

Part 1 — Introductory Provisions

Definitions

1 (1) In this Act:

"assignment of wages" includes a written authorization to pay all or part of an employee's wages to another person;

"collective agreement" means the same as in the *Fishing Collective Bargaining Act*, the *Labour Relations Code*, or the *Public Service Labour Relations Act*;

"conditions of employment" means all matters and circumstances that in any way affect the employment relationship of employers and employees;

"construction" means the construction, renovation, repair or demolition of property or the alteration or improvement of land;

"day" means

(a) a 24 hour period ending at midnight, or

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

"determination" means any decision made by the director under section 30 (2), 66, 68 (3), 73, 76 (3), 79, 100 or 119;

"director" means the Director of Employment Standards appointed under the *Public Service Act* and, in relation to a function, duty or power that the director has under section 117 of this Act delegated to another person, **"director"** includes that other person;

"domestic" means a person who

(a) is employed at an employer's private residence to provide cooking, cleaning, child care or other prescribed services, and

(b) resides at the employer's private residence;

"employee" includes

(a) a person, including a deceased person, receiving or entitled to wages for work performed for another,

(b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,

(c) a person being trained by an employer for the employer's business,

(d) a person on leave from an employer, and

(e) a person who has a right of recall;

"employer" includes a person

(a) who has or had control or direction of an employee, or

(b) who is or was responsible, directly or indirectly, for the employment of an employee;

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

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

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

"immediate family" means

(a) the spouse, child, parent, guardian, sibling, grandchild or grandparent of an employee, and

(b) any person who lives with an employee as a member of the employee's family;

"insolvency Act" means the *Bankruptcy and Insolvency Act (Canada)*, the *Companies' Creditors Arrangement Act (Canada)* or the *Winding-up and Restructuring Act (Canada)*;

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

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

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

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

"penalty" means a monetary penalty imposed under section 98;

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

"regular wage" means

(a) if an employee is paid by the hour, the hourly wage,

(b) if an employee is paid on a flat rate, piece rate, commission or other incentive basis, the employee's wages in a pay period divided by the employee's total hours of work during that pay period,

(c) if an employee is paid a weekly wage, the weekly wage divided by the lesser of the employee's normal or average weekly hours of work,

(d) if an employee is paid a monthly wage, the monthly wage multiplied by 12 and divided by the product of 52 times the lesser of the employee's normal or average weekly hours of work, and

(e) if an employee is paid a yearly wage, the yearly wage divided by the product of 52 times the lesser of the employee's normal or average weekly hours of work;

"representative member" means a member of the tribunal appointed under section 102 (c);

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

"settlement agreement" means a settlement agreement under section 78;

"special clothing" includes a uniform and a specified brand of clothing;

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

"talent agency" means a person that, for a fee, engages in the occupation of offering to procure, promising to procure or procuring employment for actors, performers, extras or technical creative film personnel;

"temporary layoff" means

(a) in the case of an employee who has a right of recall, a layoff that exceeds the specified period within which the employee is entitled to be recalled to employment, and

(b) in any other case, a layoff of up to 13 weeks in any period of 20 consecutive weeks;

"termination of employment" includes a layoff other than a temporary layoff;

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

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

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

"tribunal" means the Employment Standards Tribunal;

"wages" includes

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

- (b) money that is paid or payable by an employer as an incentive and relates to hours of work, production or efficiency,
- (c) money, including the amount of any liability under section 63, required to be paid by an employer to an employee under this Act,
- (d) money required to be paid in accordance with
 - (i) a determination, other than costs required to be paid under section 79 (1) (f), or
 - (ii) a settlement agreement or an order of the tribunal, and
- (e) in Parts 10 and 11, money required under a contract of employment to be paid, for an employee's benefit, to a fund, insurer or other person,

but does not include

- (f) gratuities,
- (g) money that is paid at the discretion of the employer and is not related to hours of work, production or efficiency,
- (h) allowances or expenses,
- (i) penalties, and
- (j) an administrative fee imposed under section 30.1;

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

- (a) for the purpose of calculating overtime, on Sunday,
- (b) for the purposes of sections 37 and 52.1, on Sunday, and
- (c) for any other purpose, on any day;

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

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

Purposes of this Act

2 The purposes of this Act are as follows:

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

Scope of this Act

3 (1) Subject to this section, this Act applies to all employees other than those excluded by regulation.

(2) If a collective agreement contains any provision respecting a matter set out in Column 1 of the following table, the Part or provision of this Act specified opposite that matter in Column 2 does not apply in respect of employees covered by the collective agreement:

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

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

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

(4) If a collective agreement contains any provision respecting a matter set out in one of the following specified provisions of this Act, that specified provision of this Act does not apply in respect of employees covered by the collective agreement:

section 17 *[paydays]*;
 section 18 (1) *[payment of wages when employer terminates]*;
 section 18 (2) *[payment of wages when employee terminates]*;
 section 20 *[how wages are paid]*;
 section 22 *[assignment of wages]*;
 section 23 *[employer's duty to make assigned payments]*;
 section 24 *[how an assignment is cancelled]*;
 section 25 (1) or (2) *[special clothing]*;
 section 26 *[payments by employer to funds, insurers or others]*;
 section 27 *[wage statements]*;
 section 28 (1) *[content of payroll records]*;
 section 28 (2) *[payroll record requirements]*.

(5) If a collective agreement contains no provision respecting a matter set out in a provision specified in subsection (4), the specified provision of this Act is deemed to be incorporated in the collective agreement as part of its terms.

(6) Parts 10, 11 and 13 of this Act do not apply in relation to the enforcement of the following provisions of this Act in respect of an employee covered by a collective agreement:

section 9 *[hiring children]*;
 section 10 *[no charge for hiring or providing information]*;
 section 16 *[employers required to pay minimum wage]*;
 section 21 *[deductions]*;
 Part 6 *[leaves and jury duty]*;
 section 64 *[group terminations]*;
 section 65 *[exceptions to section 64]*;
 section 67 *[rules about notice of termination]*;
 section 68 *[rules about payments on termination]*.

(7) If a dispute arises respecting the application, interpretation or operation of

- (a) a Part or provision of this Act deemed by subsection (3) or (5) to be incorporated in a collective agreement, or
- (b) a provision specified in subsection (6),

the grievance procedure contained in the collective agreement or, if applicable, deemed to be contained in the collective agreement under section 84 (3) of the *Labour Relations Code*, applies for the purposes of resolving the dispute.

(8) Despite subsection (6), if an arbitration board makes a decision on the merits of a matter in dispute referred to in subsection (7) and the decision is in respect of wages, the arbitration board may refer the decision to the director for the purpose of collecting the wages and, for that purpose, the director may collect the wages under sections 87 to 97 and 99 as if the decision of the arbitration board were an order of the tribunal.

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

Requirements of this Act cannot be waived

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

Promoting awareness of employment standards

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

Repealed 6 [Repealed 2002-42-3.]

Repealed 7 [Repealed 2003-65-2.]

Part 2 – Hiring Employees

No false representations

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

Hiring children

- 9 (1) A person must not employ a child under 15 years of age unless the person has obtained the written consent of the child's parent or guardian.
- (2) A person must not employ a child under 12 years of age without the director's permission.
- (3) On permitting the employment of a child under 12 years of age, the director may set the conditions of employment for the child.
- (4) An employer must comply with the conditions of employment set under subsection (3).

No charge for hiring or providing information

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

No fees to other persons

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

Employment and talent agencies must be licensed

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

Farm labour contractors must be licensed

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

Written employment contract required for domestics

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

Register of employees working in residences

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

Part 3 — Wages, Special Clothing and Records

Employers required to pay minimum wage

- 16 (1) An employer must pay an employee at least the minimum wage as prescribed in the regulations.
- (2) An employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages in a pay period to comply with subsection (1) in relation to any other pay period.

Paydays

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

If employment is terminated

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

If employee cannot be located

- 19 (1) In this section, "**administrator**" has the same meaning as in the *Unclaimed Property Act*.
- (1.1) If an employer cannot locate an employee to pay the employee's wages, the employer must pay the wages to the director within 60 days after the wages became payable.
- (2) The director must give an employer a receipt for any wages received from the employer under subsection (1.1).
- (3) The director's receipt for wages is proof that the employer's liability for payment of the wages is discharged to the extent of the amount stated in the receipt.
- (4) If the director cannot locate an employee within one year after receiving the employee's wages under this section, the director must transfer the wages to the administrator in accordance with the transfer schedule set by the administrator.
- (5) Money transferred to the administrator under subsection (4) is deemed to be an unclaimed money deposit under the *Unclaimed Property Act*.

How wages are paid

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

Deductions

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

Assignments

- 22 (1) An employer must honour an employee's written assignment of wages
- (a) to a trade union in accordance with the *Labour Relations Code*,
- (b) to a charitable or other organization, or a pension or superannuation or other plan, if the amounts assigned are deductible for income tax purposes under the *Income Tax Act* (Canada),
- (c) to a person to whom the employee is required under a maintenance order, as defined in the *Family Maintenance Enforcement Act*, to pay maintenance, and
- (d) to an insurance company for insurance or medical or dental coverage.
- (e) [Repealed 2003-65-5.]
- (2) [Repealed 2003-65-5.]
- (3) An employer must honour an assignment of wages authorized by a collective agreement.
- (4) An employer may honour an employee's written assignment of wages to meet a credit obligation.

