

October 21, 2024

**CONSULTATION DRAFT**  
**EMPLOYMENT STANDARDS ACT**

**BILL NO.****2024**

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

**PART 1 – INTERPRETATION**

**1. Definitions**

In this Act

- (a) “**averaging agreement**” means an agreement to average an employee’s hours of work to determine overtime, in accordance with section 25;
- (b) “**Board**” means the Employment Standards Board continued under section 7;
- (c) “**chief inspector**” means the chief inspector appointed under subsection 6(1);
- (d) “**corporation**” includes a co-operative association incorporated under the *Co-operative Associations Act* R.S.P.E.I. 1988, Cap. C-23;
- (e) “**Department**” means the Department of Workforce, Advanced Learning and Population;
- (f) “**employee**” includes
  - (i) a person who is on leave from an employment,
  - (ii) a person who is being trained by an employer to perform work for the employer, and
  - (iii) a former employee, in respect of the former employee’s rights and duties while an employee;
- (g) “**employer**” includes a former employer, in respect of the former employer’s powers and duties while an employer;
- (h) “**former Act**” means the *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.2;
- (i) “**inspector**” means an inspector appointed under subsection 6(2) or the chief inspector;
- (j) “**layoff**” means a temporary interruption of an employee’s employment at the direction of the employer because of a lack of work;
- (k) “**minimum wage**” means the minimum wage payable to an employee, set by order of the Board pursuant to section 20;
- (l) “**Minister**” means the Minister of Workforce, Advanced Learning and Population;
- (m) “**overtime hour**” means an hour of work performed by an employee for an employer in a work week, in excess of the employee’s standard number of hours of work;
- (n) “**paid holiday**” means
  - (i) New Year’s Day;
  - (ii) Islander Day;

- (iii) Good Friday;
- (iv) Canada Day, observed on July 1;
- (v) Labour Day;
- (vi) National Day for Truth and Reconciliation, observed on September 30;
- (vii) Remembrance Day;
- (viii) Christmas Day; and
- (ix) any other day prescribed as a paid holiday;
- (o) “**panel**” means a panel of the Board established under section 8;
- (p) “**pay**” means all compensation due or paid to an employee by an employer, including wages, holiday pay, vacation pay, leave pay, tips or gratuities, and benefits;
- (q) “**pay period**” means the interval between payments of pay;
- (r) “**place of business**” means a place where an employer carries on a business or undertaking;
- (s) “**regular wage rate**” means an employee’s wage rate for an hour of work performed by the employee for the employer within the employee’s standard number of hours of work;
- (t) “**standard number of hours of work**” means the standard number of hours of work of an employee in a work week, established under subsection 15(1) or an order of the Board;
- (u) “**termination**” means the ending of an employee’s employment by the employer;
- (v) “**vacation pay**” means compensation earned by an employee concurrently with wages, due or paid to an employee in accordance with sections 29 to 35;
- (w) “**wages**” means salary, commission or other monetary compensation measured by time, piece or otherwise, due or paid to an employee for work performed for an employer, but does not include holiday pay, vacation pay, leave pay, tips or gratuities, or benefits;
- (x) “**week**” means a period of seven consecutive days;
- (y) “**work**” means the labour or services an employer requires or permits an employee to perform for the employer, whether in the employer’s place of business or elsewhere, and includes
  - (i) labour or services performed during a trial period of employment,
  - (ii) participation in training required by the employer, and
  - (iii) being available to work, at a location designated by the employer, other than the employee’s residence;
- (z) “**workplace**” means a place of business where an employee performs work for an employer, including a building, structure, premises, vehicle or vessel on water or land;
- (aa) “**work week**” means a recurring period of seven consecutive days beginning on Sunday and ending on Saturday, or beginning on an alternate day of the week selected by the employer and ending six days later, for the purpose of scheduling work.

## 2. Purposes of Act

The purposes of this Act are

- (a) to establish a minimum standard of conditions and benefits of employment for employees;
- (b) to promote positive relationships and open communication between employers and employees;

- (c) to foster a productive and efficient labour force that can contribute fully to the prosperity of Prince Edward Island;
- (d) to assist employees to meet work and personal responsibilities; and
- (e) to provide fair and efficient procedures for resolving disputes about this Act and the regulations.

### **3. Application of Act**

- (1) This Act applies to all employers and employees, except as otherwise provided in this Act and the regulations.

#### **Collective agreement**

- (2) This Act does not apply to an employment governed by a collective agreement pursuant to the *Labour Act* R.S.P.E.I. 1988, Cap. L-1, except for the following provisions:
  - (a) section 4, in relation to the requirements, conditions or benefits set out in the provisions referred to in this subsection;
  - (b) sections 27 and 28, respecting paid holidays;
  - (c) sections 36, 37 and 39, respecting payment of pay, pay statements and payroll records;
  - (d) section 43, respecting sick leave;
  - (e) section 44, respecting medical leave;
  - (f) sections 45 to 48, respecting pregnancy and parental leave;
  - (g) section 50, respecting compassionate care leave;
  - (h) section 54, respecting leave related to domestic violence, intimate partner violence and sexual violence;
  - (i) section 55, respecting emergency leave;
  - (j) section 56, respecting leave for reservists;
  - (k) section 61, respecting group termination or layoff;
  - (l) Part 7, where dispute resolution mechanisms under the collective agreement do not apply;
  - (m) Part 8, insofar as it relates to the provisions referred to in this subsection.

