

1980 BILL 80

Second Session, 19th Legislature, 29 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 80**

**THE EMPLOYMENT STANDARDS ACT**

THE MINISTER OF LABOUR

First Reading .....  
Second Reading .....  
Committee of the Whole .....  
Third Reading .....  
Royal Assent .....

## **THE EMPLOYMENT STANDARDS ACT**

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## BILL 80

1980

### THE EMPLOYMENT STANDARDS ACT

(Assented to , 1980)

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

#### PART 1

#### INTERPRETATION, APPLICATION AND OPERATION

**1(1)** In this Act

- (a) “collective agreement” has the same meaning that it has in *The Labour Relations Act*;
- (b) “Director” means the individual appointed pursuant to *The Public Service Act* as the Director charged with the administration of this Act;
- (c) “employee” means an individual employed to do work who is in receipt of or entitled to wages, and includes a former employee;
- (d) “employer” means a person who employs an employee, and includes a former employer;
- (e) “employment record” means the record required to be maintained under section 14 and any other document or record that is necessary in order to determine whether an employee is entitled to wages, overtime pay, entitlements or maternity benefits;
- (f) “entitlements” means vacation pay, general holiday pay and pay in place of notice of termination of employment;
- (g) “general holiday” means



**GENERAL** This Bill will revise and replace Parts 1-3 of The Alberta Labour Act, 1973. The rest of that Act will be revised and replaced by The Labour Relations Act.

## **1** Definitions.

- (i) New Year's Day,
- (ii) Good Friday,
- (iii) Victoria Day,
- (iv) Dominion Day,
- (v) Labour Day,
- (vi) Thanksgiving Day,
- (vii) Remembrance Day,
- (viii) Christmas Day, and
- (ix) any other day designated as a general holiday by the Lieutenant Governor in Council under this Act;
- (h) "general holiday pay" means the general holiday pay payable to an employee under this Act;
- (i) "hours of work" means the period of time during which an employee works for his employer;
- (j) "maternity benefits" means the benefits to which an employee is entitled under Part 3, Division 7;
- (k) "officer" means an individual appointed pursuant to *The Public Service Act* and designated by the Director as an officer for the purposes of this Act, and includes the Director;
- (l) "overtime agreement" means an agreement described in section 26;
- (m) "overtime pay" means a payment made or to be made in respect of those hours of work referred to and on the basis specified in section 21 or the regulations;
- (n) "overtime rate" means a rate of pay at not less than 1.5 times the wages of an employee;
- (o) "pay period" means the period of employment established by an employer for the computation of wages, overtime pay or time off in place of overtime pay;
- (p) "person" means an individual, corporation, partnership or a group of them or any combination of them;
- (q) "served" means served in accordance with section 8;
- (r) "umpire" means an individual appointed as an umpire under this Act;

(s) “vacation pay” means vacation pay payable to an employee under this Act;

(t) “wage” includes salary, pay, commission or remuneration for work, however computed, but does not include

(i) overtime pay,

(ii) entitlements,

(iii) a payment made as a gift or bonus that is dependent on the discretion of an employer and that is not related to hours of work, production or efficiency,

(iv) expenses or an allowance provided in place of expenses, or

(v) tips or other gratuities;

(u) “week” means 7 consecutive days;

(v) “works” includes providing a service.

(2) When the expression “time off in place of overtime pay” is used in this Act it means the time off in place of overtime pay provided by an employer and taken by an employee at the time, for the remuneration and in the circumstances described in Part 3, Division 2.

(3) A reference to “this Act” includes a regulation made under this Act.

**2(1)** Subject to subsections (2) and (3), this Act applies to all employers and employees.

(2) This Act does not apply to

(a) employers as defined in *The Public Service Employee Relations Act* and to whom that Act applies;

(b) individuals employed by employers as defined in *The Public Service Employee Relations Act* and to whom that Act applies;

(c) employees who are members of a municipal police force appointed pursuant to *The Police Act, 1973*;

(d) employees and employers to the extent that another Act states that this Act or a provision of it does not apply to them.

(3) The following provisions of this Act, namely:

(a) Part 2, Division 3, and

## **2 Application of the Act.**

(b) Part 3, Divisions 2, 3, 4, 5, 7 and 8

do not apply to:

(c) employees employed on a farm or ranch whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, poultry or bees or to their employer while acting in the capacity of their employer, or

(d) employees employed in domestic work in a private dwelling or to their employer while he is ordinarily resident in the dwelling and acting in the capacity of their employer.

**3** Nothing in this Act affects

(a) any civil remedy an employee has against his employer or that an employer has against his employee;

(b) a provision in an agreement, a right at common law or a custom that

(i) provides to an employee wages, overtime pay, entitlements, vacations, maternity benefits, notice of termination of employment or other benefits at least equal to those provided under this Act, or

(ii) imposes on an employer an obligation or duty greater than that provided under this Act.

**4** An agreement by a person that this Act or a provision of it does not apply or that the remedies provided by it are not to be available for his benefit is against public policy and void.

**5** For the purposes of this Act, the employment of an employee shall be deemed to be continuous and uninterrupted when a business, undertaking or other activity or part thereof is sold, leased, transferred or merged.

**3** The Act does not affect civil remedies or provisions in an agreement or custom or right that provides for benefits to an employee at least equal to those provided under this Act.

**4** Agreements that the Act is not to apply are against public policy.

**5** Employment of employees deemed to be continuous and uninterrupted in certain circumstances.

**PART 2**  
**GENERAL PROVISIONS**

**Division 1**

**Administrative Matters**

**6** When the Director is given a power or duty under this Act he may authorize one or more employees of the Crown in right of Alberta to exercise or perform that power or duty generally or with respect to any particular case on the conditions or in the circumstances that the Director prescribes, and that power or duty may then be exercised or performed by the employee so authorized in addition to the Director.

**7(1)** In exercising a power or duty under this Act, an officer may

(a) attach any conditions he considers necessary either generally or specifically, or

(b) specify a time within which anything must be done,

or both.

(2) Except as otherwise provided in this Act, a notice, directive or order given or an approval or permit granted by an officer under this Act may be revoked, amended or varied by an officer at any time or at those times specified in the notice, directive, approval or permit.

**Service of Documents**

**8** If anything is required or permitted to be served under this Act it may be served

(a) in the case of an individual

(i) personally or by leaving it for him at his last or most usual place of abode with some person there present who is apparently at least 16 years old, or

(ii) by mailing it to him by registered mail or certified mail to his last known post office address;

**6** Delegation of Director's responsibilities.

**7** Conditions attached to orders or directives to ensure the proper operation of the Act.

**8** Service of documents.



(b) in the case of a corporation

(i) personally on a director, manager or officer of the corporation, or

(ii) by leaving it at or by sending it by registered or certified mail to the registered office of a corporation or to the office of the attorney of an extra-provincial corporation.

**9** When it is necessary to prove service of any thing in the course of any proceeding or prosecution under this Act,

(a) if service is effected personally, the actual date on which it is served is the date of service;

(b) if service is effected by registered mail or certified mail, service of it shall be deemed to have been made 5 days after the date of mailing;

(c) if service is effected by leaving it with a person apparently at least 16 years old, service of it shall be deemed to have been made on the date it was so left.

### **Certification of Copies**

**10** In a proceeding or prosecution under this Act

(a) a copy of a notice, directive, order, approval, permit, determination, demand or declaration certified by an officer or an umpire to be a true copy, or

(b) a copy of an employment record or other document or an extract of an employment record certified by an officer to be a true copy,

shall be admitted in evidence as prima facie proof of the matters stated in it without proof that the certificate was signed by the person purporting to sign it or of the appointment of the person signing.

**11** In a proceeding or prosecution under this Act a certificate of the Director that an employer has failed to comply with a notice, directive, demand or order is prima facie proof of the failure of the employer to comply, without proof that the certificate was signed by the Director or of the appointment of the Director.

**9** Proof of service.

**10** Certification of copies.

**11** Certificate of non-compliance.

**Division 2**  
**Officer's Authority**

**12(1)** An officer may

- (a) inspect employment records and make copies of them;
  - (b) require an employer, employee or any other person to provide oral or written statements respecting any matter relating to employment or employment records;
  - (c) enter and inspect at any reasonable time any premises or other place, except a private dwelling, in which he has reason to believe that an individual is or was employed;
  - (d) make any inspection, investigation and inquiry that is necessary to ascertain whether this Act or any order, determination, demand or declaration made, permit or approval granted or notice given under this Act has been or is being complied with;
  - (e) question an employee, without his employer being present, during the employee's regular hours of work or otherwise to ascertain whether this Act or an order, determination, demand or declaration made, permit or approval granted or notice given under this Act has been or is being complied with;
  - (f) require a person supplying information or giving oral or written statements to give any of them in the form of a written statement under oath;
  - (g) by notice in writing demand the production of employment records for inspection either forthwith or at a time, date and place specified in the notice;
  - (h) on giving a receipt for it, remove any employment record for not more than 48 hours for the purpose of making copies of it;
  - (i) by notice in writing, require an employer to record the times at which his employees start and stop work each day they work.
- (2) Nothing in subsection (1)(e) requires an employee to answer a question asked of him by an officer.