Employer's duty to make assigned payments

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

How an assignment is cancelled

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

Special clothing

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

Payments by employer to funds, insurers or others

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

Wage statements

- 27 (1) On every payday, an employer must give each employee a written wage statement for the pay period stating all of the following:
- (a) the employer's name and address;
 - (b) the hours worked by the employee;
 - (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;
 - (d) the employee's overtime wage rate;
 - (e) the hours worked by the employee at the overtime wage rate;
 - (f) any money, allowance or other payment the employee is entitled to;
 - (g) the amount of each deduction from the employee's wages and the purpose of each deduction;
 - (h) if the employee is paid other than by the hour or by salary, how the wages were calculated for the work the employee is paid for;
 - (i) the employee's gross and net wages;
 - (j) how much money the employee has taken from the employee's time bank and how much remains.
- (2) An employer may provide a wage statement to an employee electronically if the employer provides to the employee, through the workplace,
- (a) confidential access to the electronic wage statement, and
 - (b) a means of making a paper copy of that wage statement.
- (3) [Repealed 2002-42-8.]

(4) If a wage statement would be the same as the wage statement given for the previous pay period, another wage statement need not be given until a change occurs.

Payroll records

28 (1) For each employee, an employer must keep records of the following information:

- (a) the employee's name, date of birth, occupation, telephone number and residential address;
- (b) the date employment began;
- (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;
- (d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;
- (e) the benefits paid to the employee by the employer;
- (f) the employee's gross and net wages for each pay period;
- (g) each deduction made from the employee's wages and the reason for it;
- (h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;
- (i) the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;
- (j) how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.

(2) Payroll records must

- (a) be in English,
- (b) be kept at the employer's principal place of business in British Columbia, and
- (c) be retained by the employer for 2 years after the employment terminates.

Repealed

29 [Repealed 2002-42-10.]

Producer and farm labour contractor are liable for unpaid wages

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

(2) Subsection (1) does not apply in respect of a producer if

- (a) the farm labour contractor is licensed under this Act at the time the producer engages the services of the farm labour contractor, and
- (b) the producer satisfies the director that the producer paid the farm labour contractor for wages earned by each employee of the farm labour contractor for work done on behalf of the producer.

Liability of farm labour contractor for transportation costs

30.1 (1) A farm labour contractor is liable to pay a prescribed administrative fee to the Province if

- (a) a motor vehicle used by the farm labour contractor to transport employees of the farm labour contractor, of another farm labour contractor or of a producer is, during the transportation of the employees, removed from service as the result of a failure to comply with, or a contravention of, an enactment of British Columbia or of Canada, and
- (b) the Province, at its own cost, provides alternative transportation to transport the employees to the employees' work site or another location.

(2) If a farm labour contractor is liable under subsection (1) to pay an administrative fee, the director must serve on the contractor a notice setting out

- (a) the amount of the fee,
- (b) the date by which the fee must be paid,

- (c) the consequences of failing to pay the fee, and
- (d) the manner and method for payment of the fee.

(3) A farm labour contractor liable to pay an administrative fee under subsection (1) must pay the fee in accordance with the regulations.

(4) The director may vary or cancel a notice

(a) if

(i) the farm labour contractor on whom the notice was served provides evidence satisfactory to the director that the finding that the farm labour contractor failed to comply with or contravened an enactment as described in subsection (1) (a) has been reversed on appeal under that enactment, or

(ii) evidence comes to the attention of the director that was not available at the time the notice was issued that another requirement under subsection (1) was not met, or

(b) to correct a clerical, typographical or inadvertent error, an omission or a similar mistake.

Enforcement of administrative fee

30.2 (1) An administrative fee imposed under section 30.1 is a debt payable to the government.

(2) If a farm labour contractor fails to pay the administrative fee as required under section 30.1, the director may do one or more of the following:

(a) suspend, cancel or refuse to reinstate the farm labour contractor's licence, or refuse to grant a new licence to the farm labour contractor, until the fee is paid;

(b) file with the Supreme Court a copy of the notice referred to in section 30.1 (2).

(3) On being filed, the notice is enforceable in the same manner as a judgment of the Supreme Court in favour of the director for the recovery of the amount of the fee stated in the notice.

(4) Sections 79 and 98 do not apply to a contravention of section 30.1.

Part 4 — Hours of Work and Overtime

Repealed

31 [Repealed 2002-42-12.]

Meal breaks

32 (1) An employer must ensure

(a) that no employee works more than 5 consecutive hours without a meal break, and

(b) that each meal break lasts at least a 1/2 hour.

(2) An employer who requires an employee to work or be available for work during a meal break must count the meal break as time worked by the employee.

Split shifts

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

Minimum daily hours

34 (1) Subject to subsections (2) and (3), if as required by an employer an employee reports for work on any day, the employer must pay the employee for a minimum of 2 hours at the regular wage whether or not the employee starts work, unless the employee is unfit to work or fails to comply with Part 3 of the *Workers Compensation Act*, or a regulation under that Part.

(2) Whether or not the employee starts work, the employer under subsection (1) must pay the employee for a minimum of 4 hours at the employee's regular wage if the employer had previously scheduled the employee to work for more than 8 hours that day, unless

(a) the employee is unfit to work or fails to comply with Part 3 of the *Workers Compensation Act*, or a regulation under that Part, or

(b) the work is suspended for reasons completely beyond the employer's control, including unsuitable weather conditions.

(3) If the circumstance set out in subsection (2) (b) applies, the employer must pay the employee for a minimum of 2 hours at the employee's regular wage.

(4) If

(a) the employee under subsection (1) is required to work longer than 2 hours, or

(b) the circumstances described in subsection (2) are applicable and the employee is required to work longer than 4 hours,

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

Maximum hours of work before overtime applies

35 (1) An employer must pay an employee overtime wages in accordance with section 40 if the employer requires, or directly or indirectly allows, the employee to work more than 8 hours a day or 40 hours a week.

(2) Subsection (1) does not apply for the purposes of an employee who is working under an averaging agreement under section 37.

Hours free from work

36 (1) An employer must either

(a) ensure that an employee has at least 32 consecutive hours free from work each week, or

(b) pay an employee 1 1/2 times the regular wage for time worked by the employee during the 32 hour period the employee would otherwise be entitled to have free from work.

(2) An employer must ensure that each employee has at least 8 consecutive hours free from work between each shift worked.

(3) Subsection (2) does not apply in an emergency.

Agreements to average hours of work

37 (1) Despite sections 35, 36 (1) and 40 but subject to this section, an employer and employee may agree to average the employee's hours of work over a period of 1, 2, 3 or 4 weeks for the purpose of determining the employee's entitlement, if any, to overtime wages under subsections (4) and (6) of this section and wages payable under subsection (8) or (9) (b).

(2) An averaging agreement under subsection (1) is not valid unless

(a) the agreement

(i) is in writing,

(ii) is signed by the employer and employee before the start date provided in the agreement,

(iii) specifies the number of weeks over which the agreement applies,

(iv) specifies the work schedule for each day covered by the agreement,

(v) specifies the number of times, if any, that the agreement may be repeated, and

(vi) provides for a start date and an expiry date for the period specified under subparagraph (iii),

(b) the schedule in the agreement under paragraph (a) (iv) is in compliance with subsection (3), and

(c) the employee receives a copy of the agreement before the date on which the period specified in the agreement begins.

(3) A work schedule in an agreement under this section must not provide for more than the following hours of work for the employee:

(a) 40 hours, if the agreement specifies a 1 week period under subsection (2) (a) (iii);

(b) an average of 40 hours per week, if the agreement specifies more than a 1 week period under subsection (2) (a) (iii).

(4) An employer under this section who requires, or directly or indirectly allows, an employee to work more than 12 hours a day, at any time during the period specified in the agreement, must pay the employee double the employee's regular wage for the time over 12 hours.

(5) An employer under this section who requires, or directly or indirectly allows, an employee to work more than an average of 40 hours a week within the period specified in the agreement must pay the employee 1 1/2 times the employee's regular wage for the time over 40 hours.

(6) An employer under this section who requires, or directly or indirectly allows, an employee to work more than the hours scheduled for a day during the period of the agreement must pay the employee

(a) 1 1/2 times the employee's regular wage for,

(i) if fewer than 8 hours were scheduled for that day, any time worked over 8 hours, or

(ii) if 8 or more hours were scheduled for that day, any time worked over the number of hours scheduled, and

(b) double the employee's regular wage for any time worked over 12 hours that day.

(7) For the purpose of calculating average weekly hours for an employee under subsection (5),

(a) only the first 12 hours worked by the employee in each day are counted, no matter how long the employee works on any day of the week, and

(b) if subsection (6) applies, the time that the employee works beyond the scheduled hours and for which the employee is paid in accordance with that subsection, is excluded.

(8) Section 36 (1) applies in relation to an averaging agreement if the period specified in the agreement is 1 week.

(9) If the period specified in an averaging agreement is more than 1 week, the employer must either

(a) ensure that for each week covered by the agreement, the employee has an interval free from work of 32 consecutive hours, whether the interval is taken in the same week, different weeks or consecutively any time during the weeks covered by the agreement, or

(b) pay the employee 1 1/2 times the regular wage for time worked by the employee during the periods the employee would otherwise be entitled to have free from work under paragraph (a).

(10) At the employee's written request, the employer and employee may agree to adjust the work schedule referred to in subsection (2) (a) (iv) provided that the total number of hours scheduled in the agreement remain the same.

(11) The parties to an averaging agreement under this section are bound by that agreement until the expiry date set out in the agreement or a later date provided in an agreement to repeat the averaging agreement, as the case may be, and the provisions of the averaging agreement apply for the purpose of determining the employee's entitlement, if any, to overtime wages under subsections (4) and (6) and wages payable under subsection (8) or (9) (b).

(12) Subsections (2) to (11) are deemed to be incorporated in an averaging agreement under this section as terms of the agreement.

(13) An employer must retain an averaging agreement under this section for 2 years after the employment terminates.

(14) The application and operation of an averaging agreement under this section must not be interpreted as a waiver described in section 4.

Repealed 38 [Repealed 2002-42-18.]

