his or her regular work week and,
 - (i) the number of hours in excess of eight that the employee worked in each day, or
 - (ii) if the number of hours in the employee's regular work day is more than eight hours, the number in excess; or
- (b) sections 17 to 19 and Part VIII (Overtime Pay) do not apply with respect to the employee. 2000, c. 41, s. 15 (3).

Meaning of salary

- (4) An employee is considered to be paid a salary for the purposes of subsection (3) if,
 - (a) the employee is entitled to be paid a fixed amount for each pay period; and
 - (b) the amount actually paid for each pay period does not vary according to the number of hours worked by the employee, unless he or she works more than 44 hours in a week. 2000, c. 41, s. 15 (4).

Retention of records

(5) The employer shall retain or arrange for some other person to retain the records of the information required under this section for the following periods:

1. For information referred to in paragraph 1 or 3 of subsection (1), three years after the employee ceased to be employed by the employer.
2. For information referred to in paragraph 2 of subsection (1), the earlier of,
 - i. three years after the employee's 18th birthday, or
 - ii. three years after the employee ceased to be employed by the employer.
3. For information referred to in paragraph 4 of subsection (1) or in subsection (3), three years after the day or week to which the information relates.
4. For information referred to in paragraph 5 of subsection (1), three years after the information was given to the employee.
5. REPEALED: 2002, c. 18, Sched. J, s. 3 (8).

2000, c. 41, s. 15 (5); 2002, c. 18, Sched. J, s. 3 (8).

Register of homeworkers

(6) Information pertaining to a homemaker may be deleted from the register three years after the homemaker ceases to be employed by the employer. 2000, c. 41, s. 15 (6).

Retain documents re leave

(7) An employer shall retain or arrange for some other person to retain all notices, certificates, correspondence and other documents given to or produced by the employer that relate to an employee taking pregnancy leave, parental leave, family medical leave, personal emergency leave or emergency leave during a declared emergency for three years after the day on which the leave expired. 2006, c. 13, s. 3 (1).

Retention of agreements re excess hours

(8) An employer shall retain or arrange for some other person to retain copies of every agreement that the employer has made with an employee permitting the employee to work hours in excess of the limits set out in subsection 17 (1) for three years after the last day on which work was performed under the agreement. 2004, c. 21, s. 2.

Retention of averaging agreements

(9) An employer shall retain or arrange for some other person to retain copies of every averaging agreement that the employer has made with an employee under clause 22 (2) (a) for three years after the last day on which work was performed under the agreement. 2004, c. 21, s. 2.

Record re vacation time and vacation pay

15.1 (1) An employer shall record information concerning an employee's entitlement to vacation time and vacation pay in accordance with this section. 2002, c. 18, Sched. J, s. 3 (9).

Content of record

(2) The employer shall record the following information:

1. The amount of vacation time, if any, that the employee had earned since the start of employment but had not taken before the start of the vacation entitlement year.
2. The amount of vacation time that the employee earned during the vacation entitlement year.
3. The amount of vacation time, if any, taken by the employee during the vacation entitlement year.
4. The amount of vacation time, if any, that the employee had earned since the start of employment but had not taken as of the end of the vacation entitlement year.
5. The amount of vacation pay paid to the employee during the vacation entitlement year.
6. The amount of wages on which the vacation pay referred to in paragraph 5 was calculated and the period of time to which those wages relate. 2002, c. 18, Sched. J, s. 3 (9).

Additional requirement, alternative vacation entitlement year

(3) If the employer establishes for an employee an alternative vacation entitlement year that starts on or after the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force, the employer shall record the following information for the stub period:

1. The amount of vacation time that the employee earned during the stub period.
2. The amount of vacation time, if any, that the employee took during the stub period.
3. The amount of vacation time, if any, earned but not taken by the employee during the stub period.
4. The amount of vacation pay paid to the employee during the stub period.
5. The amount of wages on which the vacation pay referred to in paragraph 4 was calculated and the period of time to which those wages relate. 2002, c. 18, Sched. J, s. 3 (9).

When information to be recorded

- (4) The employer shall record information under this section by a date that is not later than the later of,
 - (a) seven days after the start of the next vacation entitlement year or the first vacation entitlement year, as the case may be; and
 - (b) the first pay day of the next vacation entitlement year or of the first vacation entitlement year, as the case may be. 2002, c. 18, Sched. J, s. 3 (9).

Retention of records

(5) The employer shall retain or arrange for some other person to retain each record required under this section for three years after it was made. 2002, c. 18, Sched. J, s. 3 (9).

Exception

(6) Paragraphs 5 and 6 of subsection (2) and paragraphs 4 and 5 of subsection (3) do not apply with respect to an employee whose employer pays vacation pay in accordance with subsection 36 (3). 2002, c. 18, Sched. J, s. 3 (9).

Transition

(7) This section does not apply with respect to a vacation entitlement year or a stub period that is completed before the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force. 2002, c. 18, Sched. J, s. 3 (9).

Availability

16. An employer shall ensure that all of the records and documents required to be retained under sections 15 and 15.1 are readily available for inspection as required by an employment standards officer, even if the employer has arranged for another person to retain them. 2000, c. 41, s. 16; 2004, c. 21, s. 3.

**PART VII
HOURS OF WORK AND EATING PERIODS**

Limit on hours of work

17. (1) Subject to subsections (2) and (3), no employer shall require or permit an employee to work more than,
- (a) eight hours in a day or, if the employer establishes a regular work day of more than eight hours for the employee, the number of hours in his or her regular work day; and
 - (b) 48 hours in a work week. 2004, c. 21, s. 4.

Exception: hours in a day

(2) An employee's hours of work may exceed the limit set out in clause (1) (a) if the employee has made an agreement with the employer that he or she will work up to a specified number of hours in a day in excess of the limit and his or her hours of work in a day do not exceed the number specified in the agreement. 2004, c. 21, s. 4.

Exception: hours in a work week

- (3) An employee's hours of work may exceed the limit set out in clause (1) (b) if,
- (a) the employee has made an agreement with the employer that he or she will work up to a specified number of hours in a work week in excess of the limit;
 - (b) the employer has received an approval under section 17.1 that applies to the employee or to a class of employees that includes the employee; and
 - (c) the employee's hours of work in a work week do not exceed the lesser of,
 - (i) the number of hours specified in the agreement, and
 - (ii) the number of hours specified in the approval. 2004, c. 21, s. 4.

Same, pending approval

(4) Despite subsection (3), an employee's hours of work may exceed the limit set out in clause (1) (b) even though the employer has not received the approval described in clause (3) (b), if,

- (a) the employee has made an agreement described in clause (3) (a) with the employer;
- (b) the employer has served on the Director an application for an approval under section 17.1;
- (c) the application is for an approval that applies to the employee or to a class of employees that includes the employee;
- (d) 30 days have passed since the application was served on the Director;
- (e) the employer has not received a notice that the application has been refused;
- (f) the employer's most recent previous application, if any, for an approval under section 17.1 was not refused;
- (g) the most recent approval, if any, received by the employer under section 17.1 was not revoked;
- (h) the employer has posted and kept posted a copy of the application in at least one conspicuous place in the workplace where the employee works, so that it is likely to come to the employee's attention; and
- (i) the employee's hours of work in a work week do not exceed any of,
 - (i) the number of hours specified in the application,
 - (ii) the number of hours specified in the agreement, and
 - (iii) 60 hours. 2004, c. 21, s. 4.

Document re employee rights

- (5) An agreement described in subsection (2) or in clause (3) (a) is not valid unless,

- (a) the employer has, before the agreement is made, provided the employee with a copy of the most recent document published by the Director under section 21.1; and
- (b) the agreement contains a statement in which the employee acknowledges that he or she has received a document that the employer has represented is the most recent document published by the Director under section 21.1. 2004, c. 21, s. 4.

Revocation by employee

(6) An employee may revoke an agreement described in subsection (2) or in clause (3) (a) two weeks after giving written notice to the employer. 2004, c. 21, s. 4.

Revocation by employer

(7) An employer may revoke an agreement described in subsection (2) or in clause (3) (a) after giving reasonable notice to the employee. 2004, c. 21, s. 4.

Transition: certain agreements

- (8) For the purposes of this section,
 - (a) an agreement to exceed the limit on hours of work in a day set out in clause (1) (a) of this section as it read on February 28, 2005 shall be treated as if it were an agreement described in subsection (2);
 - (b) an agreement to exceed the limit on hours of work in a work week set out in clause (1) (b) of this section as it read on February 28, 2005 shall be treated as if it were an agreement described in clause (3) (a); and
 - (c) an agreement to exceed the limit on hours of work in a work week set out in clause (2) (b) of this section as it read on February 28, 2005 shall be treated as if it were an agreement described in clause (3) (a). 2004, c. 21, s. 4.

Document re employee rights – exceptions

- (9) Subsection (5) does not apply in respect of,
 - (a) an agreement described in subsection (8); or
 - (b) an agreement described in subsection (2) or in clause (3) (a) in respect of an employee who is represented by a trade union. 2004, c. 21, s. 4.

Transition: document re employee rights

(10) On or before June 1, 2005, an employer who made an agreement described in subsection (8) with an employee who is not represented by a trade union shall provide the employee with a copy of the most recent document published by the Director under section 21.1. 2004, c. 21, s. 4.

Transition: application for approval before commencement

(11) If the employer applies for an approval under section 17.1 before March 1, 2005, the 30-day period referred to in clause (4) (d) shall be deemed to end on the later of,

- (a) the last day of the 30-day period; and
- (b) March 1, 2005. 2004, c. 21, s. 4.

Hours in work week: application for approval

17.1 (1) An employer may apply to the Director for an approval allowing some or all of its employees to work more than 48 hours in a week. 2004, c. 21, s. 4.

Form

- (2) The application shall be in a form provided by the Director. 2004, c. 21, s. 4.

Service of application

- (3) The application shall be served on the Director,
 - (a) by being delivered to the Director's office on a day and at a time when it is open;
 - (b) by being mailed to the Director's office using a method of mail delivery that allows delivery to be verified; or
 - (c) by being sent to the Director's office by electronic transmission or by telephonic transmission of a facsimile. 2004, c. 21, s. 4.

When service effective

- (4) Service under subsection (3) shall be deemed to be effected,

- (a) in the case of service under clause (3) (a), on the day shown on a receipt or acknowledgment provided to the employer by the Director or his or her representative;
- (b) in the case of service under clause (3) (b), on the day shown in the verification;
- (c) in the case of service under clause (3) (c), on the day on which the electronic or telephonic transmission is made, subject to subsection (5). 2004, c. 21, s. 4.

Same

(5) Service shall be deemed to be effected on the next day on which the Director's office is not closed, if the electronic or telephonic transmission is made,

- (a) on a day on which the Director's office is closed; or
- (b) after 5 p.m. on any day. 2004, c. 21, s. 4.

Application to be posted

(6) An employer who makes an application under subsection (1) shall,

- (a) on the day the application is served on the Director, post a copy of the application in at least one conspicuous place in every workplace of the employer where the employee or class of employees in respect of whom the application applies works, so that it is likely to come to the attention of the employee or class of employees;
- (b) keep the copy or copies posted as set out in clause (a) until an approval is issued or a notice of refusal is given to the employer. 2004, c. 21, s. 4.

Criteria

(7) The Director may issue an approval to the employer if the Director is of the view that it would be appropriate to do so. 2004, c. 21, s. 4.

Same

(8) In deciding whether it is appropriate to issue an approval to the employer, the Director may take into consideration any factors that he or she considers relevant, and, without restricting the generality of the foregoing, he or she may consider,

- (a) any current or past contraventions of this Act or the regulations on the part of the employer;
- (b) the health and safety of employees; and
- (c) any prescribed factors. 2004, c. 21, s. 4.

Employees to whom approval applies

(9) An approval applies to the employee or class of employees specified in the approval, and applies to every employee in a specified class whether or not the employee was employed by the employer at the time the approval was issued. 2004, c. 21, s. 4.

Same

(10) For greater certainty, all the employees of the employer may constitute a specified class. 2004, c. 21, s. 4.

Approval to be posted

(11) An employer to whom an approval is issued shall,

- (a) remove the copy or copies of the application that were posted under subsection (6); and
- (b) post the approval or a copy of the approval in at least one conspicuous place in every workplace of the employer where the employee or class of employees in respect of whom the approval applies works, so that it is likely to come to the attention of the employee or class of employees. 2004, c. 21, s. 4.

Same

(12) The employer shall keep each approval or copy posted as set out in clause (11) (b) until the approval expires or is revoked, and shall then remove it. 2004, c. 21, s. 4.

Expiry

(13) An approval under this section expires on the date that is specified in the approval, which shall not be more than three years after the approval was issued. 2004, c. 21, s. 4.

Same

(14) Despite subsection (13), an approval under this section that would allow an employee to work more than 60 hours in a week shall specify an expiry date that is not more than one year after the approval was issued. 2004, c. 21, s. 4.

Conditions

(15) The Director may impose conditions on an approval. 2004, c. 21, s. 4.

Revocation

(16) The Director may revoke an approval on giving the employer such notice as the Director considers reasonable in the circumstances. 2004, c. 21, s. 4.

Criteria

(17) In deciding whether to impose conditions on or to revoke an approval, the Director may take into consideration any factors that he or she considers relevant, including but not limited to any factor that the Director could consider under subsection (8). 2004, c. 21, s. 4.

Further applications

(18) For greater certainty, nothing in this section prevents an employer from applying for an approval after an earlier approval expires or is revoked or after an application is refused. 2004, c. 21, s. 4.

Refusal to approve

(19) If the Director decides that it is inappropriate to issue an approval to the employer, the Director shall give notice to the employer that the application for approval has been refused. 2004, c. 21, s. 4.

Notice to be posted

(20) An employer who receives notice from the Director that an application has been refused shall,

- (a) remove the copy or copies of the application that were posted under subsection (6); and
- (b) for the 60-day period following the date on which the notice was issued, post and keep posted the notice or a copy of it in at least one conspicuous place in every workplace of the employer where the employee or the class of employees in respect of whom the application applied works, so that it is likely to come to the attention of that employee or class of employees. 2004, c. 21, s. 4.

Termination of old approvals

(21) Any approval granted by the Director under a regulation made under paragraph 8 of subsection 141 (1), as that paragraph read on February 28, 2005, ceases to have effect on March 1, 2005. 2004, c. 21, s. 4.

Time for applications

(22) An application under subsection (1) may be made on or after the day the *Employment Standards Amendment Act (Hours of Work and Other Matters)*, 2004 receives Royal Assent. 2004, c. 21, s. 4.

Non-application of s. 5 (2)

17.2 Despite subsection 5 (2), an employer shall not require or permit an employee to work more than the limit specified in clause 17 (1) (b), except in accordance with subsection 17 (3) or (4), even if one or more provisions in the employee's employment contract that directly relate to limits on hours of work provide a greater benefit, within the meaning of subsection 5 (2), to an employee than is provided by section 17. 2004, c. 21, s. 4.

Delegation by Director

17.3 (1) The Director may authorize an individual employed in the Ministry to exercise a power or to perform a duty conferred on the Director under section 17.1, either orally or in writing. 2004, c. 21, s. 4.

Residual powers

(2) The Director may exercise a power conferred on the Director under section 17.1 even if he or she has delegated it to a person under subsection (1). 2004, c. 21, s. 4.

Hours free from work

18. (1) An employer shall give an employee a period of at least 11 consecutive hours free from performing work in each day. 2000, c. 41, s. 18 (1); 2002, c. 18, Sched. J, s. 3 (10).

Exception

(2) Subsection (1) does not apply to an employee who is on call and called in during a period in which the employee would not otherwise be expected to perform work for his or her employer. 2000, c. 41, s. 18 (2).

Free from work between shifts

(3) An employer shall give an employee a period of at least eight hours free from the performance of work between shifts unless the total time worked on successive shifts does not exceed 13 hours or unless the employer and the employee agree otherwise. 2000, c. 41, s. 18 (3).

Weekly or biweekly free time requirements

- (4) An employer shall give an employee a period free from the performance of work equal to,
- (a) at least 24 consecutive hours in every work week; or
 - (b) at least 48 consecutive hours in every period of two consecutive work weeks. 2000, c. 41, s. 18 (4).

Exceptional circumstances

19. An employer may require an employee to work more than the maximum number of hours permitted under section 17 or to work during a period that is required to be free from performing work under section 18 only as follows, but only so far as is necessary to avoid serious interference with the ordinary working of the employer's establishment or operations:

1. To deal with an emergency.
2. If something unforeseen occurs, to ensure the continued delivery of essential public services, regardless of who delivers those services.
3. If something unforeseen occurs, to ensure that continuous processes or seasonal operations are not interrupted.
4. To carry out urgent repair work to the employer's plant or equipment. 2000, c. 41, s. 19.

Eating periods

20. (1) An employer shall give an employee an eating period of at least 30 minutes at intervals that will result in the employee working no more than five consecutive hours without an eating period. 2000, c. 41, s. 20 (1).

Exception

(2) Subsection (1) does not apply if the employer and the employee agree, whether or not in writing, that the employee is to be given two eating periods that together total at least 30 minutes in each consecutive five-hour period. 2000, c. 41, s. 20 (2).

Payment not required

21. An employer is not required to pay an employee for an eating period in which work is not being performed unless his or her employment contract requires such payment. 2000, c. 41, s. 21.

Director to prepare document

21.1 (1) The Director shall prepare and publish a document that describes such rights of employees and obligations of employers under this Part and Part VIII as the Director believes an employee should be made aware of in connection with an agreement referred to in subsection 17 (2) or clause 17 (3) (a). 2004, c. 21, s. 5.

If document not up to date

(2) If the Director believes that a document prepared under subsection (1) has become out of date, he or she shall prepare and publish a new document. 2004, c. 21, s. 5.

PART VIII OVERTIME PAY

Overtime threshold

22. (1) An employer shall pay an employee overtime pay of at least one and one-half times his or her regular rate for each hour of work in excess of 44 hours in each week or, if another threshold is prescribed, that prescribed threshold. 2000, c. 41, s. 22 (1).

Averaging

(2) An employee's hours of work may be averaged over separate, non-overlapping, contiguous periods of two or more consecutive weeks for the purpose of determining the employee's entitlement, if any, to overtime pay if,

- (a) the employee has made an agreement with the employer that his or her hours of work may be averaged over periods of a specified number of weeks;
- (b) the employer has received an approval under section 22.1 that applies to the employee or a class of employees that includes the employee; and
- (c) the averaging period does not exceed the lesser of,
 - (i) the number of weeks specified in the agreement, and
 - (ii) the number of weeks specified in the approval. 2004, c. 21, s. 6 (1).

Same, pending approval

(2.1) Despite subsection (2), an employee's hours of work may be averaged for the purpose of determining the employee's entitlement, if any, to overtime pay even though the employer has not received the approval described in clause (2) (b), if,

- (a) the employee has made an agreement described in clause (2) (a) with the employer;
- (b) the employer has served on the Director an application for an approval under section 22.1;
- (c) the application is for an approval that applies to the employee or to a class of employees that includes the employee;
- (d) 30 days have passed since the application was served on the Director;
- (e) the employer has not received a notice that the application has been refused;
- (f) the employer's most recent previous application, if any, for an approval under section 22.1 was not refused;
- (g) the most recent approval, if any, received by the employer under section 22.1 was not revoked; and
- (h) the employee's hours of work, pending the approval, are averaged over separate, non-overlapping, contiguous periods of not more than two consecutive weeks. 2004, c. 21, s. 6 (1).

Transition: certain agreements

(2.2) For the purposes of this section, each of the following agreements shall be treated as if it were an agreement described in clause (2) (a):

1. An agreement to average hours of work made under a predecessor to this Act.
2. An agreement to average hours of work made under this section as it read on February 28, 2005.
3. An agreement to average hours of work that complies with the conditions prescribed by the regulations made under paragraph 7 of subsection 141 (1) as it read on February 28, 2005. 2004, c. 21, s. 6 (1).

Term of agreement

(3) An averaging agreement is not valid unless it provides for an expiry date and, if it involves an employee who is not represented by a trade union, the expiry date shall not be more than two years after the day the agreement takes effect. 2000, c. 41, s. 22 (3).

Agreement may be renewed

(4) Nothing in subsection (3) prevents an employer and employee from agreeing to renew or replace an averaging agreement. 2000, c. 41, s. 22 (4).

Existing agreement

(5) An averaging agreement made before this Act comes into force that was approved by the Director under the *Employment Standards Act* is valid for the purposes of subsection (2) until,

- (a) one year after the day this section comes into force; or
- (b) if the employee is represented by a trade union and a collective agreement applies to the employee,
 - (i) the day a subsequent collective agreement that applies to the employee comes into operation, or
 - (ii) if no subsequent collective agreement comes into operation within one year after the existing agreement expires, at the end of that year. 2000, c. 41, s. 22 (5); 2001, c. 9, Sched. I, s. 1 (4).

Transition: application for approval before commencement

(5.1) If the employer applies for an approval under section 22.1 before March 1, 2005, the 30-day period referred to in clause (2.1) (d) shall be deemed to end on the later of,

- (a) the last day of the 30-day period; and
- (b) March 1, 2005. 2004, c. 21, s. 6 (2).

Agreement irrevocable

(6) No averaging agreement referred to in this section may be revoked before it expires unless the employer and the employee agree to revoke it. 2000, c. 41, s. 22 (6).

Time off in lieu

(7) The employee may be compensated for overtime hours by receiving one and one-half hours of paid time off work for each hour of overtime worked instead of overtime pay if,

- (a) the employee and the employer agree to do so; and
- (b) the paid time off work is taken within three months of the work week in which the overtime was earned or, with the employee's agreement, within 12 months of that work week. 2000, c. 41, s. 22 (7).

Where employment ends

(8) If the employment of an employee ends before the paid time off is taken under subsection (7), the employer shall pay the employee overtime pay for the overtime hours that were worked in accordance with subsection 11 (5). 2000, c. 41, s. 22 (8).

Changing work

(9) If an employee who performs work of a particular kind or character is exempted from the application of this section by the regulations or the regulations prescribe an overtime threshold of other than 44 hours for an employee who performs such work, and the duties of an employee's position require him or her to perform both that work and work of another kind or character, this Part shall apply to the employee in respect of all work performed by him or her in a work week unless the time spent by the employee performing that other work constitutes less than half the time that the employee spent fulfilling the duties of his or her position in that work week. 2000, c. 41, s. 22 (9).

Averaging: application for approval

22.1 (1) An employer may apply to the Director for an approval permitting the employer to average an employee's hours of work for the purpose of determining the employee's entitlement, if any, to overtime pay. 2004, c. 21, s. 7.

Form

(2) The application shall be in a form provided by the Director. 2004, c. 21, s. 7.

Service of application

(3) The application shall be served on the Director,

- (a) by being delivered to the Director's office on a day and at a time when it is open;
- (b) by being mailed to the Director's office using a method of mail delivery that allows delivery to be verified; or
- (c) by being sent to the Director's office by electronic transmission or by telephonic transmission of a facsimile. 2004, c. 21, s. 7.

When service effective

(4) Service under subsection (3) shall be deemed to be effected,

- (a) in the case of service under clause (3) (a), on the day shown on a receipt or acknowledgment provided to the employer by the Director or his or her representative;
- (b) in the case of service under clause (3) (b), on the day shown in the verification;
- (c) in the case of service under clause (3) (c), on the day on which the electronic or telephonic transmission is made, subject to subsection (5). 2004, c. 21, s. 7.

Same

(5) Service shall be deemed to be effected on the next day on which the Director's office is not closed, if the electronic or telephonic transmission is made,

- (a) on a day on which the Director's office is closed; or
- (b) after 5 p.m. on any day. 2004, c. 21, s. 7.

Criteria

(6) The Director may issue an approval to the employer if the Director is of the view that it would be appropriate to do so. 2004, c. 21, s. 7.

Same

(7) In deciding whether it is appropriate to issue the approval to the employer, the Director may take into consideration any factors that he or she considers relevant, and, without restricting the generality of the foregoing, he or she may consider,

- (a) any current or past contraventions of this Act or the regulations on the part of the employer;
- (b) the health and safety of employees; and
- (c) any prescribed factors. 2004, c. 21, s. 7.

Employees to whom approval applies

(8) An approval applies to the employee or class of employees specified in the approval, and applies to every employee in a specified class whether or not the employee was employed by the employer at the time the approval was issued. 2004, c. 21, s. 7.

Same

(9) For greater certainty, all the employees of the employer may constitute a specified class. 2004, c. 21, s. 7.

Approval to be posted

(10) An employer to whom an approval is issued shall post the approval or a copy of the approval in at least one conspicuous place in every workplace of the employer where the employee or the class of employees in respect of whom the approval applies works, so that it is likely to come to the attention of that employee or class of employees. 2004, c. 21, s. 7.

Same

(11) The employer shall keep each approval or copy posted as set out in subsection (10) until the approval expires or is revoked, and shall then remove it. 2004, c. 21, s. 7.

Expiry

(12) An approval under this section expires on the date on which the averaging agreement between the employer and the employee expires, or on the earlier date that the Director specifies in the approval. 2004, c. 21, s. 7.

Conditions

(13) The Director may impose conditions on an approval. 2004, c. 21, s. 7.

Revocation

(14) The Director may revoke an approval on giving the employer such notice as the Director considers reasonable in the circumstances. 2004, c. 21, s. 7.

Criteria

(15) In deciding whether to impose conditions on or to revoke an approval, the Director may take into consideration any factors that he or she considers relevant, including but not limited to any factor that the Director could consider under subsection (7). 2004, c. 21, s. 7.

Further applications

(16) For greater certainty, nothing in this section prevents an employer from applying for an approval after an earlier approval expires or is revoked or after an application is refused. 2004, c. 21, s. 7.

Refusal to approve

(17) If the Director decides that it is inappropriate to issue an approval to the employer, the Director shall give notice to the employer that the application for approval has been refused. 2004, c. 21, s. 7.

Termination of old approvals

(18) Any approval of an averaging agreement that is granted by the Director under a regulation made under paragraph 7 of subsection 141 (1), as that paragraph read on February 28, 2005, ceases to have effect on March 1, 2005. 2004, c. 21, s. 7.