**13** Every employer, every person acting on his behalf and every

**12** Authority of officers.

**13** Assistance to be provided to officers.

employee shall give whatever assistance is necessary to an officer to enable him to make an entry, inspection, investigation or inquiry.

### **Division 3**

#### **Employment Records**

**14(1)** Subject to this Act, every employer shall maintain in each place of business operated by him in Alberta a record of the following particulars in respect of each of his employees employed at that place of business:

- (a) hours of work each day, recorded daily;
- (b) wages and overtime pay paid;
- (c) time off in place of overtime pay provided and taken;
- (d) name, address and date of birth;
- (e) date of commencement of the present term of employment;
- (f) wage rate, and date and particulars of each change to it;
- (g) each annual vacation granted, showing
  - (i) the dates of commencement and completion, and
  - (ii) the period of employment covered by the annual vacation;
- (h) amount of vacation pay paid;
- (i) general holiday pay paid and the date on which a general holiday is taken if it is not taken on the actual day of the general holiday;
- (j) amount of each deduction from the wages, overtime pay or entitlements of the employee and the purpose for which each deduction is made;
- (k) copies of overtime agreements, written requests to an employee to return to work after a temporary layoff and any notice of termination of employment;
- (l) amount of money paid in place of notice of termination of

**14** Maintenance of employment records.

employment.

(2) Subsection (1)(a) does not apply to an employee employed entirely in

- (a) a supervisory capacity,
- (b) a managerial capacity, or
- (c) a capacity concerning matters of a confidential nature,

and whose duties do not, other than in an incidental way, consist of work similar to that performed by other employees who are not so employed.

**15** An employer may, with the written consent of the Director, maintain employment records in whole or in part at his principal place of business in Alberta or at any other place in Alberta that the Director may designate.

**16** Employment records shall be retained by an employer for at least 3 years from the date each record is made.

**17(1)** Every employer shall, at the end of each pay period, provide each of his employees with a statement in writing, for retention by that employee, setting out for that period and in respect of the employee the following information:

- (a) hours of work;
- (b) wage rate;
- (c) wages paid;
- (d) overtime pay paid;
- (e) time off in place of overtime pay provided and taken;
- (f) vacation pay paid;
- (g) general holiday pay paid;
- (h) money paid in place of notice of termination of employment;
- (i) amount of each deduction from the wages, overtime pay or entitlements of the employee and the purpose for which each deduction is made;
- (j) period of employment covered by the statement.

**15** Maintaining employment records at principal place of business.

**16** Employment records to be kept for at least 3 years.

**17** Statement of employment.



(2) An employer shall, on request, give to an employee a detailed statement as to the computation of the amount of wages, overtime pay and entitlements to which he is entitled and the method of computing any bonus or living allowance paid, whether or not it forms part of wages.

(3) On the termination of employment of an employee, an employer shall, on request, give to the employee a written statement of the dates during which time the employee was employed by him.

**18** Wages and overtime pay or time off in place of overtime pay shall be computed by an employer over a period of employment that does not exceed one month or any longer period that the Director may approve.

### **PART 3**

## **EMPLOYMENT STANDARDS**

### **Division 1**

#### **Payment of Wages**

**19(1)** Subject to subsection (2), within 10 days after the end of each pay period an employer shall pay to each employee the wages earned by the employee in the pay period.

(2) If the employment of an employee is terminated, whether by the employer or the employee, the employer shall pay the employee the wages to which the employee is entitled forthwith after the termination of employment.

**20(1)** Subject to subsection (2), no employer may set off against, deduct, claim or make a claim against or accept from the wages, overtime pay or entitlements of an employee any sum of money.

(2) An employer may deduct from the wages, overtime pay or entitlements of an employee a sum of money that is

(a) permitted or required to be deducted by an Act or regulation or a judgment of a court, or

(b) subject to subsection (3), personally authorized in writing by the employee to be deducted.

(3) No written authorization of an employee permits an employer

**18** Period of employment for computation of wages, overtime pay or time off in place of overtime pay.

**19** Payment of wages.

**20** Deductions from wages, overtime pay and entitlements.

to deduct from the wages, overtime pay or entitlements of an employee a sum for

- (a) faulty workmanship, or
- (b) cash shortages or loss of property if an individual other than the employee has access to the cash or property.

## **Division 2**

### **Hours of Work and Overtime Pay**

**21**(1) If in a week an employee completes 44 hours of work or less but on one or more of the days in the week he completes more than 8 hours of work,

- (a) the overtime rate shall be paid for those hours of work in excess of 8 in each day, or
- (b) in accordance with an overtime agreement, time off in place of overtime pay shall be provided and taken.

(2) If in a week an employee completes more than 44 hours of work, in accordance with an overtime agreement time off in place of overtime pay shall be provided and taken, or

- (a) the hours of work in excess of 8 in each day of the week shall be totalled, and
- (b) the hours of work in excess of 44 in a week shall be calculated,

and the overtime rate shall be paid for whichever is the greater number of hours under clause (a) or (b), or if they are the same, that common number of hours.

(3) The hours of work on a general holiday shall not be included in a computation of the number of hours of work in a day or in a week to determine whether an employee is entitled to overtime pay or time off in place of overtime pay.

**22**(1) Section 21 does not apply to an employee employed entirely in

- (a) a supervisory capacity,
- (b) a managerial capacity, or

**21** Hours of work and overtime pay.

**22** Managers, supervisors and individuals employed in a confidential capacity are exempt.

- (c) a capacity concerning matters of a confidential nature,  
and whose duties do not, other than in an incidental way, consist of work similar to that performed by other employees who are not so employed.
- (2) An officer may make a determination as to whether an individual is or is not employed entirely in a supervisory capacity, in a managerial capacity or in a capacity concerning matters of a confidential nature.
- (3) A copy of the determination made under subsection (2) shall be served on the employer and employee affected by it.
- (4) An employer or employee affected by a determination made under this section may appeal to an umpire in accordance with section 93.

**23(1)** Subject to subsection (2), if an employee is to be paid overtime pay an employer shall pay it within 10 days after the end of the pay period in which it is earned or any longer period that the Director may approve.

(2) If the employment of an employee is terminated, whether by the employer or the employee, the employer shall pay the employee the overtime pay to which the employee is entitled forthwith after the termination of employment.

### **Time Off in Place of Overtime Pay**

**24(1)** This section applies if an employer and employee agree that

- (a) the employer is to provide time off in place of overtime pay,  
and
- (b) the employee will take the time off provided by the employer in place of overtime pay.
- (2) The time off in place of overtime pay provided by an employer and taken by an employee shall be provided and taken at a time that would, but for the time off, have been a time that the employee worked for his employer.
- (3) The amount of time off in place of overtime pay provided by an employer and taken by an employee shall be at least equal to the

**23** Payment of overtime pay.

**24** Time off in place of overtime pay.

number of hours of work for which the employee, but for the overtime agreement, would have received overtime pay.

(4) An employer shall pay his employee remuneration for the time taken off in place of overtime pay at the same rate that the employee would have been paid his wages if he had worked those hours on a normal working day.

(5) For the purposes of this Act

(a) time off in place of overtime pay provided by an employer and taken by an employee shall be treated as hours of work, and

(b) remuneration paid to an employee in respect of the time off in place of overtime pay shall be treated as wages.

**25(1)** Subject to subsection (2), if an employee is to receive time off in place of overtime pay the employer shall provide the time off and the employee shall take it

(a) within 3 months of the end of the pay period in which it is earned,

(b) in accordance with a collective agreement providing for a longer or shorter period for time off to be provided and taken, or

(c) within any period longer than 3 months that may be approved by the Director or specified in the regulations.

(2) Subject to subsection (3), if time off in place of overtime pay is not provided and taken in accordance with subsection (1), the employer shall pay the employee overtime pay for the hours of work for which time off in place of overtime pay was to have been provided and taken within 10 days of the last date on which the time off should have been provided and taken under the agreement but was not taken.

(3) If the employment of an employee is terminated, whether by the employer or the employee, before time off in place of overtime pay is taken by the employee, the employer shall, forthwith after the termination of employment, pay the employee overtime pay for those hours of work in respect of which time off in place of overtime pay was to be provided and taken.

**25** When time off in place of overtime pay is to be taken.



## **Overtime Agreements**

**26(1)** An employer and an employee may

- (a) as part of a collective agreement, or
- (b) if there is no collective agreement, in a written agreement between the employer and the employee,

agree that, wholly or partly in place of overtime pay, the employer will provide and the employee will take time off in place of overtime pay.