No excessive hours

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

Overtime wages for employees not working under an averaging agreement

- 40 (1) An employer must pay an employee who works over 8 hours a day, and is not working under an averaging agreement under section 37,
- (a) 1 1/2 times the employee's regular wage for the time over 8 hours, and
 - (b) double the employee's regular wage for any time over 12 hours.
- (2) An employer must pay an employee who works over 40 hours a week, and is not working under an averaging agreement under section 37, 1 1/2 times the employee's regular wage for the time over 40 hours.
- (3) For the purpose of calculating weekly overtime under subsection (2), only the first 8 hours worked by an employee in each day are counted, no matter how long the employee works on any day of the week.
- (4) [Repealed 2002-42-19.]

Repealed 41 [Repealed 2002-42-20.]

Banking of overtime wages

- 42 (1) At the written request of an employee, an employer may establish a time bank for the employee and credit the employee's overtime wages to the time bank instead of paying them to the employee within the time required under section 17.
- (2) Overtime wages must be credited to a time bank at the rates required under section 37 (4), (5) or (6) or 40.
- (3) If a time bank is established, the employee may at any time request the employer to do one or more of the following:
- (a) pay the employee all or part of the overtime wages credited to the time bank;
 - (b) allow the employee to use the credited overtime wages to take time off with pay at a time agreed by the employer and the employee;
 - (c) close the time bank.
- (3.1) The employer may close an employee's time bank after one month's written notice to the employee.
- (3.2) Within 6 months of closing an employee's time bank under subsection (3.1), the employer must do one of the following:
- (a) pay the employee all of the overtime wages credited to the time bank at the time it was closed;
 - (b) allow the employee to use the credited overtime wages to take time off with pay;
 - (c) pay the employee for part of the overtime wages credited to the time bank at the time it was closed and allow the employee to use the remainder of the credited overtime wages to take time off with pay.
- (4) [Repealed 2003-65-6.]
- (5) On termination of employment or on receiving the employee's written request to close the time bank, the employer must pay the employee any amount credited to the time bank.
- (6) [Repealed 2003-65-6.]

Repealed 43 [Repealed 2002-42-22.]

Part 5 – Statutory Holidays

Entitlement to statutory holiday

- 44 An employer must comply with section 45 or 46 in respect of an employee who has been employed by the employer for at least 30 calendar days before the statutory holiday and has
- (a) worked or earned wages for 15 of the 30 calendar days preceding the statutory holiday, or

(b) worked under an averaging agreement under section 37 at any time within that 30 calendar day period.

Statutory holiday pay

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

amount paid \div days worked

where

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

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

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

If employee is required to work on statutory holiday

- 46 An employee who works on a statutory holiday must be paid for that day

- (a) 1 1/2 times the employee's regular wage for the time worked up to 12 hours,
- (b) double the employee's regular wage for any time worked over 12 hours, and
- (c) an average day's pay, as determined using the formula in section 45 (1).

Repealed 47 [Repealed 2002-42-23.]

Substituting another day for a statutory holiday

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

(2) Any employees affected by the substitution of another day for a statutory holiday have the same rights under this Act and their employer has the same duties under this Act as if the other day were a statutory holiday.

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

Repealed 49 [Repealed 2002-42-25.]

Part 6 — Leaves and Jury Duty

Pregnancy leave

- 50 (1) A pregnant employee who requests leave under this section is entitled to up to 17 consecutive weeks of unpaid leave

- (a) beginning
 - (i) no earlier than 11 weeks before the expected birth date, and
 - (ii) no later than the actual birth date, and
- (b) ending

- (i) no earlier than 6 weeks after the actual birth date, unless the employee requests a shorter period, and
- (ii) no later than 17 weeks after the actual birth date.

(2) An employee who requests leave under this section after the birth of a child or the termination of a pregnancy is entitled to up to 6 consecutive weeks of unpaid leave beginning on the date of the birth or of the termination of the pregnancy.

(3) An employee is entitled to up to 6 additional consecutive weeks of unpaid leave if, for reasons related to the birth or the termination of the pregnancy, she is unable to return to work when her leave ends under subsection (1) or (2).

(4) A request for leave must

- (a) be given in writing to the employer,
- (b) if the request is made during the pregnancy, be given to the employer at least 4 weeks before the day the employee proposes to begin leave, and
- (c) if required by the employer, be accompanied by a medical practitioner's certificate stating the expected or actual birth date or the date the pregnancy terminated or stating the reasons for requesting additional leave under subsection (3).

(5) A request for a shorter period under subsection (1) (b) (i) must

- (a) be given in writing to the employer at least one week before the date the employee proposes to return to work, and
- (b) if required by the employer, be accompanied by a medical practitioner's certificate stating the employee is able to resume work.

Parental leave

51 (1) An employee who requests parental leave under this section is entitled to,

- (a) for a birth mother who takes leave under section 50 in relation to the birth of the child or children with respect to whom the parental leave is to be taken, up to 35 consecutive weeks of unpaid leave beginning immediately after the end of the leave taken under section 50 unless the employer and employee agree otherwise,
- (b) for a birth mother who does not take leave under section 50 in relation to the birth of the child or children with respect to whom the parental leave is to be taken, up to 37 consecutive weeks of unpaid leave beginning after the child's birth and within 52 weeks after that event,
- (c) for a birth father, up to 37 consecutive weeks of unpaid leave beginning after the child's birth and within 52 weeks after that event, and
- (d) for an adopting parent, up to 37 consecutive weeks of unpaid leave beginning within 52 weeks after the child is placed with the parent.

(2) If the child has a physical, psychological or emotional condition requiring an additional period of parental care, the employee is entitled to up to an additional 5 consecutive weeks of unpaid leave, beginning immediately after the end of the leave taken under subsection (1).

(3) A request for leave must

- (a) be given in writing to the employer,
- (b) if the request is for leave under subsection (1) (a), (b) or (c), be given to the employer at least 4 weeks before the employee proposes to begin leave, and
- (c) if required by the employer, be accompanied by a medical practitioner's certificate or other evidence of the employee's entitlement to leave.

(4) An employee's combined entitlement to leave under section 50 and this section is limited to 52 weeks plus any additional leave the employee is entitled to under section 50 (3) or subsection (2) of this section.

Family responsibility leave

52 An employee is entitled to up to 5 days of unpaid leave during each employment year to meet responsibilities related to

- (a) the care, health or education of a child in the employee's care, or
- (b) the care or health of any other member of the employee's immediate family.

Compassionate care leave

52.1 (1) In this section, "**family member**" means

- (a) a member of an employee's immediate family, and
- (b) any other individual who is a member of a prescribed class.

(2) An employee who requests leave under this section is entitled to up to 8 weeks of unpaid leave to provide care or support to a family member if a medical practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks, or such other period as may be prescribed, after

- (a) the date the certificate is issued, or
- (b) if the leave began before the date the certificate is issued, the date the leave began.

(3) The employee must give the employer a copy of the certificate as soon as practicable.

(4) An employee may begin a leave under this section no earlier than the first day of the week in which the period under subsection (2) begins.

(5) A leave under this section ends on the last day of the week in which the earlier of the following occurs:

- (a) the family member dies;
- (b) the expiration of 26 weeks or other prescribed period from the date the leave began.

(6) A leave taken under this section must be taken in units of one or more weeks.

(7) If an employee takes a leave under this section and the family member to whom subsection (2) applies does not die within the period referred to in that subsection, the employee may take a further leave after obtaining a new certificate in accordance with subsection (2), and subsections (3) to (6) apply to the further leave.

Reservists' leave

52.2 (1) In this section:

"Canadian Forces" has the same meaning as in section 14 of the *National Defence Act* (Canada);

"reservist" means a member of the reserve force, as defined in section 2 (1) of the *National Defence Act* (Canada).

(2) Subject to the regulations, an employee who is a reservist and who requests leave under this section is entitled to unpaid leave, for the period described in subsection (3), if

- (a) the employee is deployed to a Canadian Forces operation outside Canada or is engaged, either inside or outside Canada, in a pre-deployment or post-deployment activity required by the Canadian Forces in connection with such an operation,
- (b) the employee is deployed to a Canadian Forces operation inside Canada that is or will be providing assistance in dealing with an emergency or with its aftermath, or
- (c) the prescribed circumstances apply.

(3) An employee who is a reservist is entitled to take leave under this section for the prescribed period or, if no period is prescribed, for as long as subsection (2) (a), (b) or (c) applies to the employee.

(4) Subject to subsection (5), a request for leave must

- (a) be in writing,
- (b) be given to the employer,
 - (i) unless subparagraph (ii) or (iii) applies, at least 4 weeks before the employee proposes to begin leave,
 - (ii) in the case of leave under subsection (2) (a) or (b), if the employee receives notice of the deployment less than 4 weeks before it will begin, as soon as practicable after the employee receives the notice, or
 - (iii) in the case of leave under subsection (2) (c), within the prescribed period, and

(c) include the date the employee proposes to begin leave and the date the employee proposes to return to work.

(5) If circumstances require leave to be taken beyond the date specified in the request under subsection (4) (c), the employee must

(a) notify the employer of the need for the extended leave and of the date the employee now proposes to return to work, and

(b) provide the notice referred to in paragraph (a),

(i) unless subparagraph (ii) or (iii) applies, at least 4 weeks before the date the employee had proposed, in the request under subsection (4), to return to work,

(ii) in the case of leave under subsection (2) (a) or (b), if the employee receives notice of the extended deployment less than 4 weeks before the date referred to in subparagraph (i), as soon as practicable after the employee receives the notice, or

(iii) in the case of a leave under subsection (2) (c), within the prescribed period.

(6) If an employee who is a reservist proposes to return to work earlier than specified in the request submitted under subsection (4) or the notice provided under subsection (5), if applicable, the employee must notify the employer of this proposal at least one week before the date the employee proposes to return to work.