#### **Not applicable to management, executive employees**

- (3) Part 3 and sections 23, 24 and 25 do not apply to the employment of
  - (a) an employee whose principal employment responsibilities consist of supervising or directing human or other resources; or
  - (b) an employee employed in an executive role.

### **4. No agreement to waive minimum standards**

- (1) The requirements of this Act and the regulations are minimum requirements and an agreement to waive any of those requirements is void and of no effect.

#### **Agreement for more favourable conditions or benefits**

- (2) A provision of an agreement providing employment conditions or benefits that are more favourable than those provided for an employee under a provision of this Act or the regulations prevails over that provision of this Act or the regulations.

## PART 2 – ADMINISTRATION

### Minister and Inspectors

#### 5. Minister

- (1) The Minister is responsible for the administration of this Act.

##### Delegation

- (2) The Minister may, in writing, delegate to an employee of the Department any of the Minister's powers or duties under this Act, subject to any limitations or conditions set out in the delegation.

#### 6. Chief inspector

- (1) The Minister shall appoint a person as a chief inspector to exercise the powers and perform the duties of the chief inspector set out in this Act and the regulations, and to perform any other functions assigned by the Minister.

##### Inspectors

- (2) The Minister may appoint any person as an inspector to exercise the powers and perform the duties of an inspector set out in this Act and the regulations or specified in another enactment, and to perform any other functions assigned by the Minister.

##### Inspector by office

- (3) The chief inspector is an inspector by virtue of the office.

### Employment Standards Board

#### 7. Employment Standards Board

- (1) The Employment Standards Board, established pursuant to the former Act, is continued.

##### Composition of Board

- (2) The Board shall be comprised of the following members appointed by the Lieutenant Governor in Council:
- (a) at least six persons equally representative of employees and employers respectively;
  - (b) one additional person who shall be the chairperson.

##### Vice-chairpersons

- (3) The Lieutenant Governor in Council may appoint one or more members of the Board as a vice-chairperson.

##### Term of office

- (4) A member of the Board shall be appointed for a term not exceeding three years and may be reappointed.

##### Continuation after expiry

- (5) A member of the Board continues to hold office after the expiry of the member's term until the member is reappointed or a successor is appointed.

**Remuneration**

- (6) A member of the Board may be remunerated as determined by the Lieutenant Governor in Council.

**Expenses**

- (7) A member of the Board shall be reimbursed, as determined by Treasury Board, for the reasonable expenses incurred by the member in carrying out the member's duties.

**Quorum**

- (8) A majority of the members of the Board or a panel of the Board constitutes a quorum at any meeting.

**Decision of majority is decision of Board or panel**

- (9) A decision of the majority of the members of the Board or a panel of the Board is the decision of the Board or panel and, if the votes are equal, the chairperson shall have the casting vote.

**8. Panel of the Board**

- (1) The chairperson of the Board may establish a panel of the Board comprised of a chairperson and two other members of the Board.

**Powers of a panel**

- (2) A panel has the power and authority of the Board under this Act and the regulations with respect to matters assigned to it by the chairperson of the Board.

**Referral of matters by chairperson of the Board**

- (3) The chairperson of the Board may
- (a) refer any matter that is before the Board to a panel; and
  - (b) refer any matter that is before a panel to another panel.

**9. Secretary**

- (1) The Minister may appoint a secretary to the Board to perform duties set out in this Act or the regulations and assigned by the Board or the Minister.

**Clerical and other staff**

- (2) The Minister shall provide the Board with the clerical and other staff the Minister considers necessary and fix their remuneration.

**10. Functions**

The functions of the Board include

- (a) conducting an annual review, making a report and establishing the minimum wage rate and deductions that may be made for meals and accommodations from an employee's wages under section 20;
- (b) establishing the standard number of hours of work for specified employers or employees under section 15;
- (c) hearing and determining appeals and reconsiderations under Part 7; and
- (d) performing any functions specified in another enactment.

**11. Powers under *Public Inquiries Act***

- (1) In the discharge of the functions of the Board, the Board and each of its members have the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31.

**Evidence**

- (2) The Board may receive and accept information and evidence on oath or affirmation, by affidavit or otherwise as it considers appropriate, whether admissible as evidence in court or not.

**Practices and procedures**

- (3) The Board may determine its own practices and procedures but shall give full opportunity to all interested persons to present evidence and to make representations.

**Rules and forms**

- (4) The Board may
- (a) make rules governing its practices and procedures and the exercise of its powers; and
  - (b) establish any forms it considers advisable.

**12. Exclusive jurisdiction of Board**

- (1) The Board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal or reconsideration under Part 7 and to make any order permitted to be made.

**Decision or order final**

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

**13. Stated case to Court of Appeal**

- (1) The Board may, on its own motion, state a case in writing for the opinion of the Court of Appeal upon any question that, in the opinion of the Board, is a question of law.

**Procedure**

- (2) The Court of Appeal shall determine the procedure to be followed on a stated case and may expand or amend any question referred to it.

**Decision**

- (3) The Court of Appeal shall hear and determine a stated case and remit the matter to the Board with its opinion on the question as referred, or as expanded or amended.

**Costs**

- (4) No costs shall be awarded in a stated case under this section.

**14. Alternative dispute resolution**

- (1) The Board may use alternative dispute resolution, where it considers it appropriate, to resolve any issue or matter in dispute before the Board.

**Agreement may be incorporated into order**

- (2) The terms of any agreement made through alternative dispute resolution may be incorporated in and form part of an order made by the Board.