(2) An overtime agreement referred to in subsection (1) shall include provisions to the following effect:

(a) that the time off in place of overtime pay shall be provided and taken at a time that would, but for the time off, have been a time that the employee worked for his employer,

(b) that the amount of time off in place of overtime pay shall be at least equal to the number of hours of work for which the employee, but for the overtime agreement, would have received overtime pay,

(c) that the employee shall be remunerated for the time taken off in place of overtime pay at the same rate that the employee would have been paid his wages if he had worked those hours on a normal working day,

(d) that the time off in place of overtime pay shall be provided by the employer and taken by the employee within 3 months of the end of the pay period in which it is earned unless

(i) the agreement is part of a collective agreement and the collective agreement provides for a longer period of time within which time off shall be provided and taken,

(ii) the Director approves an agreement that provides for a longer period of time within which time off shall be provided and taken, or

(iii) a regulation provides for a longer period of time within which time off shall be provided and taken,

(e) that if time off is not provided and taken in accordance with the agreement, the employee will be paid overtime pay for the hours of work for which time off in place of overtime pay was to have been provided and taken within 10 days of the date that was the last date that time off should have been provided and taken under the agreement but was not taken, and

**26** Overtime agreements whereby an employer and employees may agree on the employee taking time off in place of overtime pay.

- (f) that no amendment or termination of the agreement shall be effective without at least 2 weeks' notice in writing by one party to the other.
- (3) If an agreement referred to in subsection (1) does not contain or is contrary to the provisions required to be contained under this section, the agreement shall be deemed to contain
  - (a) those provisions of subsection (2) in respect of which it is silent, and
  - (b) those provisions of subsection (2) that the agreement contravenes in substitution for the provisions that are contrary to subsection (2).

### **Hours of Work Confined**

- 27** The hours of work of an employee shall be confined within a period of 12 hours in any one day unless
- (a) an accident occurs, urgent work is necessary to a plant or machinery, or other unforeseeable or unpreventable circumstances occur, in which case the hours of work shall be increased only to the extent necessary to avoid serious interference with the ordinary working of a business, undertaking or other activity,
  - (b) the Director issues a permit authorizing extended hours of work, or
  - (c) a regulation permits extended hours of work.

### **Minimum Hours of Rest**

- 28** An employer shall allow his employees at least
- (a) 24 consecutive hours of rest each week,
  - (b) 48 consecutive hours of rest in each period of 14 consecutive days,
  - (c) 72 consecutive hours of rest in each period of 21 consecutive

**27** Extended hours of work.

**28** Hours of rest.

days, or

(d) 96 consecutive hours of rest in each period of 28 consecutive days.

### **Notifications**

**29**(1) Every employer shall notify his employees

- (a) of the time at which work begins and ends, and
- (b) if work is carried on by shift, of the time at which each shift begins and ends,

by posting notices in places where they can be seen by his employees or by any other method the Director approves.

(2) If work is carried on by shift, an employee shall not be required to change from one shift to another shift without at least

- (a) 24 hours' notice in writing of the change of shift, and
- (b) 8 hours of rest between shifts.

### **Hours of Work Regulation**

**30** The Lieutenant Governor in Council may make regulations

- (a) prescribing the hours of rest to be provided to employees in addition to or substitution for those specified in this Part during the period of time specified in the regulations.
- (b) governing the hours within which the hours of work of an employee are to be confined in addition to or in substitution for those specified in this Part;
- (c) prescribing those hours of work in respect of which the overtime rate is to be paid or is not to be paid, as the case may be, in addition to or in substitution for those specified in this Part and matters related thereto, and determining for the purpose of the regulation what constitutes an hour of work;

**29** Notification of starting and ending of work and shift schedules.

**30** Hours of work regulation.

(d) governing the period of time within which time off in place of overtime pay is to be provided and taken in addition to or in substitution for the period specified in this Part;

(e) prescribing the hours of the day at which work is to begin and end and prohibiting the employment of employees other than during the hours prescribed.

### **Division 3**

#### **Minimum Wage**

**31** The Lieutenant Governor in Council may make regulations

(a) fixing one or more minimum wages to be paid by employers to employees, whether or not those employees are engaged in the same type of employment;

(b) permitting or prohibiting deductions from a minimum wage;

(c) if board or lodging or both are provided by an employer to an employee to whom a minimum wage applies, fixing a maximum to be charged for the board or lodging or both that are provided

(i) to that employee, or

(ii) to those employees described or referred to in the regulation.

**32** The Director may issue to the employer or prospective employer of an individual who is handicapped a permit authorizing

(a) the employer to pay the individual a wage at less than the minimum wage to which he would otherwise be entitled, and

(b) the prospective employee to receive less than the minimum wage

if the Director is satisfied that the proposed employment arrangement between the employer and prospective employee is satisfactory for both of them in all the circumstances.

**31** Minimum wage regulations.

**32** Employment of handicapped individuals.



## **Division 4**

### **Vacations and Vacation Pay**

**33** In this Division, “year of employment” means a period of 12 consecutive months from

- (a) the date on which the employee’s employment actually commenced, or
- (b) if a common anniversary date is established by an employer for the purpose of determining the vacation and vacation pay of his employees or a group of them, that common anniversary date,

and each subsequent period of 12 consecutive months.

**34**(1) Subject to section 35, an employer shall give to each of his employees, after each year of employment of the employee, an annual vacation of at least 2 weeks with vacation pay calculated in accordance with subsection (2).

(2) The vacation pay payable for each week of vacation shall be calculated as follows:

- (a) if an employee is paid by the month, the wage of the employee for his normal hours of work in a month divided by  $4\frac{1}{3}$ ,
- (b) if an employee is paid by the hour, day or week, the wage of the employee calculated on the basis of the actual rate of wages for the week preceding the employee’s vacation, or
- (c) if an employee is paid wholly or partly on a piece work basis or on a commission basis, the average weekly wage of the employee during
  - (i) his term of employment with the employer, or
  - (ii) the 12 months preceding his vacation,

whichever is the shorter period.

**35** If an employee does not work for his employer for all the days he would normally have been scheduled to work, the employer may reduce the employee’s vacation and vacation pay proportionately, according to the number of days that the employee was expected to work but did not do so.

**33** Definition.

**34** Vacation and vacation pay entitlement.

**35** Proportionate reduction in holiday and vacation pay.

**36(1)** If

- (a) an employee's year of employment is based on a common anniversary date, and
- (b) the employee commenced employment after that date in a year,

the employer shall give to that employee, after the next occurrence of the common anniversary date, an annual vacation in accordance with subsection (2) with vacation pay.

(2) The annual vacation of the employee shall be calculated on a pro rata basis bearing the same relationship to 2 weeks' vacation as the period of time elapsed between

- (a) the date the employee's employment commenced, and
- (b) the next occurrence of the common anniversary date,

bears to one year.

(3) The vacation pay payable under subsection (1) shall be calculated in accordance with section 34(2) and reduced proportionately according to the length of vacation to which the employee is entitled under subsection (2).

**37(1)** Subject to subsection (2), vacation pay shall be paid to an employee at least one day but not more than 2 weeks before the commencement of the employee's annual vacation.

(2) If the employment of an employee is terminated, whether by the employer or the employee, the employer shall pay the employee, forthwith after termination of employment, vacation pay calculated as follows:

- (a) in the case of an employee who has not become entitled to an annual vacation, an amount equal to 4% of his wages during his period of employment, or
- (b) if an employee has become entitled to an annual vacation, an amount equal to
  - (i) the vacation pay to which he would have been entitled in that year if he had remained employed by the employer, and
  - (ii) 4% of his wages for the period from the date he was last entitled to an annual vacation to the date of termination of employment.

**36** Vacation entitlement for part of a year.

**37** Payment of vacation pay and effect of termination of employment.

**38(1)** An employer shall grant the annual vacation to which an employee is entitled

- (a) in one unbroken period of 2 weeks, or
- (b) at the request of the employee, in 2 periods of one week each.

(2) An employee shall be granted his annual vacation with vacation pay not later than 12 months after the date on which he becomes entitled to the annual vacation.

**39** If an employer and an employee cannot agree on the date of commencement of the employee's annual vacation, the employer shall give to the employee at least one week's notice of the date the employee's annual vacation shall commence.

**40(1)** The Lieutenant Governor in Council may make regulations

- (a) requiring an employer in an employment described or referred to in the regulations to pay an employee a sum of money as vacation pay in place of giving him an annual vacation with pay;
- (b) governing what constitutes a period of employment that will entitle an employee to an annual vacation with vacation pay or to a payment of a sum of money as vacation pay in place of an annual vacation with vacation pay;
- (c) governing what constitutes vacation pay, the method of computing it and the time at which it must be paid to an employee.

(2) A regulation made under this section applies notwithstanding anything in this Part to the contrary.

## **Division 5**

### **General Holidays and General Holiday Pay**

**41** In this Division

- (a) "average daily wage" means
  - (i) the daily wage of an employee averaged over the employee's employment with an employer, or

**38** Annual vacation may be taken in one unbroken period or two periods.

**39** Direction by employer respecting annual vacation.

**40** Vacation and vacation pay regulations.

**41** Definitions.

(ii) the daily wage of an employee averaged over the 2 months of employment with an employer immediately preceding the week in which a general holiday occurs,

whichever is the shorter period;

(b) “daily wage” means the wage to which an employee would be entitled if the employee worked on a normal working day of the employer that is not a general holiday.