Time for applications

(19) An application under subsection (1) may be made on or after the day the *Employment Standards Amendment Act (Hours of Work and Other Matters)*, 2004 receives Royal Assent. 2004, c. 21, s. 7.

Delegation by Director

22.2 (1) The Director may authorize an individual employed in the Ministry to exercise a power or to perform a duty conferred on the Director under section 22.1, either orally or in writing. 2004, c. 21, s. 7.

Residual powers

(2) The Director may exercise a power conferred on the Director under section 22.1 even if he or she has delegated it to a person under subsection (1). 2004, c. 21, s. 7.

PART IX MINIMUM WAGE

Minimum wage

23. (1) An employer shall pay employees at least the prescribed minimum wage. 2000, c. 41, s. 23 (1).

Room or board

(2) If an employer provides room or board to an employee, the prescribed amount with respect to room or board shall be deemed to have been paid by the employer to the employee as wages. 2000, c. 41, s. 23 (2).

Determining compliance

(3) Compliance with this Part shall be determined on a pay period basis. 2000, c. 41, s. 23 (3).

Hourly rate

- (4) Without restricting the generality of subsection (3), if the prescribed minimum wage applicable with respect to an employee is expressed as an hourly rate, the employer shall not be considered to have complied with this Part unless,
- (a) when the amount of regular wages paid to the employee in the pay period is divided by the number of hours he or she worked in the pay period, other than hours for which the employee was entitled to receive overtime pay or premium pay, the quotient is at least equal to the prescribed minimum wage; and
 - (b) when the amount of overtime pay and premium pay paid to the employee in the pay period is divided by the number of hours worked in the pay period for which the employee was entitled to receive overtime pay or premium pay, the quotient is at least equal to one and one half times the prescribed minimum wage. 2000, c. 41, s. 23 (4).

PART X PUBLIC HOLIDAYS

Public holiday pay

- 24.** (1) An employee's public holiday pay for a given public holiday shall be equal to,
- (a) the total amount of regular wages earned and vacation pay payable to the employee in the four work weeks before the work week in which the public holiday occurred, divided by 20; or
 - (b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation. 2000, c. 41, s. 24 (1); 2002, c. 18, Sched. J, s. 3 (12).

Premium pay

(2) An employer who is required under this Part to pay premium pay to an employee shall pay the employee at least one and one half times his or her regular rate. 2000, c. 41, s. 24 (2).

Two kinds of work

- 25.** (1) Subsection (2) applies with respect to an employee if,
- (a) an employee performs work of a particular kind or character in a work week in which a public holiday occurs;
 - (b) the regulations exempt employees who perform work of that kind or character from the application of this Part; and
 - (c) the duties of the employee's position also require him or her to perform work of another kind or character. 2000, c. 41, s. 25 (1).

Same

(2) This Part applies to the employee with respect to that public holiday unless the time spent by the employee performing the work referred to in clause (1) (b) constitutes more than half the time that the employee spent fulfilling the duties of his or her position in that work week. 2000, c. 41, s. 25 (2).

Public holiday ordinarily a working day

26. (1) If a public holiday falls on a day that would ordinarily be a working day for an employee and the employee is not on vacation that day, the employer shall give the employee the day off work and pay him or her public holiday pay for that day. 2000, c. 41, s. 26 (1).

Exception

(2) The employee has no entitlement under subsection (1) if he or she fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday. 2000, c. 41, s. 26 (2).

Agreement to work, ordinarily a working day

27. (1) An employee and employer may agree that the employee will work on a public holiday that would ordinarily be a working day for that employee, and if they do, section 26 does not apply to the employee. 2000, c. 41, s. 27 (1).

Employee's entitlement

- (2) Subject to subsections (3) and (4), if an employer and an employee make an agreement under subsection (1),
- (a) the employer shall pay to the employee wages at his or her regular rate for the hours worked on the public holiday and substitute another day that would ordinarily be a working day for the employee to take off work and for which he or she shall be paid public holiday pay as if the substitute day were a public holiday; or
 - (b) if the employee and the employer agree, the employer shall pay to the employee public holiday pay for the day plus premium pay for each hour worked on that day. 2000, c. 41, s. 27 (2).

Restriction

- (3) A day that is substituted for a public holiday under clause (2) (a) shall be,

- (a) a day that is no more than three months after the public holiday; or
- (b) if the employee and the employer agree, a day that is no more than 12 months after the public holiday. 2000, c. 41, s. 27 (3).

Where certain work not performed

- (4) The employee's entitlement under subsection (2) is subject to the following rules:
 - 1. If the employee, without reasonable cause, performs none of the work that he or she agreed to perform on the public holiday, the employee has no entitlement under subsection (2).
 - 2. If the employee, with reasonable cause, performs none of the work that he or she agreed to perform on the public holiday, the employer shall give the employee a substitute day off work in accordance with clause (2) (a) or, if an agreement was made under clause (2) (b), public holiday pay for the public holiday. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employee has no entitlement under subsection (2).
 - 3. If the employee performs some of the work that he or she agreed to perform on the public holiday but fails, without reasonable cause, to perform all of it, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2).
 - 4. If the employee performs some of the work that he or she agreed to perform on the public holiday but fails, with reasonable cause, to perform all of it, the employer shall give the employee wages at his or her regular rate for the hours worked on the public holiday and a substitute day off work in accordance with clause (2) (a) or, if an agreement was made under clause (2) (b), public holiday pay for the public holiday plus premium pay for each hour worked on the public holiday. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2).
 - 5. If the employee performs all of the work that he or she agreed to perform on the public holiday but fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2). 2000, c. 41, s. 27 (4); 2002, c. 18, Sched. J, s. 3 (13).

Requirement to work on a public holiday: certain operations

28. (1) If an employee is employed in a hospital, a continuous operation, or a hotel, motel, tourist resort, restaurant or tavern, the employer may require the employee to work on a public holiday that is ordinarily a working day for the employee and that is not a day on which the employee is on vacation, and if the employer does so, sections 26 and 27 do not apply to the employee. 2000, c. 41, s. 28 (1).

Employee's entitlement

- (2) Subject to subsections (3) and (4), if an employer requires an employee to work on a public holiday under subsection (1), the employer shall,
 - (a) pay to the employee wages at his or her regular rate for the hours worked on the public holiday and substitute another day that would ordinarily be a working day for the employee to take off work and for which he or she shall be paid public holiday pay as if the substitute day were a public holiday; or
 - (b) pay to the employee public holiday pay for the day plus premium pay for each hour worked on that day. 2000, c. 41, s. 28 (2).

Restriction

- (3) A day that is substituted for a public holiday under clause (2) (a) shall be,
 - (a) a day that is no more than three months after the public holiday; or
 - (b) if the employee and the employer agree, a day that is no more than 12 months after the public holiday. 2000, c. 41, s. 28 (3).

Where certain work not performed

- (4) The employee's entitlement under subsection (2) is subject to the following rules:
 - 1. If the employee, without reasonable cause, performs none of the work that he or she was required to perform on the public holiday, the employee has no entitlement under subsection (2).

2. If the employee, with reasonable cause, performs none of the work that he or she was required to perform on the public holiday, the employer shall give the employee a substitute day off work in accordance with clause (2) (a) or public holiday pay for the public holiday under clause (2) (b), as the employer chooses. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employee has no entitlement under subsection (2).
3. If the employee performs some of the work that he or she was required to perform on the public holiday but fails, without reasonable cause, to perform all of it, he or she is entitled to premium pay for each hour worked on the public holiday but has no other entitlement under subsection (2).
4. If the employee performs some of the work that he or she was required to perform on the public holiday but fails, with reasonable cause, to perform all of it, the employer shall give the employee wages at his or her regular rate for the hours worked on the public holiday and a substitute day off work in accordance with clause (2) (a) or public holiday pay for the public holiday plus premium pay for each hour worked on the public holiday under clause (2) (b), as the employer chooses. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2).
5. If the employee performs all of the work that he or she was required to perform on the public holiday but fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2). 2000, c. 41, s. 28 (4); 2002, c. 18, Sched. J, s. 3 (14).

Public holiday not ordinarily a working day

29. (1) If a public holiday falls on a day that would not ordinarily be a working day for an employee or a day on which the employee is on vacation, the employer shall substitute another day that would ordinarily be a working day for the employee to take off work and for which he or she shall be paid public holiday pay as if the substitute day were a public holiday. 2000, c. 41, s. 29 (1).

Restriction

- (2) A day that is substituted for a public holiday under subsection (1) shall be,
 - (a) a day that is no more than three months after the public holiday; or
 - (b) if the employee and the employer agree, a day that is no more than 12 months after the public holiday. 2000, c. 41, s. 29 (2).

Employee on leave or lay-off

(2.1) If a public holiday falls on a day that would not ordinarily be a working day for an employee and the employee is on a leave of absence under section 46 or 48 or on a layoff on that day, the employee is entitled to public holiday pay for the day but has no other entitlement under this Part with respect to the public holiday. 2002, c. 18, Sched. J, s. 3 (15).

Layoff resulting in termination

(2.2) Subsection (2.1) does not apply to an employee if his or her employment has been terminated under clause 56 (1) (c) and the public holiday falls on or after the day on which the lay-off first exceeded the period of a temporary lay-off. 2002, c. 18, Sched. J, s. 3 (15).

Agreement re: public holiday pay

(3) An employer and an employee may agree that, instead of complying with subsection (1), the employer shall pay the employee public holiday pay for the public holiday, and if they do subsection (1) does not apply to the employee. 2000, c. 41, s. 29 (3).

Exception

(4) The employee has no entitlement under subsection (1), (2.1) or (3) if he or she fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday. 2000, c. 41, s. 29 (4); 2002, c. 18, Sched. J, s. 3 (16).

Agreement to work where not ordinarily a working day

30. (1) An employee and employer may agree that the employee will work on a public holiday that falls on a day that would not ordinarily be a working day for that employee or on a day on which the employee is on vacation, and if they do, section 29 does not apply to the employee. 2000, c. 41, s. 30 (1).

Employee's entitlement

- (2) Subject to subsections (3) and (4), if an employer and an employee make an agreement under subsection (1),
- (a) the employer shall pay to the employee wages at his or her regular rate for the hours worked on the public holiday and substitute another day that would ordinarily be a working day for the employee to take off work and for which he or she shall be paid public holiday pay as if the substitute day were a public holiday; or
 - (b) if the employer and employee agree, the employer shall pay the employee public holiday pay for the day plus premium pay for each hour worked. 2000, c. 41, s. 30 (2).

Restriction

- (3) A day that is substituted for a public holiday under clause (2) (a) shall be,
- (a) a day that is no more than three months after the public holiday; or
 - (b) if the employee and the employer agree, a day that is no more than 12 months after the public holiday. 2000, c. 41, s. 30 (3).

Where certain work not performed

- (4) The employee's entitlement under subsection (2) is subject to the following rules:
1. If the employee, without reasonable cause, performs none of the work that he or she agreed to perform on the public holiday, the employee has no entitlement under subsection (2).
 2. If the employee, with reasonable cause, performs none of the work that he or she agreed to perform on the public holiday, the employer shall give the employee a substitute day off work in accordance with clause (2) (a) or, if an agreement was made under clause (2) (b), public holiday pay for the public holiday. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employee has no entitlement under subsection (2).
 3. If the employee performs some of the work that he or she agreed to perform on the public holiday but fails, without reasonable cause, to perform all of it, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2).
 4. If the employee performs some of the work that he or she agreed to perform on the public holiday but fails, with reasonable cause, to perform all of the work that he or she agreed to perform on the public holiday, the employer shall give the employee wages at his or her regular rate for the hours worked on the public holiday and a substitute day off work in accordance with clause (2) (a) or, if an agreement was made under clause (2) (b), public holiday pay for the public holiday plus premium pay for each hour worked on the public holiday. However, if the employee also fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before the public holiday or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2).
 5. If the employee performs all of the work that he or she agreed to perform on the public holiday but fails, without reasonable cause, to work all of his or her last regularly scheduled day of work before or all of his or her first regularly scheduled day of work after the public holiday, the employer shall give the employee premium pay for each hour worked on the public holiday but the employee has no other entitlement under subsection (2). 2000, c. 41, s. 30 (4); 2002, c. 18, Sched. J, s. 3 (17).

Premium pay hours not overtime hours

31. If an employee receives premium pay for working on a public holiday, the hours worked shall not be taken into consideration in calculating overtime pay to which the employee may be entitled. 2000, c. 41, s. 31.

If employment ends

32. If the employment of an employee ends before a day that has been substituted for a public holiday under this Part, the employer shall pay the employee public holiday pay for that day in accordance with subsection 11 (5). 2000, c. 41, s. 32.

PART XI VACATION WITH PAY

Right to vacation

33. (1) An employer shall give an employee a vacation of at least two weeks after each vacation entitlement year that he or she completes. 2002, c. 18, Sched. J, s. 3 (18).

Active and inactive employment

(2) Both active employment and inactive employment shall be included for the purposes of subsection (1). 2002, c. 18, Sched. J, s. 3 (18).

Where vacation not taken in complete weeks

(3) If an employee does not take his or her vacation in complete weeks and the 12-month period of employment to which the vacation relates begins on or after the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force, the employer shall base the number of days of vacation that the employee is entitled to on,

- (a) the number of days in the employee's regular work week;
- (b) if the employee does not have a regular work week, the average number of days the employee worked per week during the most recently completed vacation entitlement year. 2002, c. 18, Sched. J, s. 3 (18).

Same

(4) If an employee does not take his or her vacation in complete weeks and the 12-month period of employment to which the vacation relates begins before the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force, the number of vacation days to which the employee is entitled shall be determined as follows:

1. If the 12-month period of employment ends before the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force, the number of days of vacation to which the employee is entitled shall be determined under subsection (3) of this section as it read before the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force.
2. If the 12-month period of employment had begun but not ended before the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force, the number of days of vacation to which the employee is entitled shall be the greater of,
 - i. the number of days to which he or she would have been entitled under subsection (3) of this section as it read before the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force, and
 - ii. the number of days to which he or she would be entitled under subsection (3) of this section as re-enacted by section 3 of Schedule J to the *Government Efficiency Act, 2002*. 2002, c. 18, Sched. J, s. 3 (18).

Alternative vacation entitlement year**Application**

34. (1) This section applies if the employer establishes for an employee an alternative vacation entitlement year that starts on or after the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force. 2002, c. 18, Sched. J, s. 3 (18).

Vacation for stub period

(2) The employer shall do the following with respect to the stub period:

1. The employer shall calculate the ratio between the stub period and 12 months.
2. If the employee has a regular work week, the employer shall give him or her a vacation for the stub period that is equal to two weeks multiplied by the ratio calculated under paragraph 1.
3. If the employee does not have a regular work week, the employer shall give him or her a vacation for the stub period that is equal to $2 \times A \times$ the ratio calculated under paragraph 1, where,

A = the average number of days the employee worked per work week in the stub period.

2002, c. 18, Sched. J, s. 3 (18).

Active and inactive employment

(3) Both active employment and inactive employment shall be included for the purposes of subsection (2). 2002, c. 18, Sched. J, s. 3 (18).

Timing of vacation

35. The employer shall determine when an employee shall take his or her vacation for a vacation entitlement year, subject to the following rules:

1. The vacation shall be completed no later than 10 months after the end of the vacation entitlement year for which it is given.
2. The vacation shall be a two-week period or two periods of one week each, unless the employee requests in writing that the vacation be taken in shorter periods and the employer agrees to that request. 2002, c. 18, Sched. J, s. 3 (18).

Timing of vacation, alternative vacation entitlement year

35.1 (1) This section applies if the employer establishes for an employee an alternative vacation entitlement year that starts on or after the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force. 2002, c. 18, Sched. J, s. 3 (18).

Same

(2) The employer shall determine when the employee shall take his or her vacation for the stub period, subject to the following rules:

1. The vacation shall be completed no later than 10 months after the start of the first alternative vacation entitlement year.
2. Subject to paragraphs 3 and 4, if the vacation entitlement is equal to two or more days, the vacation shall be taken in a period of consecutive days.
3. Subject to paragraph 4, if the vacation entitlement is equal to more than five days, at least five vacation days shall be taken in a period of consecutive days and the remaining vacation days may be taken in a separate period of consecutive days.
4. Paragraphs 2 and 3 do not apply if the employee requests in writing that the vacation be taken in shorter periods and the employer agrees to that request. 2002, c. 18, Sched. J, s. 3 (18).

Vacation pay

35.2 An employer shall pay vacation pay to an employee who is entitled to vacation under section 33 or 34 equal to at least 4 per cent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given. 2002, c. 18, Sched. J, s. 3 (18).

When to pay vacation pay

36. (1) Subject to subsections (2) to (4), the employer shall pay vacation pay to the employee in a lump sum before the employee commences his or her vacation. 2000, c. 41, s. 36 (1); 2001, c. 9, Sched. I, s. 1 (5).

Same

(2) If the employer pays the employee his or her wages in accordance with subsection 11 (4) or the employee does not take his or her vacation in complete weeks, the employer may pay the employee his or her vacation pay on or before the pay day for the period in which the vacation falls. 2000, c. 41, s. 36 (2).

Same

(3) The employer may pay the employee vacation pay that accrues during a pay period on the pay day for that period if the employer agrees that it may be paid in that manner and,

- (a) the statement of wages provided for that period under subsection 12 (1) sets out, in addition to the information required by that subsection, the amount of vacation pay that is being paid separately from the amount of other wages that is being paid; or
- (b) a separate statement setting out the amount of vacation pay that is being paid is provided to the employee at the same time that the statement of wages is provided under subsection 12 (1). 2000, c. 41, s. 36 (3); 2001, c. 9, Sched. I, s. 1 (6); 2002, c. 18, Sched. J, s. 3 (19, 20).

Same

(4) The employer may pay the employee vacation pay at a time agreed to by the employee. 2001, c. 9, Sched. I, s. 1 (7).

Payment during labour dispute

37. (1) If the employer has scheduled vacation for an employee and subsequently the employee goes on strike or is locked out during a time for which the vacation had been scheduled, the employer shall pay to the employee the vacation pay that would have been paid to him or her with respect to that vacation. 2000, c. 41, s. 37 (1).

Cancellation

(2) Subsection (1) applies despite any purported cancellation of the vacation. 2000, c. 41, s. 37 (2).

If employment ends

38. If an employee's employment ends at a time when vacation pay has accrued with respect to the employee, the employer shall pay the vacation pay that has accrued to the employee in accordance with subsection 11 (5). 2000, c. 41, s. 38.

Multi-employer plans

39. Sections 36, 37 and 38 do not apply with respect to an employee and his or her employer if,

- (a) the employee is represented by a trade union; and
- (b) the employer makes contributions for vacation pay to the trustees of a multi-employer vacation benefit plan. 2000, c. 41, s. 39; 2001, c. 9, Sched. I, s. 1 (8).

Vacation pay in trust

40. (1) Every employer shall be deemed to hold vacation pay accruing due to an employee in trust for the employee whether or not the employer has kept the amount for it separate and apart. 2000, c. 41, s. 40 (1).

Same

(2) An amount equal to vacation pay becomes a lien and charge upon the assets of the employer that in the ordinary course of business would be entered in books of account, even if it is not entered in the books of account. 2000, c. 41, s. 40 (2).

Approval to forego vacation

41. (1) If the Director approves and an employee's employer agrees, an employee may be allowed to forego taking vacation to which he or she is entitled under this part. 2000, c. 41, s. 41 (1).

Vacation pay

(2) Nothing in subsection (1) allows the employer to forego paying vacation pay. 2000, c. 41, s. 41 (2).

Vacation statements

41.1 (1) An employee is entitled to receive the following statements on making a written request:

1. After the end of a vacation entitlement year, a statement in writing that sets out the information contained in the record the employer is required to keep under subsection 15.1 (2).
2. After the end of a stub period, a statement in writing that sets out the information contained in the record the employer is required to keep under subsection 15.1 (3). 2002, c. 18, Sched. J, s. 3 (21).

When statement to be provided

- (2) Subject to subsection (3), the statement shall be provided to the employee not later than the later of,
- (a) seven days after the employee makes his or her request; and
 - (b) the first pay day after the employee makes his or her request. 2002, c. 18, Sched. J, s. 3 (21).

Same

(3) If the request is made during the vacation entitlement year or stub period to which it relates, the statement shall be provided to the employee not later than the later of,

- (a) seven days after the start of the next vacation entitlement year or the first vacation entitlement year, as the case may be; and
- (b) the first pay day of the next vacation entitlement year or of the first vacation entitlement year, as the case may be. 2002, c. 18, Sched. J, s. 3 (21).

Restriction re frequency

(4) The employer is not required to provide a statement to an employee more than once with respect to a vacation entitlement year or stub period. 2002, c. 18, Sched. J, s. 3 (21).

Exception

(5) This section does not apply with respect to an employee whose employer pays vacation pay in accordance with subsection 36 (3). 2002, c. 18, Sched. J, s. 3 (21).

Transition

(6) This section does not apply with respect to a vacation entitlement year that is completed before the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force. 2002, c. 18, Sched. J, s. 3 (21).

**PART XII
EQUAL PAY FOR EQUAL WORK**

Equal pay for equal work

42. (1) No employer shall pay an employee of one sex at a rate of pay less than the rate paid to an employee of the other sex when,

- (a) they perform substantially the same kind of work in the same establishment;
- (b) their performance requires substantially the same skill, effort and responsibility; and
- (c) their work is performed under similar working conditions. 2000, c. 41, s. 42 (1).

Exception

- (2) Subsection (1) does not apply when the difference in the rate of pay is made on the basis of,
- (a) a seniority system;

- (b) a merit system;
- (c) a system that measures earnings by quantity or quality of production; or
- (d) any other factor other than sex. 2000, c. 41, s. 42 (2).

Reduction prohibited

- (3) No employer shall reduce the rate of pay of an employee in order to comply with subsection (1). 2000, c. 41, s. 42 (3).

Organizations

- (4) No trade union or other organization shall cause or attempt to cause an employer to contravene subsection (1). 2000, c. 41, s. 42 (4).

Deemed wages

- (5) If an employment standards officer finds that an employer has contravened subsection (1), the officer may determine the amount owing to an employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that employee. 2000, c. 41, s. 42 (5).

PART XIII BENEFIT PLANS

Definition

- 43. In this Part,

“employer” means an employer as defined in subsection 1 (1), and includes a group or number of unaffiliated employers or an association of employers acting for an employer in relation to a pension plan, a life insurance plan, a disability insurance plan, a disability benefit plan, a health insurance plan or a health benefit plan. 2000, c. 41, s. 43.

Differentiation prohibited

- 44. (1) Except as prescribed, no employer or person acting directly on behalf of an employer shall provide, offer or arrange for a benefit plan that treats any of the following persons differently because of the age, sex or marital status of employees:

1. Employees.
2. Beneficiaries.
3. Survivors.
4. Dependants. 2000, c. 41, s. 44 (1); 2004, c. 15, s. 1.

Causing contravention prohibited

- (2) No organization of employers or employees and no person acting directly on behalf of such an organization shall, directly or indirectly, cause or attempt to cause an employer to contravene subsection (1). 2000, c. 41, s. 44 (2).

PART XIV LEAVES OF ABSENCE

Definitions

- 45. In this Part,

“parent” includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own, and “child” has a corresponding meaning; (“père ou mère”)

“spouse” means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage. (“conjoint”) 2000, c. 41, s. 45; 2001, c. 9, Sched. I, s. 1 (9); 2004, c. 15, s. 2; 2005, c. 5, s. 23.

PREGNANCY LEAVE

Pregnancy leave

- 46. (1) A pregnant employee is entitled to a leave of absence without pay unless her due date falls fewer than 13 weeks after she commenced employment. 2000, c. 41, s. 46 (1).

When leave may begin

- (2) An employee may begin her pregnancy leave no earlier than the earlier of,

- (a) the day that is 17 weeks before her due date; and
- (b) the day on which she gives birth. 2000, c. 41, s. 46 (2).

Exception

(3) Clause (2) (b) does not apply with respect to a pregnancy that ends with a still-birth or miscarriage. 2000, c. 41, s. 46 (3).

Latest day for beginning pregnancy leave

- (3.1) An employee may begin her pregnancy leave no later than the earlier of,
- (a) her due date; and
 - (b) the day on which she gives birth. 2001, c. 9, Sched. I, s. 1 (10).

Notice

- (4) An employee wishing to take pregnancy leave shall give the employer,
- (a) written notice at least two weeks before the day the leave is to begin; and
 - (b) if the employer requests it, a certificate from a legally qualified medical practitioner stating the due date. 2000, c. 41, s. 46 (4).

Notice to change date

- (5) An employee who has given notice to begin pregnancy leave may begin the leave,
- (a) on an earlier day than was set out in the notice, if the employee gives the employer a new written notice at least two weeks before that earlier day; or
 - (b) on a later day than was set out in the notice, if the employee gives the employer a new written notice at least two weeks before the day set out in the original notice. 2000, c. 41, s. 46 (5).

Same, complication, etc.

(6) If an employee stops working because of a complication caused by her pregnancy or because of a birth, still-birth or miscarriage that occurs earlier than the due date, subsection (4) does not apply and the employee shall, within two weeks after stopping work, give the employer,

- (a) written notice of the day the pregnancy leave began or is to begin; and
- (b) if the employer requests it, a certificate from a legally qualified medical practitioner stating,
 - (i) in the case of an employee who stops working because of a complication caused by her pregnancy, that she is unable to perform the duties of her position because of the complication and stating her due date,
 - (ii) in any other case, the due date and the actual date of the birth, still-birth or miscarriage. 2000, c. 41, s. 46 (6).

End of pregnancy leave

47. (1) An employee's pregnancy leave ends,
- (a) if she is entitled to parental leave, 17 weeks after the pregnancy leave began;
 - (b) if she is not entitled to parental leave, on the day that is the later of,
 - (i) 17 weeks after the pregnancy leave began, and
 - (ii) six weeks after the birth, still-birth or miscarriage. 2000, c. 41, s. 47 (1).

Ending leave early

(2) An employee may end her leave earlier than the day set out in subsection (1) by giving her employer written notice at least four weeks before the day she wishes to end her leave. 2000, c. 41, s. 47 (2).