(7) An employer may require an employee who takes leave under this section to provide further information respecting the leave.

(8) If an employer requires an employee to provide further information under subsection (7), the employee must

(a) provide the prescribed information in accordance with the regulations, or

(b) if no information is prescribed, provide information reasonable in the circumstances to explain why subsection (2) (a), (b) or (c) applies to the employee and provide it within a reasonable time after the employee learns of the requirement under subsection (7).

Bereavement leave

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

Duties of employer

54 (1) An employer must give an employee who requests leave under this Part the leave to which the employee is entitled.

(2) An employer must not, because of an employee's pregnancy or a leave allowed by this Part,

(a) terminate employment, or

(b) change a condition of employment without the employee's written consent.

(3) As soon as the leave ends, the employer must place the employee

(a) in the position the employee held before taking leave under this Part, or

(b) in a comparable position.

(4) If the employer's operations are suspended or discontinued when the leave ends, the employer must, subject to the seniority provisions in a collective agreement, comply with subsection (3) as soon as operations are resumed.

Jury duty

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

Employment deemed continuous while employee on leave or jury duty

56 (1) The services of an employee who is on leave under this Part or is attending court as a juror are deemed to be continuous for the purposes of

(a) calculating annual vacation entitlement and entitlement under sections 63 and 64, and

(b) any pension, medical or other plan beneficial to the employee.

(2) In the following circumstances, the employer must continue to make payments to a pension, medical or other plan beneficial to an employee as though the employee were not on leave or attending court as a juror:

(a) if the employer pays the total cost of the plan;

(b) if both the employer and the employee pay the cost of the plan and the employee chooses to continue to pay his or her share of the cost.

(3) The employee is entitled to all increases in wages and benefits the employee would have been entitled to had the leave not been taken or the attendance as a juror not been required.

(4) Subsection (1) does not apply if the employee has, without the employer's consent, taken a longer leave than is allowed under this Part.

(5) Subsection (2) does not apply to an employee on leave under section 52.2.

Part 7 – Annual Vacation

Entitlement to annual vacation

57 (1) An employer must give an employee an annual vacation of

(a) at least 2 weeks, after 12 consecutive months of employment, or

(b) at least 3 weeks, after 5 consecutive years of employment.

(2) An employer must ensure an employee takes an annual vacation within 12 months after completing the year of employment entitling the employee to the vacation.

(3) An employer must allow an employee who is entitled to an annual vacation to take it in periods of one or more weeks.

(4) An annual vacation is exclusive of statutory holidays that an employee is entitled to.

Vacation pay

58 (1) An employer must pay an employee the following amount of vacation pay:

(a) after 5 calendar days of employment, at least 4% of the employee's total wages during the year of employment entitling the employee to the vacation pay;

(b) after 5 consecutive years of employment, at least 6% of the employee's total wages during the year of employment entitling the employee to the vacation pay.

(2) Vacation pay must be paid to an employee

(a) at least 7 days before the beginning of the employee's annual vacation, or

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

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

(ii) provided by the collective agreement.

(3) Any vacation pay an employee is entitled to when the employment terminates must be paid to the employee at the time set by section 18 for paying wages.

Other payments or benefits do not affect vacation rights

59 (1) An employer must not reduce an employee's annual vacation or vacation pay because the employee

(a) was paid a bonus or sick pay, or

(b) was previously given a longer annual vacation than the minimum required under section 57.

(2) Despite subsection (1) (b), an employer may reduce an employee's annual vacation or vacation pay because at the written request of the employee the employer allowed the employee to take an annual vacation in advance.

Common date for calculating vacation entitlement

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

Repealed 61 [Repealed 2002-42-29.]

Part 8 – Termination of Employment

Definition

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

Liability resulting from length of service

- 63 (1) After 3 consecutive months of employment, the employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service.
- (2) The employer's liability for compensation for length of service increases as follows:
- (a) after 12 consecutive months of employment, to an amount equal to 2 weeks' wages;
 - (b) after 3 consecutive years of employment, to an amount equal to 3 weeks' wages plus one additional week's wages for each additional year of employment, to a maximum of 8 weeks' wages.
- (3) The liability is deemed to be discharged if the employee
- (a) is given written notice of termination as follows:
 - (i) one week's notice after 3 consecutive months of employment;
 - (ii) 2 weeks' notice after 12 consecutive months of employment;
 - (iii) 3 weeks' notice after 3 consecutive years of employment, plus one additional week for each additional year of employment, to a maximum of 8 weeks' notice;
 - (b) is given a combination of written notice under subsection (3) (a) and money equivalent to the amount the employer is liable to pay, or
 - (c) terminates the employment, retires from employment, or is dismissed for just cause.
- (4) The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by
- (a) totalling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,
 - (b) dividing the total by 8, and
 - (c) multiplying the result by the number of weeks' wages the employer is liable to pay.
- (5) For the purpose of determining the termination date under this section, the employment of an employee who is laid off for more than a temporary layoff is deemed to have been terminated at the beginning of the layoff.

Group terminations

- 64 (1) If the employment of 50 or more employees at a single location is to be terminated within any 2 month period, the employer must give written notice of group termination to all of the following:
- (a) each employee who will be affected;
 - (b) a trade union certified to represent, or recognized by the employer as the bargaining agent of, any affected employees;
 - (c) the minister.
- (2) The notice of group termination must specify all of the following:
- (a) the number of employees who will be affected;

- (b) the effective date or dates of the termination;
 - (c) the reasons for the termination.
- (3) The notice of group termination must be given as follows:
- (a) at least 8 weeks before the effective date of the first termination, if 50 to 100 employees will be affected;
 - (b) at least 12 weeks before the effective date of the first termination, if 101 to 300 employees will be affected;
 - (c) at least 16 weeks before the effective date of the first termination, if 301 or more employees will be affected.
- (4) If an employee is not given notice as required by this section, the employer must give the employee termination pay instead of the required notice or a combination of notice and termination pay.
- (5) The notice and termination pay requirements of this section are in addition to the employer's liability, if any, to the employee in respect of individual termination under section 63 or under the collective agreement, as the case may be.
- (6) This section applies whether the employment is terminated by the employer or by operation of law.

Exceptions

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

(c) is laid off and does not return to work within a reasonable time after being requested to do so by the employer.

Director may determine employment has been terminated

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

Rules about notice

67 (1) A notice given to an employee under this Part has no effect if

(a) the notice period coincides with a period during which the employee is on annual vacation, leave, temporary layoff, strike or lockout or is unavailable for work due to a strike or lockout or medical reasons, or

(b) the employment continues after the notice period ends.

(2) Once notice is given to an employee under this Part, the employee's wage rate, or any other condition of employment, must not be altered without the written consent of

(a) the employee, or

(b) a trade union representing the employee.

Rules about payments

68 (1) A payment made under this Part does not discharge liability for any other payment the employee is entitled to receive under this Act.

(2) The termination pay requirements of section 64 apply whether or not the employee has obtained other employment or has in any other way realized or recovered any money for the notice period.

(3) If an employee is not covered by a collective agreement, the director may determine that a payment made to the employee in respect of termination of employment, other than money paid under section 64, discharges, to the extent of the payment, the employer's liability to the employee under section 63.

Repealed 69-70 [Repealed 2002-42-34 and 35.]

Adjustment committee

71 (1) If an employer is required to give notice under section 64, the minister may require the employer to establish an adjustment committee.

(2) The adjustment committee is to consist of

(a) an equal number of representatives of the employer and of the affected employees, and

(b) anyone else the minister considers suitable for appointment to the committee.

(3) The purpose of the adjustment committee is to develop, by cooperation, an adjustment program

(a) to eliminate the need for terminating the employment of the affected employees, or

(b) to minimize the impact of terminating their employment and to help them obtain other employment.

(4) The adjustment committee may require any of the following to provide it with any information necessary for carrying out its purpose:

(a) the employer;

(b) the representatives of the employer and the affected employees;

(c) any other member of the adjustment committee.

Application for variance

- 72 An employer and any of the employer's employees may, in accordance with the regulations, join in a written application to the director for a variance of any of the following:
- (a) a time period specified in the definition of "temporary layoff";
 - (b) section 17 (1) (paydays);
 - (c) section 25 (special clothing);
 - (d) section 33 (split shifts);
 - (e) section 34 (minimum daily hours);
 - (f) section 35 (maximum hours of work);
 - (g) section 36 (hours free from work);
 - (h) section 40 (overtime wages for employees not working under an averaging agreement);
 - (h.1) a period specified in section 37 (1) (number of weeks covered by an agreement to average hours of work);
 - (i) section 64 (notice and termination pay requirements for group terminations).

Power to grant variance

- 73 (1) The director may vary a time period or requirement specified in an application under section 72 if the director is satisfied that
- (a) a majority of the employees who will be affected by the variance are aware of its effect and approve of the application, and
 - (b) the variance is not inconsistent with the purposes of this Act set out in section 2.
- (1.1) The application and operation of a variance under this Part must not be interpreted as a waiver described in section 4.
- (2) In addition, if the application is for a variance of a time period or a requirement of section 64 the director must be satisfied that the variation will facilitate
- (a) the preservation of the employer's operations,
 - (b) an orderly reduction or closure of the employer's operations, or
 - (c) the short term employment of employees for special projects.
- (3) The director may
- (a) specify that a variance applies only to one or more of the employer's employees,
 - (b) specify an expiry date for a variance, and
 - (c) attach any conditions to a variance.
- (4) On being served with a determination on a variance application, the employer must display a copy of the determination in each workplace, in locations where the determination can be read by any affected employees.

Part 10 – Complaints, Investigations and Determinations

Complaint and time limit

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

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

(4) A complaint that a person has contravened a requirement of section 8, 10 or 11 must be delivered under subsection (2) within 6 months after the date of the contravention.