**42** An employee is not entitled to general holiday pay if the employee

(a) has worked for his employer for less than 30 days,

(b) does not work on a general holiday when he is required or scheduled to do so, or

(c) is absent from his employment without the consent of his employer on the employee’s last regular working day preceding, or the employee’s first regular working day following, a general holiday.

**43** If a general holiday falls on a day that would, but for the general holiday, have been a working day for an employee, and the employee does not work on that day, the employer shall pay the employee, for that day, general holiday pay that is at least equal to the average daily wage of the employee.

**44** If a general holiday falls on a day that would, but for the general holiday, have been a working day for the employee, and the employee works on the general holiday, the employer shall

(a) pay the employee general holiday pay

(i) for each hour of work of the employee on that day a sum that is at least equal to 1.5 times the hourly wage of the employee, and

(ii) a sum that is at least equal to the average daily wage of the employee,

or

(b) provide the employee

(i) for each hour of work of the employee on that day, with a sum that is at least equal to the hourly wage of the employee,

**42** Application of Division.

**43** General holiday falling on working days.

**44** General holiday pay entitlement.



(ii) with one day's holiday, not later than the next annual vacation of the employee, on a day that would, but for the holiday, be a working day for the employee, and

(iii) in respect of the holiday referred to in subclause (ii), with general holiday pay of a sum that is at least equal to the average daily wage of the employee.

**45** If a general holiday falls on a day that is not normally a working day for an employee, but the employee is required or scheduled to work on the general holiday, the employer shall pay the employee, for each hour of work of the employee on that day, general holiday pay of a sum that is at least equal to 1.5 times the daily wage of the employee.

**46** If a general holiday falls within the annual vacation of an employee, the employer shall, if the general holiday is one to which the employee would have been entitled if he had not been on his annual vacation, give the employee

(a) a holiday on what would have been the first day the employee would have worked after his annual vacation, and

(b) general holiday pay of a sum that is at least equal to the average daily wage of the employee.

**47** If an employee does not work on a general holiday, his employer shall not require him to work on another day of that week that would otherwise be a day of rest for the employee unless he is paid his wages and overtime pay, if any, for that day of work in addition to other wages and overtime pay due to him.

**48(1)** Subject to section 49 and except for the general holiday pay referred to in section 44(b)(iii), general holiday pay shall be paid within 10 days after the end of the pay period in which the general holiday occurs.

(2) Subject to section 49, if an employee is entitled to general holiday pay under section 44(b)(iii), the employer shall pay the employee the general holiday pay within 10 days after the end of the pay period in which the holiday is provided.

**49** If the employment of an employee is terminated, whether by the employer or the employee, the employer shall pay the employee the general holiday pay to which the employee is entitled forthwith after the termination of employment.

**50(1)** The Lieutenant Governor in Council may make regulations

**45** General holiday falling on non-working day.

**46** General holiday falling in an annual vacation.

**47** Prohibition on employer requiring additional working days to replace a general holiday.

**48** Payment of general holiday pay.

**49** Effect of termination of employment on general holiday pay.

**50** General holiday pay regulations.

- (a) requiring an employer in an employment described or referred to in the regulations to pay an employee a sum of money as general holiday pay in place of giving him a general holiday with general holiday pay;
  - (b) governing the conditions on which an employee is entitled to general holiday pay under the regulations;
  - (c) governing what constitutes general holiday pay, the method of computing it and the time at which it must be paid;
  - (d) designating a day as a general holiday for the purposes of this Act.
- (2) A regulation made under this section applies notwithstanding anything in this Part to the contrary.

## **Division 6**

### **Termination of Employment**

#### **51 In this Division**

- (a) “notice of termination” means a written notice of termination of employment given by an employer to an employee in accordance with section 53;
- (b) “temporary layoff” means
  - (i) a layoff of less than 60 days, or
  - (ii) a layoff of 60 days or more if during the period of layoff
    - (A) the employee laid off receives wages or payment in place of wages in an amount agreed to by the employer and employee, or
    - (B) the employer makes payments for the benefit of the employee laid off pursuant to a pension or employee insurance plan or the like.

**52** For the purpose of this Division, when an employee has been employed by the same employer more than once, those periods of employment shall be considered to be one period of employment if not more than 3 months has elapsed between each period of employment.

**51** Definitions.

**52** Separate periods of employment are considered to be one period in certain circumstances.

**53**(1) Subject to section 54, no employer may terminate the employment of an employee unless he gives the employee

(a) notice of termination in accordance with subsection (2), or

(b) a sum of money in place of notice of termination in accordance with subsection (3).

(2) If an employer wishes to terminate the employment of an employee by written notice, the employer shall give the employee written notice of termination of employment of at least

(a) 7 days, if the employee has been employed by the employer for more than 3 months but less than 2 years, or

(b) 14 days, if the employee has been employed by the employer for 2 years or more,

indicating on the notice the date it is issued.

(3) If an employer wishes to terminate the employment of an employee by giving the employee a sum of money in place of notice of termination, the employer shall pay the employee the following:

(a) if the employee has been employed by the employer for more than 3 months but less than 2 years, a sum of money that is at least equal to the wages the employee would have earned if the employee had worked during his regular hours of work in a week, or

(b) if the employee has been employed by the employer for 2 years or more, a sum of money that is at least equal to the wages the employee would have earned if the employee had worked during his regular hours of work in a 14 day period.

(4) If the wages of an employee vary from one week to another or one 14 day period to another, as the case may be, the average of the employee's wages for the 3 month period that the employee worked immediately preceding the date of termination of employment shall be used in determining the sum to be paid to an employee pursuant to subsection (3).

**54** No notice of termination of employment or payment of money in place of notice of termination is required to be given or paid by an employer under this Act to terminate the employment of an employee if

(a) the employee has been employed by his employer for 3

**53** Termination of employment of an employee.

**54** Employment when no notice of termination is required under this Act.

months or less;

(b) the employee is employed at the site of and in the construction, erection, repair, remodelling, alteration, painting, interior decoration or demolition of any

- (i) building or structure;
- (ii) road, highway, railway or airfield;
- (iii) sidewalk, curb or gutter;
- (iv) pipeline;
- (v) irrigation or drainage system;
- (vi) earth and rock fill dam;
- (vii) sewage system;
- (viii) power transmission line or power distribution system;
- (ix) gas distribution system;

other than as an office employee employed at the site;

(c) the employee is employed for a definite term or task for a period not exceeding 12 months on completion of which the employment terminates;

(d) the employee is temporarily laid off;

(e) the employee's employment is terminated for just cause;

(f) the employee is laid off after refusing an offer by the employer of reasonable alternative work;

(g) the employee refuses work made available through a seniority system;

(h) the employee is not provided with work by his employer by reason of a strike or lockout occurring at the employee's place of employment;

(i) the employee on temporary layoff does not return to work within 7 days after being requested to do so in writing by his employer;

(j) the employee is employed under an agreement by which the employee may elect to either work or not work for a temporary period when requested to do so by his employer;

(k) it is the custom or practice of an employer that his employees

terminate their employment by retirement on attaining a particular age, and the employee reaches that age;

(l) a contract of employment is or has become impossible for the employer to perform by reason of unforeseeable or unpreventable causes beyond the control of the employer;

(m) the employee is employed on a seasonal basis;

(n) the employee is employed in the cutting, removal, burning or other disposal of trees and brush or either of them for the primary purpose of clearing land and not for the harvesting of timber on it.

**55** When a notice of termination is given, the employer

(a) shall not reduce the wages, rate of wages or alter any term or condition of employment of the employee to whom the notice is given, and

(b) shall, between the time that notice of termination is issued and the date of termination of employment, pay wages to the employee to whom the notice is given at not less than the wages to which he would have been entitled if the employee had worked his regular hours of work in that week whether or not work is required to be performed.

**56** Notice of termination is void and of no effect if an employee continues to be employed by his employer after the date specified for termination of employment.

**57(1)** If an employee is to be given a sum of money in place of notice of termination, the employer shall pay that sum to the employee forthwith after the termination of employment.

(2) When a laid off employee ceases to be on temporary layoff, the employment of the employee shall be deemed to have been terminated on the last day of temporary layoff and the employer shall pay to the employee a sum of money in place of notice of termination forthwith after the date that the employee ceases to be on temporary layoff.



**55** Prohibition on changing employee benefits after notice of termination is given.

**56** Continuation of employment after termination.

**57** Money in place of notice of termination.

**Division 7**  
**Maternity Benefits**

**58** In this Division,

- (a) “date of delivery” means the date when the pregnancy of an employee terminates with the birth of a child or the pregnancy otherwise terminates;
- (b) “medical certificate” includes a written statement for the purpose of this Division containing the signature of a physician.

**59(1)** A pregnant employee who has been employed by an employer for a period of at least 12 months is entitled to maternity leave without pay.

