

1996 BILL 29

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 29

EMPLOYMENT STANDARDS CODE

THE MINISTER OF LABOUR

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 29

1996

EMPLOYMENT STANDARDS CODE

(Assented to , 1996)

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Preamble	<p>RECOGNIZING that a mutually effective relationship between employees and employers is critical to the capacity of Albertans to prosper in the competitive world-wide market economy of which Alberta is a part; and</p> <p>ACKNOWLEDGING that it is fitting that the worth and dignity of all Albertans be recognized by the Legislature of Alberta through legislation that encourages fair and equitable resolution of matters arising over terms and conditions of employment; and</p> <p>REALIZING that the employee-employer relationship is based on a common interest in the success of the employing organization, best recognized through open and honest communication between affected parties; and</p> <p>RECOGNIZING that employees and employers are best able to manage their affairs when statutory rights and responsibilities are clearly established and understood; and</p> <p>RECOGNIZING that legislation is an appropriate means of establishing minimum standards for terms and conditions of employment;</p> <p>HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:</p>
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Definitions	<p>1(1) In this Act,</p> <p>(a) “agreement” includes a collective agreement;</p> <p>(b) “average daily wage” means</p>
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- (i) for employees who have been employed by the same employer for 9 work weeks or more immediately preceding a general holiday, the employee's daily wage averaged over the days worked during the 9 weeks, or
 - (ii) for employees who have been employed by the same employer for less than 9 work weeks immediately preceding a general holiday, the employee's daily wage averaged over the days worked during the employee's employment with the employer;
- (c) "collection notice" means a notice given by the Director under section 122;
- (d) "collective agreement" means an agreement in writing between an employer or an employers' organization and a bargaining agent containing terms or conditions of employment, and may include one or more documents containing one or more agreements;
- (e) "Court" means the Court of Queen's Bench;
- (f) "daily wage" means the wage of an employee on a normal work day;
- (g) "date of delivery" means the date when the pregnancy of an employee terminates with the birth of a child or when the pregnancy otherwise terminates;
- (h) "Director" means the Director of Employment Standards;
- (i) "Director's demand" means a demand by the Director under section 115 or a further demand under section 116(3);
- (j) "earnings" means wages, overtime pay, vacation pay, general holiday pay and termination pay;
- (k) "employee" means an individual employed to do work who receives or is entitled to wages and includes a former employee;
- (l) "employer" means a person who employs an employee and includes a former employer;
- (m) "employment record" means the employment information required by section 14 to be kept up-to-date and any other record needed to determine whether an employee is entitled to anything under this Act;

- (n) “hours of work” means
 - (i) the period of time during which an employee works for an employer, and
 - (ii) time off with pay instead of overtime pay provided by an employer and taken by an employee;
- (o) “maternity and adoption benefits” means the rights and obligations described in Part 2, Division 7;
- (p) “medical certificate” includes the signed statement of a physician;
- (q) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (r) “officer” means an employment standards officer;
- (s) “overtime agreement” means an agreement between an employer and employees under section 23;
- (t) “Registrar” means the Registrar of Appeals;
- (u) “termination pay” means the pay given to an employee instead of a termination notice;
- (v) “third party” means a person to whom a Director’s demand is issued, and includes the Crown in right of Alberta;
- (w) “umpire” means an umpire appointed under section 69;
- (x) “wages” includes salary, pay, money paid for time off instead of overtime pay, commission or remuneration for work, however calculated, but does not include
 - (i) overtime pay, vacation pay, general holiday pay and termination pay,
 - (ii) 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,
 - (iii) expenses or an allowance provided instead of expenses, or
 - (iv) tips or other gratuities;
- (y) “wage rate” means the hourly rate of pay for wages;

- (z) “week” means 7 consecutive days;
 - (aa) “work” includes providing a service;
 - (bb) “work day” means a 24-hour period ending at midnight or a 24-hour period as established by the consistent practice of an employer;
 - (cc) “work month” means a calendar month or the period from a time on a specific day in a month to the same time on the same day in the following month as established by the consistent practice of an employer;
 - (dd) “work week” means the period between midnight on a Saturday and midnight on the following Saturday, or 7 consecutive days as established by the consistent practice of an employer;
 - (ee) “year of employment” means a period of 12 consecutive months.
- (2) A reference to “this Act” includes a regulation made under this Act.

PART 1

APPLICATION AND OPERATION OF THIS ACT

Application of
this Act

2(1) This Act applies to all employers and employees, including the Crown in right of Alberta and its employees, except as otherwise provided in this section.

(2) Except for provisions relating to maternity and adoption benefits and other provisions of this Act necessary to give effect to those provisions, this Act does not apply to

- (a) employees who are members of a municipal police service appointed pursuant to the *Police Act* and their employers with respect to the employment of those employees, or
 - (b) 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 Divisions and regulations:
- (a) Part 2, Division 3, Hours of Work;
 - (b) Part 2, Division 4, Overtime and Overtime Pay;

- (c) Part 2, Division 5, General Holidays and General Holiday Pay;
- (d) Part 2, Division 6, Vacations and Vacation Pay;
- (e) Part 2, Division 9, Restriction on Employment of Children and regulations made under section 138(1)(e), prohibiting or regulating the employment of individuals under 18 years of age;
- (f) regulations under section 138(1)(d) respecting vacations, vacation pay, general holidays and general holiday pay;
- (g) regulations under section 138(1)(f) respecting the minimum wage,

do not apply to employees employed on a farm or ranch whose employment is directly related to

- (h) the primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, game-production animals within the meaning of the *Livestock Industry Diversification Act*, poultry or bees, or
- (i) any other primary agricultural operation specified in the regulations,

or to their employer while acting in the capacity as employer.

Civil remedies
and greater
benefits

3(1) Nothing in this Act affects

- (a) any civil remedy of an employee or an employer;
- (b) an agreement, a right at common law or a custom that
 - (i) provides to an employee earnings, maternity and adoption benefits or other benefits that are at least equal to those under this Act, or
 - (ii) imposes on an employer an obligation or duty greater than that under this Act.

(2) If under an agreement an employee is to receive greater earnings or maternity and adoption benefits than those for which this Act provides, the employer must give those greater benefits.

Minimum standards cannot be avoided

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

Employment deemed continuous

5 For the purposes of this Act, the employment of an employee is deemed to be continuous and uninterrupted when a business, undertaking or other activity or part of it is sold, leased, transferred or merged or if it continues to operate under a receiver or receiver-manager.

PART 2

STANDARDS

Exemptions, modifications and substitutions

6 Despite anything in this Act, the regulations under section 138 may

- (a) exempt an employment, employer or employee from Part 2 or any provision of it, and
- (b) modify or substitute any provision of Part 2 in respect of an employment, employer or employee.

Division 1

Paying Earnings

Pay periods

7(1) Every employer must establish one or more pay periods for the calculation of wages and overtime pay due to an employee.

(2) A pay period must not be longer than one work month.

Payment of wages, overtime pay and general holiday pay

8(1) Wages, overtime pay and general holiday pay earned in a pay period must be paid by an employer not later than 10 consecutive days after the end of each pay period.

(2) When employment ends, earnings must be paid by an employer within the time described in section 9 or 10.

Termination of employment by employer - payment of earnings

9(1) When an employer terminates an employee's employment by

- (a) a termination notice under section 56,
- (b) termination pay under section 57(1) instead of a termination notice, or

(c) a combination of a termination notice and termination pay under section 57(2),

the employer must pay the employee's earnings not later than 3 consecutive days after the last day of employment.

(2) When an employer terminates an employee's employment and no termination notice or termination pay is required to be given, the employer must pay the employee's earnings not later than 10 consecutive days after the last day of employment.

Termination of
employment
by employee -
payment of
earnings

10(1) When an employee terminates employment by giving a termination notice under section 58 the employer must pay the employee's earnings not later than 3 consecutive days after the last day of employment.

(2) When an employee terminates employment and a termination notice is not required, the employer must pay the employee's earnings not later than 10 consecutive days after the last day of employment.

(3) When an employee is required to give a termination notice but terminates employment without doing so, the employer must pay the employee's earnings not later than 10 consecutive days after the date on which the notice would have expired if it had been given.

Ways of
paying
earnings

11(1) In this section, "authorized financial institution" means a bank, treasury branch, credit union, loan corporation, trust corporation or other corporation insured under the *Canada Deposit Insurance Corporation Act* (Canada).

(2) An employee's earnings must be paid by an employer in Canadian currency

(a) in cash or by cheque, bill of exchange or order to pay, payable on demand, drawn on an authorized financial institution, or

(b) if the employer so chooses, by direct deposit to the employee's account in an authorized financial institution of the employee's choice.

Deductions
from earnings

12(1) An employer must not deduct, set off against or claim from the earnings of an employee any sum of money, unless allowed to do so by subsection (2).

(2) An employer may deduct from the earnings of an employee a sum of money that is

- (a) permitted or required to be deducted by an enactment or a judgment or order of a court,
 - (b) authorized to be deducted by a collective agreement that is binding on the employee, or
 - (c) personally authorized in writing by the employee to be deducted.
- (3) Despite an authorization in a collective agreement or a written authorization by an employee, an employer may not deduct from earnings a sum for
- (a) faulty workmanship, or
 - (b) cash shortages or loss of property if an individual other than the employee had access to the cash or property.