**PART 3 – HOURS OF WORK****15. Standard number of hours of work**

- (1) Except as otherwise specified by order of the Board and subject to any averaging agreement, the standard number of hours of work of an employee in a work week is 44 hours.

**Standard established by Board**

- (2) The Board may, by order published in the Royal Gazette, establish a standard number of hours of work that exceeds 44 hours in a work week, for employees of specified employers or classes of employers or specified employees or classes of employees.

**Factors considered**

- (3) When making an order under subsection (2), the Board shall consider
- (a) the seasonal nature of the work;
  - (b) the effect of a standard number of hours of work that exceeds 44 hours on the health and safety of workers and the public;
  - (c) work requirements that include the need to have employees in the workplace while not always engaged in work-related activities;
  - (d) the duration of the work schedule customary in the industry; and
  - (e) any other prescribed factors.

**Review of order specified**

- (4) The Board may require that the order shall be reviewed on, after or by a specified date or event, or within a specified period after the date of the order.

**Order reviewed any time**

- (5) Notwithstanding subsection (4), the Board may, at any time, review and vary or revoke an order made under this section or section 15 of the former Act.

**16. Work schedule**

- (1) An employer shall provide to an employee, in writing, a work schedule specifying
- (a) the time when work begins and ends;
  - (b) where work is done in shifts, the time when each shift begins and ends;
  - (c) where reasonably practicable, the time when a rest or meal break begins and ends; and
  - (d) where reasonably practicable, the number and time of overtime hours.

**Work schedule for week**

- (2) A work schedule shall cover at least one work week.

**Change to work schedule**

- (3) Where there is any change in an employee's work schedule, the employer shall provide an updated work schedule in accordance with subsections (1) and (2).

**Delivery of work schedule**

- (4) An employer may provide a work schedule to an employee personally, electronically, by posting it in the workplace or on a secure website to which the employee has access, or in any other manner that informs the employee of the schedule.

**Notice**

- (5) An employer shall provide a work schedule to an employee at least one week before the start of the schedule, except where a change in the schedule is unexpected, unusual or due to an emergency.

**17. Rest day**

- (1) Subject to the regulations and any averaging agreement, an employer shall provide an employee at least 24 consecutive hours of unpaid rest in every week.

**Rest period**

- (2) An employer shall provide an employee at least eight consecutive hours of unpaid rest in every 24-hour period, except where
- (a) an accident occurs, urgent work is necessary, or other unforeseeable or unpreventable circumstances occur; or
  - (b) it is not reasonable for the employee to have eight consecutive hours of unpaid rest.

**Split shift**

- (3) An employer shall ensure that an employee completes a split shift within 12 hours of starting it.

**Rest or meal period**

- (4) An employer shall provide an employee with an unpaid rest or meal period of at least 30 consecutive minutes at intervals not exceeding five consecutive hours of work.

**Not required to remain at workplace**

- (5) An employer shall not require an employee to remain at the employee’s workplace during an unpaid rest or meal period provided by the employer in accordance with subsection (4).

**PART 4 – PAY**

**Pay Transparency**

**18. Definition, applicant**

- (1) In this section, “**applicant**” means a person who applies for employment with an employer but does not include an existing employee of the employer.

**Pay history**

- (2) No employer shall seek information about an applicant’s pay history by any means, whether directly or through an agent.

**Unprompted disclosure**

- (3) Nothing in this section prohibits an applicant from, voluntarily and without prompting, disclosing information about the applicant’s pay history to an employer or an employer’s agent.



**Comparable pay**

- (4) Nothing in this section prohibits an employer from seeking information about the ranges of pay or aggregate pay provided for positions comparable to the position for which the applicant is applying.

**Use of information**

- (5) Nothing in this section prohibits the employer from considering or relying on information disclosed or obtained in accordance with this section in determining pay for the applicant.

**Exception, public information**

- (6) This section does not apply to pay history information that is publicly available.

**19. Job posting**

- (1) An employer who advertises a specific job to the general public shall include in the job posting, the expected pay or range of expected pay for the position.

**Does not apply**

- (2) For greater certainty, subsection (1) does not apply to a recruitment campaign, a general help wanted sign or a job posting that is only advertised to existing employees of the employer.

**Entitlement to Pay****20. Minimum wage and deductions order**

- (1) The Board shall, subject to the approval of the Lieutenant Governor in Council, by order
- (a) establish one minimum wage for all employees, on an hourly, daily, weekly, monthly or other basis; and
  - (b) establish the maximum amount, if any, that an employer may deduct from the wages of an employee for meals or lodging, or both, provided by the employer to the employee.

**Annual review**

- (2) The Board shall meet at least once per year to review an order made under subsection (1) and, in conducting a review, shall invite and consider written and in-person submissions from the public.

**Report on effects of minimum wage**

- (3) In seeking the approval of the Lieutenant Governor in Council for an order under subsection (1), the Board shall issue a report on the social and economic effects of the minimum wage in the province considering factors including
- (a) any cost-of-living increases since the previous order;
  - (b) economic conditions within the province;
  - (c) reasonable return on private investment;
  - (d) measures of poverty; and
  - (e) the ability of an employee to live with dignity and meaningfully participate in the community.

**Publication and effective date of order**

- (4) An order made under subsection (1) shall be published in the Royal Gazette at least six months before it comes into force.

**Report available to the public**

- (5) The Board shall make the report issued under subsection (3) available to the public on the publication of an order under subsection (4).