(2) A pregnant employee referred to in subsection (1) is entitled to maternity leave of

- (a) a period not exceeding 12 weeks immediately preceding the estimated date of delivery or any shorter period the employee may request,
- (b) the period, if any, between the estimated date of delivery and the actual date of delivery, and
- (c) a period not exceeding 6 weeks immediately following the actual date of delivery.

**60(1)** A pregnant employee shall give her employer at least 2 weeks’ notice in writing of the day on which she intends to commence maternity leave together with a medical certificate certifying that she is pregnant and giving the estimated date of delivery.

(2) A pregnant employee is entitled to commence maternity leave referred to in section 59 on the expiration of the 2 weeks’ notice given under subsection (1).

**61** An employee, with the agreement of her employer, may shorten the duration of the 6 week period following the actual date of delivery by providing her employer with a medical certificate indicating that resumption of work by the employee will not endanger her health.

**62** An employee who fails to comply with section 60 and who is otherwise entitled to maternity leave is entitled to maternity leave

**58** Definitions.

**59** Entitlement to maternity leave.

**60** Notice to commence maternity leave.

**61** Shortening maternity leave.

**62** Maternity leave entitlement despite lack of notice.

for any of the period specified in section 59(2), if within 2 weeks after she ceases to work she provides her employer with a medical certificate

(a) indicating that she is not able to work by reason of a medical condition arising from her pregnancy, and

(b) giving the estimated date of delivery or the actual date of delivery.

**63** When an employee takes maternity leave under this Division and is unable to return to work after the expiration of the 6 week period following the actual date of delivery by reason of a medical condition arising following the date of delivery, her employer shall grant her a further period of maternity leave without pay of not more than 3 weeks if she provides her employer with a medical certificate indicating that due to a medical condition arising following the date of delivery she is not able to return to work at that time.

**64** No employer shall terminate the employment of or lay off an employee who

(a) is entitled to maternity leave under section 59(1), or

(b) has commenced maternity leave under this Division,

by reason only that the employee is pregnant or that maternity leave has been or will be taken.

**65(1)** An employee who wishes to resume her employment on the expiration of maternity leave to which she is entitled shall give her employer 2 weeks' notice in writing of the day on which she intends to resume employment and her employer shall

(a) reinstate her in the position she occupied at the time her maternity leave commenced, or

(b) provide her with alternative work of a comparable nature,

at not less than the same wages and other benefits that had accrued to her to the date that she commenced maternity leave.

(2) No employer is required to allow an employee to whom maternity leave has been granted under this Division to resume her employment with the employer after the date of delivery until after the expiration of 2 weeks from the date on which the employee notifies the employer of her intention to resume employment.

**66(1)** If an employer has suspended or discontinued his business, undertaking or other activity wholly or partly during the period of

**63** Extended maternity leave.

**64** Prohibition on termination of employment.

**65** Notice of resumption of employment.

**66** Circumstances when employer suspends or discontinues operations.

an employee's maternity leave and the employer has not resumed operations on the expiration of the employee's maternity leave, the employer shall, on resumption of the business, undertaking or other activity

(a) reinstate the employee in the position she occupied at the time her maternity leave commenced at not less than the same wages and other benefits that had accrued to her to the date that she commenced maternity leave, or

(b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's maternity leave commenced, with no loss of seniority or other benefits accrued to the employee to the date that the employee commenced maternity leave.

(2) The requirement for an employer to reinstate or provide an employee with alternative work under subsection (1) extends for a period of 12 months from the date of expiration of the employee's maternity leave.

**67** If during the period referred to in section 59(2)(a) the pregnancy of an employee interferes with the performance of the employee's duties the employer may, by notice in writing to the employee, require the employee to commence maternity leave under this Division.

**68(1)** Subject to subsection (3), no person shall, during normal school hours

(a) employ, or

(b) permit to work on his premises,

a child who is required to attend school under *The School Act*.

(2) Subject to subsection (3) and the regulations made under subsection (4), no individual under 15 years old shall be employed without the written consent of his parent or guardian and the approval of the Director.

(3) Subsections (1) and (2) do not apply to an individual under 15 years old

(a) who has been excused from school attendance under *The School Act* for the purpose of vocational training through employment, or

(b) who is enrolled in a work experience program approved under *The School Act* and by the Director.

(4) The Lieutenant Governor in Council may by regulation

**67** Employer's notice to employee to commence maternity leave.

**68** Regulations for employment of adolescents and young persons.

- (a) specify those occupations in which individuals under 15 years old may be employed, and authorize the Director to approve occupations of a nature similar to those specified, subject to any conditions that are prescribed;
- (b) impose any conditions with respect to employment of individuals under 15 years old in any occupation as he considers proper;
- (c) prohibit the employment of individuals 15, 16 and 17 years old in any occupation that he considers likely to be injurious to life, health, education or welfare;
- (d) establish any conditions with respect to the employment of individuals 15, 16 and 17 years old in any specific occupation that he considers proper;
- (e) authorize the Director to impose conditions on any particular occupation whenever he considers it necessary to do so.

## **Division 9**

### **General Regulations**

#### **69** The Lieutenant Governor in Council may make regulations

- (a) exempting an employment described or referred to in the regulations from section 14, this Part, a provision of it or a regulation made under it;
- (b) authorizing the Director to approve a scheme of employment between an employer and his employees notwithstanding section 14, this Part or a regulation made under it;
- (c) directing that a regulation or a part of it be of particular or general application, and describing or referring to an employment to which the regulation applies;
- (d) specifying the times of the year during which a regulation applies;
- (e) specifying the conditions under which a regulation applies or does not apply, and conferring or imposing on the Director, with or without conditions, a power or duty under the regulation;
- (f) delegating to the Director, with or without conditions, the



**69** General regulation making power.

power to exempt from a regulation an employment described or referred to in the regulation.

## **PART 4**

### **COLLECTION OF WAGES, OVERTIME PAY, ENTITLEMENTS AND MATERNITY BENEFITS**

#### **Division 1**

#### **Umpires**

**70** The Lieutenant Governor in Council may

- (a) appoint those individuals he considers necessary to act as umpires for the purposes of this Act, and
- (b) revoke the appointment of an umpire.

**71(1)** If a provincial judge appointed under *The Provincial Court Act* is appointed as an umpire he may issue or direct a clerk to issue a summons to any person who in the opinion of the umpire may be able to give evidence which relates to the appeal before him.

(2) A provincial judge acting as an umpire has the same powers

- (a) to compel the attendance of witnesses,
- (b) to punish a witness for
  - (i) disobeying a summons to appear,
  - (ii) refusing to be sworn, or
  - (iii) refusing to give evidence

as are conferred on a provincial judge by the *Criminal Code*.

**72(1)** An umpire

- (a) may accept any oral or written evidence that he, in his discretion, considers proper, whether admissible in a court of law or not,
- (b) is not bound by the laws of evidence applicable to judicial proceedings, and

**70** Appointment of umpires.

**71** Provincial judges appointed as umpires.

**72** Attendance of individuals and production of documents.

(c) may administer an oath to an individual appearing before him.

(2) If, in the opinion of an umpire

(a) the attendance of an individual is required, or

(b) the attendance of an individual to produce a document or other thing is necessary,

the umpire may cause to be served on the individual concerned a notice to attend or a notice to attend and produce the document or other thing, as the case may be, signed by the umpire or an individual authorized by him.

(3) If an individual fails or refuses to comply with

(a) a notice to attend, or

(b) a notice to attend and produce a document or other thing,

issued by or on behalf of an umpire under subsection (1), a judge of the Court of Queen's Bench, on application of the umpire or an individual acting on his behalf, may issue a bench warrant requiring the attendance of the individual or the attendance of the individual to produce the document or other thing, as the case may be, before the umpire.

(4) Nothing in this section requires an umpire who is a provincial judge to proceed under this section rather than section 71.

## **Division 2**

### **Single Employer Declaration**

**73**(1) If, in the opinion of an officer, a business, undertaking or other activity is carried on or has been carried on by or through 2 or more employers or other persons or a combination of them, the officer may make a declaration that all or any of the employers or persons or combination of them are a single employer for the purposes of this Act.

(2) A copy of a declaration under subsection (1) shall be served on the employers or persons or both and employees affected by it.

(3) An employer, employee or person affected by a declaration made under this section may appeal to an umpire in accordance with section 93.

**73** Service of single employer declaration.

**74** If an officer or, on appeal, an umpire makes a declaration that employers or persons or a combination of them are a single employer for the purposes of this Act, the employers or persons or combination of them declared to be a single employer are jointly and severally liable for the payment of wages, overtime pay and entitlements to those individuals who, as a result of the declaration, are considered to be employees of the single employer.

### **Division 3**

#### **Third Party Demand**

**75** In this Division

- (a) “3rd party” means a person to whom a Director’s demand is issued;
- (b) “Director’s demand” means a demand by the Director under section 76 or a further demand under section 77(3).