Notice
required
before
earnings
reduced

13(1) An employer must give each employee notice of a reduction of the employee's wage rate, overtime rate, vacation pay, general holiday pay or termination pay before the start of the employee's pay period in which the reduction is to take effect.

(2) If an employer does not comply with subsection (1), an employee is entitled to the difference between the employee's wage rate, overtime rate, vacation pay, general holiday pay or termination pay before the reduction and those rates and pay after the reduction from the time in the pay period in which the reduction was first applied to the end of that pay period.

Division 2 Employment Records

Records to be
maintained

14(1) Every employer must keep an up-to-date record of the following information for each employee:

- (a) regular and overtime hours of work;
- (b) wage rate and overtime rate;
- (c) earnings paid showing separately each component of the earnings for each pay period;
- (d) deductions from earnings and the reason for each deduction;
- (e) time off instead of overtime pay provided and taken.

(2) At the end of each pay period, an employer must provide a written statement to each employee setting out, in respect of the employee,

(a) the information described in subsection (1), and

(b) the period of employment covered by the statement.

(3) The hours of work of an employee, maintained by an employer under subsection (1)(a), must be recorded daily.

(4) An employer must keep an up-to-date record of the following additional information for each employee:

(a) name, address and date of birth;

(b) the date that the present period of employment started;

(c) the date on which a general holiday is taken;

(d) each annual vacation, showing the date it started and finished and the period of employment in which the annual vacation was earned;

(e) the wage rate and overtime rate when employment starts, the date of any change to wage rates or overtime rates, and particulars of every change to them;

(f) copies of documentation relating to maternity and adoption benefits;

(g) copies of any termination notice and of written requests to employees to return to work after a temporary layoff.

(5) On request, an employer must give to an employee a detailed statement of how the employee's earnings were calculated and the method of calculating any bonus or living allowance paid, whether or not it forms part of wages.

Keeping
employment
records

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

Division 3 Hours of Work

Hours of work
confined

16(1) An employee's hours of work must be confined within a period of 12 consecutive hours in any one work day, unless

(a) an accident occurs, urgent work is necessary to a plant or machinery or other unforeseeable or unpreventable circumstances occur, or

(b) the Director issues a permit authorizing extended hours of work.

(2) If hours of work have to be extended, they are to be increased only to the extent necessary to avoid serious interference with the ordinary working of a business, undertaking or other activity.

Notice of work times

17(1) Every employer must notify the employees of the time at which work starts and ends by posting notices where they can be seen by the employees, or by any other reasonable method.

(2) An employer must not require an employee to change from one shift to another without at least 24 hours' written notice and 8 hours of rest between shifts.

Rest periods

18 Every employer must allow each employee a total of at least 30 minutes of rest, whether paid or unpaid, during each shift in excess of 5 consecutive hours of work unless

(a) an accident occurs, urgent work is necessary or other unforeseeable or unpreventable circumstances occur,

(b) different rest provisions are agreed to pursuant to a collective agreement, or

(c) it is not reasonable for the employee to take a rest period.

Days of rest

19(1) Every employer must allow each employee at least

(a) one day of rest in each work week,

(b) 2 consecutive days of rest in each period of 2 consecutive work weeks,

(c) 3 consecutive days of rest in each period of 3 consecutive work weeks, or

(d) 4 consecutive days of rest in each period of 4 consecutive work weeks.

(2) Every employer must allow each employee at least 4 consecutive days of rest after each 24 consecutive work days.

Compressed
work week

20(1) An employer may require or permit an employee to work a compressed work week, consisting of fewer work days in the work week and more hours of work in a work day paid at the employee's regular wage rate.

(2) A compressed work week must be scheduled in advance and the schedule must meet the following requirements:

- (a) if the compressed work week is part of a cycle, the schedule must show all the work weeks that make up the cycle;
- (b) the maximum hours of work that an employee may be scheduled to work in a work day is 12 hours;
- (c) the maximum hours of work that an employee may be scheduled to work in a compressed work week is 44 hours;
- (d) if the compressed work week is part of a cycle, clause (c) does not apply and the maximum average weekly hours of work that an employee may be scheduled to work in the work weeks that are part of the cycle is 44 hours.

Division 4 Overtime and Overtime Pay

Overtime
hours

21 Overtime hours in respect of a work week are

- (a) the total of an employee's hours of work in excess of 8 on each work day in the work week, or
- (b) an employee's hours of work in excess of 44 hours in the work week,

whichever is greater, and, if the hours in clauses (a) and (b) are the same, the overtime hours are those common hours.

Overtime pay

22(1) An employer must pay an employee overtime pay of at least 1.5 times the employee's wage rate for overtime hours.

(2) Subsection (1) does not apply to an employer or employee who has entered into an overtime agreement.

Overtime
agreements

23(1) An employee or the majority of a group of employees may enter into an overtime agreement

- (a) as part of a collective agreement, or

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

that provides that, wholly or partly instead of overtime pay, the employer will provide, and the employee or group of employees will take, time off with pay instead of overtime pay.

(2) An agreement referred to in subsection (1) is deemed to include at least the following provisions:

- (a) time off with pay instead of overtime pay will be provided, taken and paid at the employee's wage rate at a time that the employee could have worked and received wages from the employer;
- (b) if time off with pay instead of overtime pay is not provided, taken and paid in accordance with clause (a), the employee will be paid overtime pay of at least 1.5 times the employee's wage rate for the overtime hours worked;
- (c) time off with pay instead of overtime pay will be provided, taken and paid to the employee within 3 months of the end of the pay period in which it was earned unless
 - (i) the agreement is part of a collective agreement and the collective agreement provides for a longer period within which the time off with pay is to be provided and taken, or
 - (ii) the Director issues a permit authorizing an agreement that provides for a longer period within which the time off with pay is to be provided and taken;
- (d) no amendment or termination of the agreement is to be effective without at least one month's written notice given by one party to the agreement to the other.

(3) An employer must provide a copy of the overtime agreement to each employee affected by it.

Incentive pay -
hourly wage
for calculation
of overtime

24(1) If an employee is paid entirely on commission or other incentive-based remuneration, then, for the purpose of calculating overtime pay, the employee's wage rate is deemed to be the minimum wage prescribed by the regulations.

(2) If an employee is paid partly by salary and partly by commission or other incentive-based remuneration, then, for the purpose of calculating overtime pay, the employee's wage rate

- (a) is based on the salary component of the wages, if the salary component is greater than the minimum wage, or
- (b) is deemed to be the minimum wage, if the salary component of the employee's wages is equal to or less than the minimum wage.

Division 5

General Holidays and General Holiday Pay

General
holidays in
Alberta

25 The following days are general holidays in Alberta:

- (a) New Year's Day,
- (b) Alberta Family Day,
- (c) Good Friday,
- (d) Victoria Day,
- (e) Canada Day,
- (f) Labour Day,
- (g) Thanksgiving Day,
- (h) Remembrance Day,
- (i) Christmas Day,
- (j) any other day designated, by regulation, as a general holiday by the Lieutenant Governor in Council, and
- (k) any other day designated as a general holiday under an agreement between an employer and employees, or otherwise designated as a general holiday by an employer.

Eligibility for
general
holiday pay

26(1) An employee is eligible for general holiday pay if the employee has worked for the same employer for 30 work days or more in the 12 months preceding the general holiday.

(2) An employee is not entitled to general holiday pay if the employee

- (a) does not work on a general holiday when required or scheduled to do so, or
- (b) is absent from employment without the consent of the employer on the employee's last regular work day

preceding, or the employee's first regular work day following, a general holiday.

Resolving
doubts about
general
holiday pay
entitlements

27(1) If an employee works an irregular schedule and there is doubt about whether a general holiday is on a day that would normally have been a work day for the employee, the doubt is to be resolved in accordance with subsection (2).

(2) If in at least 5 of the 9 weeks preceding the work week in which the general holiday occurs the employee worked on the same day of the week as the day on which the general holiday falls, the general holiday is to be considered a day that would normally have been a work day for the employee.

General
holiday pay -
not working on
a normal work
day

28 If

(a) a general holiday falls on a day that would normally have been a work day for the employee, and

(b) an employee does not work on the general holiday,

the employer must pay the employee general holiday pay of an amount that is at least the average daily wage of the employee.

General
holiday pay -
working on a
normal work
day

29 If

(a) a general holiday is on a day that would normally have been a work day for an employee, and

(b) the employee works on the general holiday,

the employer must comply with clause (c) or (d):

(c) pay the employee general holiday pay of

(i) an amount that is at least the average daily wage of the employee, and

(ii) an amount that is at least 1.5 times the employee's wage rate for each hour of work of the employee on that day,

or

(d) provide the employee with

(i) an amount that is at least the employee's wage rate times each hour of work on that day, and

- (ii) one day's holiday, not later than the employee's next annual vacation, on a day that would normally be a work day for the employee and general holiday pay for that day of an amount that is at least the employee's average daily wage.

General
holiday pay -
working on
unscheduled
work day

30 If

- (a) a general holiday is on a day that is not normally a work day for an employee, and
- (b) the employee works on the general holiday,

the employer must pay the employee general holiday pay of an amount that is at least 1.5 times the wage rate of the employee for each hour of work on that day.

General
holiday during
annual
vacation

31(1) If a general holiday occurs during an employee's annual vacation, the employer must, if the general holiday is one to which the employee would have been entitled had the employee not been on annual vacation, give the employee a holiday with general holiday pay of a sum that is at least equal to the average daily wage of the employee.