**Order posted in workplace**

- (6) An employer shall post and keep posted in a conspicuous place in the workplace, a copy of all applicable orders made under subsection (1).

**Additional notice of order**

- (7) An employer shall give additional notice to employees of an order made under subsection (1) as directed by the Board.

**Order binding and effective**

- (8) An order made under subsection (1) is binding on employers and employees on and after the date it comes into force and no order is subject to variation through individual agreement.

**Order under former Act**

- (9) An order made under subsection 5(1) of the former Act shall be considered an order made under subsection (1) for the purposes of this section.

**21. Entitlement to wages**

An employer shall pay an employee wages at a rate that is equal to or greater than the minimum wage for each hour or part of an hour the employee is required or permitted to perform work for the employer.

**22. Notice required before reducing wage rate**

An employer shall give an employee notice of any reduction in the employee's regular wage rate at least one pay period before the start of the pay period in which the reduction is to take effect.

**23. Reporting pay**

Each time an employee is required to report for work, the employer shall pay the employee wages at the employee's regular wage rate for at least three hours.

**24. Overtime pay**

- (1) Subject to subsections (2) and (3), an employer shall pay an employee at the rate of one and one-half times the employee's regular wage rate for each overtime hour.

**Paid time off in lieu of overtime pay**

- (2) An employee may take time off with pay in lieu of overtime pay, where the employee
- (a) gives the employer written notice of the employee's election to take time off with pay in lieu of overtime pay; and
  - (b) takes the time off with pay within three months of the end of the work week in which the overtime occurred.

**Number of hours of paid time off**

- (3) An employer who receives a written notice under subsection (2) shall grant the employee one and one-half hours of time off with pay for each overtime hour of work to which the notice applies.

**Employment ends before paid time off**

- (4) Where an employee's employment ends before the employee is able to take time off with pay in lieu of overtime pay, the employer shall pay the employee overtime pay in accordance with subsection (1) for any overtime hours for which the employee has not been compensated.

**25. Averaging agreement**

- (1) Notwithstanding section 24, an employer and an employee may enter into a written agreement to average the employee's hours of work over a period of two to four weeks for the purpose of determining the employee's entitlement, if any, to overtime pay.

**Contents of agreement**

- (2) An averaging agreement under subsection (1) is not valid unless
- (a) the agreement specifies
    - (i) the number of weeks covered by the agreement,
    - (ii) the start date and an expiry date of the period covered by the agreement,
    - (iii) the work schedule for each day covered by the agreement,
    - (iv) the number of times, if any, that the agreement may be renewed; and
  - (b) the agreement is signed and the employee receives a copy of the agreement before the start date provided in the agreement.

**Amending work schedule**

- (3) The employer and employee may agree to amend the work schedule in an averaging agreement, provided that the total number of work hours scheduled in the agreement remain the same.

**Maximum scheduled hours of work**

- (4) During the period covered by an averaging agreement, the employer shall not schedule the employee to work more than an average of 44 hours per week.

**Overtime pay after average of 44 hours per week**

- (5) During the period covered by an averaging agreement, the employer shall pay an employee at the rate of one and one-half times the employee's regular wage rate for each hour of work the employee is required or permitted to perform for the employer that exceeds an average of 44 hours per week.

**Rest period**

- (6) During the period covered by an averaging agreement, the employer shall
- (a) provide the employee with an unpaid rest period of at least 36 consecutive hours for each week covered by the averaging agreement, which may be taken at any time during the period covered by the agreement; or
  - (b) pay the employee at a rate of one and one-half times the employee's regular wage rate for each hour of work the employee is required or permitted to perform for the employer instead of unpaid rest under clause (a).

**Provisions are terms of agreement**

- (7) Subsections (3) to (6) are deemed to be incorporated as terms of an averaging agreement.

**Retention of agreement**

- (8) An employer shall retain an averaging agreement for at least four years after the expiry date of the averaging agreement or, where applicable, the last renewal of the averaging agreement, whichever occurs latest.

**26. Tips and gratuities**

- (1) Tips and gratuities are the property of the employee to whom or for whom they are given.

**Exclusive to employee**

- (2) No employer shall require an employee to share a tip or gratuity with the employer.

**Restrictions**

- (3) No employer shall
- (a) withhold tips or gratuities intended for an employee; or
  - (b) treat tips or gratuities intended for an employee as wages or partial wages of the employee,

unless the employer and the employee have agreed that those tips or gratuities are to be considered additional wages of the employee.

**Employer surcharge**

- (4) Where an employer imposes a surcharge or other charge on a customer in lieu of the payment of tips or gratuities to an employee, subsections (1) to (3) apply in respect of the amounts collected as a surcharge or other charge.

**Payments of amounts collected as surcharge**

- (5) Where amounts collected as a surcharge or other charge in lieu of the payment of tips or gratuities are payable to an employee, the employer shall pay the amounts collected to the employee not later than the last day of the next pay period of the employee.

**Payment of tips or gratuities based on billings**

- (6) Where tips or gratuities are payable to an employee based on the employer's billings for services provided, the employer shall pay the tips or gratuities to the employee within 60 days of the date the services are provided.

**Administrative charges**

- (7) An employer shall not pass on any administrative costs of the employer, including credit card or debit card fees, to an employee.

**Pooling**

- (8) An employer may, pursuant to a written policy, pool tips or gratuities for the benefit of some or all employees.

**Notification of pooling policy**

- (9) An employer shall
- (a) notify an employee, in writing, of any pooling policy in effect at the time the employee is hired or implemented after the employee is hired; and
  - (b) post a copy of the pooling policy in the employer's place of business.