Changing end date

- (3) An employee who has given notice under subsection (2) to end her pregnancy leave may end the leave,
- (a) on an earlier day than was set out in the notice, if the employee gives the employer a new written notice at least four weeks before the earlier day; or
 - (b) on a later day than was set out in the notice, if the employee gives the employer a new written notice at least four weeks before the day indicated in the original notice. 2000, c. 41, s. 47 (3).

Employee not returning

(4) An employee who takes pregnancy leave shall not terminate her employment before the leave expires or when it expires without giving the employer at least four weeks' written notice of the termination. 2000, c. 41, s. 47 (4).

Exception

(5) Subsection (4) does not apply if the employer constructively dismisses the employee. 2000, c. 41, s. 47 (5).

PARENTAL LEAVE

Parental leave

48. (1) An employee who has been employed by his or her employer for at least 13 weeks and who is the parent of a child is entitled to a leave of absence without pay following the birth of the child or the coming of the child into the employee's custody, care and control for the first time. 2000, c. 41, s. 48 (1).

When leave may begin

(2) An employee may begin parental leave no later than 52 weeks after the day the child is born or comes into the employee's custody, care and control for the first time. 2000, c. 41, s. 48 (2).

Restriction if pregnancy leave taken

(3) An employee who has taken pregnancy leave must begin her parental leave when her pregnancy leave ends unless the child has not yet come into her custody, care and control for the first time. 2000, c. 41, s. 48 (3).

Notice

(4) Subject to subsection (6), an employee wishing to take parental leave shall give the employer written notice at least two weeks before the day the leave is to begin. 2000, c. 41, s. 48 (4).

Notice to change date

(5) An employee who has given notice to begin parental leave may begin the leave,

- (a) on an earlier day than was set out in the notice, if the employee gives the employer a new written notice at least two weeks before that earlier day; or
- (b) on a later day than was set out in the notice, if the employee gives the employer a new written notice at least two weeks before the day set out in the original notice. 2000, c. 41, s. 48 (5).

If child earlier than expected

(6) If an employee stops working because a child comes into the employee's custody, care and control for the first time earlier than expected,

- (a) the employee's parental leave begins on the day he or she stops working; and
- (b) the employee must give the employer written notice that he or she is taking parental leave within two weeks after stopping work. 2000, c. 41, s. 48 (6).

End of parental leave

49. (1) An employee's parental leave ends 35 weeks after it began, if the employee also took pregnancy leave and 37 weeks after it began, otherwise. 2000, c. 41, s. 49 (1).

Ending leave early

(2) An employee may end his or her parental leave earlier than the day set out in subsection (1) by giving the employer written notice at least four weeks before the day he or she wishes to end the leave. 2000, c. 41, s. 49 (2).

Changing end date

(3) An employee who has given notice to end his or her parental leave may end the leave,

- (a) on an earlier day than was set out in the notice, if the employee gives the employer a new written notice at least four weeks before the earlier day; or
- (b) on a later day than was set out in the notice, if the employee gives the employer a new written notice at least four weeks before the day indicated in the original notice. 2000, c. 41, s. 49 (3).

Employee not returning

(4) An employee who takes parental leave shall not terminate his or her employment before the leave expires or when it expires without giving the employer at least four weeks' written notice of the termination. 2000, c. 41, s. 49 (4).

Exception

(5) Subsection (4) does not apply if the employer constructively dismisses the employee. 2000, c. 41, s. 49 (5).

FAMILY MEDICAL LEAVE

Family medical leave

49.1 (1) In this section,

“qualified health practitioner” means a person who is qualified to practise medicine under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (3) or, in the prescribed circumstances, a member of a prescribed class of health practitioners; (“praticien de la santé qualifié”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”) 2004, c. 15, s. 3.

Entitlement to leave

(2) An employee is entitled to a leave of absence without pay of up to eight weeks to provide care or support to an individual described in subsection (3) if a qualified health practitioner issues a certificate stating that the individual has a serious medical condition with a significant risk of death occurring within a period of 26 weeks or such shorter period as may be prescribed. 2004, c. 15, s. 3.

Application of subs. (2)

(3) Subsection (2) applies in respect of the following individuals:

1. The employee’s spouse.
2. A parent, step-parent or foster parent of the employee.
3. A child, step-child or foster child of the employee or the employee’s spouse.
4. Any individual prescribed as a family member for the purpose of this section. 2004, c. 15, s. 3.

Earliest date leave can begin

(4) The employee may begin a leave under this section no earlier than the first day of the week in which the period referred to in subsection (2) begins. 2004, c. 15, s. 3.

Latest date employee can remain on leave

(5) The employee may not remain on a leave under this section after the earlier of the following dates:

1. The last day of the week in which the individual described in subsection (3) dies.
2. The last day of the week in which the period referred to in subsection (2) ends. 2004, c. 15, s. 3.

Two or more employees

(6) If two or more employees take leaves under this section in respect of a particular individual, the total of the leaves taken by all the employees shall not exceed eight weeks during the period referred to in subsection (2) that applies to the first certificate issued for the purpose of this section. 2004, c. 15, s. 3.

Full-week periods

(7) An employee may take a leave under this section only in periods of entire weeks. 2004, c. 15, s. 3.

Advising employer

(8) An employee who wishes to take leave under this section shall advise his or her employer in writing that he or she will be doing so. 2004, c. 15, s. 3.

Same

(9) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it. 2004, c. 15, s. 3.

Copy of certificate

(10) If requested by the employer, the employee shall provide the employer with a copy of the certificate referred to in subsection (2) as soon as possible. 2004, c. 15, s. 3.

Further leave

(11) If an employee takes a leave under this section and the individual referred to in subsection (3) does not die within the period referred to in subsection (2), the employee may, in accordance with this section, take another leave and, for that purpose, the reference in subsection (6) to “the first certificate” shall be deemed to be a reference to the first certificate issued after the end of that period. 2004, c. 15, s. 3.

Leave under s. 50

(12) An employee's entitlement to leave under this section is in addition to any entitlement to leave under section 50. 2004, c. 15, s. 3.

EMERGENCY LEAVE

Note: On a day to be named by proclamation of the Lieutenant Governor, the heading before section 50 is repealed by the Statutes of Ontario, 2006, chapter 13, subsection 3 (2) and the following substituted:

PERSONAL EMERGENCY LEAVE

See: 2006, c. 13, ss. 3 (2), 5 (2).

Emergency leave

50. (1) An employee whose employer regularly employs 50 or more employees is entitled to a leave of absence without pay because of any of the following:

1. A personal illness, injury or medical emergency.
2. The death, illness, injury or medical emergency of an individual described in subsection (2).
3. An urgent matter that concerns an individual described in subsection (2). 2000, c. 41, s. 50 (1).

Same

(2) Paragraphs 2 and 3 of subsection (1) apply with respect to the following individuals:

1. The employee's spouse.
2. A parent, step-parent or foster parent of the employee or the employee's spouse.
3. A child, step-child or foster child of the employee or the employee's spouse.
4. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse.
5. The spouse of a child of the employee.
6. The employee's brother or sister.
7. A relative of the employee who is dependent on the employee for care or assistance. 2000, c. 41, s. 50 (2); 2004, c. 15, s. 4.

Advising employer

(3) An employee who wishes to take leave under this section shall advise his or her employer that he or she will be doing so. 2000, c. 41, s. 50 (3).

Same

(4) If the employee must begin the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it. 2000, c. 41, s. 50 (4).

Limit

(5) An employee is entitled to take a total of 10 days' leave under this section in each calendar year. 2000, c. 41, s. 50 (5); 2004, c. 21, s. 8.

Leave deemed to be taken in entire days

(6) If an employee takes any part of a day as leave under this section, the employer may deem the employee to have taken one day's leave on that day for the purposes of subsection (5). 2000, c. 41, s. 50 (6).

Evidence

(7) An employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave. 2000, c. 41, s. 50 (7).

EMERGENCY LEAVE, DECLARED EMERGENCIES

Emergency leave, declared emergencies

50.1 (1) An employee is entitled to a leave of absence without pay if the employee will not be performing the duties of his or her position because of an emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act* and,

- (a) because of an order that applies to him or her made under section 7.0.2 of the *Emergency Management and Civil Protection Act*;
- (b) because of an order that applies to him or her made under the *Health Protection and Promotion Act*;

- (c) because he or she is needed to provide care or assistance to an individual referred to in subsection (8); or
- (d) because of such other reasons as may be prescribed. 2006, c. 13, s. 3 (3).

Advising employer

(2) An employee who takes leave under this section shall advise his or her employer that he or she will be doing so. 2006, c. 13, s. 3 (3).

Same

(3) If the employee begins the leave before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it. 2006, c. 13, s. 3 (3).

Evidence of entitlement

(4) An employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances at a time that is reasonable in the circumstances that the employee is entitled to the leave. 2006, c. 13, s. 3 (3).

Limit

(5) An employee is entitled to take a leave under this section for as long as he or she is not performing the duties of his or her position because of an emergency declared under section 7.0.1 of the *Emergency Management and Civil Protection Act* and a reason referred to in clause (1) (a), (b), (c) or (d), but, subject to subsection (6), the entitlement ends on the day the emergency is terminated or disallowed. 2006, c. 13, s. 3 (3).

Same

(6) If an employee took leave because he or she was not performing the duties of his or her position because of an emergency that has been terminated or disallowed and because of an order made under subsection 7.0.2 (4) of the *Emergency Management and Civil Protection Act* and the order is extended under subsection 7.0.8 (4) of that Act, the employee's entitlement to leave continues during the period of the extension if he or she is not performing the duties of his or her position because of the order. 2006, c. 13, s. 3 (3).

Additional to entitlement under s. 50

(7) The entitlement to leave under this section is in addition to the entitlement to leave under section 50. 2006, c. 13, s. 3 (3).

Care or assistance, specified individuals

(8) Clause (1) (c) applies with respect to the following individuals:

1. The employee's spouse.
2. A parent, step-parent or foster parent of the employee or the employee's spouse.
3. A child, step-child or foster child of the employee or the employee's spouse.
4. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse.
5. The spouse of a child of the employee.
6. The employee's brother or sister.
7. A relative of the employee who is dependent on the employee for care or assistance. 2006, c. 13, s. 3 (3).

Definitions

(9) The definitions of "parent" and "spouse" in section 45 apply for the purpose of subsection (8). 2006, c. 13, s. 3 (3).

Retroactive order

(10) If an order made under section 7.0.2 of the *Emergency Management and Civil Protection Act* is made retroactive pursuant to subsection 7.2 (1) of that Act,

- (a) an employee who does not perform the duties of his or her position because of the declared emergency and the order is deemed to have been on leave beginning on the first day the employee did not perform the duties of his or her position on or after the date to which the order was made retroactive; and
- (b) clause 74 (1) (a) applies with necessary modifications in relation to the deemed leave described in clause (a). 2006, c. 13, s. 3 (3).

GENERAL PROVISIONS CONCERNING LEAVES

Rights during leave

51. (1) During any leave under this Part, an employee continues to participate in each type of benefit plan described in subsection (2) that is related to his or her employment unless he or she elects in writing not to do so. 2000, c. 41, s. 51 (1).

Benefit plans

(2) Subsection (1) applies with respect to pension plans, life insurance plans, accidental death plans, extended health plans, dental plans and any prescribed type of benefit plan. 2000, c. 41, s. 51 (2).

Employer contributions

(3) During an employee's leave under this Part, the employer shall continue to make the employer's contributions for any plan described in subsection (2) unless the employee gives the employer a written notice that the employee does not intend to pay the employee's contributions, if any. 2000, c. 41, s. 51 (3).

Leave and vacation conflict

51.1 (1) An employee who is on leave under this Part may defer taking vacation until the leave expires or, if the employer and employee agree to a later date, until that later date if,

- (a) under the terms of the employee's employment contract, the employee may not defer taking vacation that would otherwise be forfeited or the employee's ability to do so is restricted; and
- (b) as a result, in order to exercise his or her right to leave under this Part, the employee would have to,
 - (i) forfeit vacation or vacation pay, or
 - (ii) take less than his or her full leave entitlement. 2001, c. 9, Sched. I, s. 1 (11).

Leave and completion of vacation conflict

(2) If an employee is on leave under this Part on the day by which his or her vacation must be completed under paragraph 1 of section 35 or paragraph 1 of subsection 35.1 (2), the uncompleted part of the vacation shall be completed immediately after the leave expires or, if the employer and employee agree to a later date, beginning on that later date. 2001, c. 9, Sched. I, s. 1 (11); 2002, c. 18, Sched. J, s. 3 (22).

Alternative right, vacation pay

(3) An employee to whom this section applies may forego vacation and receive vacation pay in accordance with section 41 rather than completing his or her vacation under this section. 2001, c. 9, Sched. I, s. 1 (11).

Length of employment

52. (1) The period of an employee's leave under this Part shall be included in calculating any of the following for the purpose of determining his or her rights under an employment contract:

1. The length of his or her employment, whether or not it is active employment.
2. The length of the employee's service whether or not that service is active.
3. The employee's seniority. 2000, c. 41, s. 52 (1).

Exception

(2) The period of an employee's leave shall not be included in determining whether he or she has completed a probationary period under an employment contract. 2000, c. 41, s. 52 (2).

Reinstatement

53. (1) Upon the conclusion of an employee's leave under this Part, the employer shall reinstate the employee to the position the employee most recently held with the employer, if it still exists, or to a comparable position, if it does not. 2000, c. 41, s. 53 (1).

Exception

(2) Subsection (1) does not apply if the employment of the employee is ended solely for reasons unrelated to the leave. 2000, c. 41, s. 53 (2).

Wage rate

- (3) The employer shall pay a reinstated employee at a rate that is equal to the greater of,
- (a) the rate that the employee most recently earned with the employer; and
 - (b) the rate that the employee would be earning had he or she worked throughout the leave. 2000, c. 41, s. 53 (3).

**PART XV
TERMINATION AND SEVERANCE OF EMPLOYMENT**

TERMINATION OF EMPLOYMENT

No termination without notice

54. No employer shall terminate the employment of an employee who has been continuously employed for three months or more unless the employer,

- (a) has given to the employee written notice of termination in accordance with section 57 or 58 and the notice has expired; or
- (b) has complied with section 61. 2000, c. 41, s. 54.

Prescribed employees not entitled

55. Prescribed employees are not entitled to notice of termination or termination pay under this Part. 2000, c. 41, s. 55.

What constitutes termination

56. (1) An employer terminates the employment of an employee for purposes of section 54 if,

- (a) the employer dismisses the employee or otherwise refuses or is unable to continue employing him or her;
- (b) the employer constructively dismisses the employee and the employee resigns from his or her employment in response to that within a reasonable period; or
- (c) the employer lays the employee off for a period longer than the period of a temporary lay-off. 2000, c. 41, s. 56 (1).

Temporary lay-off

(2) For the purpose of clause (1) (c), a temporary layoff is,

- (a) a lay-off of not more than 13 weeks in any period of 20 consecutive weeks;
- (b) a lay-off of more than 13 weeks in any period of 20 consecutive weeks, if the lay-off is less than 35 weeks in any period of 52 consecutive weeks and,
 - (i) the employee continues to receive substantial payments from the employer,
 - (ii) the employer continues to make payments for the benefit of the employee under a legitimate retirement or pension plan or a legitimate group or employee insurance plan,
 - (iii) the employee receives supplementary unemployment benefits,
 - (iv) the employee is employed elsewhere during the lay-off and would be entitled to receive supplementary unemployment benefits if that were not so,
 - (v) the employer recalls the employee within the time approved by the Director, or
 - (vi) in the case of an employee who is not represented by a trade union, the employer recalls the employee within the time set out in an agreement between the employer and the employee; or
- (c) in the case of an employee represented by a trade union, a lay-off longer than a lay-off described in clause (b) where the employer recalls the employee within the time set out in an agreement between the employer and the trade union. 2000, c. 41, s. 56 (2); 2001, c. 9, Sched. I, s. 1 (12).

Definition

(3) In subsections (3.1) to (3.6),

“excluded week” means a week during which, for one or more days, the employee is not able to work, is not available for work, is subject to a disciplinary suspension or is not provided with work because of a strike or lock-out occurring at his or her place of employment or elsewhere. 2002, c. 18, Sched. J, s. 3 (23).

Lay-off, regular work week

(3.1) For the purpose of subsection (2), an employee who has a regular work week is laid off for a week if,

- (a) in that week, the employee earns less than one-half the amount he or she would earn at his or her regular rate in a regular work week; and
- (b) the week is not an excluded week. 2002, c. 18, Sched. J, s. 3 (23).

Effect of excluded week

(3.2) For the purpose of clauses (2) (a) and (b), an excluded week shall be counted as part of the periods of 20 and 52 weeks. 2002, c. 18, Sched. J, s. 3 (23).

Lay-off, no regular work week

(3.3) For the purposes of clauses (1) (c) and (2) (a), an employee who does not have a regular work week is laid off for a period longer than the period of a temporary lay-off if for more than 13 weeks in any period of 20 consecutive weeks he or she earns less than one-half the average amount he or she earned per week in the period of 12 consecutive weeks that preceded the 20-week period. 2002, c. 18, Sched. J, s. 3 (23).

Effect of excluded week

(3.4) For the purposes of subsection (3.3),

- (a) an excluded week shall not be counted as part of the 13 or more weeks but shall be counted as part of the 20-week period; and
- (b) if the 12-week period contains an excluded week, the average amount earned shall be calculated based on the earnings in weeks that were not excluded weeks and the number of weeks that were not excluded. 2002, c. 18, Sched. J, s. 3 (23).

Lay-off, no regular work week

(3.5) For the purposes of clauses (1) (c) and (2) (b), an employee who does not have a regular work week is laid off for a period longer than the period of a temporary lay-off if for 35 or more weeks in any period of 52 consecutive weeks he or she earns less than one-half the average amount he or she earned per week in the period of 12 consecutive weeks that preceded the 52-week period. 2002, c. 18, Sched. J, s. 3 (23).

Effect of excluded week

(3.6) For the purposes of subsection (3.5),

- (a) an excluded week shall not be counted as part of the 35 or more weeks but shall be counted as part of the 52-week period; and
- (b) if the 12-week period contains an excluded week, the average amount earned shall be calculated based on the earnings in weeks that were not excluded weeks and the number of weeks that were not excluded. 2002, c. 18, Sched. J, s. 3 (23).

Temporary lay-off not termination

(4) An employer who lays an employee off without specifying a recall date shall not be considered to terminate the employment of the employee, unless the period of the lay-off exceeds that of a temporary lay-off. 2000, c. 41, s. 56 (4).

Deemed termination date

(5) If an employer terminates the employment of an employee under clause (1) (c), the employment shall be deemed to be terminated on the first day of the lay-off. 2000, c. 41, s. 56 (5).

Employer notice period

57. The notice of termination under section 54 shall be given,

- (a) at least one week before the termination, if the employee's period of employment is less than one year;
- (b) at least two weeks before the termination, if the employee's period of employment is one year or more and fewer than three years;
- (c) at least three weeks before the termination, if the employee's period of employment is three years or more and fewer than four years;
- (d) at least four weeks before the termination, if the employee's period of employment is four years or more and fewer than five years;
- (e) at least five weeks before the termination, if the employee's period of employment is five years or more and fewer than six years;
- (f) at least six weeks before the termination, if the employee's period of employment is six years or more and fewer than seven years;
- (g) at least seven weeks before the termination, if the employee's period of employment is seven years or more and fewer than eight years; or
- (h) at least eight weeks before the termination, if the employee's period of employment is eight years or more. 2000, c. 41, s. 57.

Notice, 50 or more employees

58. (1) Despite section 57, the employer shall give notice of termination in the prescribed manner and for the prescribed period if the employer terminates the employment of 50 or more employees at the employer's establishment in the same four-week period. 2000, c. 41, s. 58 (1).

Information

(2) An employer who is required to give notice under this section,

- (a) shall provide to the Director the prescribed information in a form approved by the Director; and

- (b) shall, on the first day of the notice period, post in the employer's establishment the prescribed information in a form approved by the Director. 2000, c. 41, s. 58 (2).

Content

- (3) The information required under subsection (2) may include,
- (a) the economic circumstances surrounding the terminations;
 - (b) any consultations that have been or are proposed to take place with communities in which the terminations will take place or with the affected employees or their agent in connection with the terminations;
 - (c) any proposed adjustment measures and the number of employees expected to benefit from each; and
 - (d) a statistical profile of the affected employees. 2000, c. 41, s. 58 (3).

When notice effective

(4) The notice required under subsection (1) shall be deemed not to have been given until the Director receives the information required under clause (2) (a). 2000, c. 41, s. 58 (4).

Posting

(5) The employer shall post the information required under clause (2) (b) in at least one conspicuous place in the employer's establishment where it is likely to come to the attention of the affected employees and the employer shall keep that information posted throughout the notice period required under this section. 2000, c. 41, s. 58 (5).

Employee notice

- (6) An employee to whom notice has been given under this section shall not terminate his or her employment without first giving the employer written notice,
- (a) at least one week before doing so, if his or her period of employment is less than two years; or
 - (b) at least two weeks before doing so, if his or her period of employment is two years or more. 2000, c. 41, s. 58 (6).

Exception

(7) Subsection (6) does not apply if the employer constructively dismisses the employee or breaches a term of the employment contract, whether or not such a breach would constitute a constructive dismissal. 2000, c. 41, s. 58 (7).

Period of employment: included, excluded time

59. (1) Time spent by an employee on leave or other inactive employment is included in determining his or her period of employment. 2000, c. 41, s. 59 (1).

Exception

(2) Despite subsection (1), if an employee's employment was terminated as a result of a lay-off, no part of the lay-off period after the deemed termination date shall be included in determining his or her period of employment. 2000, c. 41, s. 59 (2).

Requirements during notice period

- 60.** (1) During a notice period under section 57 or 58, the employer,
- (a) shall not reduce the employee's wage rate or alter any other term or condition of employment;
 - (b) shall in each week pay the employee the wages the employee is entitled to receive, which in no case shall be less than his or her regular wages for a regular work week; and
 - (c) shall continue to make whatever benefit plan contributions would be required to be made in order to maintain the employee's benefits under the plan until the end of the notice period. 2000, c. 41, s. 60 (1).

No regular work week

(2) For the purposes of clause (1) (b), if the employee does not have a regular work week or if the employee is paid on a basis other than time, the employer shall pay the employee an amount equal to the average amount of regular wages earned by the employee per week for the weeks in which the employee worked in the period of 12 weeks immediately preceding the day on which notice was given. 2001, c. 9, Sched. I, s. 1 (13).

Benefit plan contributions

(3) If an employer fails to contribute to a benefit plan contrary to clause (1) (c), an amount equal to the amount the employer should have contributed shall be deemed to be unpaid wages for the purpose of section 103. 2000, c. 41, s. 60 (3).

Same

(4) Nothing in subsection (3) precludes the employee from an entitlement that he or she may have under a benefit plan. 2000, c. 41, s. 60 (4).

Pay instead of notice

61. (1) An employer may terminate the employment of an employee without notice or with less notice than is required under section 57 or 58 if the employer,

- (a) pays to the employee termination pay in a lump sum equal to the amount the employee would have been entitled to receive under section 60 had notice been given in accordance with that section; and
- (b) continues to make whatever benefit plan contributions would be required to be made in order to maintain the benefits to which the employee would have been entitled had he or she continued to be employed during the period of notice that he or she would otherwise have been entitled to receive. 2000, c. 41, s. 61 (1); 2001, c. 9, Sched. I, s. 1 (14).

No regular work week

(1.1) For the purposes of clause (1) (a), if the employee does not have a regular work week or is paid on a basis other than time, the amount the employee would have been entitled to receive under section 60 shall be calculated as if the period of 12 weeks referred to in subsection 60 (2) were the 12-week period immediately preceding the day of termination. 2001, c. 9, Sched. I, s. 1 (15).

Information to Director

(2) An employer who terminates the employment of employees under this section and would otherwise be required to provide notices of termination under section 58 shall comply with clause 58 (2) (a). 2000, c. 41, s. 61 (2).

Deemed active employment

62. (1) If an employer terminates the employment of employees without giving them part or all of the period of notice required under this Part, the employees shall be deemed to have been actively employed during the period for which there should have been notice for the purposes of any benefit plan under which entitlement to benefits might be lost or affected if the employees cease to be actively employed. 2000, c. 41, s. 62 (1).

Benefit plan contributions

(2) If an employer fails to contribute to a benefit plan contrary to clause 61 (1) (b), an amount equal to the amount the employer should have contributed shall be deemed to be unpaid wages for the purpose of section 103. 2000, c. 41, s. 62 (2).

Same

(3) Nothing in subsection (2) precludes the employee from an entitlement he or she may have under a benefit plan. 2000, c. 41, s. 62 (3).

SEVERANCE OF EMPLOYMENT

What constitutes severance

- 63.** (1) An employer severs the employment of an employee if,
- (a) the employer dismisses the employee or otherwise refuses or is unable to continue employing the employee;
 - (b) the employer constructively dismisses the employee and the employee resigns from his or her employment in response within a reasonable period;
 - (c) the employer lays the employee off for 35 weeks or more in any period of 52 consecutive weeks;
 - (d) the employer lays the employee off because of a permanent discontinuance of all of the employer's business at an establishment; or
 - (e) the employer gives the employee notice of termination in accordance with section 57 or 58, the employee gives the employer written notice at least two weeks before resigning and the employee's notice of resignation is to take effect during the statutory notice period. 2000, c. 41, s. 63 (1); 2002, c. 18, Sched. J, s. 3 (24).

Definition

(2) In subsections (2.1) to (2.4),

“excluded week” means a week during which, for one or more days, the employee is not able to work, is not available for work, is subject to a disciplinary suspension or is not provided with work because of a strike or lock-out occurring at his or her place of employment or elsewhere. 2002, c. 18, Sched. J, s. 3 (25).

Lay-off, regular work week

(2.1) For the purpose of clause (1) (c), an employee who has a regular work week is laid off for a week if,

- (a) in that week, the employee earns less than one-quarter the amount he or she would earn at his or her regular rate in a regular work week; and
- (b) the week is not an excluded week. 2002, c. 18, Sched. J, s. 3 (25).

Effect of excluded week

(2.2) For the purposes of clause (1) (c), an excluded week shall be counted as part of the period of 52 weeks. 2002, c. 18, Sched. J, s. 3 (25).