If complainant requests identity be kept confidential

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

- (a) the disclosure is necessary for the purposes of a proceeding under this Act, or
- (b) the director considers the disclosure is in the public interest.

(2) Subsection (1) applies despite any provision of the *Freedom of Information and Protection of Privacy Act* other than section 44 (2) and (3) of that Act.

Investigations

76 (1) Subject to subsection (3), the director must accept and review a complaint made under section 74.

(2) The director may conduct an investigation to ensure compliance with this Act and the regulations, whether or not the director has received a complaint.

(3) The director may refuse to accept, review, mediate, investigate or adjudicate a complaint or may stop or postpone reviewing, mediating, investigating or adjudicating a complaint if

- (a) the complaint is not made within the time limit specified in section 74 (3) or (4),
- (b) this Act does not apply to the complaint,
- (c) the complaint is frivolous, vexatious or trivial or is not made in good faith,
- (d) the employee has not taken the requisite steps specified by the director in order to facilitate resolution or investigation of the complaint,
- (e) there is not enough evidence to prove the complaint,
- (f) a proceeding relating to the subject matter of the complaint has been commenced before a court, a tribunal, an arbitrator or a mediator,
- (g) a court, a tribunal or an arbitrator has made a decision or an award relating to the subject matter of the complaint,
- (h) the dispute that caused the complaint may be dealt with under section 3 (7), or
- (i) the dispute that caused the complaint is resolved.

Opportunity to respond

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

Settlement agreements

78 (1) The director may do one or more of the following:

- (a) assist in settling a complaint or a matter investigated under section 76;
- (b) arrange that a person pay directly to an employee or other person any amount to be paid as a result of a settlement agreement under paragraph (a);
- (c) receive on behalf of an employee or other person any amount to be paid as a result of a settlement agreement under paragraph (a).

(2) The director must pay money received under subsection (1) (c) to the person on whose behalf the money was received.

(3) A person who is a party to a settlement agreement under subsection (1) (a) must comply with the terms of the settlement agreement.

(4) If a person fails to comply with the terms of a settlement agreement under subsection (1) (a), the director may file the settlement agreement under section 91.

(5) The application and operation of a settlement agreement under this section must not be interpreted as a waiver described in section 4.

Determinations and consequences

- 79 (1) If satisfied that a person has contravened a requirement of this Act or the regulations, the director may require the person to do one or more of the following:
- (a) comply with the requirement;
 - (b) remedy or cease doing an act;
 - (c) post notice, in a form and location specified by the director, respecting
 - (i) a determination, or
 - (ii) a requirement of, or information about, this Act or the regulations;
 - (d) pay all wages to an employee by deposit to the credit of the employee's account in a savings institution;
 - (e) employ, at the employer's expense, a payroll service for the payment of wages to an employee;
 - (f) pay any costs incurred by the director in connection with inspections under section 85 related to investigation of the contravention.
- (2) In addition to subsection (1), if satisfied that an employer has contravened a requirement of section 8 or 83 or Part 6, the director may require the employer to do one or more of the following:
- (a) hire a person and pay the person any wages lost because of the contravention;
 - (b) reinstate a person in employment and pay the person any wages lost because of the contravention;
 - (c) pay a person compensation instead of reinstating the person in employment;
 - (d) pay an employee or other person reasonable and actual out of pocket expenses incurred by him or her because of the contravention.
- (3) In addition to subsection (1), if satisfied that an employer has contravened section 39, the director may require the employer to limit hours of work of employees to the hours or schedule specified by the director.
- (4) The director may make a requirement under subsection (1), (2) or (3) subject to any terms and conditions that the director considers appropriate.
- (5) The director must serve an employer with notice of a requirement imposed under subsection (1), (2) or (3), including any terms and conditions imposed under subsection (4).
- (6) A person on whom the director imposes a requirement under this section must comply with that requirement.
- (7) If the director requires a person to pay costs referred to in subsection (1) (f), the amount required to be paid is a debt due to the government and may be collected by the director in the same manner as wages.
- (8) If satisfied that the requirements of this Act and the regulations have not been contravened, the director must dismiss a complaint.

Limit on amount of wages required to be paid

- 80 (1) The amount of wages an employer may be required by a determination to pay an employee is limited to the amount that became payable in the period beginning
- (a) in the case of a complaint, 6 months before the earlier of the date of the complaint or the termination of the employment, and
 - (b) in any other case, 6 months before the director first told the employer of the investigation that resulted in the determination,
- plus interest on those wages.
- (1.1) Despite subsection (1) (a), for the purposes of a complaint that was delivered before May 30, 2002, to an office of the Employment Standards Branch under and in accordance with section 74, the amount of wages an employer may be required by a determination to pay an employee is limited to the amount that became payable in the period beginning 24 months before the earlier of
- (a) the date of the complaint, and

(b) the termination of the employment,
plus interest on those wages.

(2) If a talent agency that has received wages from an employer on behalf of an employee has failed to pay those wages, less any fees allowed under the regulations, to the employee within the time required under the regulations, the amount the agency may be required by a determination to pay to the employee is limited to the amount calculated

(a) by deducting any fees allowed under the regulations from the amount received by the agency on behalf of the employee in the period beginning,

(i) in the case of a complaint, 6 months before the date of the complaint, and

(ii) in any other case, 6 months before the director first told the talent agency of the investigation that resulted in the determination, and

(b) by adding interest to the amount obtained under paragraph (a).

Notifying others of determination

81 (1) On making a determination under this Act, the director must serve any person named in the determination with a copy of the determination that includes the following:

(a) [Repealed 2002-42-43.]

(b) if an employer or other person is required by the determination to pay wages, compensation, interest, a penalty or another amount, the amount to be paid and how it was calculated;

(c) if a penalty is imposed, the nature of the contravention and the date by which the penalty must be paid;

(d) the time limit and process for appealing the determination to the tribunal.

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

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

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

(2) On being served with a determination requiring the employer to limit the hours of work of employees, an employer must display a copy of the determination in each workplace in locations where the determination can be read by any affected employees.

No other proceedings

82 Once a determination is made requiring payment of wages, an employee may commence another proceeding to recover them only if

(a) the director has consented in writing, or

(b) the director or the tribunal has cancelled the determination.

Employee not to be mistreated because of complaint or investigation

83 (1) An employer must not

(a) refuse to employ or refuse to continue to employ a person,

(b) threaten to dismiss or otherwise threaten a person,

(c) discriminate against or threaten to discriminate against a person with respect to employment or a condition of employment, or

(d) intimidate or coerce or impose a monetary or other penalty on a person,

because a complaint or investigation may be or has been made under this Act or because an appeal or other action may be or has been taken or information may be or has been supplied under this Act.

(2) [Repealed 2002-42-44.]

Power to compel persons to answer questions and order disclosure

- 84 (1) For the purposes of this Act, the director may make an order requiring a person to do either or both of the following:
- (a) attend, in person or by electronic means, before the director to answer questions on oath or affirmation, or in any other manner;
 - (b) produce for the director a record or thing in the person's possession or control.
- (2) The director may apply to the Supreme Court for an order
- (a) directing a person to comply with an order made under subsection (1), or
 - (b) directing any officers and governing members of a person to cause the person to comply with an order made under subsection (1).

Maintenance of order at hearings

- 84.1 (1) At an oral hearing, the director may make orders or give directions that he or she considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the director may call on the assistance of any peace officer to enforce the order or direction.
- (2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.
- (3) Without limiting subsection (1), the director, by order, may
- (a) impose restrictions on a person's continued participation in or attendance at a hearing, and
 - (b) exclude a person from further participation in or attendance at a hearing until the director orders otherwise.

Contempt proceeding for uncooperative person

- 84.2 (1) The failure or refusal of a person subject to an order under section 84 to do any of the following makes the person, on application to the Supreme Court by the director, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court:
- (a) attend before the director;
 - (b) take an oath or make an affirmation;
 - (c) answer questions;
 - (d) produce records or things in the person's possession or control.
- (2) The failure or refusal of a person subject to an order or direction under section 84.1 to comply with the order or direction makes the person, on application to the Supreme Court by the director, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.
- (3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the Supreme Court.

Immunity protection

- 84.3 (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against the director, or a person acting on behalf of or under the direction of the director, because of anything done or omitted
- (a) in the performance or intended performance of any duty under this Act, or
 - (b) in the exercise or intended exercise of any power under this Act.
- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Entry and inspection powers

- 85 (1) For the purposes of ensuring compliance with this Act and the regulations, the director may do one or more of the following:
- (a) enter during regular working hours any place, including any means of conveyance or transport, where
 - (i) work is or has been done or started by employees,

- (ii) an employer carries on business or stores assets relating to that business,
- (iii) a record required for the purposes of this Act is kept, or
- (iv) anything to which this Act applies is taking place or has taken place;

(b) inspect, and question a person about, any work, material, appliance, machinery, equipment or other thing in the place;

(c) inspect any records that may be relevant to an investigation under this Part;

(d) on giving a receipt for a record examined under paragraph (c), remove the record to make copies or extracts;

(e) require a person to disclose, either orally or in writing, a matter required under this Act and require that the disclosure be under oath or affirmation;

(f) require a person to produce, or to deliver to a place specified by the director, any records for inspection under paragraph (c).

(2) Despite subsection (1), the director may enter a place occupied as a private residence only with the consent of the occupant or under the authority of a warrant issued under section 120.

Power to reconsider

86 (1) Subject to subsection (2), the director may vary or cancel a determination.

(2) If a person appeals a determination that the director intends to vary or cancel under subsection (1), the director must vary or cancel the determination within 30 days of the date that a copy of the appeal request was received by the director.