(2) The general holiday must be taken

- (a) on what would have been the employee's first day back to work after the annual vacation, or
- (b) by agreement with the employee, on another day after the annual vacation that would normally be a working day for the employee, and provide it before the employee's next annual vacation.

Incentive pay-
hourly wage
for calculating
general
holiday pay

32(1) If an employee is paid entirely on commission or other incentive-based remuneration, then, for the purpose of calculating pay for time worked on a general holiday, the employee's wage rate is deemed to be the minimum wage prescribed by the regulations.

(2) If an employee is paid partly by salary and partly by commission or other incentive-based remuneration, then, for purposes of calculating pay for time worked on a general holiday, the employee's wage rate

- (a) is based on the salary component of the wages, if the salary component is greater than the minimum wage, or

- (b) is deemed to be the minimum wage, if the salary component of the employee's wages is equal to or less than the minimum wage.

Effect of
general
holiday on
overtime
calculation

33 When an employee works on a general holiday and is paid general holiday pay of at least 1.5 times the employee's wage rate for each hour worked, the hours worked are not to be counted for the purpose of calculating any entitlement to overtime pay under Part 2, Division 4, Overtime and Overtime Pay, for the work week in which the general holiday occurs.

Division 6

Vacations and Vacation Pay

Basic vacation
entitlement

34 An employee becomes entitled to an annual vacation of at least

- (a) 2 weeks after each of the first 4 years of employment, and
- (b) 3 weeks after 5 consecutive years of employment and each year of employment after that,

unless section 35 applies.

Vacation
entitlements
with a
common
anniversary
date

35(1) For the purpose of calculating vacation and vacation pay, an employer may establish a common anniversary date for all employees or a group of them.

(2) If an employer establishes a common anniversary date, then, despite any other provision in this Division,

- (a) the amount of vacation pay, and
- (b) the length of an employee's vacation,

must not be reduced to less than the employee would have received if the common anniversary date had not been established.

(3) If an employee has a common anniversary date, the employee becomes entitled to an annual vacation as follows:

- (a) on the first common anniversary date after employment starts with the employer, at least 2 weeks' vacation or a proportionately lesser period of vacation if the employee has been employed for less than one year;

- (b) on the 2nd, 3rd, 4th and 5th common anniversary date after employment starts with the employer, at least 2 weeks' vacation;
- (c) on the 6th common anniversary date after employment starts with the employer, at least
 - (i) 3 weeks' vacation, and
 - (ii) vacation for the period that the proportion referred to in clause (a), if any, bears to one week;
- (d) on the 7th and subsequent common anniversary dates after employment starts with the employer, at least 3 weeks' vacation.

Computing 5
or more years
of employment

36 When it is necessary to determine whether an employee has been employed by an employer for 5 years of employment, or to determine whether the 6th common anniversary date has occurred, any break in the employee's employment with the employer of less than 3 months is to be counted as a period of continuous employment.

How vacation
is to be given

37(1) Employers must give employees their annual vacation in one unbroken period no later than 12 months after an employee becomes entitled to it.

(2) If an employee so requests in writing, the employer may provide the vacation in two or more periods, so long as each vacation period is at least one day long.

Dates for
annual
vacations

38 If an employer and an employee are unable to agree on a mutually satisfactory date to start the employee's annual vacation, the employer must give the employee at least 2 weeks' written notice of the date on which the employee's annual vacation is to start, and the employee must take the vacation at that time.

Vacation pay
for employee
paid monthly

39 For each week of vacation, the employer must pay an employee paid by the month vacation pay of an amount at least equal to the employee's wages for the employee's normal hours of work in a work month divided by 4 $\frac{1}{4}$.

Vacation pay
for employee
paid other
than monthly

40 The employer must pay an employee who is not paid by the month vacation pay of an amount at least equal to,

- (a) for an employee entitled to 2 weeks' vacation or any lesser amount, 4% of the employee's wages for the year of employment for which vacation is given, or
- (b) for an employee entitled to 3 weeks' vacation, 6% of the employee's wages for the year of employment for which vacation is given.

When vacation
pay is to be
paid

41(1) An employer may pay vacation pay at any time, but must pay vacation pay to each employee no later than the next regularly scheduled pay-day after the employee starts annual vacation.

(2) If vacation pay has not been fully paid to an employee before the annual vacation starts, the employee may request the employer to pay vacation pay at least one day before the vacation starts and the employer must comply with the request.

Vacation pay
on termination
of employment

42(1) If employment terminates before an employee becomes entitled to a first annual vacation, the employer must pay the employee 4% of the employee's wages earned during the employment.

(2) If employment terminates after an employee becomes entitled to annual vacation, the employer must pay the employee vacation pay of an amount equal to the vacation pay to which the employee would have been entitled in that year of employment if the employee had remained employed by the employer and

- (a) for an employee who is entitled to 2 weeks' vacation, at least 4% of the employee's wages for the period from the date the employee last became entitled to an annual vacation to the date employment terminates, or
- (b) for an employee who is entitled to 3 weeks' vacation, at least 6% of the employee's wages for the period from the date the employee last became entitled to an annual vacation to the date employment terminates.

When vacation
pay is
considered to
be wages

43 Vacation pay paid to an employee in one year of employment is deemed to be wages for the purpose of calculating the vacation pay payable to the employee in the following year of employment.

Reductions in
vacation and
vacation pay

44 When an employee is absent from work, an employer may reduce the employee's vacation and vacation pay in proportion to the number of days the employee was or would normally have been scheduled to work, but did not.

Division 7

Maternity and Adoption Benefits

Entitlement to
maternity
leave benefits

45 A pregnant employee who has been employed by an employer for at least 12 consecutive months is entitled to maternity leave without pay.

Length of
maternity
leave

46(1) The maternity leave to which a pregnant employee is entitled is

- (a) a period of not more than 18 weeks starting at any time during the 12 weeks immediately before the estimated date of delivery,
- (b) if the actual date of delivery is after the estimated date of delivery, an additional period of time between the estimated and the actual date of delivery, and
- (c) if, after the date of delivery, the medical condition of the mother or child prevents the employee from returning to work, a further period of maternity leave of not more than 3 weeks if the employee provides a medical certificate indicating that, due to her or her child's medical condition, the employee is not able to return to work.

(2) Maternity leave must include a period of at least 6 weeks immediately following the date of delivery, unless the employee and her employer agree to shorten the period by the employee's giving her employer a medical certificate indicating that resumption of work will not endanger her health.

Notice of
maternity
leave

47(1) A pregnant employee must give her employer at least 2 weeks' written notice of the date she will start her maternity leave, and if so requested by her employer, the pregnant employee must provide her employer with a medical certificate certifying that she is pregnant and giving the estimated date of delivery.

(2) A pregnant employee is entitled to start maternity leave on the date specified in the notice given to her employer under subsection (1).

No notice of
maternity
leave

48 An employee who does not give her employer prior notice of maternity leave before starting it is still entitled to maternity leave 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 because of a medical condition arising from her pregnancy, and
- (b) giving the estimated or actual date of delivery.

Notice by
employer to
start maternity
leave

49 If during the 12 weeks immediately before the estimated date of delivery the pregnancy of an employee interferes with the performance of her duties, an employer may give the employee written notice requiring her to start maternity leave.

Adoption Leave

Adoption leave

50(1) Adoption leave is a period of not more than 8 weeks' leave, without pay, starting on the date the adoptive parent first obtains custody of the child.

(2) An employer must grant adoption leave to an employee who is the adoptive parent of a child under 3 years of age if

- (a) the employee has been employed by the employer for at least 12 consecutive months, and
- (b) the employee gives written notice to the employer of adoption leave at least 2 weeks before the employee can reasonably expect to first obtain custody of the child.

(3) When an employee is unable to give written notice of adoption leave, the employee must give notice to the employer as soon as possible after receiving notice of the adoption.

(4) An employer is not required to grant adoption leave to more than one parent of an adoptive child.

Rules Common to Maternity and Adoption Benefits

Termination of
employment
prohibited
during
maternity and
adoption leave

51(1) No employer may terminate the employment of, or lay off, an employee who

- (a) has started her maternity leave, or
- (b) is entitled to or has started adoption leave.

(2) Subsection (1) does not apply if an employer suspends or discontinues in whole or in part the business, undertaking or other activity in which the employee is employed, but the obligation of the employer to reinstate the employee or provide the employee with alternative work in accordance with section 53 continues to apply.

Resumption of
employment

52(1) An employee who wishes to resume working after maternity leave or adoption leave ends must give the employer at least 2 weeks' written notice of the day on which the employee intends to resume work.

(2) The employer must

- (a) reinstate the employee in the position occupied when maternity or adoption leave started, or
- (b) provide the employee with alternative work of a comparable nature

at not less than the earnings and other benefits that had accrued to the employee when the maternity or adoption leave started.

(3) An employer is not required to allow an employee to whom maternity or adoption leave has been granted to resume employment until 2 weeks after receipt of the employee's notice of intention to return to work.

(4) An employee who does not wish to resume employment after maternity or adoption leave must give the employer at least 2 weeks' written notice of intention to terminate employment.