Lay-off, no regular work week

(2.3) For the purpose of clause (1) (c), an employee who does not have a regular work week is laid off for 35 or more weeks in any period of 52 consecutive weeks if for 35 or more weeks in any period of 52 consecutive weeks he or she earns less than one-quarter the average amount he or she earned per week in the period of 12 consecutive weeks that preceded the 52-week period. 2002, c. 18, Sched. J, s. 3 (25).

Effect of excluded week

(2.4) For the purposes of subsection (2.3),

- (a) an excluded week shall not be counted as part of the 35 or more weeks, but shall be counted as part of the 52-week period; and
- (b) if the 12-week period contains an excluded week, the average amount earned shall be calculated based on the earnings in weeks that were not excluded weeks and the number of weeks that were not excluded. 2002, c. 18, Sched. J, s. 3 (25).

Resignation

(3) An employee's employment that is severed under clause (1) (e) shall be deemed to have been severed on the day the employer's notice of termination would have taken effect if the employee had not resigned. 2000, c. 41, s. 63 (3).

Entitlement to severance pay

64. (1) An employer who severs an employment relationship with an employee shall pay severance pay to the employee if the employee was employed by the employer for five years or more and,

- (a) the severance occurred because of a permanent discontinuance of all or part of the employer's business at an establishment and the employee is one of 50 or more employees who have their employment relationship severed within a six-month period as a result; or
- (b) the employer has a payroll of \$2.5 million or more. 2000, c. 41, s. 64 (1).

Payroll

(2) For the purposes of subsection (1), an employer shall be considered to have a payroll of \$2.5 million or more if,

- (a) the total wages earned by all of the employer's employees in the four weeks that ended with the last day of the last pay period completed prior to the severance of an employee's employment, when multiplied by 13, was \$2.5 million or more; or
- (b) the total wages earned by all of the employer's employees in the last or second-last fiscal year of the employer prior to the severance of an employee's employment was \$2.5 million or more. 2000, c. 41, s. 64 (2); 2001, c. 9, Sched. I, s. 1 (16).

Exceptions

(3) Prescribed employees are not entitled to severance pay under this section. 2000, c. 41, s. 64 (3).

Location deemed an establishment

(4) A location shall be deemed to be an establishment under subsection (1) if,

- (a) there is a permanent discontinuance of all or part of an employer's business at the location;
- (b) the location is part of an establishment consisting of two or more locations; and
- (c) the employer severs the employment relationship of 50 or more employees within a six-month period as a result. 2000, c. 41, s. 64 (4).

Calculating severance pay

65. (1) Severance pay under this section shall be calculated by multiplying the employee's regular wages for a regular work week by the sum of,

- (a) the number of years of employment the employee has completed; and

- (b) the number of months of employment not included in clause (a) that the employee has completed, divided by 12. 2000, c. 41, s. 65 (1).

Non-continuous employment

(2) All time spent by the employee in the employer's employ, whether or not continuous and whether or not active, shall be included in determining whether he or she is eligible for severance pay under subsection 64 (1) and in calculating his or her severance pay under subsection (1). 2000, c. 41, s. 65 (2).

Where employee resigns

(3) If an employee's employment is severed under clause 63 (1) (e), the period between the day the employee's notice of resignation took effect and the day the employer's notice of termination would have taken effect shall not be considered in calculating the amount of severance pay to which the employee is entitled. 2000, c. 41, s. 65 (3).

Termination without notice

(4) If an employer terminates the employment of an employee without providing the notice, if any, required under section 57 or 58, the amount of severance pay to which the employee is entitled shall be calculated as if the employee continued to be employed for a period equal to the period of notice that should have been given and was not. 2000, c. 41, s. 65 (4).

Limit

(5) An employee's severance pay entitlement under this section shall not exceed an amount equal to the employee's regular wages for a regular work week for 26 weeks. 2000, c. 41, s. 65 (5).

Where no regular work week

(6) For the purposes of subsections (1) and (5), if the employee does not have a regular work week or if the employee is paid on a basis other than time, the employee's regular wages for a regular work week shall be deemed to be the average amount of regular wages earned by the employee for the weeks in which the employee worked in the period of 12 weeks preceding the date on which,

- (a) the employee's employment was severed; or
- (b) if the employee's employment was severed under clause 63 (1) (c) or (d), the date on which the lay-off began. 2000, c. 41, s. 65 (6); 2002, c. 18, Sched. J, s. 3 (26).

In addition to other amounts

(7) Subject to subsection (8), severance pay under this section is in addition to any other amount to which an employee is entitled under this Act or his or her employment contract. 2000, c. 41, s. 65 (7).

Set-off, deduction

- (8) Only the following set-offs and deductions may be made in calculating severance pay under this section:
1. Supplementary unemployment benefits the employee receives after his or her employment is severed and before the severance pay becomes payable to the employee.
 2. An amount paid to an employee for loss of employment under a provision of the employment contract if it is based upon length of employment, length of service or seniority.
 3. Severance pay that was previously paid to the employee under this Act, a predecessor of this Act or a contractual provision described in paragraph 2. 2000, c. 41, s. 65 (8).

Instalments

66. (1) An employer may pay severance pay to an employee who is entitled to it in instalments with the agreement of the employee or the approval of the Director. 2001, c. 9, Sched. I, s. 1 (17).

Restriction

- (2) The period over which instalments can be paid must not exceed three years. 2000, c. 41, s. 66 (2).

Default

(3) If the employer fails to make an instalment payment, all severance pay not previously paid shall become payable immediately. 2000, c. 41, s. 66 (3).

ELECTION RE RECALL RIGHTS

Where election may be made

67. (1) This section applies if an employee who has a right to be recalled for employment under his or her employment contract is entitled to,

- (a) termination pay under section 61 because of a lay-off of 35 weeks or more; or

(b) severance pay. 2000, c. 41, s. 67 (1).

Exception

(2) Clause (1) (b) does not apply if the employer and employee have agreed that the severance pay shall be paid in instalments under section 66. 2000, c. 41, s. 67 (2).

Nature of election

(3) The employee may elect to be paid the termination pay or severance pay forthwith or to retain the right to be recalled. 2000, c. 41, s. 67 (3).

Consistency

(4) An employee who is entitled to both termination pay and severance pay shall make the same election in respect of each. 2000, c. 41, s. 67 (4).

Deemed abandonment

(5) An employee who elects to be paid shall be deemed to have abandoned the right to be recalled. 2000, c. 41, s. 67 (5).

Employee not represented by trade union

(6) If an employee who is not represented by a trade union elects to retain the right to be recalled or fails to make an election, the employer shall pay the termination pay and severance pay to which the employee is entitled to the Director in trust. 2000, c. 41, s. 67 (6).

Employee represented by trade union

(7) If an employee who is represented by a trade union elects to retain the right to be recalled or fails to make an election,

- (a) the employer and the trade union shall attempt to negotiate an arrangement for holding the money in trust, and, if the negotiations are successful, the money shall be held in trust in accordance with the arrangement agreed upon; and
- (b) if the trade union advises the Director and the employer in writing that efforts to negotiate such an arrangement have been unsuccessful, the employer shall pay the termination pay and severance pay to which the employee is entitled to the Director in trust. 2000, c. 41, s. 67 (7).

Where employee accepts recall

(8) If the employee accepts employment made available under the right of recall, the amount held in trust shall be paid out of trust to the employer and the employee shall be deemed to have abandoned the right to termination pay and severance pay paid into trust. 2000, c. 41, s. 67 (8).

Recall rights expired or renounced

(9) If the employee renounces the right to be recalled or the right expires, the amount held in trust shall be paid to the employee and, if the right to be recalled had not expired, the employee shall be deemed to have abandoned the right. 2000, c. 41, s. 67 (9).

**PART XVI
LIE DETECTORS**

Definitions

68. In this Part, and for purposes of Part XVIII (Reprisal), Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions), Part XXVII (Regulations) and Part XXVIII (Transition, Amendment, Repeals, Commencement and Short Title), insofar as matters concerning this Part are concerned,

“employee” means an employee as defined in subsection 1 (1) and includes an applicant for employment, a police officer and a person who is an applicant to be a police officer; (“employé”)

“employer” means an employer as defined in subsection 1 (1) and includes a prospective employer and a police governing body; (“employeur”)

“lie detector test” means an analysis, examination, interrogation or test that is taken or performed,

- (a) by means of or in conjunction with a device, instrument or machine, and
- (b) for the purpose of assessing or purporting to assess the credibility of a person. (“test du détecteur de mensonges”) 2000, c. 41, s. 68.

Right to refuse test

69. Subject to section 71, an employee has a right not to,

- (a) take a lie detector test;

- (b) be asked to take a lie detector test; or
- (c) be required to take a lie detector test. 2000, c. 41, s. 69.

Prohibition: testing

70. (1) Subject to section 71, no person shall, directly or indirectly, require, request, enable or influence an employee to take a lie detector test. 2000, c. 41, s. 70 (1).

Prohibition: disclosure

(2) No person shall disclose to an employer that an employee has taken a lie detector test or disclose to an employer the results of a lie detector test taken by an employee. 2000, c. 41, s. 70 (2).

Consent to test by police

71. This Part shall not be interpreted to prevent a person from being asked by a police officer to take, consenting to take and taking a lie detector test administered on behalf of a police force in Ontario or by a member of a police force in Ontario in the course of the investigation of an offence. 2000, c. 41, s. 71.

PART XVII RETAIL BUSINESS ESTABLISHMENTS

Application of Part

72. (1) This Part applies with respect to,
- (a) retail business establishments as defined in subsection 1 (1) of the *Retail Business Holidays Act*;
 - (b) employees employed to work in those establishments; and
 - (c) employers of those employees. 2000, c. 41, s. 72 (1).

Exception

- (2) This Part does not apply with respect to retail business establishments in which the primary retail business is one that,
- (a) sells prepared meals;
 - (b) rents living accommodations;
 - (c) is open to the public for educational, recreational or amusement purposes; or
 - (d) sells goods or services incidental to a business described in clause (a), (b) or (c) and is located in the same premises as that business. 2000, c. 41, s. 72 (2).

Right to refuse work

73. (1) An employee may refuse to work on a public holiday or a day declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of the *Retail Business Holidays Act*. 2000, c. 41, s. 73 (1).

Same

- (2) An employee may refuse to work on a Sunday. 2000, c. 41, s. 73 (2).

Notice of refusal

(3) An employee who agrees to work on a day referred to in subsection (1) or (2) may then decline to work on that day, but only if he or she gives the employer notice that he or she declines at least 48 hours before he or she was to commence work on that day. 2000, c. 41, s. 73 (3).

PART XVIII REPRISAL

Reprisal prohibited

74. (1) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so,

- (a) because the employee,
 - (i) asks the employer to comply with this Act and the regulations,
 - (ii) makes inquiries about his or her rights under this Act,
 - (iii) files a complaint with the Ministry under this Act,
 - (iv) exercises or attempts to exercise a right under this Act,
 - (v) gives information to an employment standards officer,

- (vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,
 - (vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the *Retail Business Holidays Act*,
 - (viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or
- (b) because the employer is or may be required, because of a court order or garnishment, to pay to a third party an amount owing by the employer to the employee. 2000, c. 41, s. 74 (1).

Onus of proof

(2) Subject to subsection 122 (4), in any proceeding under this Act, the burden of proof that an employer did not contravene a provision set out in this section lies upon the employer. 2000, c. 41, s. 74 (2).

**PART XIX
BUILDING SERVICES PROVIDERS**

New provider

75. (1) This Part applies if a building services provider for a building is replaced by a new provider. 2000, c. 41, s. 75 (1).

Termination and severance pay

(2) The new provider shall comply with Part XV (Termination and Severance of Employment) with respect to every employee of the replaced provider who is engaged in providing services at the premises and whom the new provider does not employ as if the new provider had terminated and severed the employee's employment. 2000, c. 41, s. 75 (2).

Same

(3) The new provider shall be deemed to have been the employee's employer for the purpose of subsection (2). 2000, c. 41, s. 75 (3).

Exception

- (4) The new provider is not required to comply with subsection (2) with respect to,
- (a) an employee who is retained by the replaced provider; or
 - (b) any prescribed employees. 2000, c. 41, s. 75 (4).

Vacation pay

76. (1) A provider who ceases to provide services at a premises and who ceases to employ an employee shall pay to the employee the amount of any accrued vacation pay. 2000, c. 41, s. 76 (1).

Same

- (2) A payment under subsection (1) shall be made within the later of,
- (a) seven days after the day the employee's employment with the provider ceases; or
 - (b) the day that would have been the employee's next regular pay day. 2000, c. 41, s. 76 (2).

Information request, possible new provider

77. (1) Where a person is seeking to become the new provider at a premises, the owner or manager of the premises shall upon request give to that person the prescribed information about the employees who on the date of the request are engaged in providing services at the premises. 2000, c. 41, s. 77 (1).

Same, new provider

(2) Where a person becomes the new provider at a premises, the owner or manager of the premises shall upon request give to that person the prescribed information about the employees who on the date of the request are engaged in providing services for the premises. 2000, c. 41, s. 77 (2).

Request by owner or manager

(3) If an owner or manager requests a provider or former provider to provide information to the owner or manager so that the owner or manager can fulfil a request made under subsection (1) or (2), the provider or former provider shall provide the information. 2000, c. 41, s. 77 (3).

Use of information

78. (1) A person who receives information under this Part shall use that information only for the purpose of complying with this Part or determining the person's obligations or potential obligations under this Part. 2000, c. 41, s. 78 (1).

Confidentiality

(2) A person who receives information under section 77 shall not disclose it, except as authorized under this Part. 2000, c. 41, s. 78 (2).

PART XX LIABILITY OF DIRECTORS

Definition

79. In this Part,

“director” means a director of a corporation and includes a shareholder who is a party to a unanimous shareholder agreement. 2000, c. 41, s. 79.

Application of Part

80. (1) This Part applies with respect to shareholders described in section 79 only to the extent that the directors are relieved, under subsection 108 (5) of the *Business Corporations Act* or subsection 146 (5) of the *Canada Business Corporations Act*, of their liability to pay wages to the employees of the corporation. 2000, c. 41, s. 80 (1).

Non-application

(2) This Part does not apply with respect to directors of corporations to which Part III of the *Corporations Act* applies or to which the *Co-operative Corporations Act* applies. 2000, c. 41, s. 80 (2).

Same

(3) This Part does not apply with respect to directors, or persons who perform functions similar to those of a director, of a college of a health profession or a group of health professions that is established or continued under an Act of the Legislature. 2000, c. 41, s. 80 (3).

Same

(4) This Part does not apply with respect to directors of corporations,

- (a) that have been incorporated in another jurisdiction;
- (b) that have objects that are similar to the objects of corporations to which Part III of the *Corporations Act* applies or to which the *Co-operative Corporations Act* applies; and
- (c) that are carried on without the purpose of gain. 2000, c. 41, s. 80 (4).

Directors' liability for wages

81. (1) The directors of an employer are jointly and severally liable for wages as provided in this Part if,

- (a) the employer is insolvent, the employee has caused a claim for unpaid wages to be filed with the receiver appointed by a court with respect to the employer or with the employer's trustee in bankruptcy and the claim has not been paid;
- (b) an employment standards officer has made an order that the employer is liable for wages, unless the amount set out in the order has been paid or the employer has applied to have it reviewed;
- (c) an employment standards officer has made an order that a director is liable for wages, unless the amount set out in the order has been paid or the employer or the director has applied to have it reviewed; or
- (d) the Board has issued, amended or affirmed an order under section 119, the order, as issued, amended or affirmed, requires the employer or the directors to pay wages and the amount set out in the order has not been paid. 2000, c. 41, s. 81 (1).

Employer primarily responsible

(2) Despite subsection (1), the employer is primarily responsible for an employee's wages but proceedings against the employer under this Act do not have to be exhausted before proceedings may be commenced to collect wages from directors under this Part. 2000, c. 41, s. 81 (2).

Wages

(3) The wages that directors are liable for under this Part are wages, not including termination pay and severance pay as they are provided for under this Act or an employment contract and not including amounts that are deemed to be wages under this Act. 2000, c. 41, s. 81 (3).

Vacation pay

(4) The vacation pay that directors are liable for is the greater of the minimum vacation pay provided in Part XI (Vacation With Pay) and the amount contractually agreed to by the employer and the employee. 2000, c. 41, s. 81 (4).

Holiday pay

(5) The amount of holiday pay that directors are liable for is the greater of the amount payable for holidays at the rate as determined under this Act and the regulations and the amount for the holidays at the rate as contractually agreed to by the employer and the employee. 2000, c. 41, s. 81 (5).

Overtime wages

(6) The overtime wages that directors are liable for are the greater of the amount of overtime pay provided in Part VIII (Overtime Pay) and the amount contractually agreed to by the employer and the employee. 2000, c. 41, s. 81 (6).

Directors' maximum liability

(7) The directors of an employer corporation are jointly and severally liable to the employees of the corporation for all debts not exceeding six months' wages, as described in subsection (3), that become payable while they are directors for services performed for the corporation and for the vacation pay accrued while they are directors for not more than 12 months under this Act and the regulations made under it or under any collective agreement made by the corporation. 2000, c. 41, s. 81 (7).

Interest

(8) A director is liable to pay interest, at the rate and calculated in the manner determined by the Director under subsection 88 (5), on outstanding wages for which the director is liable. 2000, c. 41, s. 81 (8).

Contribution from other directors

(9) A director who has satisfied a claim for wages is entitled to contribution in relation to the wages from other directors who are liable for the claim. 2000, c. 41, s. 81 (9).

Limitation periods

(10) A limitation period set out in section 114 prevails over a limitation period in any other Act, unless the other Act states that it is to prevail over this Act. 2000, c. 41, s. 81 (10).

No relief by contract, etc.

82. (1) No provision in a contract, in the articles of incorporation or the by-laws of a corporation or in a resolution of a corporation relieves a director from the duty to act according to this Act or relieves him or her from liability for breach of it. 2000, c. 41, s. 82 (1).

Indemnification of directors

(2) An employer may indemnify a director, a former director and the heirs or legal representatives of a director or former director against all costs, charges and expenses, including an amount paid to satisfy an order under this Act, including an order which is the subject of a filing under section 126, reasonably incurred by the director with respect to any civil or administrative action or proceeding to which he or she is a party by reason of being or having been a director of the employer if,

- (a) he or she has acted honestly and in good faith with a view to the best interests of the employer; and
- (b) in the case of a proceeding or action that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful. 2000, c. 41, s. 82 (2).

Civil remedies protected

83. No civil remedy that a person may have against a director or that a director may have against a person is suspended or affected by this Part. 2000, c. 41, s. 83.

PART XXI WHO ENFORCES THIS ACT AND WHAT THEY CAN DO

Minister responsible

84. The Minister is responsible for the administration of this Act. 2000, c. 41, s. 84.

Director

85. (1) The Minister shall appoint a person to be the Director of Employment Standards to administer this Act and the regulations. 2000, c. 41, s. 85 (1).

Acting Director

(2) The Director's powers may be exercised and the Director's duties may be performed by an employee of the Ministry appointed as Acting Director if,

- (a) the Director is absent or unable to act; or
- (b) an individual who was appointed Director has ceased to be the Director and no new Director has been appointed. 2000, c. 41, s. 85 (2).

Same

(3) An Acting Director shall be appointed by the Director or, in the Director's absence, the Deputy Minister of Labour. 2000, c. 41, s. 85 (3).

Employment standards officers

86. (1) Persons to enforce this Act and the regulations may be appointed as employment standards officers under the *Public Service Act*. 2000, c. 41, s. 86 (1).

Certificate of appointment

(2) The Deputy Minister of Labour shall issue a certificate of appointment bearing his or her signature or a facsimile of it to every employment standards officer. 2000, c. 41, s. 86 (2).

Delegation

87. (1) The Minister may, in writing, delegate to any person any of the Minister's powers or duties under this Act, subject to the limitations or conditions set out in the delegation. 2000, c. 41, s. 87 (1).

Same: residual powers

(2) The Minister may exercise a power or perform a duty under this Act even if he or she has delegated it to a person under this section. 2000, c. 41, s. 87 (2).

Powers and duties of Director

88. (1) The Director may exercise the powers conferred upon the Director under this Act and shall perform the duties imposed upon the Director under this Act. 2000, c. 41, s. 88 (1).

Policies

(2) The Director may establish policies respecting the interpretation, administration and enforcement of this Act. 2000, c. 41, s. 88 (2).

Authorization

(3) The Director may authorize an employment standards officer to exercise a power or to perform a duty conferred upon the Director under this Act, either orally or in writing. 2000, c. 41, s. 88 (3).

Same: residual powers

(4) The Director may exercise a power conferred upon the Director under this Act even if he or she has delegated it to a person under subsection (3). 2000, c. 41, s. 88 (4).

Interest

(5) The Director may, with the approval of the Minister, determine the rate of interest and the manner of calculating interest for the purposes of this Act. 2000, c. 41, s. 88 (5).

Determinations not regulations

(6) A determination under subsection (5) is not a regulation within the meaning of the *Regulations Act*. 2000, c. 41, s. 88 (6).

Other circumstances

(7) Where money has been paid to the Director in trust and no provision is made for paying it out elsewhere in this Act, it shall be paid out to the person entitled to receive it together with interest at the rate and calculated in the manner determined by the Director under subsection (5). 2000, c. 41, s. 88 (7).

Surplus interest

(8) If the interest earned on money held by the Director in trust exceeds the interest paid to the person entitled to receive the money, the Director may use the difference to pay any service charges for the management of the money levied by the financial institution with which the money was deposited. 2000, c. 41, s. 88 (8).

Hearing not required

(9) The Director is not required to hold a hearing in exercising any power or making any decision under this Act. 2000, c. 41, s. 88 (9).

Director may reassign an investigation

88.1 (1) The Director may terminate the assignment of an employment standards officer to the investigation of a complaint and may assign the investigation to another employment standards officer. 2006, c. 19, Sched. M, s. 1 (1).

Same

(2) If the Director terminates the assignment of an employment standards officer to the investigation of a complaint,

- (a) the officer whose assignment is terminated shall no longer have any powers or duties with respect to the investigation of the complaint or the discovery during the investigation of any similar potential entitlement of another employee of the employer related to the complaint; and
- (b) the new employment standards officer assigned to the investigation may rely on evidence collected by the first officer and any findings of fact made by that officer. 2006, c. 19, Sched. M, s. 1 (1).

Inspections

(3) This section applies with necessary modifications to inspections of employers by employment standards officers. 2006, c. 19, Sched. M, s. 1 (1).

Powers and duties of officers

89. (1) An employment standards officer may exercise the powers conferred upon employment standards officers under this Act and shall perform the duties imposed upon employment standards officers under this Act. 2000, c. 41, s. 89 (1).

Officers to follow policies

(2) An employment standards officer shall follow any policies established by the Director under subsection 88 (2). 2000, c. 41, s. 89 (2).

Hearing not required

(3) An employment standards officer is not required to hold a hearing in exercising any power or making any decision under this Act. 2000, c. 41, s. 89 (3).

Officers not compellable

90. (1) An employment standards officer is not a competent or compellable witness in a civil proceeding respecting any information given or obtained, statements made or received, or records or other things produced or received under this Act except for the purpose of carrying out his or her duties under it. 2000, c. 41, s. 90 (1).

Records

(2) An employment standards officer shall not be compelled in a civil proceeding to produce any record or other thing he or she has made or received under this Act except for the purpose of carrying out his or her duties under this Act. 2000, c. 41, s. 90 (2).

Investigation and inspection powers

91. (1) An employment standards officer may, without a warrant, enter and inspect any place in order to investigate a possible contravention of this Act or to perform an inspection to ensure that this Act is being complied with. 2000, c. 41, s. 91 (1).

Time of entry

(2) The power to enter and inspect a place without a warrant may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2000, c. 41, s. 91 (2).

Dwellings

(3) The power to enter and inspect a place without a warrant shall not be exercised to enter and inspect a part of the place that is used as a dwelling unless the occupier of the dwelling consents or a warrant has been issued under section 92. 2000, c. 41, s. 91 (3).

Use of force

(4) An employment standards officer is not entitled to use force to enter and inspect a place. 2000, c. 41, s. 91 (4).

Identification

(5) An employment standards officer shall produce, on request, evidence of his or her appointment. 2000, c. 41, s. 91 (5).

Powers of officer

- (6) An employment standards officer conducting an investigation or inspection may,
 - (a) examine a record or other thing that the officer thinks may be relevant to the investigation or inspection;
 - (b) require the production of a record or other thing that the officer thinks may be relevant to the investigation or inspection;
 - (c) remove for review and copying a record or other thing that the officer thinks may be relevant to the investigation or inspection;
 - (d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place; and

- (e) question any person on matters the officer thinks may be relevant to the investigation or inspection. 2000, c. 41, s. 91 (6); 2006, c. 19, Sched. M, s. 1 (2).

Written demand

(7) A demand that a record or other thing be produced must be in writing and must include a statement of the nature of the record or thing required. 2000, c. 41, s. 91 (7).

Obligation to produce and assist

(8) If an employment standards officer demands that a record or other thing be produced, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form. 2000, c. 41, s. 91 (8).

Records and things removed from place

(9) An employment standards officer who removes a record or other thing under clause (6) (c) shall provide a receipt and return the record or thing to the person within a reasonable time. 2000, c. 41, s. 91 (9).

Copy admissible in evidence

(10) A copy of a record that purports to be certified by an employment standards officer as being a true copy of the original is admissible in evidence to the same extent as the original, and has the same evidentiary value. 2000, c. 41, s. 91 (10).

Obstruction

(11) No person shall hinder, obstruct or interfere with or attempt to hinder, obstruct or interfere with an employment standards officer conducting an investigation or inspection. 2000, c. 41, s. 91 (11).

Same

(12) No person shall,

- (a) refuse to answer questions on matters that an employment standards officer thinks may be relevant to an investigation or inspection; or
- (b) provide an employment standards officer with information on matters the officer thinks may be relevant to an investigation or inspection that the person knows to be false or misleading. 2000, c. 41, s. 91 (12).