No jurisdiction to determine constitutional question

86.1 Nothing in this Act is to be construed as giving the director or any person acting for or on behalf of the director under this Act jurisdiction over constitutional questions relating to the *Canadian Charter of Rights and Freedoms*.

Director without jurisdiction to apply the *Human Rights Code*

86.2 (1) The director does not have jurisdiction to apply the *Human Rights Code*.

(2) Subsection (1) applies to all matters brought before, on or after the date that the subsection applies to the director.

Part 11 — Enforcement

Lien for unpaid wages

87 (1) Despite any other Act, unpaid wages constitute a lien, charge and secured debt in favour of the director, dating from the time the wages were earned, against all the real and personal property of the employer or other person named in a determination, a settlement agreement or an order, including money due or accruing due to the employer or other person from any source.

(1.1) If a talent agency named in a determination, a settlement agreement or an order has

(a) received wages from an employer on behalf of an employee, and

(b) failed to pay those wages, less any fees allowed under the regulations, to the employee within the time required under the regulations,

the wages, less any fees allowed under the regulations, constitute a lien, charge and secured debt in favour of the director, dating from the time the wages were received by the agency, against all the real and personal property of the agency, including money due or accruing due to the agency from any source.

(2) Unpaid wages set out in a decision or order filed under section 30 of the *Industrial Relations Act*, R.S.B.C. 1979, c. 212, or under section 102 or 135 of the *Labour Relations Code* constitute a lien, charge and secured debt in favour of the persons named in the decision or order against all the real and personal property of the employer or other person named in the decision or order.

(3) Despite any other Act but subject to subsection (5), the amount of a lien, charge and secured debt referred to in subsections (1), (1.1) and (2) is payable and enforceable in priority over all liens, judgments, charges and security interests or any other claims or rights, including the following:

- (a) any claim or right of the government including, but not limited to, the claims and rights of the Workers' Compensation Board;
- (b) any claim or right arising through contract, account receivable, insurance claim or sale of goods;
- (c) any security interest within the meaning of the *Personal Property Security Act*.

(4) Subsection (3) (c) applies whether the lien, judgment, charge, security interest, claim or right was perfected within the meaning of the *Personal Property Security Act*, or was created or made, before or after

- (a) in the case of wages referred to in subsection (1) or (2), the date the wages were earned or the date a payment for the benefit of the employee became due, and
- (b) in the case of wages referred to in subsection (1.1), the date the wages were received by the talent agency.

(5) The lien, charge and secured debt referred to in subsections (1), (1.1) and (2) has priority over a mortgage of, or debenture charging, land, that was registered in a land title office before registration against that land of a certificate of judgment obtained on the filing, under section 91, of a determination, a settlement agreement or an order of the tribunal, but only with respect to money advanced under the mortgage or debenture after the certificate of judgment was registered.

Payment of interest

88 (1) If an employer fails to pay wages or another amount to an employee, the employer must pay interest at the prescribed rate on the wages or other amount from the earlier of

- (a) the date the employment terminates, and
- (b) the date a complaint about the wages or other amount is delivered to the director

to the date of payment.

(2) No interest accumulates under subsection (1) from the date a determination is made under section 79 or a settlement agreement is made under section 78 requiring payment of the wages or other amount until 38 days after that date.

(3) Interest payable under subsection (1) is deemed to be wages and this Act applies to the recovery of those wages.

(4) Subsection (1) applies whether or not the wages or other amount became payable before this section comes into force, but the date from which the interest is calculated must not be earlier than the date this section comes into force.

(5) An amount collected under this Part, or deposited under section 113, earns interest at the prescribed rate, payable by the minister charged with the administration of the *Financial Administration Act*, from the date the amount is deposited in a savings institution to the date of payment to the person entitled.

(6) Subsection (5) does not apply to any security provided or bond posted under section 100.

(7) If a talent agency that has received wages from an employer on behalf of an employee fails to pay those wages, less any fees allowed under the regulations, to the employee within the time required under the regulations,

- (a) the talent agency must pay interest at the prescribed rate on the amount of the wages, less the fees, from the date a complaint about the wages is delivered to the director, and
- (b) subsections (2) and (3) apply in respect of the interest.

(8) Subsection (7) applies whether or not the wages were received by the talent agency before that subsection comes into force, but the date from which the interest is calculated must not be earlier than the date subsection (7) comes into force.

Demand on third party

89 (1) If the director has reason to believe that a person is or is likely to become indebted to another who is required to pay money under a determination, a settlement agreement or an order of the tribunal, the director may demand in writing that the person pay to the director, on account of the other's liability under the determination, settlement agreement or order, all or part of the money otherwise payable to the other person.

(2) A person on whom a demand is made under this section must, if indebted to the other person, pay to the director or to someone specified by the director the amount demanded, within 15 days after the later of

- (a) the date the demand is served, and
- (b) the date the person named in the demand becomes indebted to the other person.

(3) The director's receipt for money paid by a person in response to a demand is proof that the person's liability to the person required to pay under the determination or settlement agreement or under the order of the tribunal is discharged to the extent of the amount stated in the receipt.

(4) For the purposes of this section, a savings institution is indebted to a person required to pay under a determination or settlement agreement or under an order of the tribunal for money or a beneficial interest in money in the savings institution

- (a) on deposit to the credit of that person when a demand is served,
- (b) held in trust by a depositor for that person when a demand is served, or
- (c) deposited to the credit of that person after a demand is served.

(5) A demand made under this section continues in effect until it is satisfied or until it is cancelled by the director.

Failure to comply with demand

90 (1) If a person on whom a demand is made under section 89 does not comply with the demand,

- (a) the director may enforce recovery of the amount stated in the demand as if it were unpaid wages, and
- (b) this Act applies to the recovery of that amount.

(2) If a person on whom a demand is made under section 89 denies indebtedness to anyone required to pay under a determination, a settlement agreement or an order of the tribunal, the director may require that person to produce information the director considers necessary to establish that there is no indebtedness.

Determination or order may be filed and enforced as judgment

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

(2) Unless varied, cancelled or suspended under section 86, 113, 115, 116 or 119 a filed determination is enforceable in the same manner as a judgment of the Supreme Court in favour of the director for the recovery of a debt in the amount stated in the determination.

(3) Unless varied or cancelled by the tribunal under section 116, a filed order of the tribunal is enforceable in the same manner as a judgment of the Supreme Court in favour of the director for the recovery of a debt in the amount stated in the order.

(3.1) A settlement agreement filed under this section is enforceable in the same manner as a judgment of the Supreme Court in favour of the director for the recovery of a debt in the amount stated in the settlement agreement.

(4) If a determination or order filed under this section is varied, cancelled or suspended, the director must promptly withdraw the determination or order from filing in the Supreme Court registry.

Seizure of assets

92 (1) The director may seize as much of the assets owned or possessed by a person who is required to pay under a determination, a settlement agreement or an order of the tribunal, or used in or incidental to that person's business, as is necessary to satisfy

- (a) the amount stated in the determination, settlement agreement or order, and
- (b) the costs of seizure.

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

- (a) the determination, settlement agreement or order of the tribunal is filed in court under section 91 and a writ of seizure and sale has been executed;

(b) in the case of a determination or an order of the tribunal, the determination or order is cancelled under section 86, 115, 116 or 119 (9).

Release of assets

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

Wrongful removal of seized assets

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

Associated employers

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

Corporate officer's liability for unpaid wages

- 96 (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.
- (2) Despite subsection (1), a person who was a director or an officer of a corporation is not personally liable for
- (a) any liability to an employee under section 63, termination pay or money payable in respect of individual or group terminations, if the corporation is in receivership,
- (b) any liability to an employee for wages, if the corporation is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act,
- (c) vacation pay that becomes payable after the director or officer ceases to hold office, or
- (d) money that remains in an employee's time bank after the director or officer ceases to hold office.
- (2.1) If a corporation that is a talent agency has received wages from an employer on behalf of an employee and fails to pay those wages, less any fees allowed under the regulations, to the employee within the time required under the regulations,
- (a) a person who was a director or officer of the corporation at the time the wages were received is personally liable for the amount received by the corporation from the employer, less any fees allowed under the regulations, and
- (b) that amount is considered for the purposes of subsection (3) to be unpaid wages.
- (3) This Act applies to the recovery of the unpaid wages from a person liable for them under subsection (1) or (2.1).
- (4) In this section, "**director or officer of a corporation**" includes a director or officer of a corporation, firm, syndicate or association that the director treats as one employer under section 95.

Sale of business or assets

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

Monetary penalties

- 98 (1) In accordance with the regulations, a person in respect of whom the director makes a determination and imposes a requirement under section 79 is subject to a monetary penalty prescribed by the regulations.
- (1.1) A penalty imposed under this section is in addition to and not instead of any requirement imposed under section 79.
- (1.2) A determination made by the director under section 79 must include a statement of the applicable penalty.
- (2) If a corporation contravenes a requirement of this Act or the regulations, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the contravention is also liable to the penalty.
- (3) A person on whom a penalty is imposed under this section must pay the penalty whether or not the person
- (a) has been convicted of an offence under this Act, or
 - (b) is also liable to pay a fine for an offence under section 125.
- (4) A penalty imposed under this Part is a debt due to the government and may be collected by the director in the same manner as wages.