Suspension of
operations

53 If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during an employee's maternity or adoption leave and the employer has not resumed operations when the employee's leave ends, the employer must, if the operation is subsequently resumed within 12 months following the end of the leave,

- (a) reinstate the employee in the position occupied at the time the maternity or adoption leave started, at not less than the earnings and other benefits that had accrued to the employee, 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 or adoption leave started, with no loss of seniority or other benefits accrued to the employee.

Division 8

Termination of Employment

Calculating
length of
employment
for termination
notice
purposes

54 For the purposes of determining the correct termination notice to be given by an employer or employee or termination pay to be given by an employer, when an employee has been employed by the same employer more than once, the periods of employment with that employer are considered to be one period of employment if not more than 3 months has elapsed between the periods of employment.

Options for
employer to
terminate
employment

55(1) Unless subsection (2) applies, an employer may terminate the employment of an employee only by giving the employee

- (a) a termination notice under section 56,
- (b) termination pay under section 57(1), or
- (c) a combination of termination notice and termination pay under section 57(2).

(2) Termination notice is not required

- (a) to terminate the employment of an employee for just cause,
- (b) when an employee has been employed by the employer for 3 months or less,
- (c) when 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) when the employee is laid off after refusing an offer by the employer of reasonable alternative work,
- (e) if the employee refuses work made available through a seniority system,
- (f) if the employee is not provided with work by the employer by reason of a strike or lockout occurring at the employee's place of employment,
- (g) when the employee is employed under an agreement by which the employee may elect either to work or not to work for a temporary period when requested to work by the employer.

- (h) if the 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,
- (i) if the employee is employed on a seasonal basis and on the completion of the season the employee's employment is terminated, or
- (j) when employment ends in the circumstances described in sections 62 to 64.

Employer's
termination
notice

56 To terminate employment an employer must give an employee written termination notice of at least

- (a) one week, if the employee has been employed by the employer for more than 3 months but less than 2 years,
- (b) 2 weeks, if the employee has been employed by the employer for 2 years or more but less than 4 years,
- (c) 4 weeks, if the employee has been employed by the employer for 4 years or more but less than 6 years,
- (d) 5 weeks, if the employee has been employed by the employer for 6 years or more but less than 8 years,
- (e) 6 weeks, if the employee has been employed by the employer for 8 years or more but less than 10 years, or
- (f) 8 weeks, if the employee has been employed by the employer for 10 years or more.

Termination
pay

57(1) Instead of giving a termination notice, an employer may pay an employee termination pay of an amount at least equal to the wages the employee would have earned if the employee had worked the regular hours of work for the applicable termination notice period.

(2) An employer may give an employee a combination of termination pay and termination notice, in which case the termination pay must be at least equal to the wages the employee would have earned for the applicable termination notice period that is not covered by the notice.

(3) If the wages of an employee vary from one pay period to another, the average of the employee's wages for the 3-month period immediately preceding the date of termination of employment is to be used to determine the employee's termination pay.

Termination of
employment
by an
employee

58(1) Except as otherwise provided in subsection (2), to terminate employment an employee must give the employer a written termination notice of at least

- (a) one week, if the employee has been employed by the employer for more than 3 months but less than 2 years, or
- (b) 2 weeks, if the employee has been employed by the employer for 2 years or more.

(2) Subsection (1) does not apply when

- (a) there is an established custom or practice in any industry respecting the termination of employment that is contrary in whole or in part to subsection (1),
- (b) an employee terminates employment because the employee's personal health or safety would be in danger if the employee continued to be employed by the employer,
- (c) the contract of employment is or has become impossible for the employee to perform by reason of unforeseeable or unpreventable causes beyond the control of the employee,
- (d) the employee has been employed by the employer for 3 months or less,
- (e) the employee is temporarily laid off,
- (f) the employee is laid off after refusing an offer by the employer of reasonable alternative work,
- (g) the employee is not provided with work by the employer by reason of a strike or lockout occurring at the employee's place of employment,
- (h) the employee is employed under an agreement by which the employee may elect either to work or not to work for a temporary period when requested to work by the employer, or
- (i) an employee terminates the employment because of a reduction in wage rate, overtime rate, vacation pay, general holiday pay or termination pay.

Expediting
termination of
employment
after an
employee's
termination
notice

59(1) If an employee gives a termination notice that is the minimum notice required to be given by the employee and the employer wishes to terminate the employee's employment before the end of the employee's notice period, the employer must pay the employee an amount at least equal to the wages that the employee would have earned if the employee had worked the employee's regular hours of work for the remainder of the notice period given by the employee.

(2) If an employee gives a termination notice that is longer than the minimum notice required to be given by the employee and the employer wishes to terminate the employee's employment before the end of the employee's notice period, the employer must pay the employee an amount at least equal to the wages the employee would have earned if the employee had worked the employee's regular hours for the remainder of the termination notice period that the employer is required to give to the employee under section 56.

Continuation
of employment
after
termination

60 A termination notice is of no effect if an employee continues to be employed by the same employer after the date specified for termination of employment.

Earnings not
to change
after
termination
notice given

61(1) Neither the wages, wage rate, nor any other term or condition of employment may be reduced by an employer between the time termination notice is given by the employer or employee and the date employment terminates, whether or not work is required to be performed during that period.

(2) During the period between the date a termination notice is given by an employer or employee and termination of the employment, the employee remains employed by the employer unless

- (a) the employer gives the employee termination pay, or
- (b) the employer terminates employment of the employee
 - (i) for just cause,
 - (ii) if the employee is laid off after refusing an offer by the employer of reasonable alternative work,
 - (iii) if the employee refuses work made available through a seniority system,
 - (iv) if the employee is not provided with work by the employer by reason of a strike or lockout occurring at the employee's place of employment, or

- (v) if the employment contract is or has become impossible for the employer to perform by reason of unforeseeable or unpreventable causes beyond the control of the employer.

Layoff and Recall

Temporary layoff	62 If an employer wishes to maintain an employment relationship without terminating the employment of an employee, the employer may temporarily lay off the employee.
Termination pay after temporary layoff	<p>63(1) On the 60th consecutive day of temporary layoff, an employee's employment terminates and the employer must pay the employee termination pay on that day.</p> <p>(2) Subsection (1) does not apply if</p> <ul style="list-style-type: none"> (a) after the layoff starts, and by agreement between the employer and employee, an employer pays the employee wages or an amount instead of wages, in which case the employment terminates and termination pay is payable when the agreement ends; (b) the employer makes payments for the benefit of the laid-off employee in accordance with a pension or employee insurance plan or the like, in which case employment terminates and termination pay is payable when the payments cease; (c) there is a collective agreement binding the employer and employee containing recall rights for employees following layoff, in which case employment terminates and termination pay is payable when the recall rights expire.
Effect of failure to return to work after recall	<p>64(1) If an employee fails to return to work within 7 consecutive days after being requested to do so in writing by the employer, the employee is not entitled to termination notice or termination pay if the employer decides to terminate the employee's employment as a result of the employee's failure to return to work in accordance with the recall notice.</p> <p>(2) Subsection (1) does not apply to an employee bound by a collective agreement containing recall rights for employees following a layoff.</p>

Division 9
Restriction on Employment of Children

Employment
of children

65(1) No person may, during normal school hours, employ, or permit to work on the person's premises, an individual who is required to attend school under the *School Act*, unless the conditions specified in section 66 are complied with.

(2) No individual under 15 years old may be employed without the written consent of the individual's parent or guardian and the approval of the Director, unless the regulations and the conditions specified in section 66 are complied with.

Conditions of
a child's
employment

66 The conditions referred to in section 65 are that the individual must be

- (a) excused from school attendance under the *School Act* for the purpose of vocational training through employment, or
- (b) enrolled in a work experience program approved under the *School Act*.

Division 10
Persons with Disabilities

Employment
of persons
with
disabilities

67(1) If the Director is satisfied that a proposed employment arrangement between an employer and a prospective employee who has a disability is satisfactory for both of them in all the circumstances, the Director may issue to the employer a permit authorizing

- (a) the employer to pay the prospective employee a wage less than the minimum wage prescribed by the regulations, and
- (b) the prospective employee to receive less than the minimum wage.

(2) A copy of the permit must be served on the employer and the prospective employee.

(3) The employer or the prospective employee to whom a permit applies may appeal the permit to an umpire.

PART 3
ADMINISTRATION

Division 1
General

Director and Registrar	<p>68(1) The Minister must appoint an individual who is an employee under the <i>Public Service Act</i> as the Director of Employment Standards.</p> <p>(2) The Minister must appoint an individual as the Registrar of Appeals.</p>
Appointment and designation of umpires	<p>69(1) The Lieutenant Governor in Council may</p> <ul style="list-style-type: none">(a) appoint individuals as umpires;(b) authorize the Minister to appoint as umpires individuals who are members of a class of persons designated by the Lieutenant Governor in Council;(c) designate a class of persons, the members of which are deemed to have been appointed umpires. <p>(2) The Minister may establish a code for the ethical conduct of umpires.</p>
Liability of officials	<p>70 No action for damages may be commenced against the Director, an officer, the Registrar or an umpire for anything done or not done in good faith in the performance or exercise or purported performance or exercise of their functions, powers or duties under this Act.</p>
Delegation	<p>71(1) The Director may delegate the performance or exercise of any function, power or duty of the Director to one or more individuals.</p> <p>(2) A delegation may be</p> <ul style="list-style-type: none">(a) general or specific to one or more functions, powers or duties, and(b) subject to conditions or applicable in the circumstances specified by the Director.