Separate inquiries

(13) No person shall prevent or attempt to prevent an employment standards officer from making inquiries of any person separate and apart from another person under clause (6) (e). 2000, c. 41, s. 91 (13).

Warrant

92. (1) A justice of the peace may issue a warrant authorizing an employment standards officer named in the warrant to enter premises specified in the warrant and to exercise any of the powers mentioned in subsection 91 (6), if the justice of the peace is satisfied on information under oath that,

- (a) the officer has been prevented from exercising a right of entry to the premises under subsection 91 (1) or has been prevented from exercising a power under subsection 91 (6); or
- (b) there are reasonable grounds to believe that the officer will be prevented from exercising a right of entry to the premises under subsection 91 (1) or will be prevented from exercising a power under subsection 91 (6). 2000, c. 41, s. 92 (1).

Expiry of warrant

(2) A warrant issued under this section shall name a date on which it expires, which date shall not be later than 30 days after the warrant is issued. 2000, c. 41, s. 92 (2).

Extension of time

(3) Upon application without notice by the employment standards officer named in a warrant issued under this section, a justice of the peace may extend the date on which the warrant expires for an additional period of no more than 30 days. 2000, c. 41, s. 92 (3).

Use of force

(4) An employment standards officer named in a warrant issued under this section may call upon a police officer for assistance in executing the warrant. 2000, c. 41, s. 92 (4).

Time of execution

(5) A warrant issued under this section may be executed only between 8 a.m. and 8 p.m., unless the warrant specifies otherwise. 2000, c. 41, s. 92 (5).

Other matters

(6) Subsections 91 (4) to (13) apply with necessary modifications to an officer executing a warrant issued under this section. 2000, c. 41, s. 92 (6); 2002, c. 18, Sched. J, s. 3 (27).

Posting of notices

93. An employment standards officer may require an employer to post and to keep posted in or upon the employer's premises in a conspicuous place or places where it is likely to come to the attention of the employer's employees,

- (a) any notice relating to the administration or enforcement of this Act or the regulations that the officer considers appropriate; or
- (b) a copy of a report or part of a report made by the officer concerning the results of an investigation or inspection. 2000, c. 41, s. 93.

Powers under the *Canada Labour Code*

94. If a regulation is made under the *Canada Labour Code* incorporating by reference all or part of this Act or a regulation under it, the Board and any person having powers under this Act may exercise the powers conferred under the *Canada Labour Code* regulation. 2000, c. 41, s. 94.

Service of documents

95. (1) Where this Act requires or permits service of a document in accordance with this section, it may be served,

- (a) by mail addressed to the person's last known business or residential address using any method of mail delivery that permits the delivery to be verified;
- (b) by telephonic transmission of a facsimile of the document or by electronic mail if the person is equipped to receive such transmissions or mail. 2000, c. 41, s. 95 (1).

Same

(2) A document that is served by a means described in clause (1) (b) on a Saturday, Sunday or a public holiday or on any other day after 5 p.m. shall be deemed to have been served on the next day that is not a Saturday, Sunday or public holiday. 2000, c. 41, s. 95 (2).

PART XXII COMPLAINTS AND ENFORCEMENT

COMPLAINTS

Complaints

96. (1) A person alleging that this Act has been or is being contravened may file a complaint with the Ministry in a written or electronic form approved by the Director. 2000, c. 41, s. 96 (1).

Effect of failure to use form

(2) A complaint that is not filed in a form approved by the Director shall be deemed not to have been filed. 2000, c. 41, s. 96 (2).

Limitation

(3) A complaint regarding a contravention that occurred more than two years before the day on which the complaint was filed shall be deemed not to have been filed. 2001, c. 9, Sched. I, s. 1 (18).

When civil proceeding not permitted

97. (1) An employee who files a complaint under this Act with respect to an alleged failure to pay wages or comply with Part XIII (Benefit Plans) may not commence a civil proceeding with respect to the same matter. 2000, c. 41, s. 97 (1).

Same, wrongful dismissal

(2) An employee who files a complaint under this Act alleging an entitlement to termination pay or severance pay may not commence a civil proceeding for wrongful dismissal if the complaint and the proceeding would relate to the same termination or severance of employment. 2000, c. 41, s. 97 (2).

Amount in excess of order

(3) Subsections (1) and (2) apply even if,

- (a) the amount alleged to be owing to the employee is greater than the amount for which an order can be issued under this Act; or
- (b) in the civil proceeding, the employee is claiming only that part of the amount alleged to be owing that is in excess of the amount for which an order can be issued under this Act. 2000, c. 41, s. 97 (3).

Withdrawal of complaint

(4) Despite subsections (1) and (2), an employee who has filed a complaint may commence a civil proceeding with respect to a matter described in those subsections if he or she withdraws the complaint within two weeks after it is filed. 2000, c. 41, s. 97 (4).

When complaint not permitted

98. (1) An employee who commences a civil proceeding with respect to an alleged failure to pay wages or to comply with Part XIII (Benefit Plans) may not file a complaint with respect to the same matter or have such a complaint investigated. 2000, c. 41, s. 98 (1).

Same, wrongful dismissal

(2) An employee who commences a civil proceeding for wrongful dismissal may not file a complaint alleging an entitlement to termination pay or severance pay or have such a complaint investigated if the proceeding and the complaint relate to the same termination or severance of employment. 2000, c. 41, s. 98 (2).

ENFORCEMENT UNDER COLLECTIVE AGREEMENT

When collective agreement applies

99. (1) If an employer is or has been bound by a collective agreement, this Act is enforceable against the employer as if it were part of the collective agreement with respect to an alleged contravention of this Act that occurs,

- (a) when the collective agreement is or was in force;
- (b) when its operation is or was continued under subsection 58 (2) of the *Labour Relations Act, 1995*; or
- (c) during the period that the parties to the collective agreement are or were prohibited by subsection 86 (1) of the *Labour Relations Act, 1995* from unilaterally changing the terms and conditions of employment. 2000, c. 41, s. 99 (1).

Complaint not permitted

(2) An employee who is represented by a trade union that is or was a party to a collective agreement may not file a complaint alleging a contravention of this Act that is enforceable under subsection (1) or have such a complaint investigated. 2000, c. 41, s. 99 (2).

Employee bound

(3) An employee who is represented by a trade union that is or was a party to a collective agreement is bound by any decision of the trade union with respect to the enforcement of this Act under the collective agreement, including a decision not to seek that enforcement. 2000, c. 41, s. 99 (3).

Membership status irrelevant

(4) Subsections (2) and (3) apply even if the employee is not a member of the trade union. 2000, c. 41, s. 99 (4).

Unfair representation

(5) Nothing in subsection (3) or (4) prevents an employee from filing a complaint with the Board alleging that a decision of the trade union with respect to the enforcement of this Act contravenes section 74 of the *Labour Relations Act, 1995*. 2000, c. 41, s. 99 (5).

Exception

(6) Despite subsection (2), the Director may permit an employee to file a complaint and may direct an employment standards officer to investigate it if the Director considers it appropriate in the circumstances. 2000, c. 41, s. 99 (6).

If arbitrator finds contravention

100. (1) If an arbitrator finds that an employer has contravened this Act, the arbitrator may make any order against the employer that an employment standards officer could have made with respect to that contravention but the arbitrator may not issue a notice of contravention. 2000, c. 41, s. 100 (1).

Same: Part XIII

(2) If an arbitrator finds that an employer has contravened Part XIII (Benefit Plans), the arbitrator may make any order that the Board could make under section 121. 2000, c. 41, s. 100 (2).

Directors and collective agreement

(3) An arbitrator shall not require a director to pay an amount, take an action or refrain from taking an action under a collective agreement that the director could not be ordered to pay, take or refrain from taking in the absence of the collective agreement. 2000, c. 41, s. 100 (3).

Conditions respecting orders under this section

- (4) The following conditions apply with respect to an arbitrator's order under this section:
1. In an order requiring the payment of wages or compensation, the arbitrator may require that the amount of the wages or compensation be paid,
 - i. to the trade union that represents the employee or employees concerned, or
 - ii. directly to the employee or employees.
 2. If the order requires the payment of wages, the order may be made for an amount greater than is permitted under subsection 103 (4).
 3. The order is not subject to review under section 116. 2000, c. 41, s. 100 (4).

Copy of decision to Director

(5) When an arbitrator makes a decision with respect to an alleged contravention of this Act, the arbitrator shall provide a copy of it to the Director. 2000, c. 41, s. 100 (5).

Arbitration and s. 4

101. (1) This section applies if, during a proceeding before an arbitrator, other than the Board, concerning an alleged contravention of this Act, an issue is raised concerning whether the employer to whom the collective agreement applies or applied and another person are to be treated as one employer under section 4. 2000, c. 41, s. 101 (1).

Restriction

(2) The arbitrator shall not decide the question of whether the employer and the other person are to be treated as one employer under section 4. 2000, c. 41, s. 101 (2).

Reference to Board

(3) If the arbitrator finds it is necessary to make a finding concerning the application of section 4, the arbitrator shall refer that question to the Board by giving written notice to the Board. 2000, c. 41, s. 101 (3).

Content of notice

- (4) The notice to the Board shall,
- (a) state that an issue has arisen in an arbitration proceeding with respect to whether the employer and another person are to be treated as one employer under section 4; and
 - (b) set out the decisions made by the arbitrator on the other matters in dispute. 2000, c. 41, s. 101 (4).

Decision by Board

(5) The Board shall decide whether the employer and the other person are one employer under section 4, but shall not vary any decision of the arbitrator concerning the other matters in dispute. 2000, c. 41, s. 101 (5).

Order

(6) Subject to subsection (7), the Board may make an order against the employer and, if it finds that the employer and the other person are one employer under section 4, it may make an order against the other person. 2000, c. 41, s. 101 (6).

Exception

(7) The Board shall not require the other person to pay an amount or take or refrain from taking an action under a collective agreement that the other person could not be ordered to pay, take or refrain from taking in the absence of the collective agreement. 2000, c. 41, s. 101 (7).

Application

- (8) Section 100 applies, with necessary modifications, with respect to an order under this section. 2000, c. 41, s. 101 (8).

ENFORCEMENT BY EMPLOYMENT STANDARDS OFFICER

Meeting may be required

102. (1) An employment standards officer may, after giving at least 15 days written notice, require any of the persons referred to in subsection (2) to attend a meeting with the officer in either of the following circumstances:

1. The officer is investigating a complaint against an employer.
2. The officer, while inspecting a place under section 91 or 92, comes to have reasonable grounds to believe that an employer has contravened this Act or the regulations with respect to an employee. 2000, c. 41, s. 102 (1).

Attendees

- (2) Any of the following persons may be required to attend the meeting:

1. The employee.
2. The employer.
3. If the employer is a corporation, a director or employee of the corporation. 2000, c. 41, s. 102 (2).

Documents

(3) The employment standards officer may also require the person to bring to the meeting any records or other documents specified in the notice. 2000, c. 41, s. 102 (3).

Content of notice

(4) The notice shall specify the time and place at which the person is to attend. 2000, c. 41, s. 102 (4).

Delivery of notice

(5) The notice may be delivered personally or in accordance with section 95. 2000, c. 41, s. 102 (5).

Compliance

(6) A person who receives a notice under this section shall comply with it. 2000, c. 41, s. 102 (6).

Order to pay wages

- 103.** (1) If an employment standards officer finds that an employer owes wages to an employee, the officer may,
- (a) arrange with the employer that the employer pay the wages directly to the employee; or
 - (b) order the employer to pay the amount of wages to the Director in trust. 2000, c. 41, s. 103 (1).

Administrative costs

(2) An order issued under clause (1) (b) shall also require the employer to pay to the Director in trust an amount for administrative costs equal to the greater of \$100 and 10 per cent of the wages owing. 2000, c. 41, s. 103 (2).

If more than one employee

(3) A single order may be issued with respect to wages owing to more than one employee. 2000, c. 41, s. 103 (3).

Maximum amount

(4) An employment standards officer shall not issue an order under this section for more than \$10,000 in wages with respect to any one employee. 2000, c. 41, s. 103 (4).

Contents of order

(5) The order shall contain information setting out the nature of the amount found to be owing to the employee or be accompanied by that information. 2000, c. 41, s. 103 (5).

Service

- (6) The order shall be served on the employer,
- (a) if the employer is an individual, either personally or in accordance with section 95; or
 - (b) if the employer is a corporation,
 - (i) on the corporation in accordance with section 95, or
 - (ii) on an officer of the corporation or a person in charge of any location at which the corporation carries on business, personally or in accordance with section 95. 2000, c. 41, s. 103 (6).

Proof of service

(7) A certificate of the employment standards officer who issued the order is evidence of its issuance, the service of the order on the person and the receipt of the order by the person if the officer,

- (a) certifies in it that the copy of the order is a true copy of it;
- (b) certifies in it that the order was served on the person; and
- (c) sets out in it the method of service used. 2000, c. 41, s. 103 (7); 2001, c. 9, Sched. I, s. 1 (19).

Notice to employee

(7.1) An employment standards officer who issues an order with respect to an employee under this section shall advise the employee of its issuance by letter served personally or in accordance with section 95. 2001, c. 9, Sched. I, s. 1 (20).

Proof of service

(7.2) A certificate of the employment standards officer who served a letter on an employee under subsection (7.1) is evidence of the issuance of the order, service of the letter on the person and the receipt of it by the person if the officer,

- (a) certifies in it that the letter was served on the person; and
- (b) sets out in it the method of service used. 2001, c. 9, Sched. I, s. 1 (20).

Compliance

(8) Every employer to whom an order is issued under this section shall comply with it according to its terms. 2000, c. 41, s. 103 (8).

Effect of order

(9) If an employer fails to apply under section 116 for a review of an order issued under this section within the time allowed for applying for that review, the order becomes final and binding against the employer. 2000, c. 41, s. 103 (9).

Same

(10) Subsection (9) applies even if a review hearing is held under this Act to determine another person's liability for the wages that are the subject of the order. 2000, c. 41, s. 103 (10).

Orders for compensation or reinstatement

104. (1) If an employment standards officer finds that an employer has contravened any of the following Parts with respect to an employee, the officer may order that the employee be compensated for any loss he or she incurred as a result of the contravention or that he or she be reinstated or that he or she be both compensated and reinstated:

1. Part XIV (Leaves of Absence).
2. Part XVI (Lie Detectors).
3. Part XVII (Retail Business Establishments).
4. Part XVIII (Reprisal). 2000, c. 41, s. 104 (1).

Order to hire

(2) An employment standards officer who finds a contravention of Part XVI may order that an applicant for employment or an applicant to be a police officer be hired by an employer as defined in that Part or may order that he or she be compensated by an employer as defined in that Part or that he or she be both hired and compensated. 2000, c. 41, s. 104 (2).

Terms of orders

(3) If an order made under this section requires a person to compensate an employee, it shall also require the person to pay to the Director in trust,

- (a) the amount of the compensation; and
- (b) an amount for administration costs equal to the greater of \$100 and 10 per cent of the amount of compensation. 2000, c. 41, s. 104 (3).

How orders apply

(4) Subsections 103 (3) and (5) to (9) apply, with necessary modifications, with respect to orders issued under this section. 2000, c. 41, s. 104 (4).

Employee cannot be found

105. (1) If an employment standards officer has arranged with an employer that the employer pay wages under clause 103 (1) (a) directly to the employee and the employer is unable to locate the employee despite having made reasonable efforts to do so, the employer shall pay the wages to the Director in trust. 2000, c. 41, s. 105 (1).

Settlements

(2) If an employment standards officer has received money for an employee under a settlement but the employee cannot be located, the money shall be paid to the Director in trust. 2000, c. 41, s. 105 (2).

When money vests in Crown

(3) Money paid to or held by the Director in trust under this section vests in the Crown but may, without interest, be paid out to the employee, the employee's estate or such other person as the Director considers is entitled to it. 2000, c. 41, s. 105 (3).

Order against director, Part XX

106. (1) If an employment standards officer makes an order against an employer that wages be paid, he or she may make an order to pay wages for which directors are liable under Part XX against some or all of the directors of the employer and may serve a copy of the order on them together with a copy of the order to pay against the employer. 2000, c. 41, s. 106 (1).

Effect of order

(2) If the directors do not comply with the order or do not apply to have it reviewed, the order becomes final and binding against those directors even though a review hearing is held to determine another person's liability under this Act. 2000, c. 41, s. 106 (2).

Orders, insolvent employer

(3) If an employer is insolvent and the employee has caused a claim for unpaid wages to be filed with the receiver appointed by a court with respect to the employer or with the employer's trustee in bankruptcy, and the claim has not been paid, the employment standards officer may issue an order to pay wages for which directors are liable under Part XX against some or all of the directors and shall serve it on them. 2000, c. 41, s. 106 (3).

Procedure

(4) Subsection (2) applies with necessary modifications to an order made under subsection (3). 2000, c. 41, s. 106 (4).

Maximum liability

(5) Nothing in this section increases the maximum liability of a director beyond the amounts set out in section 81. 2000, c. 41, s. 106 (5).

Payment to Director

(6) At the discretion of the Director, a director who is subject to an order under this section may be ordered to pay the wages in trust to the Director. 2000, c. 41, s. 106 (6).

Service of orders on directors

(7) An order issued against a director under this section may be served personally or in accordance with section 95. 2001, c. 9, Sched. I, s. 1 (21).

If returned

(8) If an order served by mail under section 95 is returned and the director is not served personally, the Director may direct the Board to consider the manner of service. 2000, c. 41, s. 106 (8).

Board powers

(9) If the Board is directed to consider the manner of service, it may order that service be effected in such manner as it considers appropriate in the circumstances. 2000, c. 41, s. 106 (9).

Further order, Part XX

107. (1) An employment standards officer may make an order to pay wages for which directors are liable under Part XX against some or all of the directors of an employer who were not the subject of an order under section 106, and may serve it on them,

- (a) after an employment standards officer has made an order against the employer under section 103 that wages be paid and they have not been paid and the employer has not applied to have the order reviewed;
- (b) after an employment standards officer has made an order against directors under subsection 106 (1) or (3) and the amount has not been paid and the employer or the directors have not applied to have it reviewed;
- (c) after the Board has issued, amended or affirmed an order under section 119 if the order, as issued, amended or affirmed, requires the employer or the directors to pay wages and the amount set out in the order has not been paid. 2000, c. 41, s. 107 (1).

Payment to Director

(2) At the discretion of the Director, a director who is subject to an order under this section may be ordered to pay the wages in trust to the Director. 2000, c. 41, s. 107 (2).

Service

(3) Subsections 106 (7) to (9) apply, with necessary modifications, to an order issued under this section. 2000, c. 41, s. 107 (3).

Compliance order

108. (1) If an employment standards officer finds that a person has contravened a provision of this Act or the regulations, the officer may,

- (a) order that the person cease contravening the provision;
- (b) order what action the person shall take or refrain from taking in order to comply with the provision; and
- (c) specify a date by which the person must do so. 2000, c. 41, s. 108 (1).

Payment cannot be required

(2) No order issued under this section shall require the payment of wages or compensation to an employee. 2000, c. 41, s. 108 (2).

Other means not a bar

(3) Nothing in subsection (2) precludes an employment standards officer from issuing an order under section 103, 104, 106 or 107 and an order under this section in respect of the same contravention. 2000, c. 41, s. 108 (3).

Service, effect, etc.

(4) Subsections 103 (6), (7), (8) and (9) apply, with necessary modifications, with respect to an order issued under this section. 2000, c. 41, s. 108 (4).

Injunction proceeding

(5) At the instance of the Director, the contravention of an order made under subsection (1) may be restrained upon an application, made without notice, to a judge of the Superior Court of Justice. 2000, c. 41, s. 108 (5).

Same

(6) Subsection (5) applies with respect to a contravention of an order in addition to any other remedy or penalty for its contravention. 2000, c. 41, s. 108 (6).

Money paid when no review

109. (1) Money paid to the Director under any of the following orders shall be paid to the employee with respect to whom the order was issued unless an application for review is made under section 116 within the period required under that section:

1. Money with respect to wages or compensation under an order issued under section 103 or 104.
2. Money with respect to wages paid to the Director in trust under an order made under section 106 or 107. 2000, c. 41, s. 109 (1).

Money distributed rateably

(2) If the money paid to the Director under one of those orders is not enough to pay all of the employees entitled to it under the order the full amount to which they are entitled, the Director shall distribute that money, including money received with respect to administrative costs, to the employees in proportion to their entitlement. 2000, c. 41, s. 109 (2).

No proceeding against Director

(3) No proceeding shall be instituted against the Director for acting in compliance with this section. 2000, c. 41, s. 109 (3).

Refusal to issue order

110. (1) If, after an employee files a complaint alleging a contravention of this Act in respect of which an order could be issued under section 103, 104 or 108, an employment standards officer assigned to investigate the complaint refuses to issue such an order, the officer shall advise the employee of the refusal by letter served personally or in accordance with section 95. 2000, c. 41, s. 110 (1).

Deemed refusal

(2) If no order is issued with respect to a complaint described in subsection (1) within two years after it was filed, an employment standards officer shall be deemed to have refused to issue an order and to have served on the employee a letter advising the employee of the refusal on the last day of the second year. 2000, c. 41, s. 110 (2).

Time limit on recovery, employee's complaint

111. (1) If an employee files a complaint alleging a contravention of this Act or the regulations, the employment standards officer investigating the complaint may not issue an order for wages that became due to the employee under the provision that was the subject of the complaint or any other provision of this Act or the regulations if the wages became due more than six months before the complaint was filed. 2001, c. 9, Sched. I, s. 1 (22).

Same, another employee's complaint

(2) If, in the course of investigating a complaint, an employment standards officer finds that an employer has contravened this Act or the regulations with respect to an employee who did not file a complaint, the officer may not issue an order for wages that became due to that employee as a result of that contravention if the wages became due more than six months before the complaint was filed. 2001, c. 9, Sched. I, s. 1 (22).

Same, inspection

(3) If an employment standards officer finds during an inspection that an employer has contravened this Act or the regulations with respect to an employee, the officer may not issue an order for wages that became due to the employee more than six months before the officer commenced the inspection. 2001, c. 9, Sched. I, s. 1 (22).

Vacation pay

(3.1) Despite subsections (1) to (3), the time limit within which vacation pay must have become due under those subsections is 12 months, rather than six months. 2002, c. 18, Sched. J, s. 3 (28).

Repeated contraventions

(4) Despite subsections (1) to (3), the time limit within which wages must have become due under those subsections is 12 months, rather than six months, if,

- (a) the employment standards officer investigating the complaint or performing the inspection finds that the employer has contravened the same provision of this Act or the regulations more than once with respect to the employee;
- (b) the contraventions were in each case with respect to wages to which the employee became entitled under the same provision of this Act or the regulations or under provisions of the employee's employment contract that are identical or are virtually identical; and
- (c) at least one of the contraventions occurred within the six-month period referred to under those subsections. 2001, c. 9, Sched. I, s. 1 (22).

Same

(5) Subsection (4) applies with respect to repeated contraventions of section 11 or 13 only if,

- (a) none of those contraventions are also contraventions of another provision of this Act or the regulations; or
- (b) all of those contraventions are also contraventions of the same provision of this Act or the regulations, other than section 11 or 13, or of provisions of the employee's employment contract that are identical or virtually identical. 2001, c. 9, Sched. I, s. 1 (22).

Complaints from different employees

(6) If two or more employees file complaints alleging contraventions of this Act or the regulations and at least one of the contraventions in each of the complaints arose under the same provision of this Act or the regulations or under identical or virtually identical provisions of their employment contracts, subsections (1) and (2) apply with respect to all of the complaints, as if all of them had been filed on the day the first complaint was filed. 2001, c. 9, Sched. I, s. 1 (22).

Same

(7) Subsection (6) applies with respect to contraventions of section 11 or 13 with respect to different employees only if,

- (a) none of those contraventions are also contraventions of another provision of this Act or the regulations; or
- (b) all of those contraventions are also contraventions of the same provision of this Act or the regulations, other than section 11 or 13, or of provisions of the employees' employment contracts that are identical or virtually identical. 2001, c. 9, Sched. I, s. 1 (22).

Same

(8) Subsection (6) does not apply with respect to a complaint filed after an employment standards officer has issued an order under subsection (6) with respect to an earlier complaint or advised an earlier complainant of his or her refusal to issue such an order. 2001, c. 9, Sched. I, s. 1 (22).

SETTLEMENTS

Settlement

112. (1) Subject to subsection (8), if an employee and an employer who have agreed to a settlement respecting a contravention or alleged contravention of this Act inform an employment standards officer in writing of the terms of the settlement and do what they agreed to do under it,

- (a) the settlement is binding on the parties;
- (b) any complaint filed by the employee respecting the contravention or alleged contravention is deemed to have been withdrawn;
- (c) any order made in respect of the contravention or alleged contravention is void; and
- (d) any proceeding, other than a prosecution, respecting the contravention or alleged contravention is terminated. 2000, c. 41, s. 112 (1).

Compliance orders

(2) Clause (1) (c) does not apply with respect to an order issued under section 108. 2000, c. 41, s. 112 (2).

Notices of contravention

(3) This section does not apply with respect to a notice of contravention. 2000, c. 41, s. 112 (3).

Payment by officer

(4) If an employment standards officer receives money for an employee under this section, the officer may pay it directly to the employee or to the Director in trust. 2000, c. 41, s. 112 (4).

Same

(5) If money is paid in trust to the Director under subsection (4), the Director shall pay it to the employee. 2000, c. 41, s. 112 (5).

Administrative costs

(6) If the settlement concerns an order to pay, the Director is, despite clause (1) (c), entitled to be paid that proportion of the administrative costs that were ordered to be paid that is the same as the proportion of the amount of wages or compensation ordered to be paid that the employee is entitled to receive under the settlement. 2000, c. 41, s. 112 (6).

Restrictions on settlements

(7) No person shall enter into a settlement which would permit or require that person or any other person to engage in future contraventions of this Act. 2000, c. 41, s. 112 (7).

Application to void settlement

(8) If, upon application to the Board, the employee demonstrates that he or she entered into the settlement as a result of fraud or coercion,

- (a) the settlement is void;
- (b) the complaint is deemed never to have been withdrawn;
- (c) any order made in respect of the contravention or alleged contravention is reinstated;
- (d) any proceedings respecting the contravention or alleged contravention that were terminated shall be resumed. 2000, c. 41, s. 112 (8).