## Paid Holidays

### 27. Paid holiday on work day

- (1) Subject to subsection (3), where a paid holiday falls on a work day of an employee, the employer shall grant the employee a holiday with pay on the paid holiday, unless
  - (a) the employee, without the employer's direction or permission or any reasonable cause, fails to work on both the employee's last work day before the paid holiday and the employee's first work day after the paid holiday; or
  - (b) the employee may elect to work or not to work when requested to do so.

### Paid holiday not on work day

- (2) Subject to subsection (3), where a paid holiday falls on a day that is not a work day of an employee, the employer shall grant the employee a holiday with pay on
  - (a) the employee's next work day immediately following the paid holiday;
  - (b) the employee's next work day immediately following the employee's annual vacation; or
  - (c) a day agreed upon by the employer and the employee that occurs before the employee's next annual vacation.

### Pay for working on paid holiday

- (3) Where an employer requires or permits an employee to work on a paid holiday, the employer shall
  - (a) pay the employee
    - (i) for the time worked on the paid holiday at the rate of one and one-half times the employee's regular wage rate, and
    - (ii) for the paid holiday at the employee's regular rate of pay; or
  - (b) do the following:
    - (i) pay the employee for the time worked on the paid holiday at the employee's regular wage rate, and
    - (ii) grant the employee a holiday with pay on another day agreed upon by the employer and the employee that occurs before the date of the employee's next annual vacation.

### 28. Pay for paid holiday

- (1) The amount payable to an employee for a paid holiday is
  - (a) an amount equal to five per cent of the employee's wages, not including overtime pay, earned in the four weeks before the paid holiday; or
  - (b) where the employee is part of a prescribed class or type of employees, an amount calculated in accordance with the regulations.

### Determination of wages

- (2) For the purposes of clause (1)(a), an employee's wages earned in the four weeks before the paid holiday include
  - (a) pay for any paid vacation the employee took during those four weeks; and
  - (b) pay for any other paid holiday that occurred during those four weeks.

## Vacation and Vacation Pay

### 29. Vacation pay

- (1) Vacation pay shall accrue to an employee in an amount equal to
  - (a) four per cent of the sum of the employee's wages and the cash value of any meals or lodging, or both, provided by the employer per pay period, where the employee has completed less than five years of continuous employment with the employer; or
  - (b) six per cent of the sum of the employee's wages and the cash value of any meals or lodging, or both, provided by the employer per pay period, where the employee has completed five or more years of continuous employment with the employer.

#### Cash value of meals and lodging

- (2) For the purpose of calculating vacation pay, the cash value of meals or lodging, or both, provided by the employer is equal to the maximum amount that an employer may deduct from the wages of an employee for meals or lodging, or both, provided by the employer, as set out in the order made by the Board pursuant to section 20.

### 30. Annual paid vacation

- (1) After each year of continuous employment an employee completes with an employer, the employer shall, within the following four months, grant the employee
  - (a) two weeks of uninterrupted paid vacation, where the employee has completed less than five years of continuous employment with the employer; or
  - (b) three weeks of uninterrupted paid vacation, where the employee has completed five or more years of continuous employment with the employer.

#### Dates of annual vacation

- (2) Where an employer and an employee are unable to agree on when the employee will take annual paid vacation, the employer shall select the date on which the vacation is to begin and notify the employee at least one week before that date, at which time the employee shall take the vacation.

#### Payment of vacation pay

- (3) An employer shall pay to the employee, by the last day of the next pay period after the vacation ends, the vacation pay the employee accrued in the year of continuous employment during which the employee earned the paid vacation.

#### Holiday occurring during vacation

- (4) Where a paid holiday occurs during the paid vacation, the period of the vacation shall be lengthened by one work day.

#### Paid sick leave

- (5) Paid sick leave shall not be considered paid vacation.

### 31. Part-time employee, election not to take vacation

- (1) An employee who worked less than 90 per cent of the standard number of hours of work applicable to the employee in the year of continuous employment during which the employee earned paid vacation, may elect not to take the vacation.

**Notice of election**

- (2) An employee may make an election under subsection (1) by giving the employer written notice of the election by the end of the year of continuous employment.

**Payment of vacation pay**

- (3) On receiving notice under subsection (2), the employer shall, within one month of the end of the year of continuous employment, pay to the employee the vacation pay that the employee accrued in that year.

**32. Part-time employee, waive paid vacation and receive vacation pay per pay period**

- (1) An employee who is employed to work less than 90 per cent of the standard hours of work applicable to the employee, may elect to
- (a) waive any future entitlement to paid vacation at the end of a year of continuous employment with the employer; and
  - (b) receive vacation pay per pay period.

**Notice of election**

- (2) An employee may make an election under subsection (1) by giving the employer written notice of the election before the end of the employee's first pay period.

**Payment of vacation pay**

- (3) On receiving notice under subsection (2), the employer shall pay to the employee per pay period the vacation pay that the employee has accrued in the pay period.

**33. Seasonal or short-term employee, election to receive vacation pay per pay period**

- (1) An employee who is employed to work less than one continuous year for an employer may elect to receive vacation pay per pay period.

**Notice of election**

- (2) An employee may make an election under subsection (1) by giving the employer written notice of the election before the end of the employee's first pay period.

**Payment of vacation pay**

- (3) On receiving notice under subsection (2), the employer shall pay to the employee per pay period the vacation pay that the employee has accrued in the pay period.