(3) The Director may not delegate the Director's power to issue a reinstatement or compensation order under section 89.

Services by
others

72(1) The Director may engage persons

- (a) to administer this Act or any provision of it, or
- (b) to perform services for and otherwise assist the Director and officers in administering this Act.

(2) The Director may establish fees that a person referred to in subsection (1) is entitled to for anything done under subsection (1), and the person may collect those fees in accordance with the regulations.

Alternative
dispute
resolution

73(1) The Director may initiate and encourage the voluntary efforts of employers and employees

- (a) to design fair processes in which to resolve complaints or concerns arising under this Act, with or without the assistance of an officer, and
- (b) to settle complaints under this Act by appointing or facilitating the appointment of an impartial third party mediator, fact-finder or other person to assist the parties in settling their dispute.

(2) The Registrar may

- (a) initiate any system of appeal management in order to expedite the fair resolution of an appeal;
- (b) with the agreement of the parties, appoint or facilitate the appointment of an impartial third party mediator, fact-finder or other person to assist the parties in settling their dispute;
- (c) design processes to manage appeals that, at the option and with the agreement of the parties, may be used to resolve an appeal.

(3) Nothing in this section affects the right of an employee to make a complaint and to have it processed in accordance with this Act.

Scheme of
employment

74(1) The Director may approve a scheme of employment with respect to an employer and the employer's employees or prospective employees that applies despite any provision to the contrary in this Act.

(2) The Director may revoke, amend or vary an approval for a scheme of employment at any time.

Division 2 Employment Standards Officers

Certification
and
appointment of
officers

75(1) The Director must establish competency and eligibility requirements to be met by individuals wishing to provide employment standards services, including those that are a function of an officer or that entail a power or duty of an officer.

(2) When an individual satisfies the Director that the individual meets the competency and eligibility requirements referred to in subsection (1), the Director may certify the individual as eligible for appointment as an officer.

(3) The Minister may appoint as employment standards officers only those individuals who are certified as eligible for appointment by the Director.

(4) The authority of an officer under this Act may be limited by conditions imposed by the Minister.

Director
exercising
powers, etc. of
officer

76 The Director may exercise any power or perform any function or duty of an officer.

Officer's
authority

77(1) An officer may

- (a) at any reasonable time, enter any premises or other place in which the officer has reason to believe that an individual is or was employed, to inspect employment records and make copies of them;
- (b) require an employer, employee or any other person to provide oral or written statements about any matter relating to employment or employment records at a specified time, date and place;
- (c) make an inspection, investigation and inquiry that is necessary to ascertain whether this Act or any order, award, demand, declaration, permit, approval or notice under this Act has been or is being complied with;

- (d) question an employee, during the employee's regular hours of work or otherwise, without the employer's being present, to ascertain whether this Act or an order, award, demand, declaration, permit, approval or notice under this Act has been or is being complied with;
 - (e) require a person supplying information or giving an oral or written statement to give any of them in the form of a written statement under oath;
 - (f) by written notice, demand the production of employment records for inspection at a time, date and place specified in the notice;
 - (g) on giving a receipt for it, remove an employment record, for not more than 48 hours, to make copies of it;
 - (h) by written notice, require an employer to record the times at which the employees start and stop work each day they work;
 - (i) by written notice, require an employer to post notices, information bulletins or extracts from this Act at locations at the employer's place of business specified in the notice.
- (2) An officer must not enter a private dwelling without the consent of the occupier of the dwelling.

Assistance to
officers

78 Every employer and person acting on the employer's behalf and every employee must give whatever assistance is necessary to an officer to enable the officer to make an entry, inspection, investigation or inquiry.

Directions

79(1) An officer as a result of an inspection, investigation or inquiry under section 77 may direct an employer or employee to comply with this Act or any order, award, demand, declaration, permit, approval or notice under this Act.

(2) The direction may be made with or without conditions and may be revoked, amended or varied at any time.

Single
employer
declaration

80(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 single employer declaration, declaring that the employers or persons named, or combination of them, are a single employer for the purposes of this Act.

(2) A copy of the declaration must be served on the employers or persons or both, and on the employees affected by it.

(3) An employer, employee or person affected by the declaration may appeal the declaration to an umpire.

Effect of
declaration

81 If an officer or, on appeal, an umpire makes a single employer declaration, the persons affected by the declaration are jointly and severally liable for the payment of earnings to those individuals who, as a result of the declaration, are considered to be employees of the single employer.

Division 3 Employment Standards Complaints, Investigations and Determinations

Employee
complaints

82(1) An employee may make a written complaint to an officer that

- (a) the employee is entitled to earnings;
- (b) the employment of the employee was suspended or terminated or the employee was laid off
 - (i) contrary to section 51(1), after the employee started maternity leave or because the employee was entitled to or had started adoption leave,
 - (ii) for the sole reason that garnishment proceedings are being or might be taken against the employee,
 - (iii) because the employee gave evidence or may give evidence at any inquiry or in any proceeding or prosecution under this Act,
 - (iv) because the employee requested or demanded anything to which the employee is entitled under this Act, or
 - (v) because the employee made or is about to make any statement or disclosure that may be required of the employee under this Act.

(2) A complaint may be made at any time while the employee is employed by the employer and, if the employee's employment is terminated, at any time up to 6 months after the date on which the employment is terminated.

(3) When the Director considers that there are extenuating circumstances, the Director may extend the 6-month period, before or after it expires.

(4) An employee may not be charged a fee for making a complaint or for the investigation of a complaint.

When
complaints
may be
refused

83 An officer may refuse to accept or investigate a complaint if

(a) the officer considers that

(i) the complaint is frivolous or vexatious,

(ii) there is insufficient evidence to substantiate the complaint, or

(iii) there are other means available to the employee to deal with the subject-matter of the complaint that should be pursued before the complaint is accepted or investigated,

or

(b) the employee is proceeding with another action in respect of the subject-matter of the complaint or has sought and obtained recourse in respect of the subject-matter of the complaint before a court, tribunal or arbitrator or by some other form of adjudication.

Mediation by
officer

84(1) An officer may mediate between an employer and an employee for the purpose of settling or compromising differences between them and in doing so 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 the employee's behalf;

(c) do any other things necessary to assist an employer and 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 of them in respect of the settlement or compromise.

(3) When an officer pays to an employee money received as a result of a settlement or compromise, the employer is discharged from further liability to the employee with respect to the amount received by the employee.

Decision of
officer

85(1) If an officer

- (a) determines that the employee making a written complaint is not entitled to earnings,
- (b) determines that the employment of the employee was not suspended or terminated or that the employee was not laid off in the circumstances or for the reasons described in section 82(1)(b), or
- (c) refuses to accept or investigate a complaint,

the officer must serve the employee with notice of that decision.

(2) The employee may appeal the decision of the officer to the Director under section 88.

Complaints
referred to
Director

86 If an officer, after investigating a complaint of an employee, has reason to believe that

- (a) the employment of the employee was suspended or terminated, or
- (b) the employee was laid off

in the circumstances or for the reasons described in section 82(1)(b) and the officer is unable to mediate, settle or compromise the difference between the employer and employee, the officer must refer the complaint to the Director.

Order of an
officer

87(1) If an officer determines that earnings are due to an employee and is unable to mediate, settle or compromise the difference between the employer and employee, the officer must make an order requiring the employer to pay to the employee, or to pay to the Director on behalf of the employee, earnings to which the employee is entitled.

(2) If an officer is unable to determine the amount of earnings that are due to an employee because the employer has not made or kept complete and accurate employment records, or has failed to make those records available to the officer for inspection, the officer may determine the amount in any manner the officer considers appropriate.

(3) The employer or employee may appeal the order of the officer to an umpire.

Appeal to
Director

88(1) Within 21 days from the date the employee is served with the notice of a decision under section 85, the employee may appeal to the Director by serving on the Director a written notice of appeal specifying the reasons for it.

(2) A notice of appeal that is postmarked by the Canada Post Corporation within the 21 days referred to in subsection (1) and that is received by the Director outside of the 21-day period is deemed to have been received within the 21 days.

(3) On receipt of the notice of appeal, the Director may

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

(4) The Director or the reviewing officer may

- (a) make any decision or order that the original officer could have made, or
- (b) direct the original officer or another officer to accept or investigate the complaint if the Director or reviewing officer is of the opinion that the refusal to accept the complaint or to investigate it was not justified.

(5) There is no appeal of a decision of the Director or the reviewing officer if the decision is that

- (a) the employee is not entitled to earnings, or
- (b) the original officer was justified in refusing to accept or investigate the complaint.

(6) The employer or employee may appeal to an umpire a Director's or reviewing officer's order to pay earnings.

Order for
reinstatement
or
compensation

89(1) This section applies when a complaint that

- (a) the employment of an employee was suspended or terminated, or
- (b) the employee was laid off

in the circumstances or for the reasons described in section 82(1)(b) is referred to the Director.

(2) If the Director determines that

(a) the employment of an employee was suspended or terminated, or

(b) the employee was laid off

in the circumstances or for the reasons described in section 82(1)(b) and the Director is unable to mediate, settle or compromise a difference between the employer and the employee, the Director must make an order for reinstatement or compensation, or both.