**76(1)** If the Director knows or has reason to believe that

- (a) an employer has failed or is likely to fail to pay wages, overtime pay, entitlements or maternity benefits to an employee, and
- (b) a person is or is about to become indebted to the employer for a sum of money or is about to pay a sum of money to the employer

the Director may, notwithstanding that he has not determined the amount of wages, overtime pay, entitlements or maternity benefits to which an employee is entitled, issue a demand in accordance with subsection (2) and serve it on the person referred to in clause (b).

(2) The demand under subsection (1) may direct the 3rd party to remit to the Director all or part of the money owed or likely to be owed by the 3rd party to the employer.

**77(1)** If the Director’s demand is for a specified amount, the 3rd party shall

- (a) if he is at the time of receipt of the demand indebted to the

**74** Effect of declaration.

**75** Definitions

**76** Director's demand to a 3rd party.

**77** Duties of 3rd party.

employer, subject to section 78, forthwith pay to the Director the amount of his indebtedness to the employer or the amount specified, whichever is the lesser,

(b) if he is at the time of receipt of the demand not indebted to the employer and will not or is not likely to become indebted to the employer, reply to the Director accordingly, or

(c) if he is at the time of receipt of the demand not indebted to the employer but indebtedness is likely to arise or will arise at a future date or on the happening of a future specified event, reply to the Director accordingly.

(2) If the Director is satisfied that a reply under subsection (1)(b) is true the Director's demand shall be revoked.

(3) On receipt of a reply under subsection (1)(c) the Director may revoke the demand and serve a further demand on the 3rd party to take effect at a future date or on the happening of a future specified event.

(4) If the Director's demand is not revoked under subsection (3), the demand continues in effect and the 3rd party shall, as soon as he becomes indebted to the employer, subject to section 78, pay to the Director the amount of his indebtedness to the employer or the amount specified, whichever is the lesser.

**78** Notwithstanding anything in this Division, when a Director's demand requires the payment of any sum, the 3rd party is entitled to deduct from his payment any sum that he would be entitled to deduct if the employer were making the demand for the indebtedness due to the employer.

**79(1)** A Director's demand constitutes a debt owed by the 3rd party to the Director on behalf of the employees in respect of whom the Director's demand is issued for the amount specified in the demand, and the debt arises

(a) at the time the demand is received, if the 3rd party is then indebted to the employer, or

(b) if the 3rd party is not indebted to the employer when he receives the Director's demand, when the indebtedness of the 3rd party arises.

(2) The Director may recover the amount specified or referred to in a Director's demand by civil action, and the 3rd party may raise any defence to the action that he could have raised against the employer if the employer had sued the 3rd party for the recovery of the indebtedness.

(3) The debt arising under this section is discharged if



**78** Right of 3rd party to make deductions.

**79** Debt created.

- (a) the 3rd party pays to the Director the sum required to be paid in the Director's demand,
- (b) the Director's demand is revoked, or
- (c) the employer pays his employees the wages, overtime pay, entitlements or maternity benefits in respect of which the Director's demand was issued.

**80** A 3rd party in receipt of a Director's demand shall not discharge his indebtedness to an employer

- (a) unless the Director's demand is revoked or he receives the approval of the Director in writing to discharge all or part of the debt, or
- (b) until he complies with the Director's demand.

**81** The receipt of the Director for money paid in accordance with a Director's demand is an absolute discharge of the liability of the 3rd party to the employer to the extent of the amount shown on the receipt.

**82(1)** When money is received in accordance with a Director's demand the Director shall forthwith serve the employer and employees concerned with a written notice stating

- (a) the date of receipt of the money,
- (b) the amount received,
- (c) the amount of wages, overtime pay, entitlements or maternity benefits to which an employee claims to be entitled, and
- (d) that unless an appeal is made in accordance with section 93, the Director will, on expiration of the period for appeal, pay
  - (i) the amount received under the Director's demand, or
  - (ii) the amount claimed as unpaid wages, overtime pay, entitlements or maternity benefits,

whichever is lesser, to the employees concerned, and any balance remaining to the employer.

(2) An employer or employee affected by a notice under subsection (1) may appeal to an umpire in accordance with section 93.

**83(1)** If there is no appeal under section 82 the Director may pay

**80** Liability of 3rd party to employer not to be discharged except under certain conditions.

**81** Receipt issued by Director.

**82** Director's notice of receipt of money.

**83** Disposition of money received.

the money in accordance with the notice served under section 82(1).

(2) If there is an appeal under section 82 the Director shall hold the money pending the disposition of the appeal by an umpire.

#### **Division 4**

#### **Recovery Provisions**

#### **Complaint**

**84** An employee may make a written complaint to an officer that the employee is entitled to wages, overtime pay, entitlements or maternity benefits.

#### **Settlement and Compromises**

**85(1)** An officer may mediate between an employer and an employee for the purpose of settling or compromising differences between them and in so doing may

(a) receive from an employer, on behalf of an employee, the money agreed on by the parties in settlement of their differences;

(b) pay to an employee money received on his behalf;

(c) do any other things necessary to assist an employer and his employee to settle their differences.

(2) If an officer assists or attempts to assist an employer or an employee or both to reach a settlement or compromise the officer is under no liability to either or both of them in respect of the settlement or compromise.

**86** If an officer is unable to mediate, settle or compromise a difference between an employer and his employee, the officer shall, if he is satisfied that wages, overtime pay or entitlements are due to an employee, issue an order under section 88.

**84** Employee's written complaint.

**85** Settlements and compromises.

**86** Failure to mediate settlement.

**87(1)** If, in the opinion of an officer, an employee making a written complaint is not entitled to wages, overtime pay, entitlements or maternity benefits, the officer shall serve the employee with notice of his decision accordingly.

(2) An employee served under subsection (1) may appeal to the Director by serving on him a written notice of appeal specifying the reasons for it.

(3) On receipt of a notice of appeal under subsection (2), the Director may

- (a) review the matter personally, or
- (b) direct another officer to review the matter.

(4) A decision of the Director or an officer to whom a matter is referred under subsection (3)(b) that an employee is not entitled to wages, overtime pay, entitlements or maternity benefits cannot be appealed to an umpire.

(5) If the Director or an officer to whom a matter is referred under subsection (3)(b) is satisfied that the employee is entitled to wages, overtime pay, entitlements or maternity benefits, the Director or the officer may make an order under section 88.

### **Officer's Order**

**88(1)** If an officer, as a result of an investigation, inspection, inquiry or complaint, is of the opinion that an employee is entitled to wages, overtime pay, entitlements or maternity benefits, he may make an order under this section.

(2) Subject to section 89, an order of an officer may

- (a) direct an employer to pay to an employee, or to pay to the Director on behalf of an employee, the wages, overtime pay or entitlements to which the employee is entitled, or
- (b) order the employer to pay to an employee, or to pay to the Director on behalf of the employee, any sum that the employee would have earned if the employee had been reinstated or provided with alternate work in accordance with Part 3, Division 7 and that the officer considers should be paid.

(3) An order under this section shall

**87** Notice to employee that he is not entitled to wages, overtime pay, entitlements or maternity benefits and right of employee to have that decision reviewed.

**88** Order of officer.

- (a) name the employer to whom the order is directed;
  - (b) name the one or more employees in respect of whom the order is made;
  - (c) specify the amount payable in respect of each employee named in the order.
- (4) A copy of an order under this section shall be served on
- (a) the employer to whom it is directed, and
  - (b) each employee in respect of whom it is made.
- (5) A person on whom an order of an officer is served under this section may appeal to an umpire in accordance with section 93.

**89(1)** No order of an officer may be made

- (a) in the case of pay in place of notice of termination of employment, after 6 months from the date on which the pay should have been paid, or
  - (b) in the case of wages, overtime pay, entitlements other than pay in place of notice of termination of employment, and maternity benefits, after one year from the date on which the money should have been paid or the benefits provided, as the case may be.
- (2) An order of an employment standards officer may
- (a) with respect to wages and overtime pay, direct the payment of wages or overtime pay or both for a period not exceeding 6 months from the date of
    - (i) the order of the officer, or
    - (ii) the termination of employment of the employee, if his employment was terminated,
 whichever first occurs;
  - (b) with respect to vacation pay and general holiday pay, direct the payment of vacation pay or general holiday pay or both for a period not exceeding 2 years from the date of
    - (i) the order of the officer, or
    - (ii) the termination of employment of the employee, if his employment was terminated,
 whichever first occurs;



**89** Limitation periods.

(c) with respect to maternity benefits, direct the payment of money representing the amount of wages and entitlements which the employee would have received if she had been reinstated or provided with alternative work in accordance with section 65, but not for a period exceeding 6 months from the date of

(i) the order of the officer, or

(ii) the failure of the employer to reinstate the employee or provide her with alternate work under section 65,

whichever first occurs.

**90** An order of an officer may take into account deductions authorized or permitted under this Act but shall not take into account any claim, counterclaim or set-off by an employer against an employee.

**91(1)** An officer may revoke, amend or vary an order, declaration, demand or determination issued under this Act at any time before the time for an appeal under section 93 has expired, if one is allowed, but not after that time.