NOTICES OF CONTRAVENTION

Notice of contravention

113. (1) If an employment standards officer believes that a person has contravened a provision of this Act, the officer may issue a notice to the person setting out the officer's belief and the prescribed penalty for that contravention. 2000, c. 41, s. 113 (1).

Information

(2) The notice shall contain or be accompanied by information setting out the nature of the contravention. 2000, c. 41, s. 113 (2).

Service

- (3) A notice issued under this section shall be served on the person,
 - (a) if the person is an individual, personally or in accordance with section 95; or
 - (b) if the person is a corporation,
 - (i) on the corporation, in accordance with section 95, or
 - (ii) on an officer of the corporation or a person in charge of any location at which the corporation carries on business, personally or in accordance with section 95. 2000, c. 41, s. 113 (3).

Proof of service

(4) A certificate of the employment standards officer who issued a notice under this section is evidence of its issuance, service of it on the person and the receipt of it by the person if the officer,

- (a) certifies in it that the copy of the notice is a true copy of it;
- (b) certifies in it that the notice was served on the person; and
- (c) sets out in it the method of service used. 2000, c. 41, s. 113 (4).

Deemed contravention

- (5) The person shall be deemed to have contravened the provision set out in the notice if,
 - (a) the person fails to apply to the Board for a review of the notice within the period set out in subsection 122 (1); or
 - (b) the person applies to the Board for a review of the notice and the Board finds that the person contravened the provision set out in the notice. 2001, c. 9, Sched. I, s. 1 (23).

Penalty

(6) A person who is deemed to have contravened this Act shall pay to the Minister of Finance the penalty for the deemed contravention and the amount of any collector's fees and disbursements added to the amount under subsection 128 (2). 2001, c. 9, Sched. I, s. 1 (23).

Same

(6.1) The payment under subsection (6) shall be made within 30 days after the day the notice of contravention was served or, if the notice of contravention is appealed, within 30 days after the Board finds that there was a contravention. 2001, c. 9, Sched. I, s. 1 (23); 2002, c. 18, Sched. J, s. 3 (29).

Other means not a bar

(7) An employment standards officer may issue a notice to a person under this section even though an order has been or may be issued against the person under section 103, 104 or 108 or the person has been or may be prosecuted for or convicted of an offence with respect to the same contravention. 2000, c. 41, s. 113 (7).

Trade union

(8) This section does not apply with respect to a contravention of this Act with respect to an employee who is represented by a trade union. 2000, c. 41, s. 113 (8).

Director

(9) This section does not apply with respect to a contravention of this Act by a director or officer of an employer that is a corporation. 2000, c. 41, s. 113 (9).

LIMITATION PERIOD

Limitation period re orders and notices

114. (1) An employment standards officer shall not issue an order to pay wages or compensation or a notice of contravention with respect to a contravention of this Act concerning an employee,

- (a) if the employee filed a complaint about the contravention, more than two years after the complaint was filed;
- (b) if the employee did not file a complaint but another employee of the same employer did file a complaint, more than two years after the other employee filed his or her complaint if the officer discovered the contravention with respect to the employee while investigating the complaint; or
- (c) if the employee did not file a complaint and clause (b) does not apply, more than two years after an employment standards officer commenced an inspection with respect to the employee's employer for the purpose of determining whether a contravention occurred. 2000, c. 41, s. 114 (1).

Complaints from different employees

(2) If an employee files a complaint about a contravention of this Act by his or her employer and another employee of the same employer has previously filed a complaint about substantially the same contravention, subsection (1) shall be applied as if the employee who filed the subsequent complaint did not file a complaint. 2000, c. 41, s. 114 (2).

Exception

(3) Subsection (2) does not apply if, prior to the day on which the subsequent complaint was filed, an employment standards officer had, with respect to the earlier complaint, already issued an order or advised the complainant that he or she was refusing to issue an order. 2000, c. 41, s. 114 (3).

Restriction on rescission or amendment

(4) An employment standards officer shall not amend or rescind an order to pay wages or compensation after the last day on which he or she could have issued that order under subsection (1) unless the employer against whom the order was issued and the employee with respect to whom it was issued consent to the rescission or amendment. 2001, c. 9, Sched. I, s. 1 (24).

Same

(5) An employment standards officer shall not amend or rescind a notice of contravention after the last day on which he or she could have issued that notice under subsection (1) unless the employer against whom the notice was issued consents to the rescission or amendment. 2001, c. 9, Sched. I, s. 1 (24).

Meaning of "substantially the same"

115. (1) For the purposes of section 114, contraventions with respect to two employees are substantially the same if both employees became entitled to recover money under this Act as a result of the employer's failure to comply with the same provision of this Act or the regulations or with identical or virtually identical provisions of their employment contracts. 2000, c. 41, s. 115 (1).

Exception, payment of wages, deductions

(2) Despite subsection (1), contraventions with respect to two employees are not substantially the same merely because both employees became entitled to recover money under this Act as a result of a contravention of section 11 or 13 if the contravention of the section was with respect to wages due under different provisions of this Act or the regulations or under provisions of their employment contracts which are not identical or virtually identical. 2000, c. 41, s. 115 (2).

PART XXIII REVIEWS BY THE BOARD

REVIEWS OF ORDERS

Review

116. (1) A person against whom an order has been issued under section 103, 104, 106, 107 or 108 is entitled to a review of the order by the Board if, within the period set out in subsection (4), the person,

- (a) applies to the Board in writing for a review;
- (b) in the case of an order under section 103, pays the amount owing under the order to the Director in trust or provides the Director with an irrevocable letter of credit acceptable to the Director in that amount; and
- (c) in the case of an order under section 104, pays the lesser of the amount owing under the order and \$10,000 to the Director in trust or provides the Director with an irrevocable letter of credit acceptable to the Director in that amount. 2000, c. 41, s. 116 (1); 2001, c. 9, Sched. I, s. 1 (25).

Employee seeks review of order

(2) If an order has been issued under section 103 or 104 with respect to an employee, the employee is entitled to a review of the order by the Board if, within the period set out in subsection (4), the employee applies to the Board in writing for a review. 2001, c. 9, Sched. I, s. 1 (26).

Employee seeks review of refusal

(3) If an employee has filed a complaint alleging a contravention of this Act or the regulations and an order could be issued under section 103, 104 or 108 with respect to such a contravention, the employee is entitled to a review of an employment standards officer's refusal to issue such an order if, within the period set out in subsection (4), the employee applies to the Board in writing for such a review. 2001, c. 9, Sched. I, s. 1 (26).

Period for applying for review

(4) An application for a review under subsection (1), (2) or (3) shall be made within 30 days after the day on which the order, letter advising of the order or letter advising of the refusal to issue an order, as the case may be, is served. 2001, c. 9, Sched. I, s. 1 (26).

Extension of time

(5) The Board may extend the time for applying for a review under this section if it considers it appropriate in the circumstances to do so and, in the case of an application under subsection (1),

- (a) the Board has enquired of the Director whether the Director has paid to the employee the wages or compensation that were the subject of the order and is satisfied that the Director has not done so; and
- (b) the Board has enquired of the Director whether a collector's fees or disbursements have been added to the amount of the order under subsection 128 (2) and, if so, the Board is satisfied that fees and disbursements were paid by the person to whom the order was issued. 2001, c. 9, Sched. I, s. 1 (26).

Hearing

(6) Subject to subsection 118 (2), the Board shall hold a hearing for the purposes of the review. 2000, c. 41, s. 116 (6).

Parties

(7) The following are parties to the review:

1. The applicant.
2. If the employer applies for the review, the employee with respect to whom the order was issued.
3. If the employee applies for the review, the employee's employer.
4. If a director of a corporation applies for the review, the applicant and each director, other than the applicant, on whom the order was served.
5. The Director.
6. Any other persons specified by the Board. 2000, c. 41, s. 116 (7).

Parties given full opportunity

(8) The Board shall give the parties full opportunity to present their evidence and make their submissions. 2000, c. 41, s. 116 (8).

Practice and procedure for review

(9) The Board shall determine its own practice and procedure with respect to a review under this section. 2000, c. 41, s. 116 (9).

Money held in trust pending review

117. (1) This section applies if money with respect to an order to pay wages or compensation is paid to the Director in trust and the employer applies to the Board for a review of the order. 2000, c. 41, s. 117 (1).

Interest-bearing account

(2) The money held in trust shall be held in an interest-bearing account while the application for review is pending. 2000, c. 41, s. 117 (2).

If settlement

(3) If the matter is settled under section 112 or 120, the amount held in trust shall, subject to subsection 112 (6) or 120 (6), be paid out in accordance with the settlement, with interest, calculated at the rate and in the manner determined by the Director under subsection 88 (5). 2000, c. 41, s. 117 (3).

If no settlement

(4) If the matter is not settled under section 112 or 120, the amount paid into trust shall be paid out in accordance with the Board's decision together with interest calculated at the rate and in the manner determined by the Director under subsection 88 (5). 2000, c. 41, s. 117 (4).

Rules of practice

118. (1) The chair of the Board may make rules,

- (a) governing the Board's practice and procedure and the exercise of its powers; and
- (b) providing for forms and their use. 2000, c. 41, s. 118 (1); 2001, c. 9, Sched. I, s. 1 (27).

Expedited decisions

(2) The chair of the Board may make rules to expedite decisions about the Board's jurisdiction, and those rules,

- (a) may provide that the Board is not required to hold a hearing; and
- (b) despite subsection 116 (8), may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions. 2000, c. 41, s. 118 (2).

Effective date of rules under subs. (2)

(3) A rule made under subsection (2) comes into force on the day determined by order of the Lieutenant Governor in Council. 2006, c. 19, Sched. M, s. 1 (3).

Conflict with *Statutory Powers Procedure Act*

(4) If there is a conflict between the rules made under this section and the *Statutory Powers Procedure Act*, the rules under this section prevail. 2000, c. 41, s. 118 (4).

Rules not regulations

(5) Rules made under this section are not regulations within the meaning of the *Regulations Act*. 2000, c. 41, s. 118 (5).

Powers of Board

119. (1) This section sets out the Board's powers in a review under section 116. 2000, c. 41, s. 119 (1).

Persons to represent groups

(2) If a group of parties have the same interest or substantially the same interest, the Board may designate one or more of the parties in the group to represent the group. 2000, c. 41, s. 119 (2).

Quorum

(3) The chair or a vice-chair of the Board constitutes a quorum for the purposes of this section and is sufficient for the exercise of the jurisdiction and powers of the Board under it. 2000, c. 41, s. 119 (3).

Posting of notices

(4) The Board may require a person to post and to keep posted any notices that the Board considers appropriate even if the person is not a party to the review. 2000, c. 41, s. 119 (4).

Same

(5) If the Board requires a person to post and keep posted notices, the person shall post the notices and keep them posted in a conspicuous place or places in or upon the person's premises where it is likely to come to the attention of other persons having an interest in the review. 2000, c. 41, s. 119 (5).

Powers of Board

(6) The Board may, with necessary modifications, exercise the powers conferred on an employment standards officer under this Act and may substitute its findings for those of the officer who issued the order or refused to issue the order. 2000, c. 41, s. 119 (6).

Dealing with order

(7) Without restricting the generality of subsection (6),

(a) on a review of an order, the Board may amend, rescind or affirm the order or issue a new order; and

(b) on a review of a refusal to issue an order, the Board may issue an order or affirm the refusal. 2000, c. 41, s. 119 (7).

Labour relations officers

(8) Any time after an application for review is made, the Board may direct a labour relations officer to examine any records or other documents and make any inquiries it considers appropriate, but it shall not direct an employment standards officer to do so. 2000, c. 41, s. 119 (8).

Powers of labour relations officers

(9) Sections 91 and 92 apply with necessary modifications with respect to a labour relations officer acting under subsection (8). 2000, c. 41, s. 119 (9).

Wages or compensation owing

(10) Subsection (11) applies if, during a review of an order requiring the payment of wages or compensation or a review of a refusal to issue such an order,

(a) the Board finds that a specified amount of wages or compensation is owing; or

(b) there is no dispute that a specified amount of wages or compensation is owing. 2000, c. 41, s. 119 (10).

Interim order

(11) The Board shall affirm the order to the extent of the specified amount or issue an order to the extent of that amount, even though the review is not yet completed. 2000, c. 41, s. 119 (11).

Interest

(12) If the Board issues, amends or affirms an order or issues a new order requiring the payment of wages or compensation, the Board may order the person against whom the order was issued to pay interest at the rate and calculated in the manner determined by the Director under subsection 88 (5). 2000, c. 41, s. 119 (12).

Decision final

(13) A decision of the Board is final and binding upon the parties to the review and any other parties as the Board may specify. 2000, c. 41, s. 119 (13).

Judicial review

(14) Nothing in subsection (13) prevents a court from reviewing a decision of the Board under this section, but a decision of the Board concerning the interpretation of this Act shall not be overturned unless the decision is unreasonable. 2000, c. 41, s. 119 (14).

Settlement through labour relations officer

120. (1) The Board may authorize a labour relations officer to attempt to effect a settlement of the matters raised in an application for review under section 116. 2000, c. 41, s. 120 (1).

Certain matters not bar to settlement

(2) A settlement may be effected under this section even if,

(a) the employment standards officer who issued the order or refused to issue the order does not participate in the settlement discussions or is not advised of the discussions or settlement; or

(b) the review under section 116 has started. 2000, c. 41, s. 120 (2).

Compliance orders

(3) A settlement respecting a compliance order shall not be made if the Director has not approved the terms of the settlement. 2000, c. 41, s. 120 (3).

Effect of settlement

- (4) If the parties to a settlement under this section do what they agreed to do under the settlement,
- (a) the settlement is binding on the parties;
 - (b) if the review concerns an order, the order is void; and
 - (c) the review is terminated. 2000, c. 41, s. 120 (4).

Application to void settlement

- (5) If, upon application to the Board, the employee demonstrates that he or she entered into the settlement as a result of fraud or coercion,
- (a) the settlement is void;
 - (b) if the review concerned an order, the order is reinstated; and
 - (c) the review shall be resumed. 2000, c. 41, s. 120 (5).

Distribution

- (6) If the order that was the subject of the application required the payment of money to the Director in trust, the Director,
- (a) shall distribute the amount held in trust with respect to wages or compensation in accordance with the settlement; and
 - (b) despite clause (4) (b), is entitled to be paid that proportion of the administrative costs that were ordered to be paid that is the same as the proportion of the amount of wages or compensation ordered to be paid that the employee is entitled to receive under the settlement. 2000, c. 41, s. 120 (6).

REFERRAL OF MATTER UNDER PART XIII

Referral

121. (1) If, as a result of a complaint or otherwise, the Director comes to believe that an employer, an organization of employers, an organization of employees or a person acting directly on behalf of any of them may have contravened Part XIII (Benefit Plans), the Director may refer the matter to the Board. 2000, c. 41, s. 121 (1).

Hearing

(2) If a matter is referred to the Board under subsection (1), the Board shall hold a hearing and determine whether the employer, organization or person contravened Part XIII. 2000, c. 41, s. 121 (2).

Powers of Board

- (3) If the Board determines that the employer, organization or person acting directly on behalf of an employer or organization contravened Part XIII, the Board may order the employer, organization or person,
- (a) to cease contravening that Part and to take whatever action the Board considers necessary to that end; and
 - (b) to compensate any person or persons who may have suffered loss or been disadvantaged as a result of the contravention. 2000, c. 41, s. 121 (3).

Certain review provisions applicable

(4) Subsections 116 (8) and (9), 118 (1) and (3) to (5), 119 (1) to (5), (8), (9), (13) and (14) and 120 (1), (4) and (5) apply, with necessary modifications, with respect to a proceeding under this section. 2000, c. 41, s. 121 (4).

REVIEW OF NOTICE OF CONTRAVENTION

Review of notice of contravention

122. (1) A person against whom a notice of contravention has been issued under section 113 may dispute the notice if the person makes a written application to the Board for a review,

- (a) within 30 days after the date of service of the notice; or
- (b) if the Board considers it appropriate in the circumstances to extend the time for applying, within the period specified by the Board. 2000, c. 41, s. 122 (1).

Hearing

(2) The Board shall hold a hearing for the purposes of the review. 2000, c. 41, s. 122 (2).

Parties

(3) The parties to the review are the person against whom the notice was issued and the Director. 2000, c. 41, s. 122 (3).

Onus

(4) On a review under this section, the onus is on the Director to establish, on a balance of probabilities, that the person against whom the notice of contravention was issued contravened the provision of this Act indicated in the notice. 2000, c. 41, s. 122 (4).

Decision

(5) The Board may,

- (a) find that the person did not contravene the provision and rescind the notice;
- (b) find that the person did contravene the provision and affirm the notice; or
- (c) find that the person did contravene the provision but amend the notice by reducing the penalty. 2001, c. 9, Sched. I, s. 1 (28).

Collector's fees and disbursements

(6) If the Board finds that the person contravened the provision and if it extended the time for applying for a review under clause (1) (b),

- (a) before issuing its decision, it shall enquire of the Director whether a collector's fees and disbursements have been added to the amount set out in the notice under subsection 128 (2); and
- (b) if they have been added to that amount, the Board shall advise the person of that fact and of the total amount, including the collector's fees and disbursements, when it issues its decision. 2001, c. 9, Sched. I, s. 1 (28).

Certain provisions applicable

(7) Subsections 116 (8) and (9), 118 (1), (3), (4) and (5) and 119 (3), (4), (5), (13) and (14) apply, with necessary modifications, to a review under this section. 2001, c. 9, Sched. I, s. 1 (28).

GENERAL PROVISIONS RESPECTING THE BOARD

Persons from Board not compellable

123. (1) Except with the consent of the Board, none of the following persons may be compelled to give evidence in a civil proceeding or in a proceeding before the Board or another board or tribunal with respect to information obtained while exercising his or her powers or performing his or her duties under this Act:

- 1. A Board member.
- 2. The registrar of the Board.
- 3. An employee of the Board. 2000, c. 41, s. 123 (1).

Non-disclosure

(2) A labour relations officer who receives information or material under this Act shall not disclose it to any person or body other than the Board unless the Board authorizes the disclosure. 2000, c. 41, s. 123 (2).

When no decision after six months

124. (1) This section applies if the Board has commenced a hearing to review an order, refusal to issue an order or notice of contravention, six months or more have passed since the last day of hearing and a decision has not been made. 2000, c. 41, s. 124 (1).

Termination of proceeding

(2) On the application of a party in the proceeding, the chair may terminate the proceeding. 2000, c. 41, s. 124 (2).

Re-institution of proceeding

(3) If a proceeding is terminated according to subsection (2), the chair shall re-institute the proceeding upon such terms and conditions as the chair considers appropriate. 2000, c. 41, s. 124 (3).

PART XXIV COLLECTION

Third party demand

125. (1) If the Director believes or suspects that a person owes money to or is holding money for an employer or a director who is liable to make a payment under this Act, the Director may demand that the person pay all or part of the money otherwise payable to the employer or director to the Director in trust on account of the liability under this Act. 2000, c. 41, s. 125 (1).

Notice

(2) The Director shall serve notice of the demand either personally or in accordance with section 95. 2000, c. 41, s. 125 (2).

Discharge

(3) A person who pays money to the Director in accordance with a demand under this section is relieved from liability for the amount owed to or held for the employer or director to the extent of that payment. 2000, c. 41, s. 125 (3).

Liability

(4) If a person who receives a demand under this section makes a payment to the employer or director with respect to whom the demand was made without complying with the demand, the person shall pay to the Director an amount equal to the lesser of,

- (a) the amount paid to the employer or director; and
- (b) the amount of the demand. 2000, c. 41, s. 125 (4).

Filing of order

126. (1) If an order to pay money has been made under this Act, the Director may cause a copy of the order, certified by the Director to be a true copy, to be filed in a court of competent jurisdiction. 2000, c. 41, s. 126 (1).

Advice to person against whom order was made

(2) If the Director files a copy of the order, he or she shall serve a letter in accordance with section 95 upon the person against whom the order was issued advising the person of the filing. 2000, c. 41, s. 126 (2).

Certificate enforceable

(3) The Director may enforce an order filed under subsection (1) in the same manner as a judgment or order of the court. 2000, c. 41, s. 126 (3).

Notices of contravention

(4) Subsections (1), (2) and (3) apply, with necessary modifications, to a notice of contravention. 2000, c. 41, s. 126 (4).

COLLECTORS

Director may authorize collector

127. (1) The Director may authorize a collector to exercise those powers that the Director specifies in the authorization to collect amounts owing under this Act or under an order made by a reciprocating state to which section 130 applies. 2000, c. 41, s. 127 (1).

Same

(2) The Director may specify his or her powers under sections 125, 126, 130 and subsection 135 (3) and the Board's powers under section 19 of the *Statutory Powers Procedure Act* in an authorization under subsection (1). 2000, c. 41, s. 127 (2).

Costs of collection

(3) Despite clause 22 (a) of the *Collection Agencies Act*, the Director may also authorize the collector to collect a reasonable fee or reasonable disbursements or both from each person from whom the collector seeks to collect amounts owing under this Act. 2000, c. 41, s. 127 (3).

Same

(4) The Director may impose conditions on an authorization under subsection (3) and may determine what constitutes a reasonable fee or reasonable disbursements for the purposes of that subsection. 2000, c. 41, s. 127 (4).

Exception re disbursements

(5) The Director shall not authorize a collector who is required to be registered under the *Collection Agencies Act* to collect disbursements. 2000, c. 41, s. 127 (5).

Collector's powers

128. (1) A collector may exercise any of the powers specified in an authorization of the Director under section 127. 2000, c. 41, s. 128 (1).

Fees and disbursements part of order

(2) If a collector is seeking to collect an amount owing under an order or notice of contravention, any fees and disbursements authorized under subsection 127 (3) shall be deemed to be owing under and shall be deemed to be added to the amount of the order or notice of contravention. 2000, c. 41, s. 128 (2).

Distribution of money collected re wages or compensation

- (3) Subject to subsection (4), a collector,
- (a) shall pay any amount collected with respect to wages or compensation,
 - (i) to the Director in trust, or
 - (ii) with the written consent of the Director, to the person entitled to the wages or compensation;
 - (b) shall pay any amount collected with respect to administrative costs to the Director;
 - (c) shall pay any amount collected with respect to a notice of contravention to the Minister of Finance; and
 - (d) may retain any amount collected with respect to the fees and disbursements. 2000, c. 41, s. 128 (3).

Apportionment

(4) If the money collected is less than the full amount owing to all persons, including the Director and the collector, the money shall be apportioned among those to whom it is owing in the proportion each is owed and paid to them. 2000, c. 41, s. 128 (4).

Settlement by collector

129. (1) A collector may agree to a settlement with the person from whom he or she seeks to collect money, but only with the written agreement of,

- (a) the person to whom the money is owed; or
- (b) in the case of a notice of contravention, the Director. 2000, c. 41, s. 129 (1).

Restriction

(2) A collector shall not agree to a settlement under clause (1) (a) without the Director's written approval if the person to whom the money is owed would receive less than,

- (a) 75 per cent of the money to which he or she was entitled; or
- (b) if another percentage is prescribed, the prescribed percentage of the money to which he or she was entitled. 2000, c. 41, s. 129 (2).

Orders void where settlement

(3) If an order to pay has been made with respect to an employee under section 103, 104, 106 or 107 and a settlement respecting the money that was found to be owing to the employee is made under this section, the order is void and the settlement is binding on the employee if the person against whom the order was issued does what the person agreed to do under the settlement unless, on application to the Board, the employee demonstrates that the settlement was entered into as a result of fraud or coercion. 2000, c. 41, s. 129 (3).

Notice of contravention

(4) If a settlement respecting money that is owing under a notice of contravention is made under this section, the notice is void if the person against whom the notice was issued does what the person agreed to do under the settlement. 2000, c. 41, s. 129 (4).

Payment

(5) The person who owes money under a settlement shall pay the amount agreed upon to the collector, who shall pay it out in accordance with section 128. 2000, c. 41, s. 129 (5).

RECIPROCAL ENFORCEMENT OF ORDERS

Definitions

130. (1) In this section,

“order” includes a judgment and, in the case of a state whose employment standards legislation contains a provision substantially similar to subsection 126 (1), includes a certificate of an order for the payment of money owing under that legislation; (“ordonnance”)

“state” includes another province or territory of Canada, a foreign state and a political subdivision of a state. (“État”) 2000, c. 41, s. 130 (1).

Reciprocating states

(2) The prescribed states are reciprocating states for the purposes of this section and the prescribed authorities with respect to those states are the authorities who may make applications under this section. 2000, c. 41, s. 130 (2).

Application for enforcement

(3) The designated authority of a reciprocating state may apply to the Director for enforcement of an order for the payment of money issued under the employment standards legislation of that state. 2000, c. 41, s. 130 (3).

Copy of order

- (4) The application shall be accompanied by a copy of the order, certified as a true copy,
- (a) by the court in which the order was filed, if the employment standards legislation of the reciprocating state provides for the filing of the order in a court; or
 - (b) by the designated authority, if the employment standards legislation of the reciprocating state does not provide for the filing of the order in a court. 2000, c. 41, s. 130 (4).

Enforcement

(5) The Director may file a copy of the order in a court of competent jurisdiction and, upon its filing, the order is enforceable as a judgment or order of the court,

- (a) at the instance and in favour of the Director; or
- (b) at the instance and in favour of the designated authority. 2000, c. 41, s. 130 (5).

Costs

- (6) The Director or the designated authority, as the case may be,
- (a) is entitled to the costs of enforcing the order as if it were an order of the court in which the copy of it was filed; and
 - (b) may recover those costs in the same manner as sums payable under such an order may be recovered. 2000, c. 41, s. 130 (6).

**PART XXV
OFFENCES AND PROSECUTIONS**

OFFENCES

Offence to keep false records

131. (1) No person shall make, keep or produce false records or other documents that are required to be kept under this Act or participate or acquiesce in the making, keeping or production of false records or other documents that are required to be kept under this Act. 2000, c. 41, s. 131 (1).

False or misleading information

- (2) No person shall provide false or misleading information under this Act. 2000, c. 41, s. 131 (2).