(3) An order of the Director for reinstatement or compensation may direct an employer to do one or both of the following:

(a) reinstate an employee, or

(b) pay to the employee, or to the Director on the employee's behalf, compensation of an amount not exceeding the sum the employee would have earned if

(i) the employment of the employee had not been suspended or terminated, or

(ii) the employee had not been laid off

in the circumstances or for the reasons described in section 82(1)(b).

(4) The employer or employee may appeal a Director's order for reinstatement or compensation to an umpire.

(5) If the Director determines that

(a) the employment of the employee was not suspended or terminated, or

(b) the employee was not laid off

in the circumstances or for the reasons described in section 82(1)(b), the Director must serve the employee with notice of that decision.

(6) There is no appeal of the Director's decision under subsection (5).

Limitation
periods for
orders

90(1) No order under this Division may be made with respect to earnings

- (a) after one year from the date on which the earnings should have been paid, if the employee is still employed by the employer, and
 - (b) after one year from the date the employment terminates, if the employee is no longer employed by the employer.
- (2) No order of the Director for reinstatement or compensation may be made after one year from the date that the employment of the employee was suspended or terminated or that the employee was laid off.
- (3) The Director may extend the limitation period under subsection (1) or (2) by an additional period of up to one year if the Director is satisfied that extenuating circumstances warrant the extension.
- (4) An order under this Division may direct
- (a) payment of wages or overtime pay, or both, for a period not exceeding 6 months from whichever first occurs:
 - (i) the order, or
 - (ii) the employee's termination of employment, if the employee's employment is terminated;
 - (b) payment of vacation pay or general holiday pay, or both, for a period not exceeding 2 years from whichever first occurs:
 - (i) the order, or
 - (ii) the employee's termination of employment, if the employee's employment is terminated.
- (5) An order of the Director for compensation under section 89(3)(b) may direct payment for a period not exceeding 6 months from the date that the employment of the employee was suspended or terminated, that the employee was laid off or that the employer failed to reinstate the employee or to provide the employee with alternative work, in accordance with Part 2, Division 7, Maternity and Adoption Benefits.

General
provisions
about orders

91(1) An order under this Division must

- (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, and

(c) specify the amount payable in respect of each employee named in the order.

(2) An order under this Division may also require an employer to pay the Director any fees payable to the Government under the regulations that are unpaid.

(3) A copy of an order under this Division must be served on

(a) the employer to whom it is directed, and

(b) each employee in respect of whom it is made.

(4) An order under this Division may take into account deductions authorized or permitted under this Act but must not take into account a claim, counterclaim or set-off by an employer against an employee.

Limitation on
revocations
and
amendments
to orders

92(1) An officer's order or single employer declaration may be revoked, amended or varied by the officer who made it at any time before the time for an appeal to an umpire has expired, but not after that time.

(2) The Director may vary or amend a collection notice at any time before the time for an appeal to an umpire has expired, but not after that time.

(3) Even though an appeal has been made to an umpire, the Director may, before the umpire issues an award, revoke

(a) an order of an officer or the Director under this Division or a certificate under section 112(4)(b) at any time before the order or certificate is filed in the Court, or

(b) a single employer declaration or a collection notice at any time.

(4) If the Director revokes an order that has been appealed to an umpire, the Director must return to the appellant any money paid to the Director when the appeal was made.

Variations or
amendments
and appeals
from them

93(1) If an order under this Division, a single employer declaration or a collection notice is varied or amended, a copy of the variation or amendment must be served on each person on whom the original order, declaration or notice was served.

(2) A person who receives an amendment or variation may appeal to an umpire, and the time for making the appeal starts from the date of service of the amendment or variation.

Settlement or
compromise
by Director

94(1) Despite anything in this Act, the Director may

- (a) refuse to institute or to continue any proceeding or prosecution for the failure of an employer or employee to comply with this Act, or
- (b) settle or compromise any difference between an employer and an employee and receive money on behalf of the employee in settlement of the difference.

(2) When the Director pays to an employee any money received on the employee's behalf, the employer is discharged from further liability to the employee with respect to the amount received by the employee.

Division 4 Appeals to Umpires

Appeal to
umpire

95(1) A person who has a right of appeal to an umpire may appeal by serving on the Registrar written notice of appeal specifying the reasons for it.

(2) A notice of appeal must be served on the Registrar within 21 days of the date of service on the appellant of a copy of

- (a) a permit for the employment of an employee who has a disability,
- (b) a single employer declaration,
- (c) an order under Division 3,
- (d) a collection notice, or
- (e) a certificate under section 112(4)(b).

(3) A notice of appeal that is postmarked by the Canada Post Corporation within the 21 days referred to in subsection (2) and that is received by the Registrar outside of the 21-day period is deemed to have been received within the 21 days.

(4) A notice of appeal must be accompanied by

- (a) any fee payable under the regulations, and
- (b) any amount the employer is required to pay under an order under Division 3, which must be provided in the form of a money order or certified cheque payable to the Director.

(5) When the Registrar considers that there are extenuating circumstances that warrant doing so, the Registrar may

- (a) waive or reduce a fee or other amount required to be paid when the notice of appeal is served, or
- (b) accept security for the amount payable in another form and amount acceptable to the Registrar.

Appeal
referred to
umpire

96(1) If a notice of appeal meets all the requirements for an appeal, the Registrar must

- (a) refer the appeal to an umpire, and
- (b) give to the appellant and to each employee and employer who is a party to the appeal, and to the Director, written notice of the date, time and place at which the appeal will be considered.

(2) The Director is a party to every appeal to an umpire and every proceeding resulting from an order or resulting from an umpire's award.

Abandonment
of appeal

97 An appellant may abandon an appeal by serving written notice on the Registrar and by giving copies of the notice to the other parties concerned.

Conduct of Proceedings

Fair process

98(1) An umpire must treat all parties to an appeal fairly.

(2) Each party must be given an opportunity to present a case and to respond to the other parties' cases.

(3) An umpire may conduct an appeal without requiring oral representations, but if a party requests an opportunity to make oral representations, the umpire must provide the opportunity.

(4) An umpire may determine the procedure to be followed in the appeal.

Conduct of
appeal

99 An umpire may conduct the appeal through video-conference, electronic conferencing or other means satisfactory to the umpire.

Evidence

100(1) An umpire is not bound by the rules of evidence or any other law applicable to judicial proceedings and has power to determine the admissibility, relevance and weight of any evidence.

(2) An umpire may determine the manner in which evidence is to be admitted.

(3) An umpire may administer oaths, affirmations and declarations.

(4) An umpire may require witnesses to testify under oath, affirmation or declaration.

Provincial
judges as
umpires

101(1) An umpire who is a provincial judge may issue or direct an employee of the Crown in right of Alberta to issue a subpoena to any person who in the opinion of the umpire may be able to give evidence that relates to the appeal before the umpire.

(2) An umpire who is a provincial judge has the same powers

(a) to compel the attendance of witnesses, and

(b) to punish a witness for

(i) disobeying a subpoena to appear,

(ii) refusing to be sworn, or

(iii) refusing to give evidence

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

Obtaining
evidence

102(1) A party to an appeal may request an umpire to issue a person with a notice requiring the person to attend and give evidence at the appeal at the time and place named in the notice.

(2) A notice under subsection (1) must be served on the person concerned and has the same effect as a notice in a court proceeding requiring a witness to attend at a hearing or produce documents.

(3) If a person fails to comply with an umpire's notice issued under this section or acts in a manner that may be in contempt of the umpire or the umpire's proceedings, the umpire may apply to the Court for an order directing compliance with the umpire's order or restraining any conduct found by the Court to be in contempt of the umpire or the proceedings.

(4) On application, the Court may grant any order that, in the opinion of the Court, is necessary to enable the umpire to carry out the umpire's duties.

Failure to
appear

103 At a hearing,

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

Form of award

104(1) An umpire's award must be in writing.

(2) The award must indicate the place at which and the date on which it is made and must be signed by the umpire.

(3) A copy of each award must be provided to the Registrar, who must provide it to each party to the appeal.

(4) The Registrar must keep, as a public record, a copy of all awards issued by umpires.

Settlement

105 If the parties settle the matters in dispute themselves after an appeal has been referred to an umpire, an umpire may record the settlement in the form of an award.

Correction of
errors

106(1) An umpire may

- (a) correct typographical errors, errors of calculation and similar errors in an award, or
- (b) amend an award so as to correct an injustice caused by an oversight on the part of the umpire.

(2) A copy of a corrected or amended award must be provided to the Registrar, who must provide it to each party to the appeal.

Umpire's
award

107(1) An umpire may make an award

- (a) confirming, varying, revoking or substituting anything that is the subject of an appeal;
- (b) doing anything that an officer or the Director could have done under this Act;

- (c) ordering an employer or any employee of the employer to attend an educational program in employment standards specified by the umpire, and determining who is to pay the costs of the program and the attendance;
- (d) imposing costs, subject to the regulations.

(2) An umpire's award may take into account deductions authorized or permitted under this Act but must not take into account a claim, counterclaim or set-off by an employer against an employee.

(3) There is no appeal of an umpire's award.

Disbursement
of money held
by Director

108(1) When an umpire's award orders an employer to pay an amount to an employee, the Registrar must pay out any money paid when the appeal was filed, in accordance with the umpire's award.

(2) No interest is payable on money paid under subsection (1).