**34. End of employment**

Where an employee's employment ends, the employer shall, by the last day of the next pay period, pay to the employee any vacation pay that the employee accrued but has not been paid.

**35. Vacation pay, held in trust**

- (1) Notwithstanding any other enactment, an employer is considered to hold any vacation pay accrued by an employee in trust for the employee for payment in accordance with sections 29 to 34.

**Priority over other creditors**

- (2) Any vacation pay accrued by an employee is a charge against the assets of the employer or the employer's estate and shall have priority over all other claims, including those of the Government.

**Payment and Pay Records**

**36. Payment of pay**

- (1) An employer shall pay to an employee, in the lawful currency of Canada, the pay to which the employee is entitled
- (a) in cash;
  - (b) by cheque drawn upon, honoured and paid by a chartered bank, credit union, trust company or other institution insured under the *Canada Deposit Insurance Corporation Act*;
  - (c) by direct deposit into an account of the employee in a chartered bank, credit union, trust company or other institution insured under the *Canada Deposit Insurance Corporation Act*; or
  - (d) using any other prescribed method of payment.

**Bad cheque – failure to pay**

- (2) For the purpose of clause (1)(b), where a cheque is determined to be valueless within six months of the date it is issued, the employer has failed to pay the employee.

**Time of payment**

- (3) Except where otherwise provided in a collective agreement,
- (a) a pay period shall not exceed 16 days; and
  - (b) pay shall include all wages earned up to and including a day that is not more than five work days prior to the day fixed for payment.

**Missed pay**

- (4) Where an employee is not paid on the day fixed for payment due to absence or for any other reason, the employee is entitled to be paid on demand afterwards during the employee's regular hours of work.

**Payment on termination of employment**

- (5) On termination, an employer shall pay to an employee all the outstanding pay to which the employee is entitled not later than the last day of the next pay period after the termination.

**37. Pay statement**

- (1) An employer shall give to each employee, at the time pay is being paid to the employee, a written statement showing
- (a) the name and address of the employer and the name of the employee;
  - (b) the period of time or the work for which the wages are being paid;
  - (c) the regular wage rate to which the employee is entitled and the number of hours worked;
  - (d) the gross amount of wages to which an employee is entitled;
  - (e) the gross amount of any holiday pay or vacation pay being paid to the employee;



- (f) the gross amount of any pay for paid leave being paid to the employee;
- (g) the gross amount of any pay in lieu of notice of termination being paid to the employee;
- (h) the amount and purpose of each deduction;
- (i) any bonus, gratuity, living allowance, or other payment to which the employee is entitled; and
- (j) the net amount of money being paid to the employee.

**Electronic pay statement**

- (2) An employer may give a pay statement to an employee electronically if the employer provides to the employee, through the employee's workplace,
  - (a) confidential access to the electronic pay statement; and
  - (b) a means of making a paper copy of the electronic pay statement.

**38. Deductions from pay**

- (1) No employer shall, directly or indirectly, withhold or deduct all or part of an employee's pay, or require an employee to return all or part of the employee's pay to the employer, except where authorized or required
  - (a) under this section;
  - (b) under any other enactment or an Act of the Parliament of Canada, or any regulations made under it;
  - (c) by an order made under Part 7; or
  - (d) by a court order.

**Authorized deductions**

- (2) An employer may withhold, deduct or require the return of all or part of an employee's pay
  - (a) for the purpose of contributing to a group benefit plan in which the employee participates;
  - (b) on the request of the employee, for the purpose of contributing to a savings plan;
  - (c) to reconcile a previous advance of pay to the employee;
  - (d) to cover a cash shortage; or
  - (e) on the written authorization of the employee.

**Cash shortage**

- (3) Notwithstanding clauses (2)(d) and (e), no employer shall withhold, deduct or require the return of all or part of an employee's pay to cover a cash shortage unless
  - (a) the employer finds the cash shortage during or at the end of the employee's shift;
  - (b) the employer
    - (i) advises the employee of the cash shortage at the end of the employee's shift or as soon as is reasonably practicable after the shift, and
    - (ii) permits the employee the opportunity to explain or find the cash shortage;
  - (c) the cash shortage does not result from the failure of a customer to pay for a product or service; and
  - (d) the employee had sole control of the cash or left the cash unattended without reasonable excuse.

**Employee cannot authorize**

- (4) Notwithstanding clause (2)(e), an employer shall not withhold, deduct or require the return of all or part of an employee's pay to cover the cost of
- (a) faulty work done by the employee or damage caused by the employee to the property of the employer; or
  - (b) the employee's uniform or footwear, where it is unique to the employer's business and supplied or required by the employer.

**Deposit for uniform or footwear**

- (5) For greater certainty, clause (4)(b) does not preclude an employer from requiring an employee to give the employer a deposit equal to up to 25 per cent of the cost of any uniform or footwear that the employer supplies for the use of the employee.

**Return of deposit**

- (6) Where an employee's employment ends, the employer shall refund a deposit referred to in subsection (5) on the return of the uniform or footwear.

**Deposit restriction**

- (7) No employer shall require an employee to give the employer a deposit equal to more than 25 per cent of the cost of any uniform or footwear that is supplied by the employer to the employee.