If money is paid to director

- 99 (1) Subject to section 78 (2), the director must pay to the minister charged with the administration of the *Financial Administration Act* all money received by the director under this Act, including money to be held in trust for the persons named in a determination, a settlement agreement or an order of the tribunal.
- (2) Money received by the minister charged with the administration of the *Financial Administration Act* in respect of a determination, a settlement agreement or an order of the tribunal must be attributed
- (a) first, to any wages required to be paid by the determination, settlement agreement or order,
 - (b) second, to any other amount, other than interest or penalties, required to be paid by the determination, settlement agreement or order,
 - (c) third, to interest required to be paid by the determination, settlement agreement or order, and
 - (d) last, to any penalties required to be paid by the determination or order.
- (3) The minister charged with the administration of the *Financial Administration Act* must pay, according to the direction of the director, to the persons named in a determination, a settlement agreement or an order of the tribunal, money received in trust for those persons.
- (4) Money attributed to wages under subsection (2) must be attributed proportionally among the employees or former employees named in the determination, settlement agreement or order according to the amount owing as shown on the determination, settlement agreement or order.
- (5) The money attributed to an employee under subsection (4) must then be paid according to the following priority:
- (a) to a person who is a holder for value of an uncashed cheque or money order for the employee's wages;
 - (b) to a person the employee assigned the wages to;
 - (c) to the employee or, if deceased,
 - (i) to the employee's estate, or
 - (ii) under the *Estate Administration Act*;
 - (d) to a fund, insurer or other person to whom payment is to be made under section 26.

(6) If there is not enough money to pay everyone entitled under a paragraph in subsection (5), the money available under that paragraph must be divided among them in proportion to the amount each of them is entitled to.

(7) Subsections (4) to (6) apply also to interest required to be paid on wages by a determination, a settlement agreement or an order of the tribunal.

(8) Despite subsections (5) and (7), if money is received for wages or interest owing to an employee who owes money under another determination or settlement agreement or under an order of the tribunal, the director may direct that the amount received be used to pay the claims of anyone entitled to payment under the other determination or settlement agreement or under the order.

Security to ensure compliance

100 (1) To ensure compliance with this Act or the regulations, the director may require an employer who has at any time contravened a requirement relating to the payment of wages under this Act or the former Act

(a) to provide an irrevocable letter of credit or other security satisfactory to the director, or

(b) to post a bond under the *Bonding Act*.

(2) Subsection (1) applies whether or not

(a) a penalty has been imposed on the employer under this Act, or

(b) the employer has been convicted of an offence under this Act or the former Act.

Publication of violators' names

101 (1) The director may compile information relating to contraventions of this Act or the regulations, including information identifying the persons who, according to a determination or an order of the tribunal, committed the contraventions.

(2) Despite the *Freedom of Information and Protection of Privacy Act*, the director may

(a) publish information compiled under subsection (1), and

(b) make that information available for public inspection during regular business hours at offices of the Employment Standards Branch.

Searching of records

101.1 On the written request and payment of a prescribed fee by a person, the director may

(a) conduct a search of records maintained by the director for information, in respect of a person named in the request, related to contraventions of this Act or the regulations or complaints or investigations under this Act, and

(b) provide that information to the person who made the request and paid the fee.

Part 12 — Employment Standards Tribunal

Employment Standards Tribunal continued

102 The Employment Standards Tribunal is continued consisting of

(a) a member appointed by the Lieutenant Governor in Council as the chair after a merit based process,

(b) members appointed by the minister after a merit based process and consultation with the chair, and

(c) any representative members appointed by the minister, after consultation with the chair, with equal representation from individuals with experience in employers' interests and from individuals with experience in employees' interests.

Application of *Administrative Tribunals Act*

103 Sections 1 to 21, 28 to 30, 32, 34 (3) and (4), 35 to 40, 45, 46, 46.3, 48, 49, 50 (2) to (4), 51 to 53, 55 to 58, 60 (a) and (b) and 61 of the *Administrative Tribunals Act* apply to the tribunal.

Chair may delegate authority

104 (1) The chair may

- (a) carry out any duty, power or function of the tribunal or a member, and
- (b) delegate to a member a function, duty or power of the chair.

(2) While acting as chair under subsection (1) (b), a member has the power and authority of the chair.

Employees

105 (1) Despite the *Public Service Act*, the tribunal may employ a registrar and other employees it considers necessary for the purposes of this Act.

(2) The registrar may be appointed under section 102 (b) as a member.

(3) The *Labour Relations Code*, the *Public Service Act* and the *Public Service Labour Relations Act* do not apply to the tribunal's employees.

Organization of tribunal

106 (1) The chair may establish one or more panels of the tribunal.

(2) Two or more panels may proceed with separate matters at the same time.

(3) The chair may refer matters that are before the tribunal to a panel or a matter that is before a panel to the tribunal or another panel.

(4) A panel may consist of one, 3 or 5 members, but if representative members are appointed to a panel, there must be an equal number of representative members who have experience in employers' interests and who have experience in employees' interests.

(5) The chair may terminate an appointment to a panel and may fill a vacancy on a panel.

(6) A panel has the power and authority of the tribunal in appeals assigned to the panel under this section or matters coming before it under the rules made by the tribunal.

(7) If a panel consists of more than one member, the finding of the majority is the tribunal's finding, but if there is no majority the finding of the member chairing the panel is the tribunal's finding.

Repealed

107-108 [Repealed 2004-45-91.]

Other powers of tribunal

109 (1) In addition to its powers under section 108 and Part 13, the tribunal may do one or more of the following:

(a) [Repealed 2002-42-58.]

(b) extend the time period for requesting an appeal even though the period has expired;

(c) [Repealed 2004-45-91.]

(d) enter during regular working hours any place, including any means of conveyance or transport, where

(i) work is or has been done or started by employees,

(ii) an employer carries on business or stores assets,

(iii) a record required for the purposes of this Act is kept, or

(iv) anything to which this Act applies is taking place or has taken place;

(e) inspect any records that may be relevant to an appeal or a reconsideration;

(f) on giving a receipt for a record examined under paragraph (e), remove the record to make copies or extracts;

(g) require a person to disclose, either orally or in writing, a matter required under this Act and require the disclosure to be made under oath or affirmation;

(h) order a person to produce, or to deliver to a place specified by the tribunal, any records for inspection under paragraph (e).

(2) Despite subsection (1), the tribunal may enter a place occupied as a private residence only with the consent of the occupant or under the authority of a warrant issued under section 120.

Exclusive jurisdiction of tribunal

110 (1) The tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal or reconsideration under Parts 12 and 13 and to make any order permitted to be made.

(2) A decision or order of the tribunal on a matter in respect of which the tribunal has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

Repealed 111 [Repealed 2004-45-91.]

Part 13 – Appeals

Appeal of director's determination

112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:

(a) the director erred in law;

(b) the director failed to observe the principles of natural justice in making the determination;

(c) evidence has become available that was not available at the time the determination was being made.

(2) A person who wishes to appeal a determination to the tribunal under subsection (1) must, within the appeal period established under subsection (3),

(a) deliver to the office of the tribunal

(i) a written request specifying the grounds on which the appeal is based under subsection (1),

(i.1) a copy of the director's written reasons for the determination, and

(ii) payment of the appeal fee, if any, prescribed by regulation, and

(b) deliver a copy of the request under paragraph (a) (i) to the director.

(3) The appeal period referred to in subsection (2) is

(a) 30 days after the date of service of the determination, if the person was served by registered mail, and

(b) 21 days after the date of service of the determination, if the person was personally served or served under section 122 (3).

(4) If, after an appeal is made by a person in accordance with subsections (2) and (3), the determination that is the subject of the appeal is varied by the director under section 86, the person, within 7 days of being notified of the variation,

(a) may amend the request for appeal under subsection (2) (a) (i) and deliver it to the tribunal, and

(b) if the request for appeal is amended, must deliver a copy of the amended request to the director.

(5) On receiving a copy of the request under subsection (2) (b) or amended request under subsection (4) (b), the director must provide the tribunal with the record that was before the director at the time the determination, or variation of it, was made, including any witness statement and document considered by the director.

(6) The filing of a determination under section 91 does not prevent the determination being appealed.

(7) This section does not apply to a determination made under section 119.

Director's determination may be suspended

113 (1) A person who appeals a determination may request the tribunal to suspend the effect of the determination.

(2) The tribunal may suspend the determination for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either

- (a) the total amount, if any, required to be paid under the determination, or
- (b) a smaller amount that the tribunal considers adequate in the circumstances of the appeal.

After an appeal is requested

114 (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:

- (a) the appeal is not within the jurisdiction of the tribunal;
- (b) the appeal was not filed within the applicable time limit;
- (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
- (d) the appeal was made in bad faith or filed for an improper purpose or motive;
- (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
- (f) there is no reasonable prospect that the appeal will succeed;
- (g) the substance of the appeal has been appropriately dealt with in another proceeding;
- (h) one or more of the requirements of section 112 (2) have not been met.

(2) Before considering an appeal, the tribunal may

- (a) refer the matter back to the director for further investigation, or
- (b) recommend that an attempt be made to settle the matter.

(3) If the tribunal dismisses all or part of an appeal under subsection (1), the tribunal must inform the parties of its decision in writing and give reasons for that decision.

Tribunal's orders

115 (1) After considering whether the grounds for appeal have been met, the tribunal may, by order,

- (a) confirm, vary or cancel the determination under appeal, or
- (b) refer the matter back to the director.

(2) [Repealed 2004-45-93.]

Reconsideration of orders and decisions

116 (1) On application under subsection (2) or on its own motion, the tribunal may

- (a) reconsider any order or decision of the tribunal, and
- (b) confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.

(2) The director or a person named in a decision or order of the tribunal may make an application under this section.

(3) An application may be made only once with respect to the same order or decision.

Part 14 — General Provisions

Director's power to delegate

117 (1) Subject to subsection (2), the director may delegate to any person any of the director's functions, duties or powers under this Act, except the power to delegate under this section.

(2) and (3) [Repealed 2002-42-63.]

(4) A delegation under this section

(a) may be cancelled,

(b) does not, subject to subsection (3), prevent the director carrying out the delegated function, duty or power, and

(c) may be made subject to the terms the director considers appropriate.