General offence

132. A person who contravenes this Act or the regulations or fails to comply with an order, direction or other requirement under this Act or the regulations is guilty of an offence and on conviction is liable,

- (a) if the person is an individual, to a fine of not more than \$50,000 or to imprisonment for a term of not more than 12 months or to both;
- (b) subject to clause (c), if the person is a corporation, to a fine of not more than \$100,000; and
- (c) if the person is a corporation that has previously been convicted of an offence under this Act or a predecessor to it,
 - (i) if the person has one previous conviction, to a fine of not more than \$250,000, and
 - (ii) if the person has more than one previous conviction, to a fine of not more than \$500,000. 2000, c. 41, s. 132.

Additional orders re s. 74

133. (1) If an employer is convicted under section 132 of contravening section 74, the court shall, in addition to any fine or term of imprisonment that is imposed, order that the employer take specific action or refrain from taking specific action to remedy the contravention. 2000, c. 41, s. 133 (1).

Reinstatement or compensation

(2) Without restricting the generality of subsection (1), the order made by the court may require that an employee be paid any wages that are owing to him or her or that an employee be reinstated or he or she be compensated for any loss incurred by him or her as a result of the contravention or may require that the employee be both reinstated and compensated. 2000, c. 41, s. 133 (2).

Part XVI

(3) If the contravention of section 74 was in relation to Part XVI (Lie Detectors) and the contravention affected an applicant for employment or an applicant to be a police officer, the court may require that the employer hire the applicant or compensate him or her or both hire and compensate him or her. 2000, c. 41, s. 133 (3).

Offence re order for reinstatement

134. An employer who fails to comply with an order issued under section 133 is guilty of an offence and on conviction is liable,

- (a) if the employer is an individual, to a fine of not more than \$2,000 for each day during which the failure to comply continues or to imprisonment for a term of not more than six months or to both; and
- (b) if the employer is a corporation, to a fine of not more than \$4,000 for each day during which the failure to comply continues. 2000, c. 41, s. 134.

Additional orders re other contraventions

135. (1) If an employer is convicted under section 132 of contravening a provision of this Act other than section 74, the court shall, in addition to any fine or term of imprisonment that is imposed, assess any amount owing to an employee affected by the contravention and order the employer to pay the amount assessed to the Director. 2000, c. 41, s. 135 (1).

Collection by Director

(2) The Director shall attempt to collect the amount ordered to be paid under subsection (1) and if he or she is successful shall distribute it to the employee. 2000, c. 41, s. 135 (2).

Enforcement of order

(3) An order under subsection (1) may be filed by the Director in a court of competent jurisdiction and upon filing shall be deemed to be an order of that court for the purposes of enforcement. 2000, c. 41, s. 135 (3).

Offence re directors' liability

136. (1) A director of a corporation is guilty of an offence if the director,

- (a) fails to comply with an order of an employment standards officer under section 106 or 107 and has not applied for a review of that order; or
- (b) fails to comply with an order issued under section 106 or 107 that has been amended or affirmed by the Board on a review of the order under section 116 or with a new order issued by the Board on such a review. 2000, c. 41, s. 136 (1).

Penalty

(2) A director convicted of an offence under subsection (1) is liable to a fine of not more than \$50,000. 2000, c. 41, s. 136 (2).

Offence re permitting offence by corporation

137. (1) If a corporation contravenes this Act or the regulations, an officer, director or agent of the corporation or a person acting or claiming to act in that capacity who authorizes or permits the contravention or acquiesces in it is a party to and guilty of the offence and is liable on conviction to the fine or imprisonment provided for the offence. 2000, c. 41, s. 137 (1).

Same

(2) Subsection (1) applies whether or not the corporation has been prosecuted or convicted of the offence. 2000, c. 41, s. 137 (2).

Onus of proof

(3) In a trial of an individual who is prosecuted under subsection (1), the onus is on the individual to prove that he or she did not authorize, permit or acquiesce in the contravention. 2000, c. 41, s. 137 (3).

Additional penalty

(4) If an individual is convicted under this section, the court may, in addition to any other fine or term of imprisonment that is imposed, assess any amount owing to an employee affected by the contravention and order the individual to pay the amount assessed to the Director. 2000, c. 41, s. 137 (4).

Collection by Director

(5) The Director shall attempt to collect the amount ordered to be paid under subsection (4) and if he or she is successful shall distribute it to the employee. 2000, c. 41, s. 137 (5).

No prosecution without consent

(6) No prosecution shall be commenced under this section without the consent of the Director. 2000, c. 41, s. 137 (6).

Proof of consent

(7) The production of a document that appears to show that the Director has consented to a prosecution under this section is admissible as evidence of the Director's consent. 2000, c. 41, s. 137 (7).

Prosecution of employment standards officer

137.1 (1) No prosecution of an employment standards officer shall be commenced with respect to an alleged contravention of subsection 89 (2) without the consent of the Deputy Attorney General. 2001, c. 9, Sched. I, s. 1 (29).

Proof of consent

(2) The production of a document that appears to show that the Deputy Attorney General has consented to a prosecution of an employment standards officer is admissible as evidence of his or her consent. 2001, c. 9, Sched. I, s. 1 (29).

Where prosecution may be heard

138. (1) Despite section 29 of the *Provincial Offences Act*, the prosecution of an offence under this Act may be heard and determined by the Ontario Court of Justice sitting in the area where the accused is resident or carries on business, if the prosecutor so elects. 2000, c. 41, s. 138 (1).

Election to have judge preside

(2) The Attorney General or an agent for the Attorney General may by notice to the clerk of the court require that a judge of the court hear and determine the prosecution. 2000, c. 41, s. 138 (2).

Publication re convictions

138.1 (1) If a person, including an individual, is convicted of an offence under this Act, the Director may publish or otherwise make available to the general public the name of the person, a description of the offence, the date of the conviction and the person's sentence. 2004, c. 21, s. 9.

Internet publication

(2) Authority to publish under subsection (1) includes authority to publish on the Internet. 2004, c. 21, s. 9.

Disclosure

(3) Any disclosure made under subsection (1) shall be deemed to be in compliance with clause 42 (e) of the *Freedom of Information and Protection of Privacy Act*. 2004, c. 21, s. 9.

Limitation period

139. No prosecution shall be commenced under this Act more than two years after the date on which the offence was committed or alleged to have been committed. 2000, c. 41, s. 139.

**PART XXVI
MISCELLANEOUS EVIDENTIARY PROVISIONS**

Copy constitutes evidence

140. (1) In a prosecution or other proceeding under this Act, a copy of an order or notice of contravention that appears to be made under this Act or the regulations and signed by an employment standards officer or the Board is evidence of the order or notice and of the facts appearing in it without proof of the signature or office of the person appearing to have signed the order or notice. 2000, c. 41, s. 140 (1).

Same

(2) In a prosecution or other proceeding under this Act, a copy of a record or other document or an extract from a record or other document that appears to be certified as a true copy or accurate extract by an employment standards officer is evidence of the record or document or the extracted part of the record or document and of the facts appearing in the record, document or extract without proof of the signature or office of the person appearing to have certified the copy or extract or any other proof. 2000, c. 41, s. 140 (2).

Certificate of Director constitutes evidence

(3) In a prosecution or other proceeding under this Act, a certificate that appears to be signed by the Director setting out that the records of the ministry indicate that an employer has failed to make a payment required by an order or a notice of contravention issued under this Act is evidence of the failure to make that payment without further proof. 2000, c. 41, s. 140 (3).

Same, collector

(4) In a prosecution or other proceeding under this Act, a certificate shown by a collector that appears to be signed by the Director setting out any of the following facts is evidence of the fact without further proof:

1. The Director has authorized the collector to collect amounts owing under this Act.

2. The Director has authorized the collector to collect a reasonable fee or reasonable disbursements or both.
3. The Director has, or has not, imposed conditions on an authorization described in paragraph 2 and has, or has not, determined what constitutes a reasonable fee or reasonable disbursements.
4. Any conditions imposed by the Director on an authorization described in paragraph 2.
5. The Director has approved a settlement under subsection 129 (2). 2000, c. 41, s. 140 (4).

Same, date of complaint

(5) In a prosecution or other proceeding under this Act, a certificate that appears to be signed by the Director setting out the date on which the records of the ministry indicate that a complaint was filed is evidence of that date without further proof. 2000, c. 41, s. 140 (5).

**PART XXVII
REGULATIONS**

Regulations

141. (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes of this Act and, without restricting the generality of the foregoing, may make the following regulations:

1. Prescribing anything for the purposes of any provision of this Act that makes reference to a thing that is prescribed.
2. Establishing minimum wage rates for employees or classes of employees.
- 2.1 Establishing a maximum pay period, a maximum period within which payments made to an employee shall be reconciled with wages earned by the employee or both.
3. Exempting any class of employees or employers from the application of this Act or any Part, section or other provision of it.
4. Prescribing what constitutes the performance of work.
5. Prescribing what information concerning the terms of an employment contract should be provided to an employee in writing.
6. Defining an industry and prescribing for that industry one or more terms or conditions of employment that apply to employers and employees in the industry or one or more requirements or prohibitions that apply to employers and employees in the industry.
7. Providing that any term, condition, requirement or prohibition prescribed under paragraph 6 applies in place of or in addition to one or more provisions of this Act or the regulations.
8. Providing that a regulation made under paragraph 6 or 7 applies only in respect of workplaces in the defined industry that have characteristics specified in the regulation, including but not limited to characteristics related to location.
9. Providing that an agreement under subsection 17 (2) to work hours in excess of those referred to in clause 17 (1) (a) that was made at the time of the employee's hiring and that has been approved by the Director is, despite subsection 17 (6), irrevocable unless both the employer and the employee agree to its revocation.
10. Providing a formula for the determination of an employee's regular rate that applies instead of the formula that would otherwise be applicable under the definition of "regular rate" in section 1 in such circumstances as are set out in the regulation.
11. Providing for the establishment of committees to advise the Minister on any matters relating to the application or administration of this Act.
12. Prescribing the manner and form in which notice of termination must or may be given and the content of such notice.
13. Prescribing what constitutes a constructive dismissal.
14. Providing that the common law doctrine of frustration does not apply to an employment contract and that an employer is not relieved of any obligation under Part XV because of the occurrence of an event that would frustrate an employment contract at common law except as prescribed.
- 14.1 Providing that payments to an employee by way of pension benefits, insurance benefits, workplace safety and insurance benefits, bonus, employment insurance benefits, supplementary employment insurance benefits or similar arrangements shall or shall not be taken into account in determining the amount that an employer is required to pay to an employee under clause 60 (1) (b), section 61 or section 64.
15. Providing for and governing the consolidation of hearings under this Act.

16. Prescribing the minimum number of hours in a day or week for which an employee is entitled to be paid the minimum wage or a contractual wage rate and imposing conditions in respect of that entitlement.
17. Defining any word or expression used in this Act that is not defined in it.
18. Prescribing the manner in which the information required by subsection 58 (2) shall be given to the Director.
19. Respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 2000, c. 41, s. 141 (1); 2001, c. 9, Sched. I, s. 1 (30); 2002, c. 18, Sched. J, s. 3 (30); 2004, c. 21, s. 10 (1, 2).

Regulations re Part XIII

(2) The Lieutenant Governor in Council may make regulations respecting any matter or thing necessary or advisable to carry out the intent and purpose of Part XIII (Benefit Plans), and without restricting the generality of the foregoing, may make regulations,

- (a) exempting a benefit plan, part of a benefit plan or the benefits under such a plan or part from the application of Part XIII;
- (b) permitting a differentiation in a benefit plan between employees or their beneficiaries, survivors or dependants because of the age, sex or marital status of the employees;
- (c) suspending the application of Part XIII to a benefit plan, part of a benefit plan or benefits under such a plan or part for the periods of time specified in the regulation;
- (d) prohibiting a reduction in benefits to an employee in order to comply with Part XIII;
- (e) providing the terms under which an employee may be entitled or disentitled to benefits under a benefit plan. 2000, c. 41, s. 141 (2); 2004, c. 15, s. 5.

Regulations re emergency leaves, declared emergencies

(2.1) If a regulation is made prescribing a reason for the purposes of clause 50.1 (1) (d), the regulation may,

- (a) provide that it has effect as of the date specified in the regulation;
- (b) provide that an employee who does not perform the duties of his or her position because of the declared emergency and the prescribed reason is deemed to have taken leave beginning on the first day the employee does not perform the duties of his or her position on or after the date specified in the regulation; and
- (c) provide that clause 74 (1) (a) applies, with necessary modifications, in relation to the deemed leave described in clause (b). 2006, c. 13, s. 3 (4).

Retroactive regulation

(2.2) A date specified in a regulation made under subsection (2.1) may be a date that is earlier than the day on which the regulation is made. 2006, c. 13, s. 3 (4).

Regulation extending leave

(2.3) The Lieutenant Governor in Council may make a regulation providing that the entitlement of an employee to take leave under section 50.1 is extended beyond the day on which the entitlement would otherwise end under subsection 50.1 (5) or (6), if the employee is still not performing the duties of his or her position because of the effects of the emergency and because of a reason referred to in clause 50.1 (1) (a), (b), (c) or (d). 2006, c. 13, s. 3 (4).

Same

(2.4) A regulation made under subsection (2.3) may limit the duration of the extended leave and may set conditions that must be met in order for the employee to be entitled to the extended leave. 2006, c. 13, s. 3 (4).

Regulations re Part XIX

(3) The Lieutenant Governor in Council may make regulations prescribing information for the purposes of section 77. 2000, c. 41, s. 141 (3).

Regulations re Part XXII

(3.1) A regulation prescribing penalties for contraventions for the purposes of subsection 113 (1) may,

- (a) provide for greater penalties for the second contravention and for the third or subsequent contravention of a provision of the Act in a three-year period or in such other period as may be prescribed;
- (b) provide that the penalty for a contravention is the prescribed amount multiplied by the number of employees affected by the contravention. 2001, c. 9, Sched. I, s. 1 (31).

Regulations re Part XXV

(4) If the Lieutenant Governor in Council is satisfied that laws are or will be in effect in the state for the enforcement of orders made under this Act on a basis substantially similar to that set out in section 126, the Lieutenant Governor in Council may by regulation,

- (a) declare a state to be a reciprocating state for the purposes of section 130; and
- (b) designate an authority of that state as the authority who may make applications under section 130. 2000, c. 41, s. 141 (4).

Classes

(5) A regulation made under this section may be restricted in its application to any class of employee or employer and may treat different classes of employee or employer in different ways. 2000, c. 41, s. 141 (5).

Regulations may be conditional

(5.1) A regulation made under this section may provide that it applies only if one or more conditions specified in it are met. 2004, c. 21, s. 10 (3).

Terms and conditions of employment for an industry

(6) Without restricting the generality of paragraphs 6 and 7 of subsection (1), a regulation made under paragraph 6 or 7 may establish requirements for the industry respecting such matters as a minimum wage, the scheduling of work, maximum hours of work, eating periods and other breaks from work, posting of work schedules, conditions under which the maximum hours of work set out in the regulation may be exceeded, overtime thresholds and overtime pay, vacations, vacation pay, working on public holidays and public holiday pay and treating some public holidays differently than others for those purposes. 2000, c. 41, s. 141 (6); 2004, c. 21, s. 10 (4).

- (7) REPEALED: 2004, c. 21, s. 10 (5).

Conditions, revocability of approval

(8) A regulation made under paragraph 9 of subsection (1) may authorize the Director to impose conditions in granting an approval and may authorize the Director to rescind an approval. 2000, c. 41, s. 141 (8).

Restriction where excess hours agreements approved

(9) An employer may not require an employee who has made an agreement approved by the Director under a regulation made under paragraph 9 of subsection (1) to work more than 10 hours in a day, except in the circumstances described in section 19. 2000, c. 41, s. 141 (9).

Revocability of part of approved excess hours agreement

(10) If an employee has agreed to work hours in excess of those referred to in clause 17 (1) (a) and hours in excess of those referred to in clause 17 (1) (b), the fact that the Director has approved the agreement in accordance with a regulation made under paragraph 9 of subsection (1) does not prevent the employee from revoking, in accordance with subsection 17 (6), that part of the agreement dealing with the hours in excess of those referred to in clause 17 (1) (b). 2000, c. 41, s. 141 (10); 2004, c. 21, s. 10 (6).

PART XXVIII TRANSITION

Transition

142. (1) Part XIV.1 of the *Employment Standards Act*, as it read immediately before its repeal by this Act, continues to apply only with respect to wages that became due and owing before the Employee Wage Protection Program was discontinued and only if the employee to whom the wages were owed provided a certificate of claim, on a form prepared by the Ministry, to the Program Administrator before the day on which this section comes into force. 2000, c. 41, s. 142 (1).

Parental leave

(2) If subsection 143 (2) of this Act is not proclaimed in force before subsection 144 (1), an employee who commenced parental leave under the *Employment Standards Act* before its repeal by this Act may, if the child was born or came into the employee's custody, care and control for the first time on or after December 31, 2000, extend the leave without notice to the employee's employer,

- (a) if the employee took pregnancy leave, to the day that is 35 weeks after the parental leave began; or
 - (b) if the employee did not take pregnancy leave, to the day that is 37 weeks after the parental leave began. 2000, c. 41, s. 142 (2).
- (3) REPEALED: 2001, c. 9, Sched. I, s. 1 (32).
 - (4) REPEALED: 2001, c. 9, Sched. I, s. 1 (32).
 - (5) REPEALED: 2001, c. 9, Sched. I, s. 1 (32).

143, 144. OMITTED (AMENDS OR REPEALS OTHER ACTS). 2000, c. 41, ss. 143, 144.

145. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2000, c. 41, s. 145.

146. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2000, c. 41, s. 146.

**Employment Standards Act, 2000
ONTARIO REGULATION 285/01**

EXEMPTIONS, SPECIAL RULES AND ESTABLISHMENT OF MINIMUM WAGE

Definitions

1. In this Regulation,

“construction employee” means,

- (a) an employee employed at the site in any of the activities described in the definition of “construction industry”, or
- (b) an employee who is engaged in off-site work, in whole or in part, but is commonly associated in work or collective bargaining with an employee described in clause (a); (“employé de la construction”)

“construction industry” means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site; (“industrie de la construction”)

“domestic worker” means a person who is employed by a householder to perform services in the household or to provide care, supervision or personal assistance to children, senior or disabled members of the household, but does not include a sitter who provides care, supervision or personal assistance to children on an occasional, short-term basis; (“travailleur domestique”)

“hotel, motel, tourist resort, restaurant and tavern” means an establishment that provides accommodation, lodging, meals or beverages for payment, and includes hotels, motels, motor hotels, tourist homes, tourist camps, tourist cabins and cottages, tourist inns, catering establishments and all other establishments of a similar nature; (“hôtel, motel, lieu de villégiature, restaurant et taverne”)

“information technology professional” means an employee who is primarily engaged in the investigation, analysis, design, development, implementation, operation or management of information systems based on computer and related technologies through the objective application of specialized knowledge and professional judgment; (“professionnel en technologie de l’information”)

“recorded visual and audio-visual entertainment production industry” means the industry of producing visual or audio-visual recorded entertainment that is intended to be replayed in cinemas or on the Internet, as part of a television broadcast, or on a VCR or DVD player or a similar device, but does not include the industry of producing commercials (other than trailers), video games or educational material; (“industrie de la production de divertissements visuels et audio-visuels enregistrés”)

“residential care worker” means a person who is employed to supervise and care for children or developmentally handicapped persons in a family-type residential dwelling or cottage and who resides in the dwelling or cottage during work periods, but does not include a foster parent; (“préposé aux soins en établissement”)

“road building” means the preparation, construction, reconstruction, repair, alteration, remodelling, renovation, demolition, finishing and maintenance of streets, highways or parking lots, including structures such as bridges, tunnels or retaining walls in connection with streets or highways, and all foundations, installation of equipment, appurtenances and work incidental thereto; (“construction de routes”)

“seasonal employee” means an employee who works not more than 16 weeks in a calendar year for an employer; (“employé saisonnier”)

“taxi cab” means a vehicle, with seating accommodation for not more than nine persons exclusive of the driver, used to carry persons for hire; (“taxi”)

“wage rate” means, where an employee is paid for piecework, the rate paid per piece and if there is more than one piece rate, each of the piece rates, and the number of pieces paid at each rate. (“taux de salaire”) O. Reg. 285/01, s. 1; O. Reg. 552/05, s. 1.

EXEMPTIONS RE VARIOUS PARTS OF ACT

Exemptions from Parts VII to XI of Act

2. (1) Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed,

- (a) as a duly qualified practitioner of,
 - (i) architecture,
 - (ii) law,
 - (iii) professional engineering,

- (iv) public accounting,
- (v) surveying, or
- (vi) veterinary science;
- (b) as a duly registered practitioner of,
 - (i) chiropody,
 - (ii) chiropractic,
 - (iii) dentistry,
 - (iv) massage therapy,
 - (v) medicine,
 - (vi) optometry,
 - (vii) pharmacy,
 - (viii) physiotherapy, or
 - (ix) psychology;
- (c) as a duly registered practitioner under the *Drugless Practitioners Act*;
- (d) as a teacher as defined in the *Teaching Profession Act*;
- (e) as a student in training for an occupation mentioned in clause (a), (b), (c) or (d);
- (f) in commercial fishing;
- (g) as a salesperson or broker, as those persons are defined by the *Real Estate and Business Brokers Act, 2002*; or
- (h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,
 - (i) relate to goods or services, and
 - (ii) are normally made away from the employer's place of business. O. Reg. 285/01, s. 2 (1).

(2) Subject to sections 24, 25, 26 and 27 of this Regulation, Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boar and cultured fish. O. Reg. 285/01, s. 2 (2).

SPECIAL RULE RE EMERGENCY LEAVE

Special rule re emergency leave

3. Section 50 of the Act does not apply to any of the following persons in circumstances in which the exercise of the entitlement would constitute an act of professional misconduct or a dereliction of professional duty:

1. A person described in clause 2 (1) (a), (c), (d) or (e).
2. A person employed as a registered practitioner of a health profession set out in Schedule 1 to the *Regulated Health Professions Act, 1991*, including a person described in clause 2 (1) (b). O. Reg. 285/01, s. 3.

EXEMPTIONS RE HOURS OF WORK AND EATING PERIODS

Exemptions from Part VII of Act

4. (1) Sections 17, 18 and 19 of the Act do not apply to,
 - (a) a person employed as a firefighter as defined in section 1 of the *Fire Protection and Prevention Act, 1997*;
 - (b) a person whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis;
 - (c) a person employed as a fishing or hunting guide;
 - (d) a construction employee;
 - (e) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building; or
 - (f) a person employed as an embalmer or funeral director. O. Reg. 285/01, s. 4 (1).
- (2) Sections 17 and 19 of the Act do not apply to a person employed,

- (a) as a landscape gardener; or
- (b) to install and maintain swimming pools. O. Reg. 285/01, s. 4 (2).
- (3) Part VII of the Act does not apply to,
 - (a) a person whose employment is directly related to,
 - (i) the growing of mushrooms,
 - (ii) the growing of flowers for the retail and wholesale trade,
 - (iii) the growing, transporting and laying of sod,
 - (iv) the growing of trees and shrubs for the wholesale and retail trade,
 - (v) the breeding and boarding of horses on a farm, or
 - (vi) the keeping of furbearing mammals, as defined in the *Fish and Wildlife Conservation Act, 1997*, for propagation or the production of pelts for commercial purposes;
 - (b) an information technology professional; or
 - (c) a person employed in the recorded visual and audio-visual entertainment production industry. O. Reg. 285/01, s. 4 (3); O. Reg. 552/05, s. 2.

ESTABLISHMENT OF MINIMUM WAGE

Minimum wage

5. (1) Until January 31, 2004, the prescribed minimum wage is as follows:
1. For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, \$6.40 an hour.
 2. For an employee who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act*, \$5.95 an hour.
 3. For the services of a hunting or fishing guide, \$34.25 for less than five consecutive hours in a day and \$68.50 for five or more hours in a day whether or not the hours are consecutive.
 4. For an employee who is a homemaker, 110 per cent of the amount set out in paragraph 5.
 5. For any other employee, \$6.85 an hour. O. Reg. 401/03, s. 1 (1).
- (1.1) From February 1, 2004 until January 31, 2005, the prescribed minimum wage is as follows:
1. For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, \$6.70 an hour.
 2. For an employee who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act*, \$6.20 an hour.
 3. For the services of a hunting or fishing guide, \$35.75 for less than five consecutive hours in a day and \$71.50 for five or more hours in a day whether or not the hours are consecutive.
 4. For an employee who is a homemaker, 110 per cent of the amount set out in paragraph 5.
 5. For any other employee, \$7.15 an hour. O. Reg. 401/03, s. 1 (1).
- (1.2) From February 1, 2005 until January 31, 2006, the prescribed minimum wage is as follows:
1. For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, \$6.95 an hour.
 2. For an employee who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act*, \$6.50 an hour.
 3. For the services of a hunting or fishing guide, \$37.25 for less than five consecutive hours in a day and \$74.50 for five or more hours in a day whether or not the hours are consecutive.
 4. For an employee who is a homemaker, 110 per cent of the amount set out in paragraph 5.
 5. For any other employee, \$7.45 an hour. O. Reg. 401/03, s. 1 (1).
- (1.3) From February 1, 2006 until January 31, 2007, the prescribed minimum wage is as follows:
1. For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, \$7.25 an hour.

2. For an employee who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act*, \$6.75 an hour.
3. For the services of a hunting or fishing guide, \$38.75 for less than five consecutive hours in a day and \$77.50 for five or more hours in a day whether or not the hours are consecutive.
4. For an employee who is a homemaker, 110 per cent of the amount set out in paragraph 5.
5. For any other employee, \$7.75 an hour. O. Reg. 401/03, s. 1 (1).

(1.4) From February 1, 2007 onwards, the prescribed minimum wage is as follows:

1. For an employee who is a student under 18 years of age, if the weekly hours of the student are not in excess of 28 hours or if the student is employed during a school holiday, \$7.50 an hour.
2. For an employee who, as a regular part of his or her employment, serves liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act*, \$6.95 an hour.
3. For the services of a hunting or fishing guide, \$40.00 for less than five consecutive hours in a day and \$80.00 for five or more hours in a day whether or not the hours are consecutive.
4. For an employee who is a homemaker, 110 per cent of the amount set out in paragraph 5.
5. For any other employee, \$8.00 an hour. O. Reg. 401/03, s. 1 (1).