**39. Payroll records**

- (1) An employer shall, in respect of each employee, make and keep at the employer's principal place of business in the province, for a period of 36 months after the employee last performs work for the employer, complete and accurate records of
- (a) the employee's name, address, date of birth and social insurance number;
  - (b) the employee's wage rate and net pay for each pay period;
  - (c) the number of hours the employee works in each day and week;
  - (d) the employee's gross earnings per pay period;
  - (e) the deductions from the employee's gross earnings and the nature of each deduction;
  - (f) the employee's start date and end date of employment;
  - (g) the type of work performed by the employee;
  - (h) any period during which the employee was on vacation;
  - (i) any vacation pay due or paid to the employee;
  - (j) any paid holiday pay due or paid to the employee;
  - (k) any period during which the employee was on a leave of absence and the reason for the leave of absence;
  - (l) any paid leave pay due or paid to the employee;
  - (m) the number of overtime hours the employee has accumulated and used; and
  - (n) the date of any termination, suspension or layoff of the employee and the date of the corresponding notice of termination, suspension or layoff.

**Employer to provide information on request**

- (2) An employer shall, within seven days after receipt of a request from an inspector or the Board, or within a longer time allowed by the inspector or the Board, provide to the inspector or the Board
- (a) a statement of the information required to be kept under subsection (1); and

- (b) copies of any employment contracts between the employer and the employees.

## PART 5 – LEAVE OF ABSENCE

### Interpretation

#### 40. Definitions

In this Part,

- (a) “**child**” means a person who is under 18 years of age, except where describing a relationship between persons;
- (b) “**crime**” means an offence under the *Criminal Code* (Canada);
- (c) “**critical illness or injury**” means an acute illness or injury that significantly changes a person’s state of health;
- (d) “**family member**” includes an immediate family member and any of the following in relation to an employee or the employee’s spouse:
- (i) a grandparent or grandchild,
  - (ii) a parent’s sibling, sometimes referred to as an aunt or uncle,
  - (iii) a sibling’s child, sometimes referred to as a niece or nephew,
  - (iv) a child’s spouse, sometimes referred to as a son-in-law or daughter-in-law,
  - (v) a person with whom the person or the person’s spouse has a relationship akin to a close relative,
  - (vi) a person or class of persons prescribed as a family member;
- (e) “**immediate family member**” means, in relation to an employee, the employee’s spouse and any of the following in relation to the employee or the employee’s spouse:
- (i) a child, parent or sibling, and
  - (ii) a person or class of persons prescribed as an immediate family member;
- (f) “**leave**” means a leave of absence;
- (g) “**medical practitioner**” means a person who is authorized to practice medicine under the laws of the jurisdiction in which the person practices medicine;
- (h) “**midwife**” means a person who is authorized to practice midwifery under the laws of the jurisdiction in which the person practices midwifery;
- (i) “**nurse practitioner**” means a person who is authorized to practice nursing as a nurse practitioner in the jurisdiction in which the person practices nursing;
- (j) “**parent**” means, in relation to a child,
- (i) a person who is presumed or declared to be a parent of a child under Part 4 of the *Children’s Law Act* R.S.P.E.I. 1988, Cap. C-6.1,
  - (ii) a person who has a parent-like relationship with a child and has decision-making responsibility for the child under a parenting order made under section 39 of the *Children’s Law Act*,
  - (iii) the spouse of a parent of a child,
  - (iv) a person with whom a child has been placed for the purposes of adoption,
  - (v) a guardian or foster parent of a child, and
  - (vi) a person who has the care and custody of a child, whether or not the person and the child are related by blood or adoption;

- (k) “**qualified practitioner**” means a person prescribed as a qualified practitioner.

### General Rights

#### 41. Leave shall be granted on request

- (1) Where an employee is entitled to leave under this Part, the employer shall, subject to any terms or conditions specified in this Act or the regulations, grant the leave on the request of the employee.

##### Request for leave

- (2) Where an employee requests a period of leave under this Part, the employee shall advise the employer of the start date and anticipated duration of the leave.

##### No dismissal, suspension or layoff due to leave

- (3) An employer shall not dismiss, suspend or layoff an employee for reasons arising solely from leave requested by and granted to the employee.

##### Seniority and employment not affected

- (4) An employee who has been granted leave under this Part
- (a) retains any seniority accrued up to the commencement of the leave; and
  - (b) is considered to be continuously employed by the employer during the leave.

##### Same or comparable position, same pay and benefits

- (5) Where an employee returns to work after taking leave to which the employee was entitled under this Part, the employer shall permit the employee to return to the position the employee held immediately before the leave began or, where that position no longer exists, a comparable position, with not less than the same wage rate and benefits.

#### 42. Membership in benefit plan

- (1) An employee who is granted leave under this Part may maintain the employee’s membership in an employment-related benefit plan during the leave by continuing to pay any employer and employee premiums for the benefit plan during the leave.

##### Notice by employer

- (2) The employer shall notify the employee, in writing, of the employee’s right under subsection (1) at least ten days before the deadline to exercise that right without an interruption in benefits.

##### Notice by employee

- (3) An employee shall notify the employer, in writing, before the deadline referred to in subsection (2) of the employee’s decision to exercise the employee’s right under subsection (1).

##### Benefit plan, defined

- (4) In this section, “**benefit plan**” means a life insurance plan, accidental death plan, extended health plan, dental plan or other prescribed benefit plan or class of benefit plans.

## Sick Leave

### 43. Unpaid sick leave

- (1) An employee who has been employed by the same employer for a continuous period of at least 30 days is entitled to four days of unpaid sick leave from that employment per year for illness or injury.