(3) If the amount of money paid by the Registrar under subsection (1) is less than the amount ordered to be paid to the employee, the Director may, in accordance with this Act, enforce the unpaid portion of the order.

PART 4

ORDERS AND AWARDS AND DIRECTOR'S DEMANDS TO THIRD PARTIES

Division 1 Enforcement of Orders and Awards

Deemed trust

109(1) In this section, "purchase-money security interest" and "security interest" have the meanings given to them in the *Personal Property Security Act*.

(2) Despite any other Act, every employer is deemed to hold all wages, overtime pay, vacation pay and general holiday pay accruing or due to an employee in trust for the employee, whether or not the amount accruing due or due has in fact been kept separate and apart by the employer.

(3) Subject to subsection (4) and section 111, wages, overtime pay, vacation pay and general holiday pay accruing or due to an employee are deemed to be secured by a security interest on the property and assets of the employer to a maximum of \$7500, whether or not that property or those assets are subject to other

security interests, and are payable in priority to any other claim or right in the property or assets, including

- (a) any claim or right of the Crown in right of Alberta, including, without limitation, claims or rights of the Workers' Compensation Board, and
- (b) any security interest, lien, charge, encumbrance, mortgage, assignment, including an assignment of book debts, debenture or other security of whatever kind of any person, whether or not perfected within the meaning of the *Personal Property Security Act*,

made, given, accepted or issued before or after the wages, overtime pay, vacation pay or general holiday pay accrued due, without registration or other perfection of the deemed security interest.

(4) The security interest referred to in subsection (3) does not take priority over a purchase-money security interest that is

- (a) taken prior to the wages, overtime pay, vacation pay, or general holiday pay accruing due, and
- (b) registered within the time periods referred to in section 22 of the *Personal Property Security Act*.

(5) This section and section 111 apply despite any other Act but with the same force as sections 40.1, 40.2 and 40.3 of the *Employment Pension Plans Act*.

Filing of order **110** If

- (a) an order of an officer or of the Director is not complied with and the time for an appeal has expired, or
- (b) an umpire's award is not complied with,

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

Registration of
order in land
titles office

111(1) The Director may provide the Registrar of Land Titles with an order of an officer or of the Director or an umpire's award respecting wages, overtime pay, vacation pay, general holiday pay or an amount payable under an order of the Director for compensation and require the Registrar of Land Titles to register the order on a certificate of title for land described by the Director in which the employer has an interest.

(2) The registration of an order or award referred to in subsection (1) on a certificate of title creates a secured charge in favour of the Director, on behalf of the employee, against the interests in land owned or held by the employer included in the certificate of title.

(3) A secured charge referred to in subsection (2) has the same priority it would have if it were a mortgage registered against an interest in land.

(4) If the amount payable under the order or award is paid, the Director must cause a registration under this section to be discharged.

Liability of
directors of
corporate
employers

112(1) In this section, “corporation” does not include a society incorporated under the *Societies Act* or a company referred to in Part 9 of the *Companies Act*.

(2) Despite any other Act, the directors of a corporation are jointly and severally liable to an employee of the corporation for unpaid wages earned during a period not exceeding 6 months.

(3) Subsection (2) does not make a person liable for unpaid wages if

(a) the person was not a director when the unpaid wages were earned, or

(b) for the reasons stated in section 114(2) or (3)(b) or (c) of the *Business Corporations Act* the person would not be liable.

(4) When wages owed to an employee by a corporate employer are not paid, the Director of Employment Standards may serve on each of the directors and former directors of the corporation who, in the opinion of the Director, are liable under subsection (2) for the unpaid wages

(a) a copy of the order or award filed in the Court, and

(b) a certificate stating that wages in a stated amount are due and unpaid by the employer and that the directors or former directors are liable for that amount.

(5) A director or former director of a corporation who is served with the certificate may appeal to an umpire.

(6) If a director or former director does not appeal within 21 days from the date on which the director or former director is served with the certificate, or if a director or former director appeals but is unsuccessful, the Director of Employment Standards may file the

certificate with the clerk of the Court and the certificate is then enforceable against the director or former director as an order or judgment of that Court.

(7) No certificate may be filed against a former director more than 2 years after the date the person ceased to be a director.

(8) Section 114(6) and (7) of the *Business Corporations Act* apply to a director who has satisfied a claim under this section.

Reciprocal
enforcement
of orders

113(1) If the Lieutenant Governor in Council is satisfied that reciprocal provisions are in effect or will be made by another jurisdiction for the enforcement of orders of officers or of the Director or umpires' awards, the Lieutenant Governor in Council may,

- (a) declare that jurisdiction to be a reciprocating jurisdiction for the purpose of enforcing orders, awards, certificates or judgments for the payment of earnings made under an enactment of that jurisdiction, and
- (b) designate an authority within that jurisdiction as the authority who may make applications or issue certificates under this section.

(2) If an order, award, certificate or judgment for the payment of earnings has been obtained under an enactment of a reciprocating jurisdiction, the designated authority may apply to the Director to enforce the order, award, certificate or judgment.

(3) On receipt of a copy of the order, award, certificate or judgment for the payment of earnings

- (a) certified to be a true copy by the court in which the order, award, certificate or judgment is registered, or
- (b) if there is no provision in the reciprocating jurisdiction for registration, certified to be a true copy by the designated authority,

and on being satisfied that the earnings or an amount payable is still owing, the Director must file the copy of the order, award, certificate or judgment with the clerk of the Court and the order is then enforceable under this Act.

Division 2
Director's Demand to Third Parties

Definition	114 In this Division, “employer” includes a director or former director in respect of whom a certificate has been filed in the Court under section 112(6).
Director's demand to third party	<p>115(1) If the Director knows or has reason to believe that</p> <ul style="list-style-type: none">(a) an employer has failed or is likely to fail to pay<ul style="list-style-type: none">(i) earnings to an employee, or(ii) an amount of compensation that the Director may order payable under section 89(3)(b) to an employee, <p style="text-align: center;">and</p> <ul style="list-style-type: none">(b) a third party 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, <p>the Director may, even though the Director has not determined the amount to which an employee is entitled, issue a demand and serve it on the third party.</p> <p>(2) The Director's demand may direct the third party to remit to the Director the amount specified in the demand.</p>
Duties of third party	<p>116(1) On service of the Director's demand, the third party must</p> <ul style="list-style-type: none">(a) if the third party is indebted to the employer, pay the Director the amount of the indebtedness or the amount specified, whichever is less,(b) if the third party is 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 the third party is 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. <p>(2) If the Director is satisfied that the third party is neither indebted nor likely to become indebted to the employer, the Director must revoke the Director's demand.</p>

(3) On receipt of a reply that future indebtedness will or is likely to arise, the Director may revoke the demand and serve a further Director's demand on the third party to take effect at a future date or on the happening of a future specified event.

(4) A further Director's demand has ongoing effect and the third party must, as soon as indebtedness to the employer arises, pay to the Director the amount of the indebtedness or the amount specified in the demand, whichever is less.

Right of third party to make deductions

117 Despite anything in this Division, when a Director's demand is received by a third party, the third party may deduct from a payment made to the Director any amounts that the employer owes to the third party.

Debt created

118(1) A Director's demand constitutes a debt owed by the third 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 third party is then indebted to the employer, or
- (b) when the indebtedness of the third party arises if the third party is not indebted to the employer when the demand is received and the demand is not revoked.

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

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

- (a) the third 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 the employees the amount payable in respect of which the Director's demand was issued.

Liability of third party not discharged

119 A third party in receipt of a Director's demand does not discharge the third party's indebtedness to an employer

- (a) unless the Director's demand is revoked or the third party receives the approval of the Director in writing to discharge all or part of the debt, or

(b) until the third party complies with the Director's demand.

Receipt issued
by Director

120 A receipt issued by the Director for money paid in accordance with a Director's demand is an absolute discharge of the liability of the third party to the employer to the extent of the amount shown on the receipt.

Payment of
money
received

121 When money is received in accordance with a Director's demand and an order or award has been filed in the Court, the Director may pay the money in accordance with the order or award.

Director's
collection
notice

122(1) When money is received in accordance with a Director's demand and no order or award has been made or, if made, has not been filed in the Court, the Director must as soon as possible serve the employer and employees concerned with a written collection notice stating

- (a) the date of receipt of the money,
- (b) the amount received,
- (c) the amount of earnings claimed by the employees or amount of compensation claimed by the employees that the Director may order payable or, if an order or award has been made, the amount of earnings or compensation that the employer is required to pay under the order or award, and
- (d) that, unless an appeal is made, 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 earnings or an amount payable under an order of the Director for compensation,

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

(2) An employer or employee affected by the collection notice may appeal to an umpire.

Disposition of
money
received

123(1) If a collection notice is not appealed to an umpire, the Director may pay the money in accordance with the collection notice.

(2) If there is an appeal to an umpire, the Director must hold the money pending disposition of the appeal by the umpire.

PART 5

OFFENCES, PROCEDURES AND REGULATIONS

Division 1

Offences and Penalties

No dismissal
for
garnishment
proceedings

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

Discrimination
prohibitions

125 No employer or any other person may terminate or restrict the employment of or in any manner discriminate against an individual because the 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 the person is entitled under this Act, or
- (d) has made or is about to make any statement or disclosure that may be required under this Act.