(2) The Director may vary or amend a notice issued by him under section 82 at any time before the time for an appeal under section 93 has expired, but not after that time.

(3) The Director may revoke an order of an officer at any time before it is filed in the Court of Queen's Bench, but not after that time.

**92** If an order, declaration, determination or notice is varied or amended

(a) a copy of the variation or amendment shall be served on each person on whom the original order, demand, declaration, determination or notice was served, and

(b) the time for making an appeal runs from the date of service of the variation or amendment.

**90** Order not to take into account claims, counterclaims and set-offs.

**91** Limitation on revocations, amendments and variation of orders, declarations, demands, determinations and notices.

**92** Variation or amendment of order, declaration, demand, determination or notice.

**Division 5**  
**Appeal to Umpire**

**93(1)** A person who has a right of appeal to an umpire under this Act may, within 15 days of the date of service on him of

- (a) a copy of an order made under section 88,
- (b) a copy of a declaration made under section 73,
- (c) a copy of the determination made under section 22(2), or
- (d) a copy of a notice under section 82,

appeal to an umpire by serving on the Director written notice of appeal and specifying the reasons for it.

(2) On receipt of a notice of appeal the Director shall forthwith refer the matter to an umpire.

(3) The Director shall notify

- (a) the appellant, and
- (b) each employer and employee who is a party to the appeal,

of the date, time and place that the appeal will be heard.

(4) The Director is a party to every appeal to an umpire and in connection with every proceeding resulting from an order of an officer or umpire.

**94** If a person making an appeal wishes to abandon it, he may do so by serving a notice in writing on the Director accordingly and providing copies of it to the other parties concerned.

**95** At a hearing if

- (a) the appellant fails to appear, the umpire may declare the appeal abandoned or adjourn the matter, or
- (b) any other person fails to appear, the umpire may adjourn the matter or proceed in the absence of the person concerned.

**96(1)** On hearing an appeal the umpire may

- (a) confirm, vary or revoke the order of the officer;

**93** Appeal to umpire.

**94** Abandonment of appeal.

**95** Proceedings at hearing.

**96** Umpire's powers on appeal.

(b) revoke the order of the officer and substitute for it any order that the officer could have made.

(2) With respect to an appeal from a declaration that 2 or more employees or persons are a single employer for the purpose of this Act,

(a) an umpire may, if he is satisfied that a business, undertaking or other activity is carried on or has been carried on by or through more than one employer or person, confirm or vary the order or revoke it and substitute for it a declaration that, for the purposes of this Act, the employers or persons named in the declaration are a single employer, or

(b) the umpire, if he is not satisfied under clause (a), shall revoke the declaration.

(3) With respect to an appeal from a determination by an officer under section 22(2), an umpire may confirm or revoke the determination or make any determination that he considers necessary to resolve the difference.

(4) With respect to an appeal from a notice of the Director under section 82 the umpire may make any one or more of the following orders:

(a) make any order for the payment of wages, overtime pay or entitlements by an employer to employees, or to the Director on behalf of employees that he considers appropriate;

(b) revoke the notice and the Director's demand under Division 3 of this Part;

(c) require the Director to repay money received by the Director to the person who paid it, or to the employer.

**97** An order of an umpire may take into account deductions authorized or permitted under this Act but shall not take into account a claim, counterclaim or set-off by an employer against an employee.

**98** An order, declaration or determination of an umpire is final and binding.

**97** Claims counterclaims and set-offs not to be taken into account by umpire.

**98** Umpire's order final and binding.

**PART 5**  
**ENFORCEMENT OF ORDERS AND**  
**OFFENCES AND PENALTIES**

**Division 1**

**Enforcement of Orders**

**99** If

(a) an order of an officer is not complied with and the time for an appeal has expired, or

(b) an order of an umpire is not complied with,

the Director may file the order with the clerk of the Court of Queen's Bench in the judicial district in which the order was made and the order is then enforceable as an order or judgment of the Court of Queen's Bench.

**Division 2**

**Protection of Wages, Overtime Pay and Entitlements**

**Priority of Wages**

**100**(1) An employee has a priority over the claims and rights of

(a) preferred, ordinary or general creditors,

(b) the Crown or an agent of the Crown,

(c) any other person having a claim against an employer,

for an amount of wages, overtime pay and entitlements due and owing the employee by an employer in an amount not exceeding \$5000.

(2) When an order of an officer or umpire is filed in the Court of Queen's Bench the Director may also register a copy of the order

(a) in a land titles office against real property of the employer in respect of whom the order is made or against property in which the employer has a legal or equitable interest, or



**99** Filing of order in the Court of Queen's Bench.

**100** Registration of orders in a land titles office and the Central Registry.

(b) in the Central Registry under *The Chattel Security Registries Act* against the personal property of the employer in respect of whom the order is made.

(3) On request, the registrar of a land titles office shall register an order in accordance with subsection (2)(a) and shall forthwith serve a notice of the registration to the registered owner of the land.

**101(1)** If an order of an officer or an umpire is registered in a land titles office or the Central Registry or both, the registration creates a secured charge in favour of the Director, on behalf of the employees in respect of whom the order was issued, on the real or personal property of the employer for the amount of wages, overtime pay or entitlements in respect of which the order is made.

(2) When a secured charge is created under subsection (1), the wages, overtime pay or entitlements secured shall be paid in priority to any other claim or right, secured or unsecured, against the employer named in the order registered, including priority over a claim or right of the Crown, and priority over

(a) every assignment, including an assignment of book debts, whether absolute or otherwise,

(b) every mortgage or charge on real or personal property,

(c) every debenture and security,

(d) every lien or charge created by statute, whether stated to be a preferential lien or charge or not,

whether registered or not, that is registered, made, given, accepted or issued after the date the secured charge is created under subsection (1).

(3) On payment of the wages, overtime pay and entitlements that are the subject of the secured charge, the Director shall cause the registration in the land titles office or Central Registry or both to be discharged.

(4) This section and section 100 apply notwithstanding any other Act to the contrary.

**101** Creation of secured charge for wages, overtime pay or entitlements on registration.

### **Division 3**

#### **Prohibitions, Offences and Penalties**

**102** No employer or other person shall dismiss, terminate, lay off or suspend an employee for the sole reason that garnishment proceedings are being or may be taken against an employee.

**103** No employer or any other person shall discharge, restrict the employment of or in any manner discriminate against an individual because an individual

- (a) has made a complaint under this Act,
- (b) has given evidence or may give evidence at any inquiry or in any proceeding or prosecution under this Act,
- (c) requests or demands anything to which he is entitled under this Act, or
- (d) has made or is about to make any statement or disclosure that may be required of him under this Act.

**104(1)** If an employee works for less than the minimum wage to which he is entitled, the employer of that employee and the employee are each guilty of an offence.

(2) Unless an overtime agreement is in effect, if an employee works for less than the overtime rate to which he is entitled, the employer of the employee and the employee are each guilty of an offence.

(3) If an employee directly or indirectly returns to his employer all or part of his wages, thereby effecting a reduction of the wages, overtime pay or entitlements actually received and retained by the employee to an amount less than the minimum wage or less than the overtime rate to which the employee is entitled, the employee and his employer are each guilty of an offence.

**105** An employer, employee or other person who

- (a) contravenes or fails to comply with an order, declaration or determination of an umpire,
- (b) contravenes or fails to comply with an order, directive, declaration or determination, permit, approval or notice of an officer or a demand of the Director,

**102** Prohibition on dismissal, termination or layoff by reason of garnishment proceedings.

**103** Specific prohibitions.

**104** Particular offences.

**105** Offences concerning orders of officers and umpires.

- (c) delays or obstructs an officer in the exercise of a power or duty given to him under this Act,
- (d) requires an employee to work hours in excess of the hours of work permitted under this Act,
- (e) falsifies any employment record,
- (f) gives any false or misleading information in respect of employment records,
- (g) makes a complaint to an officer knowing it to be untrue, or
- (h) fails to maintain or retain an employment record required to be maintained and retained under this Act

is guilty of an offence.

**106** An employer who receives a payment directly or indirectly from a person for the purpose of employing that person is guilty of an offence.

**107** Any employer who fails

- (a) to pay the minimum wage,
- (b) unless an overtime agreement is in effect, to pay at least the overtime rate,
- (c) to pay wages,
- (d) to give his employees a vacation with pay or a sum of money in place of vacation with pay,
- (e) to give his employees a sum of money
  - (i) for working on a general holiday,
  - (ii) for a general holiday on which he does not work, or
  - (iii) in place of a general holiday,
- (f) to provide time off in place of overtime pay, if an overtime agreement is in effect,
- (g) to give notice of termination of employment or a sum of money in place of notice of termination, or
- (h) to provide maternity benefits

to which an employee is entitled, is guilty of an offence.

**106** Premium for employment prohibited.

**107** Employer offences.

**108**(1) When a corporation is guilty of an offence, every director or officer of the corporation who directed, authorized, assented to, permitted, participated in or acquiesced in the offence is also guilty of an offence.