(5) If the director ceases to hold office, a delegation made under this section continues in effect

(a) as long as the delegate continues in office, or

(b) until cancelled by a succeeding director.

(6) A person who claims to be carrying out a function, duty or power delegated by the director under this section must, on request, produce evidence of the delegation.

Right to sue preserved

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

Extrajurisdictional certificates

119 (1) If satisfied that reciprocal provisions will be made by another jurisdiction in or outside of Canada for enforcing determinations of the director, the Lieutenant Governor in Council may

(a) declare that jurisdiction to be a reciprocating jurisdiction, and

(b) designate the designated statutory authority of that jurisdiction for the purpose of this section.

(2) If a designated statutory authority obtains an order, judgment or payment-of-wages certificate, the authority may apply to the director to enforce that order, judgment or certificate.

(3) The application must include a copy of the order, judgment or payment-of-wages certificate certified

(a) by the court in which the order, judgment or certificate is registered, or

(b) by the designated statutory authority as a true copy, if there is no provision in the reciprocating jurisdiction for registering the order, judgment or certificate in a court.

(4) If satisfied on receiving the application that the wages set out in the order, judgment or certificate are still owing, the director may make a determination requiring payment of those wages and may file the determination in a Supreme Court registry.

(5) A determination filed under subsection (4) is enforceable by the director in the same manner and with the same priorities as are provided in this Act for wages owing.

(6) Any person served under section 81 with a determination made under this section, may appeal the determination to the Supreme Court within

(a) 15 days after the date of service, if the person was served by registered mail, or

(b) 8 days after the date of service, if the person was personally served or served under section 122 (3).

(7) The Supreme Court Civil Rules apply to an appeal under subsection (6) to the extent they are consistent with this section.

(8) The Supreme Court has the same power that the tribunal has under section 113 to suspend the determination on application.

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

Warrant to carry out inspection powers

120 If satisfied by evidence given under oath or affirmation that there is reason to believe there are in a private residence records or other things that are relevant for the purposes of an investigation or appeal under this Act, a justice may issue a warrant authorizing the person named in the warrant

to enter the private residence in accordance with the warrant in order to exercise the powers referred to in section 85 (1) (b) to (d) or 109 (1) (e) or (f).

Director cannot be required to give evidence in other proceedings

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

Service of determinations, demands and notices

- 122 (1) A determination or demand or a notice under section 30.1 (2) that is required to be served on a person under this Act is deemed to have been served if
- (a) served on the person, or
 - (b) sent by registered mail to the person's last known address.
- (2) If service is by registered mail, the determination or demand or the notice under section 30.1 (2) is deemed to be served 8 days after the determination or demand or the notice under section 30.1 (2) is deposited in a Canada Post Office.
- (3) At the request of a person on whom a determination or demand or a notice under section 30.1 (2) is required to be served, the determination or demand or the notice under section 30.1 (2) may be transmitted to the person electronically or by fax machine.
- (4) A determination or demand or a notice under section 30.1 (2) transmitted under subsection (3) is deemed to have been served when the director receives an acknowledgment of the transmission from the person served.

Irregularities

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

Limitation period

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

Offences

- 125 (1) A person who contravenes a requirement of Parts 2 to 8 commits an offence.
- (2) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence commits an offence.
- (3) Subsection (2) applies whether or not the corporation is prosecuted for the offence.
- (4) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

Evidence and burden of proof

- 126 (1) The production of a cheque, bill of exchange or order to pay on which is marked "Pursuant to clearing rules, this item must not be cleared again unless certified", or other words signifying that payment was not made by a savings institution, is evidence that payment was not made.
- (2) A copy of a document issued under this Act by the minister or the director, and certified by the director as a true copy, is, without proof of the director's appointment or signature,
- (a) evidence of the document, and
 - (b) evidence that the person issuing the document was authorized to do so.
- (3) Subsection (2) applies also in respect of a copy of a document issued under this Act by the tribunal and certified by the registrar of the tribunal as a true copy.
- (4) The burden is on the employer to prove that,
- (a) in the case of an alleged contravention of section 9 (1), an employee is 15 years of age or older,
 - (b) in the case of an alleged contravention of section 9 (2), an employee is 12 years of age or older, or

(c) in the case of an alleged contravention of Part 6, an employee's pregnancy, a leave allowed by this Act or court attendance as a juror is not the reason for terminating the employment or for changing a condition of employment without the employee's consent.

Power to make regulations

127 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) excluding, on any conditions, for any periods, and in any circumstances that are considered advisable, a class of persons from all or part of this Act or the regulations;

(a.1) providing that, in respect of an employee covered by a collective agreement,

(i) all or part of a regulation under this Act does not apply, or

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

(b) establishing conditions of employment for employees or classes of employees, whether or not they have been excluded from a part of this Act;

(b.1) establishing conditions of employment for children under 15 years of age that the Lieutenant Governor in Council considers necessary or advisable to protect their health, safety, physical or emotional well-being, education or financial interests;

(c) respecting the licensing of employment agencies, talent agencies and farm labour contractors, including the following:

(i) establishing terms and conditions of licences, or terms and conditions that must be met for obtaining, continuing to hold or renewing a licence;

(ii) providing for the refusal, suspension, cancellation, renewal or reinstatement of licences, including the circumstances under which a licence may be refused, suspended, cancelled, renewed or reinstated;

(iii) providing for appeals of decisions made with respect to the refusal, suspension, cancellation, renewal or reinstatement of licences;

(d) prescribing the duties of employment agencies, talent agencies and farm labour contractors;

(e) prescribing a form of employment contract that must be used by employers when employing domestics;

(f) prescribing the information employers, or different classes of employers, must provide for the purpose of establishing and maintaining a register of employees working in private residences and the time limits for providing that information;

(g) establishing minimum wages for employees or classes of employees;

(h) [Repealed 2002-42-64.]

(i) governing time banks;

(j) designating days as statutory holidays and respecting calculation of statutory holiday pay;

(k) respecting applications for variances or renewal of variances;

(l) specifying requirements of the regulations contravention of which may be the subject of a complaint under section 74;

(m) prescribing interest rates for the purposes of section 88 and providing for different rates for different purposes;

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

(n) prescribing penalties or schedules of penalties for determinations in respect of contraventions of a requirement of this Act or the regulations or a requirement imposed under section 100, which penalties or schedules of penalties may

- (i) vary according to the nature or frequency of the contraventions or the number of employees affected by any contravention, and
- (ii) provide for greater penalties for a second contravention and for third or subsequent contraventions in a 3 year period or any other period that may be prescribed;

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

(o) providing for appeals from determinations to a person or body other than the tribunal in cases involving the tribunal as an employer and providing for the enforcement of decisions on those appeals;

(p) respecting fees, including regulations

- (i) prescribing fees for licences issued under this Act,
- (ii) prescribing fees to be paid in respect of services provided by the government under this Act,
- (iii) prescribing administrative fees for the purposes of section 30.1, and
- (iv) specifying the time, manner and method for payment of prescribed fees payable under this Act;

(p.1) [Repealed 2010-3-29.]

(q) governing the production and inspection of employers' records;

(r) defining any word or expression used but not defined in this Act;

(s) prescribing a class of individuals for the purposes of the definition of "family member" under section 52.1 (1);

(t) prescribing a period for the purposes of section 52.1 (2);

(u) for the purposes of section 52.2,

- (i) restricting the number of leaves within a specified period of time to which an employee who is a reservist is entitled,
- (ii) prescribing circumstances for the purposes of subsection (2) (c) of that section and periods of time for the purposes of subsections (3), (4) (b) (iii) and (5) (b) (iii) of that section, and
- (iii) respecting information to be provided for the purposes of subsection (8) of that section.

(3) Regulations made under subsection (2) (b.1) may be specific or general in their application and may provide differently for children of different age groups or different industries or classes of industries.

(4) Regulations made under subsection (2) (c) may delegate a matter to or confer a discretion on the director.

Part 15 – Transitional and Consequential Provisions

Transition from former Act

128 (1) Despite the repeal of the former Act, an order, certificate, registration, licence, variance, authorization or referral issued or made under that Act remains in force until it expires or is suspended or cancelled under that Act.

(2) If, before November 1, 1995, a decision was made by the director, an authorized representative of the director or an officer on a complaint made under the former Act, the remedy, review, appeal, enforcement and other provisions of that Act continue, despite the repeal of that Act, to apply to the complaint and to all subsequent proceedings in respect of the decision.

(3) If, before November 1, 1995, no decision was made by the director, an authorized representative of the director or an officer on a complaint made under the former Act, the complaint is to be treated for all purposes, including section 80 of this Act, as a complaint made under this Act.

(4) Subject to subsections (5) and (6), section 63 applies to an employee whose employment began before November 1, 1995 and is terminated on or after that date.

(5) An employer is liable to pay to an employee referred to in subsection (4), as compensation for length of service, an amount equal to the greater of the following:

(a) the number of weeks' wages the employee would have been entitled to under section 42 (3) of the former Act if the employment had been terminated without compliance with section 42 (1) of that Act;

(b) the amount the employee is entitled to under section 63 of this Act.

(6) The employer's liability to an employee referred to in subsection (4) for compensation for length of service is deemed to be discharged if the employee is given notice according to section 42 (1) of the former Act or according to section 63 (3) of this Act, whichever entitles the employee to the longer notice period.

Transitional regulations

129 (1) The Lieutenant Governor in Council may make regulations considered necessary or advisable for the purpose of more effectively bringing into operation the provisions of this Act and to obviate any transitional difficulties encountered in doing so.

(2) Without limiting subsection (1), a regulation may suspend for the period the Lieutenant Governor in Council specifies the operation of a provision of an enactment if that provision would impede the effective operation of this Act.

(3) Unless earlier repealed, a regulation made under this section is repealed one year after it is enacted.

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