General
prohibitions

126 No employer, employee or other person may

- (a) contravene or fail to comply with a notice of an officer or an order, award, permit or certificate under this Act;
- (b) delay or obstruct an officer in the exercise of a power or performance of a function or duty under this Act;
- (c) falsify an employment record or give any false or misleading information in respect of employment records;
- (d) make a complaint to an officer knowing it to be untrue.

Premium for
employment
prohibited

127 No employer may receive a payment directly or indirectly from a person for the purpose of employing that person.

Employer
prohibitions

128 No employer may

- (a) fail to pay earnings to an employee or to provide anything to which an employee is entitled under this Act;
- (b) require an employee to work hours in excess of the hours of work permitted under this Act;
- (c) fail to reinstate an employee or provide an employee with alternative work in accordance with section 52 or 53;
- (d) fail to keep employment records as required by this Act.

Offences

129 A person who contravenes section 51, 65, 124, 125, 126, 127 or 128 or a regulation made under section 138(1)(e) is guilty of an offence.

Specific
offences

130(1) If an employee works for less than the minimum wage prescribed by the regulations, both the employer and the employee are guilty of an offence.

(2) If an employee works for less than the overtime rate to which the employee is entitled, both the employer and the employee are guilty of an offence.

(3) If an employee directly or indirectly returns to the employer all or part of the employee's wages, so effecting a reduction of the earnings actually received and retained by the employee to an amount less than the minimum wage prescribed by the regulations or less than the overtime rate to which the employee is entitled, both the employee and the employer are guilty of an offence.

Corporate
offences

131 When a corporation commits an offence under this Act, every director or officer of the corporation who directed, authorized, assented to, permitted, participated in or acquiesced in the offence is guilty of the offence, whether or not the corporation has been prosecuted or convicted.

Penalty

132(1) An employer, employee, director, officer or other person who is guilty of an offence under this Act is liable,

- (a) in the case of a corporation, to a fine of not more than \$100 000, and
- (b) in the case of an individual, to a fine of not more than \$50 000.

(2) In addition to any other penalty imposed under subsection (1), the judge who convicts the person may make an order requiring payment, within the time fixed by the judge, to the Director on behalf of each employee affected, of an amount not exceeding the sum that an officer, the Director or an umpire could have ordered or awarded.

Prosecutions **133** A prosecution for an offence under this Act may be commenced within one year from the date the alleged offence occurred.

Division 2 Procedural Matters

Non-compellable witness **134(1)** In this section, “adjudicator” means the Court of Queen’s Bench or any other court and includes the Labour Relations Board or any other board or person having by law or by the consent of the parties authority to hear, receive and examine evidence, but does not include a commissioner making an inquiry under the *Public Inquiries Act*.

(2) The Minister, a person employed or engaged in the administration of this Act or any person designated by the Minister or the Director or selected by the parties to endeavour to effect settlement of any matter to which this Act applies is not a compellable witness in proceedings before an adjudicator respecting any information, material or report obtained by the Minister or person under this Act.

Service of documents **135(1)** If anything is required or permitted to be served under this Act it may, in addition to any other method provided by law, be served

- (a) in the case of service on an individual,
 - (i) personally or by being left for the individual at the individual’s last or most usual place of abode with a person who appears to be at least 18 years old, or
 - (ii) by being sent to the individual by double registered mail or certified mail to the individual’s residence, place of business or last known postal address;
- (b) in the case of service on a corporation,
 - (i) personally on a director, officer or the manager or person in charge of a place where the corporation carries on business,

(ii) by being left with a person who appears to be at least 18 years old at, or by sending it by double registered or certified mail to

(A) the registered head office of the corporation, or

(B) the office of the attorney of an extra-provincial corporation,

or

(iii) by being sent by double registered or certified mail to a director of the corporation at the director's residence or last known postal address;

(c) in the case of service on a partnership,

(i) personally or by double registered or certified mail on any one or more of the partners, or a person having, at the time of service, control or management of the partnership business at the principal place of business of the partnership, or

(ii) by being sent by double registered or certified mail to any one or more of the partners at their residence or last known postal address.

(2) When it is necessary to prove service of anything in the course of any proceeding or prosecution under this Act,

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

(b) if service is effected by double registered mail or certified mail, service of it is deemed to occur on

(i) the date of actual receipt, or

(ii) 7 days after the date of mailing where proof of service is received without evidence of the date received;

(c) if service is effected by leaving it with a person, service of it is deemed to occur on the date it was so left.

Certification of
copies

136 In a proceeding or prosecution under this Act,

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

- (b) a copy of an employment record or other document or an extract of an employment record certified to be a true copy by an officer or an employee of the Crown in right of Alberta employed in the administration of this Act, or
- (c) a certificate of the Director that an employer has failed to comply with an order, award, permit, certificate or notice

is to 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.

Employer's
duty to notify
Minister of
terminations

137 If an employer intends to terminate the employment of 50 or more employees at a single location within a 4-week period, the employer must give the Minister 4 weeks' written notice of intention to do so, specifying the number of employees whose employment will be terminated and the effective date of the terminations, unless the employees are employed on a seasonal basis or for a definite term or task.

Division 3 Regulations

Regulation-
making
authority

138(1) The Lieutenant Governor in Council may make regulations

- (a) exempting an employment, employer or employee from Part 2 or any provision of it;
- (b) modifying or substituting any provision of Part 2 in respect of an employment, employer or employee;
- (c) respecting fees for the purposes of this Act, including who may establish the fees, who is liable to pay the fees and the manner in which the fees may be recovered;
- (d) requiring an employer in an employment described in the regulations to provide an amount of money instead of providing an annual vacation and vacation pay or an amount of money instead of giving a general holiday with general holiday pay, the conditions of entitlement, what constitutes vacation pay and general holiday pay, the method of computing them, and when they must be paid, and designating days as general holidays;
- (e) prohibiting or regulating the employment of individuals under 18 years of age on the basis of their age, nature of employment or other circumstances and authorizing the

Director to approve exceptions and to impose conditions on the employment;

- (f) fixing one or more minimum wages to be paid by employers to employees and authorizing the Director to approve exceptions, prohibiting or permitting deductions from the minimum wage and fixing the maximum amount to be charged for board or lodging or both that are provided by employers to employees;
 - (g) authorizing an umpire to make an award concerning the imposition of costs specified in regulations, and specifying how those costs are to be recovered;
 - (h) authorizing a person who collects money owing to an employee under an order filed in the Court to recover the costs of collection from the person against whom the order was made and respecting the manner in which the costs may be recovered;
 - (i) respecting appeals from decisions of the Director on the certification of an individual under section 75 and the circumstances under which a certification under section 75 may be reviewed or revoked;
 - (j) respecting the conduct of officers;
 - (k) respecting the collection of the fees charged by a person engaged by the Director under section 72, who is liable to pay the fees and the manner in which they may be recovered;
 - (l) specifying an operation to be a "primary agricultural operation" for the purpose of section 2.
- (2) A regulation may be of particular or general application and applicable at particular times or in particular circumstances, may be subject to conditions and may delegate to or impose on the Director functions, powers or duties.
- (3) A regulation under subsection (1)(a) or (b) and any action or decision taken under or in accordance with the regulations under subsection (1)(a) or (b) apply despite anything in the Act to the contrary, except that no regulation overrides section 2.

PART 6

TRANSITIONAL, CONSEQUENTIAL, REPEAL AND COMMENCEMENT PROVISIONS

Definition **139** *In this Part, “former Act” means the Employment Standards Code, SA 1988 cE-10.2.*

Transitional regulations **140** *The Minister may make regulations*
(a) respecting the conversion to this Act of anything from the former Act;
(b) to deal with any difficulty or impossibility resulting from this Act or the transition to this Act from the former Act.

Transitional provisions **141(1)** *An order, approval, declaration, demand or certificate under the former Act is deemed to be an order, approval, declaration, demand or certificate under this Act.*

(2) Appointments under the former Act continue as appointments under this Act.

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

(4) Subject to subsection (5), this Act applies only in respect of earnings or maternity and adoption benefits earned or to which an employee is entitled after the date this Act comes into force.

(5) If earnings or maternity and adoption benefits are earned or claimed to be earned with respect to a period before and after this Act comes into force, this Act applies to them.

Consequential amendments **142(1)** *In the following provisions “sections 113 and 114 of the Employment Standards Code” is struck out and “sections 109 and 111 of the Employment Standards Code” is substituted:*

Act	Section number
Companies Act	283(1)
Domestic Relations Act	30(7)

(2) Section 46(3) of the Agriculture Financial Services Act is amended by striking out “section 113 of the Employment Standards

Code” and by substituting “section 109 of the Employment Standards Code”.

(3) Section 40.2 of the Employment Pension Plans Act is amended

(a) in subsection (2) by striking out “section 113 of the Employment Standards Code” and substituting “section 109 of the Employment Standards Code”;

(b) in subsection (3) by striking out “sections 113 and 114 of the Employment Standards Code” and substituting “sections 109 and 111 of the Employment Standards Code”.

(4) Section 7(3) of the Masters and Servants Act is amended by striking out “section 113(2) of the Employment Standards Code” and substituting “section 109(3) of the Employment Standards Code”.

Repeal

143 *The Employment Standards Code, SA 1988 cE-10.2, is repealed.*

Coming into
force

144(1) *In this section, “this Act” does not include a regulation made under this Act.*

(2) This Act comes into force on Proclamation.