(2) In addition to any other penalty imposed under section 109, the judge of the court shall, if applicable, make one or more of the following orders:

(a) requiring the payment, within the time fixed by the judge, to the Director on behalf of each employee affected, of the difference between

(i) the minimum wage actually paid, if any, and the minimum wage that should have been paid,

(ii) the overtime pay actually paid, if any, and the overtime pay that should have been paid,

(iii) the wages actually paid, if any, and the wages that should have been paid, or

(iv) any sum of money paid in place of notice of termination, if any, and the sum of money in place of notice of termination that should have been paid,

for the 6 months preceding the date of the commencement of a prosecution or the date of termination of employment, whichever first occurs;

(b) requiring within the time fixed by the judge, the payment to the Director on behalf of each employee of

(i) the amount to which the employee is entitled in place of vacation with pay,

(ii) a sum of money for working on a general holiday or for a general holiday on which he does not work to which the employee is entitled, or

(iii) the amount to which the employee is entitled in place of a general holiday,

for the 2 years preceding the date of the commencement of the prosecution or the date of termination of the employment, whichever first occurs.

**109** An employer, employee, director, officer or other person who is guilty of an offence is liable

(a) in the case of a corporation to a fine of not more than



**108** Offences by directors and officers of corporation and orders that may be made by a judge in addition to other penalties.

**109** Penalties.

\$10 000, and

(b) in the case of an individual, to a fine of not more than \$5000 and, in default of payment, to imprisonment for a term not exceeding 6 months.

**110** A prosecution for an offence may be commenced within one year from the date the alleged offence occurred.

## **PART 6**

### **TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS**

#### **Transitional Provisions**

**111(1)** In this Part

(a) “Board” means the Board of Industrial Relations under the former Act;

(b) “former Act” means *The Alberta Labour Act, 1973* as it existed immediately before the coming into force of this Act.

(2) A consent, designation, notice, declaration, approval, permit or dispute under Parts 1 to 3 of the former Act shall be treated as follows:

(a) a consent or designation by the Board under section 15(1) of the former Act shall be deemed to be a consent or designation by the Director under this Act;

(b) a declaration issued by the Board under section 20 of the former Act shall be deemed to be a declaration issued by an umpire under this Act;

(c) an approval issued by the Board under section 23(3)(a) of the former Act is repealed;

(d) a permit issued by the Board under section 25 or 25.1 of the former Act is repealed;

(e) an approval issued by the Board under section 26 of the former Act is repealed;

(f) an approval issued by the Board under section 27(1) of the former Act shall be deemed to be an approval issued by the

**110** Prosecutions.

**111** Transitional provisions for Board of Industrial Relations decisions under The Alberta Labour Act, 1973.

Director under this Act;

(g) a dispute referred to the Board under section 28(2) of the former Act shall be continued to its conclusion and treated for all purposes as if this Act had not come into force and the former Act had remained in force;

(h) a decision by the Board under section 28(2) of the former Act shall be deemed to be the same decision made by an umpire under this Act;

(i) an exemption by the Board under section 30(2)(e) of the former Act is repealed;

(j) a permission given by the Board under section 32(2) of the former Act is repealed;

(k) a permission given to the Board under section 32(3) of the former Act shall be deemed to be a permission issued by the Director under this Act;

(l) an agreement approved by the Board under section 34 of the former Act shall be deemed to be a scheme of employment approved by the Director pursuant to regulations made under this Act;

(m) a period fixed by the Board under section 35(1) of the former Act shall be deemed to be a period approved by the Director under this Act;

(n) an approval by the Board under section 41 of the former Act shall be deemed to be an approval by the Director under this Act;

(o) an approval by the Minister of Education under section 41 of the former Act shall be deemed to be an approval under *The School Act* for the purposes of this Act;

(p) an approval, permission or exemption granted by the Board under the regulations made under Parts 1 to 3 of the former Act shall be deemed to be an approval, permission or exemption granted under the equivalent regulation made under this Act.

**112(1)** Subject to subsection (2), this Act applies only in respect of wages, overtime pay, entitlements or maternity benefits earned or to which an employee is entitled after the date this Act comes into force.

(2) If wages, overtime pay, entitlements or maternity benefits are earned or claimed to be earned with respect to a period before and after this Act comes into force, this Act applies with respect to them.

**112** Effective dates for the operation of the Act.

(3) With respect to any claim, proceeding, prosecution or other matter under the former Act, Parts 1, 2 or 3 or regulations under the former Act, that claim, proceeding, prosecution or other matter shall be continued to its conclusion under those provisions as if this Act had not come into force and Parts 1, 2 and 3 of the former Act and regulations under it had remained in force.

**113(1)** Subject to subsection (2), section 20(1) and (2) do not require an employer to seek from an employee employed by him at the date this Act comes into force a personal authorization in writing for a deduction if

- (a) at the date this Act comes into force a deduction is being made from wages, overtime pay or entitlements, and
- (b) the deduction is for a pension plan, employee insurance plan or the like.

(2) Subsection (1) does not apply if the employee of the employer referred to in subsection (1)

- (a) ceases to be employed by the employer, and
- (b) subsequently is re-employed by the employer.

### **Consequential Amendments**

**114** *The Chattel Security Registries Act is amended*

(a) *in section 3 by adding the following after clause (d):*

(e) *The Employment Standards Act.*

(b) *in section 12 by adding the following after clause (d):*

(e) *The Employment Standards Act.*

(c) *in section 13 by adding the following after clause (d):*

(e) *The Employment Standards Act.*

(d) *in section 14(1) by adding “, The Employment Standards Act,” after “The Conditional Sales Act”.*

**115** *Section 44(1) of The Child Welfare Act is amended by striking out “Notwithstanding section 41 of The Alberta Labour Act, 1973”*

**113** Operation of the section governing deductions from wages.

**114** Amends chapter 44 of the Revised Statutes of Alberta 1970 to provide for registration of officers orders and umpires orders.

**115** Amends chapter 45 of the Revised Statutes of Alberta 1970.

*and substituting “Notwithstanding section 68 of The Employment Standards Act or the regulations made under it,”.*

**116** *Section 47 of The Colleges Act is amended by striking out subsection (5) and substituting the following:*

*(5) The Employment Standards Act and The Labour Relations Act do not apply to the college board or the academic staff members.*

**117** *Section 266(1) of The Companies Act is amended by striking out “Subject to section 48 of The Alberta Labour Act, 1973” and substituting “Subject to section 100(1) of The Employment Standards Act”.*

**118** *Section 28.2(7) of The Domestic Relations Act is amended by striking out “section 48 of The Alberta Labour Act, 1973” and substituting “section 100(1) of The Employment Standards Act”.*

**119** *The Manpower Development Act is amended*

*(a) in section 28*

*(i) by striking out “The Alberta Labour Act, 1973” and substituting “The Employment Standards Act”;*

*(ii) by striking out “Board” and substituting “Lieutenant Governor in Council”;*

*(b) in section 30(2)(e) by striking out “The Alberta Labour Act, 1973” and substituting “The Employment Standards Act”.*



**116** Amends chapter 56 of the Revised Statutes of Alberta 1970. Section 47(5) presently reads:

*(5) The Alberta Labour Act, 1973 does not apply to the college board or the academic staff members.*

**117** Amends chapter 60 of the Revised Statutes of Alberta 1970.

Section 266(1) presently reads in part:

*266(1) Subject to section 48 of The Alberta Labour Act, 1973, in a winding-up there shall be paid in priority to all other debts,*

*(a) all Provincial or municipal taxes and rates assessed on or due by the company up to the first day of January next before the date hereinafter mentioned, but in respect of any particular tax or rate not exceeding in the whole one year's assessment, and*

*(d) unless the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company, the amount of any assessment under The Workers' Compensation Act, the liability for which accrued before the said date.*

**118** Amends chapter 113 of the Revised Statutes of Alberta 1970.

**119** Amends chapter 31 of the Statutes of Alberta, 1976. Sections 28 and 30(2)(e) presently read:

*28 The provisions of The Alberta Labour Act, 1973 apply to apprentices but where the terms of a collective agreement provide any terms of employment of an apprentice that are less advantageous for an apprentice than those established by the regulations of the Board, the terms established by the regulations apply in substitution for those less advantageous terms of the agreement.*

*30(2) The Minister may, with respect to a designated trade, make regulations:*

*(e) subject to the provisions of The Alberta Labour Act, 1973, fixing the hours of work and rates of wages for apprentices;*

**120** *Section 19 of The Universities Act is amended by striking out subsection (5) and substituting the following:*

*(5) The Employment Standards Act and The Labour Relations Act do not apply to the board or academic staff.*

**121** *The Alberta Labour Act, 1973 is repealed on a date or dates to be fixed by Proclamation.*

**122** This Act comes into force on a date or dates to be fixed by Proclamation.

**120** Amends chapter 378 of the Revised Statutes of Alberta 1970. Section 19(5) presently reads:

*(5) The Alberta Labour Act, 1973 does not apply to the board or academic staff.*

**121** Repeal of The Alberta Labour Act, 1973.