(2) If the calculation under paragraph 4 of subsection (1), (1.1), (1.2), (1.3) or (1.4), as the case may be, results in an hourly minimum wage that is an amount ending in a fraction of a cent, the hourly minimum wage shall be rounded up to the nearest cent. O. Reg. 285/01, s. 5 (2); O. Reg. 401/03, s. 1 (2).

(3) If an employee falls within both paragraphs 1 and 4 of subsection (1), (1.1), (1.2), (1.3) or (1.4), as the case may be, the employer shall pay the employee not less than the minimum wage set out in paragraph 4. O. Reg. 285/01, s. 5 (3); O. Reg. 401/03, s. 1 (3).

(4) If an employer provides room or board to an employee, the following are the amounts that shall be deemed to have been paid as wages for the purposes of determining whether the minimum wage set out in subsection (1), (1.1), (1.2), (1.3) or (1.4), as the case may be, has been paid:

Room	\$31.70 a week if the room is private and \$15.85 a week if the room is not private.
Board	\$2.55 a meal and not more than \$53.55 a week.
Both room and board	\$85.25 a week if the room is private and \$69.40 a week if the room is not private.

O. Reg. 285/01, s. 5 (4); O. Reg. 401/03, s. 1 (4).

(5) The amount provided in subsection (4) in respect of a room shall be deemed to have been paid as wages only if the room is,

- (a) reasonably furnished and reasonably fit for human habitation;
- (b) supplied with clean bed linen and towels; and
- (c) reasonably accessible to proper toilet and wash-basin facilities. O. Reg. 285/01, s. 5 (5).

(6) Room or board shall not be deemed to have been paid by the employer to an employee as wages unless the employee has received the meals or occupied the room. O. Reg. 285/01, s. 5 (6).

(7) For the purpose of determining whether an employee other than a student has been paid the minimum wage set out in subsection (1), (1.1), (1.2), (1.3) or (1.4), as the case may be, the employee shall be deemed to have worked for three hours if he or she,

- (a) regularly works more than three hours a day;
- (b) is required to present himself or herself for work; and
- (c) works less than three hours. O. Reg. 285/01, s. 5 (7); O. Reg. 401/03, s. 1 (5).

(8) Subsection (7) does not apply if the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work. O. Reg. 285/01, s. 5 (8).

s. 23 (4) of Act, change to minimum wage during pay period

5.1 If the prescribed minimum wage applicable with respect to an employee changes during a pay period, the calculations required by subsection 23 (4) of the Act shall be performed as if the pay period were two separate pay periods, the first consisting of the part falling before February 1 in the relevant year and the second consisting of the part falling on and after February 1 in that year. O. Reg. 401/03, s. 2.

When work deemed to be performed

- 6.** (1) Subject to subsection (2), work shall be deemed to be performed by an employee for the employer,
- (a) where work is,
 - (i) permitted or suffered to be done by the employer, or
 - (ii) in fact performed by an employee although a term of the contract of employment expressly forbids or limits hours of work or requires the employer to authorize hours of work in advance;
 - (b) where the employee is not performing work and is required to remain at the place of employment,
 - (i) waiting or holding himself or herself ready for call to work, or
 - (ii) on a rest or break-time other than an eating period. O. Reg. 285/01, s. 6 (1).
- (2) Work shall not be deemed to be performed for an employer during the time the employee,
- (a) is entitled to,
 - (i) take time off work for an eating period,
 - (ii) take at least six hours or such longer period as is established by contract, custom or practice for sleeping and the employer furnishes sleeping facilities, or
 - (iii) take time off work in order to engage in the employee's own private affairs or pursuits as is established by contract, custom or practice;
 - (b) is not at the place of employment and is waiting or holding himself or herself ready for call to work. O. Reg. 285/01, s. 6 (2).

EXEMPTIONS RE MINIMUM WAGE

Exemptions from Part IX of Act

- 7.** Part IX of the Act does not apply to,
- (a) a person who is employed as a student in a recreational program operated by a charitable organization registered under Part I of the *Income Tax Act* (Canada) and whose work or duties are directly connected with the recreational program;
 - (b) a person employed as a student to instruct or supervise children;
 - (c) a person employed as a student at a camp for children;
 - (d) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building. O. Reg. 285/01, s. 7.

EXEMPTIONS RE OVERTIME PAY

Exemptions from Part VIII of Act

- 8.** Part VIII of the Act does not apply to,
- (a) a person employed as a firefighter as defined in section 1 of the *Fire Protection and Prevention Act, 1997*;
 - (b) a person whose work is supervisory or managerial in character and who may perform non-supervisory or non-managerial tasks on an irregular or exceptional basis;
 - (c) a person employed as a fishing or hunting guide;
 - (d) a person employed,
 - (i) as a landscape gardener, or
 - (ii) to install and maintain swimming pools;
 - (e) a person whose employment is directly related to,
 - (i) the growing of mushrooms,
 - (ii) the growing of flowers for the retail and wholesale trade,
 - (iii) the growing, transporting and laying of sod,
 - (iv) the growing of trees and shrubs for the retail and wholesale trade,

- (v) the breeding and boarding of horses on a farm, or
- (vi) the keeping of furbearing mammals, as defined in the *Fish and Wildlife Conservation Act, 1997*, for propagation or the production of pelts for commercial purposes;
- (f) a person employed as a student to instruct or supervise children;
- (g) a person employed as a student at a camp for children;
- (h) a person who is employed as a student in a recreational program operated by a charitable organization registered under Part I of the *Income Tax Act* (Canada) and whose work or duties are directly connected with the recreational program;
- (i) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building;
- (j) a person employed as a taxi cab driver;
- (k) a person employed as an ambulance driver, ambulance driver's helper or first-aid attendant on an ambulance; or
- (l) an information technology professional. O. Reg. 285/01, s. 8.

EXEMPTIONS RE PUBLIC HOLIDAYS

Exemptions from Part X of Act

- 9.** (1) Part X of the Act does not apply to,
- (a) a person employed as a firefighter as defined in section 1 of the *Fire Protection and Prevention Act, 1997*;
 - (b) a person employed as a fishing or hunting guide;
 - (c) a person employed,
 - (i) as a landscape gardener, or
 - (ii) to install and maintain swimming pools;
 - (d) a person whose employment is directly related to,
 - (i) mushroom growing,
 - (ii) the growing of flowers for the retail and wholesale trade,
 - (iii) the growing, transporting and laying of sod,
 - (iv) the growing of trees and shrubs for the retail and wholesale trade,
 - (v) the breeding and boarding of horses on a farm, or
 - (vi) the keeping of furbearing mammals, as defined in the *Fish and Wildlife Conservation Act, 1997*, for propagation or the production of pelts for commercial purposes;
 - (e) a person employed as a student to instruct or supervise children;
 - (f) a person employed as a student at a camp for children;
 - (g) a person who is employed as a student in a recreational program operated by a charitable organization registered under Part I of the *Income Tax Act* (Canada) and whose work or duties are directly connected with the recreational program;
 - (h) a person who is employed as the superintendent, janitor or caretaker of a residential building and resides in the building;
 - (i) a person employed as a taxi cab driver;
 - (j) a person who is employed as a seasonal employee in a hotel, motel, tourist resort, restaurant or tavern and provided with room and board; or
 - (k) a person who is employed under an arrangement whereby he or she may elect to work or not when requested to do so. O. Reg. 285/01, s. 9 (1).
- (2) Part X of the Act does not apply to a construction employee who works in the construction industry and receives 7.3 per cent or more of his or her hourly rate or wages for vacation pay or holiday pay. O. Reg. 285/01, s. 9 (2).

EXEMPTION RE RETAIL BUSINESS ESTABLISHMENTS

Application of s. 73 of Act

- 10.** (1) Despite section 73 of the Act, an employee in a retail business establishment shall not refuse to work on a Sunday if he or she agreed, at the time of being hired, to work on Sundays. O. Reg. 285/01, s. 10 (1).

(2) Subsection (1) does not apply to an employee who declines to work on a Sunday for reasons of religious belief or religious observance. O. Reg. 285/01, s. 10 (2).

(3) The employer shall not make an employee's agreement to work on Sundays a condition of being hired if the condition would be contrary to section 11 of the *Human Rights Code*. O. Reg. 285/01, s. 10 (3).

SPECIAL RULES RE HOMEMAKERS

Homemakers

11. (1) In this section,

“homemaker” means a person who is employed,

(a) to perform homemaking services for a householder or member of a household in the householder's private residence, and

(b) by a person other than the householder. O. Reg. 285/01, s. 11 (1).

(2) Despite section 6, the hours of work in respect of which a homemaker is to be paid at least the minimum wage shall be not more than 12 hours in a day. O. Reg. 285/01, s. 11 (2).

(3) Parts VII (Hours of Work and Eating Periods) and VIII (Overtime Pay) and paragraph 4 of subsection 15 (1) (record of hours worked) of the Act do not apply to a homemaker who is paid in accordance with subsection (2). O. Reg. 285/01, s. 11 (3).

SPECIAL RULES RE HOMEWORKERS

Homeworkers

12. (1) The employer of a homeworker shall advise the homeworker in writing of the type of work that he or she is being employed to perform and,

(a) if the homeworker is to be paid according to the number of hours worked, of the amount to be paid for an hour of work in a regular work week;

(b) if the homeworker is to be paid according to the number of articles or things manufactured, of the amount to be paid for each article or thing manufactured in a regular work week; or

(c) if the homeworker is to be paid on some other basis, the basis on which he or she is to be paid. O. Reg. 285/01, s. 12 (1).

(2) If the employer of a homeworker who is paid according to the number of articles or things manufactured requires the manufacture of a certain number of articles or things to be completed by a certain date or time, the employer shall advise the homeworker of those requirements in writing. O. Reg. 285/01, s. 12 (2).

(3) In this section,

“manufacture” includes preparation, improvement, repair, alteration, assembly or completion. O. Reg. 285/01, s. 12 (3).

SPECIAL RULES AND EXEMPTIONS RE OVERTIME PAY

Road building

13. (1) Despite Part VIII of the Act, in the case of an employee engaged at the site of road building in relation to streets, highways or parking lots,

(a) subject to clause (b), the employer shall pay overtime pay for each hour worked in excess of 55 hours in a work week, at an amount not less than one and one-half times the employee's regular rate; and

(b) if the employee works less than 55 hours in a work week, the difference between 55 hours and the number of hours actually worked, up to an amount not exceeding 22 hours, may be added to the maximum set out in clause (a) for the purpose of determining the employee's overtime pay for the next work week. O. Reg. 285/01, s. 13 (1).

(2) Despite Part VIII of the Act, in the case of an employee engaged at the site of road building in relation to structures such as bridges, tunnels or retaining walls in connection with streets or highways,

(a) subject to clause (b), the employer shall pay overtime pay for each hour worked in excess of 50 hours in a work week, at an amount not less than one and one-half times the employee's regular rate; and

(b) if the employee works less than 50 hours in a work week, the difference between 50 hours and the number of hours actually worked, up to an amount not exceeding 22 hours, may be added to the maximum set out in clause (a) for the purpose of determining the employee's overtime pay for the next work week. O. Reg. 285/01, s. 13 (2).

Hotels, motels, tourist resorts, restaurants and taverns

14. Despite Part VIII of the Act, the employer shall pay an employee who works for the owner or operator of a hotel, motel, tourist resort, restaurant or tavern for 24 weeks or less in a calendar year and who is provided with room and board

overtime pay for each hour worked in excess of 50 hours in a work week, at an amount not less than one and one-half times the employee's regular rate. O. Reg. 285/01, s. 14.

Fresh fruit and vegetable processing

15. Despite Part VIII of the Act, the employer shall pay a seasonal employee whose employment is directly related to the canning, processing and packing of fresh fruits or vegetables or their distribution by the canner, processor or packer overtime pay for each hour worked in excess of 50 hours in a work week, at an amount not less than one and one-half times the employee's regular rate. O. Reg. 285/01, s. 15.

Sewer and watermain construction

16. Despite Part VIII of the Act, the employer shall pay an employee who is employed in laying, altering, repairing or maintaining sewers and watermain and in work incidental thereto, or in guarding the site during the laying, altering, repairing or maintaining of sewers and watermain, overtime pay for each hour worked in excess of 50 hours in a work week, at an amount not less than one and one-half times the employee's regular rate. O. Reg. 285/01, s. 16.

Local cartage

17. (1) Despite Part VIII of the Act, the employer shall pay an employee who is a driver of a vehicle or a driver's helper overtime pay for each hour worked in excess of 50 hours in a work week, at an amount not less than one and one-half times the employee's regular rate. O. Reg. 285/01, s. 17 (1).

(2) Subsection (1) applies to employees who are,

- (a) drivers of vehicles used in the business of carrying goods for hire within a municipality or to any point not more than five kilometres beyond the municipality's limits; or
- (b) drivers' helpers on such vehicles. O. Reg. 285/01, s. 17 (2).

Highway transport

18. (1) Despite Part VIII of the Act, the employer shall pay an employee to whom this subsection applies overtime pay for each hour worked in excess of 60 hours in a work week, at an amount not less than one and one-half times the employee's regular rate. O. Reg. 18/06, s. 1.

(2) Subsection (1) applies to an employee who is the driver of any of the following:

1. A truck whose operator held an operating licence under the former Act on December 31, 2005.
2. A truck whose operator held a certificate of intercorporate exemption under the former Act on December 31, 2005, if after that date the truck is operated to carry, for compensation, goods of another person who is not an affiliated corporation under the former Act, such that the operator would be required to hold an operating licence under the former Act if it were still in force.
3. A truck that is operated to carry goods of another person for compensation, if the operator,
 - i. did not hold an operating licence or a certificate of intercorporate exemption under the former Act on December 31, 2005, and
 - ii. would be required to hold an operating licence under the former Act if it were still in force.O. Reg. 18/06, s. 1.

(3) For the purposes of paragraph 2 of subsection (2), subsection 3 (6) of the former Act does not apply. O. Reg. 18/06, s. 1.

(4) For the purposes of subparagraph 3 ii of subsection (2), subsections 3 (5) and (6) of the former Act do not apply. O. Reg. 18/06, s. 1.

(5) Subsection (1) does not apply to an employee to whom section 17 applies. O. Reg. 18/06, s. 1.

(6) For the purposes of this section, in computing the number of hours worked by an employee in a week, only the hours during which he or she is directly responsible for the truck shall be included. O. Reg. 18/06, s. 1.

(7) In this section,
 “commercial motor vehicle” has the same meaning as in the former Act; (“véhicule automobile utilitaire”)
 “former Act” means the *Truck Transportation Act*; (“ancienne loi”)
 “operate” has the same meaning as in the former Act, and “operator” has a corresponding meaning; (“exploiter”, “exploitant”)
 “truck” means a commercial motor vehicle or the combination of a commercial motor vehicle and trailer or trailers drawn by it. (“camion”) O. Reg. 18/06, s. 1.

SPECIAL RULES RE DOMESTIC WORKERS

Domestic workers

19. (1) A householder shall provide the domestic worker with written particulars of employment respecting,

- (a) the regular hours of work, including the starting and finishing times; and
- (b) the hourly rate of pay. O. Reg. 285/01, s. 19 (1).

(2) If the householder provides room or board to the domestic employee, the following are the amounts that shall be deemed to have been paid as wages for the purposes of determining whether the minimum wage set out in subsection 5 (1), (1.1), (1.2), (1.3) or (1.4), as the case may be, has been paid:

Private room	\$31.70 a week.
Non-private room	\$0.00
Board	\$2.55 a meal and not more than \$53.55 a week.
Both room and board	\$85.25 a week if the room is private and \$53.55 a week if the room is not private.

O. Reg. 285/01, s. 19 (2); O. Reg. 401/03, s. 3.

(3) The amount provided in subsection (2) in respect of a room shall be deemed to have been paid as wages only if the room is,

- (a) reasonably furnished and reasonably fit for human habitation;
- (b) supplied with clean bed linen and towels; and
- (c) reasonably accessible to proper toilet and wash-basin facilities. O. Reg. 285/01, s. 19 (3).

1, s. 33.

(4) Room or board shall not be deemed to have been paid by the householder to the domestic employee as wages unless the employee has received the meals or occupied the room. O. Reg. 285/01, s. 19 (4).

SPECIAL RULES RE RESIDENTIAL CARE WORKERS

Residential care workers

20. (1) In this section,

“day” means the 24-hour period between 12:00 midnight on a day and 12:00 midnight on the next day. O. Reg. 285/01, s. 20 (1).

(2) Despite section 6 and subject to subsection (3), the employer shall pay to a residential care worker for each day of work wages in a minimum amount, not less than an amount calculated by multiplying 12 hours by the worker’s regular rate, which shall not be less than the minimum wage. O. Reg. 285/01, s. 20 (2).

(3) If a residential care worker, by arrangement with the employer, is free from the performance of normal and regular duties in a day and as a result works less than 12 hours, the worker shall be paid wages not less than an amount calculated by multiplying the number of hours actually worked by the worker’s regular rate as mentioned in subsection (2). O. Reg. 285/01, s. 20 (3).

(4) In addition to the wage payable under subsection (2), the employer shall pay to a residential care worker not less than the worker’s regular rate for not more than three additional hours worked in excess of 12 hours of work in a day, if the worker,

- (a) makes and keeps an accurate daily record of the number of hours worked in the day; and
- (b) provides the record to the employer on or before the first pay day after the pay day for the pay period in which the work is performed. O. Reg. 285/01, s. 20 (4).

Free time

21. (1) Despite section 18 of the Act, every employer shall give to a residential care worker not less than 36 hours in each work week, either consecutive or as may be arranged with the consent of the worker, free from the performance of any duties for the employer. O. Reg. 285/01, s. 21 (1).

(2) If the residential care worker consents, at the employer’s request, to do work during a free hour mentioned in subsection (1),

- (a) that hour shall be added to one of the next eight 36-hour periods of free time; or
- (b) the employer shall pay the residential care worker at least one and one-half times the worker’s regular rate for the time spent doing work during a free hour. O. Reg. 285/01, s. 21 (2).

When work deemed not to be performed

22. Despite section 6, work shall be deemed not to be performed during any time that satisfies the following conditions:

1. The residential care worker spends the time at the dwelling or cottage,
 - i. attending to private affairs or pursuits, or
 - ii. resting, sleeping or eating.
2. The time is, by agreement with the employer, free from the performance of any duties. O. Reg. 285/01, s. 22.

Exemptions

23. Parts VII (Hours of Work and Eating Periods) and VIII (Overtime Pay) and paragraph 4 of subsection 15 (1) (record of hours worked) of the Act do not apply to or in respect of a residential care worker. O. Reg. 285/01, s. 23.

SPECIAL RULES RE FRUIT, VEGETABLE AND TOBACCO HARVESTERS

Application

24. Sections 25, 26 and 27 apply to an employee who is employed on a farm to harvest fruit, vegetables or tobacco for marketing or storage. O. Reg. 285/01, s. 24.

Minimum wage

25. (1) For each pay period, the employer shall pay a minimum wage of not less than the amounts set out in subsection 5 (1), (1.1), (1.2), (1.3) or (1.4), as the case may be. O. Reg. 285/01, s. 25 (1); O. Reg. 401/03, s. 4 (1).

(2) The employer shall be deemed to comply with subsection (1) if employees are paid a piece work rate that is customarily and generally recognized in the area as having been set so that an employee exercising reasonable effort would, if paid such a rate, earn at least the amounts set out in subsection 5 (1), (1.1), (1.2), (1.3) or (1.4), as the case may be. O. Reg. 285/01, s. 25 (2); O. Reg. 401/03, s. 4 (2).

(3) Subsection (2) does not apply in respect of an employee described in paragraph 1 of subsection 5 (1), (1.1), (1.2), (1.3) or (1.4), as the case may be. O. Reg. 285/01, s. 25 (3); O. Reg. 401/03, s. 4 (3).

(4) For the purposes of this section,

“piece work rate” means a rate of pay calculated on the basis of a unit of work performed. O. Reg. 285/01, s. 25 (4).

(5) If an employer provides room or board to an employee, the following are the amounts which shall be deemed to have been paid by the employer to the employee as wages for the purposes of determining whether the minimum wage set out in subsection 5 (1), (1.1), (1.2), (1.3) or (1.4), as the case may be, has been paid:

Serviced housing accommodation	\$99.35 a week.
Housing accommodation	\$73.30 a week.
Room	\$31.70 a week if the room is private and \$15.85 a week if the room is not private.
Board	\$2.55 a meal and not more than \$53.55 a week.
Both room and board	\$85.25 a week if the room is private and \$69.40 a week if the room is not private.

O. Reg. 285/01, s. 25 (5); O. Reg. 401/03, s. 4 (4).

(6) The amount provided in subsection (5) in respect of housing accommodation shall be deemed to have been paid as wages only if the accommodation,

- (a) is reasonably fit for human habitation;
- (b) includes a kitchen with cooking facilities;
- (c) includes at least two bedrooms or a bedroom and a living room; and
- (d) has its own private toilet and washing facilities. O. Reg. 285/01, s. 25 (6).

(7) The amount provided in subsection (5) in respect of serviced housing accommodation shall be deemed to have been paid as wages only if,

- (a) the accommodation complies with clauses (6) (a) to (d); and
- (b) light, heat, fuel, water, gas or electricity are provided at the employer’s expense. O. Reg. 285/01, s. 25 (7).

(8) The amount provided in subsection (5) in respect of a room shall be deemed to have been paid as wages only if the room is,

- (a) reasonably furnished and reasonably fit for human habitation;
- (b) supplied with clean bed linen and towels; and
- (c) reasonably accessible to proper toilet and wash-basin facilities. O. Reg. 285/01, s. 25 (8).

(9) Room or board shall not be deemed to have been paid by the employer to an employee as wages unless the employee has received the meals or occupied the room. O. Reg. 285/01, s. 25 (9).

Vacation or vacation pay

26. (1) If an employee has been employed by the employer for 13 weeks or more, the employer shall, in accordance with Part XI of the Act,

- (a) give the employee a vacation with pay; or
- (b) pay the employee vacation pay. O. Reg. 285/01, s. 26 (1).

(2) An employee entitled to vacation pay under subsection (1) earns vacation pay from the commencement of his or her employment. O. Reg. 285/01, s. 26 (2).

(3) Section 41 of the Act does not apply to the employee. O. Reg. 285/01, s. 26 (3).

Public holidays

27. (1) Part X of the Act applies to an employee who has been employed by an employer for a period of 13 weeks or more. O. Reg. 285/01, s. 27 (1).

(2) For the purposes of this section, an employee shall be deemed to be employed in a continuous operation. O. Reg. 285/01, s. 27 (2).

(3) Subsection (1) does not apply to a person who is employed under an arrangement whereby he or she may elect to work or not when requested to do so. O. Reg. 285/01, s. 27 (3).

SPECIAL RULES RE COMMISSION AUTOMOBILE SALES SECTOR

Commission automobile sales sector

28. (1) This section applies with respect to employees who sell automobiles partially or exclusively on a commission basis. O. Reg. 285/01, s. 28 (1).

(2) For each pay period, the employer shall pay to each employee an amount that is at least equal to the amount the employee would have earned at the minimum wage set out in subsection 5 (1), (1.1), (1.2), (1.3) or (1.4), as the case may be. O. Reg. 285/01, s. 28 (2); O. Reg. 401/03, s. 5.

(3) A pay period shall not exceed one month. O. Reg. 285/01, s. 28 (3).

(4) Payments made to an employee shall be reconciled with wages earned by the employee for each reconciliation period. O. Reg. 285/01, s. 28 (4).

(5) No balance shall be carried forward past any reconciliation period. O. Reg. 285/01, s. 28 (5).

(6) The reconciliation of payments made to an employee and wages earned by an employee shall not result in any employee receiving less than the prescribed minimum wage for any pay period. O. Reg. 285/01, s. 28 (6).

(7) For each year, the reconciliation periods shall be:

1. January 1 - March 31.
2. April 1 - June 30.
3. July 1 - September 30.
4. October 1 - December 31. O. Reg. 285/01, s. 28 (7).

(8) If an employee's employment terminates before the end of a reconciliation period, payments made to the employee shall be reconciled with wages earned by him or her, and subsection (6) applies. O. Reg. 285/01, s. 28 (8).

SPECIAL RULE RE EMPLOYEES WHO MAY ELECT TO WORK OR NOT

Employees who may elect to work or not

29. (1) This section applies to a person who is employed under an arrangement whereby he or she may elect to work or not when requested to do so. O. Reg. 285/01, s. 29 (1).

(2) If the employee works on a public holiday, the employer shall pay the employee at least one and one-half times his or her regular rate. O. Reg. 285/01, s. 29 (2).

DIRECTOR'S APPROVALS

30., 31. REVOKED: O. Reg. 50/05, s. 1.

Certain approved agreements irrevocable

32. (1) Despite subsection 17 (6) of the Act, an agreement under subsection 17 (2) of the Act that was made at the time of the employee's hiring and that has been approved by the Director is irrevocable unless both the employer and the employee agree to its revocation. O. Reg. 285/01, s. 32 (1); O. Reg. 50/05, s. 2.

(2) The Director may impose conditions in granting an approval. O. Reg. 285/01, s. 32 (2).

EXEMPTION RE CERTAIN EXISTING ARRANGEMENTS

Existing arrangements for long shifts

32.1 (1) Clause 17 (1) (a) of the Act does not apply with respect to the class of employees each of whom,

(a) has an arrangement described in subsection (2) with an employer to whom a permit was issued under section 18 of the *Employment Standards Act*; and

(b) is not required by the employer to work more than 10 hours a day. O. Reg. 361/01, s. 1.

(2) The arrangement,

(a) provides that the employee is willing to work, at the employer's request, more hours per day than the number of hours in his or her regular work day;

(b) was made at or before the time of the employee's hiring and before September 4, 2001; and

(c) has not been revoked by the mutual consent of the employer and employee. O. Reg. 361/01, s. 1.

(3) The terms of the arrangement need not be reduced to writing. O. Reg. 361/01, s. 1.

33. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 285/01, s. 33.