#### Paid sick leave

- (2) An employee who has been employed by the same employer for a continuous period of at least one year is entitled to paid sick leave from that employment for illness or injury as follows:
  - (a) one day of paid sick leave in the second year of employment;
  - (b) two days of paid sick leave in the third year of employment;
  - (c) three days of paid sick leave in the fourth year of employment and in each year of employment thereafter.

#### Rate of pay

- (3) An employer shall pay an employee at the employee's regular wage rate, in accordance with the regulations, for a day of paid sick leave taken by the employee.

#### No carry over of sick leave

- (4) Each day of sick leave to which an employee is entitled but does not take during a year of employment does not carry forward to the next year of that employment.

#### Employee may take paid leave before unpaid leave

- (5) An employee may take paid sick leave before taking unpaid sick leave.

#### Confirmation of illness or injury

- (6) Where an employee requests sick leave for five or more consecutive days, the employer may require the employee to provide the employer with written confirmation from a qualified practitioner that the employee is or was unable to work due to illness or injury.

## Medical Leave

### 44. Medical leave

- (1) An employee who has been employed by the same employer for a continuous period of at least 90 days is entitled to up to 27 weeks of unpaid medical leave from that employment in a 52-week period for
  - (a) medical treatment of and recovery from an illness or injury;
  - (b) organ or tissue donation;
  - (c) gender affirming care;
  - (d) any other prescribed medical treatment or procedure that renders the person unable to work for an extended period.

#### Application for leave

- (2) An employee shall apply, in writing, for medical leave before starting the leave, where possible, or as soon as is reasonably practicable in the circumstances.

**Confirmation of entitlement**

- (3) An employee applying for medical leave shall provide the employer with written confirmation from a medical practitioner or nurse practitioner that the employee is unable to work for a medical reason described in subsection (1) and the duration the employee is expected to be unable to work.

**Early return to work**

- (4) On application of an employee, in writing, at least two weeks before the return date proposed in the application, an employer may permit the employee to return to work before the end of the medical leave granted to the employee.

**Pregnancy Leave and Parental Leave**

**45. Pregnancy leave**

- (1) A pregnant employee who has been employed by the same employer for at least 20 of the 52 weeks immediately before the start of the leave, is entitled to 17 weeks of unpaid pregnancy leave from that employment starting at any time during the 13 weeks immediately before the estimated date of birth.

**Application**

- (2) A pregnant employee shall apply in writing for pregnancy leave at least four weeks before the start date proposed in the application, where possible, or as soon as is reasonably practicable in the circumstances.

**Confirmation of pregnancy and estimated date of birth**

- (3) Where requested by the employer, a pregnant employee shall provide written confirmation from a medical practitioner, nurse practitioner or midwife of the employee's pregnancy and estimated date of birth.

**Requiring start of pregnancy leave**

- (4) An employer may require a pregnant employee to start taking pregnancy leave to which the employee is entitled at any time during the 13 weeks immediately before the estimated date of birth, where the employee is unable to perform work for the employer due to pregnancy, despite reasonable accommodations.

**Onus of proof**

- (5) In any proceeding respecting subsection (5), the onus shall be upon the employer to prove that the pregnant employee is unable to perform work for the employer due to pregnancy, despite reasonable accommodations.

**Early return to work**

- (6) On the application of an employee, in writing, at least two weeks before the return date proposed in the application, an employer may permit the employee to return to work before the end of the pregnancy leave granted to the employee.

**46. Parental Leave**

- (1) Where
- (a) a child is placed with an employee for the purpose of adoption, or the employee becomes a parent of a child by birth or adoption; and

- (b) the employee has been employed by the same employer for at least 20 of the 52 weeks immediately before the start of the leave,  
the employee is entitled to 62 continuous weeks of unpaid parental leave from that employment to be taken during the 78 weeks immediately after the placement, birth or adoption of the child, as the case may be.

**Application**

- (2) An employee shall apply, in writing, for parental leave to which the employee is entitled under subsection (1),
- (a) as soon as is reasonably practicable on or after the date the employee receives notice of the placement of a child; or
- (b) in any other circumstance, at least four weeks before the start date proposed in the application, where possible.

**Parental leave after pregnancy leave**

- (3) Where an employee takes pregnancy leave, the employee shall start any parental leave immediately after the end of the pregnancy leave, unless the employee and the employer agree otherwise.

**Early return to work**

- (4) On application of an employee, in writing, at least two weeks before the return date proposed in the application, an employer may permit the employee to return to work before the end of the parental leave granted to the employee.

**47. Maximum pregnancy and parental leave**

Notwithstanding sections 45 and 46, but subject to subsection 48(1), the total amount of pregnancy leave and parental leave that may be taken by one or more employees in respect of the placement, birth or adoption of the same child, or of multiple children at the same time, shall not exceed 78 weeks.

**48. Extended leave**

- (1) An employee who is on pregnancy leave under section 45 or parental leave under section 46, is entitled to an additional five consecutive weeks of unpaid leave, starting immediately after the end of the pregnancy leave or parental leave, where the child in respect of whom the employee has been granted leave has a physical, psychological or emotional condition requiring an additional period of parental care.

**Application**

- (2) An employee shall apply, in writing, for extended leave to which the employee is entitled under subsection (1), at least one week before the employee's pregnancy or parental leave ends.

**Confirmation of child's condition**

- (3) Where requested by the employer, an employee shall provide a written opinion from a qualified practitioner that the child in respect of whom the employee has been granted pregnancy or parental leave has a physical, psychological or emotional condition requiring an additional period of parental care.

## Family Leave

### 49. Family leave

- (1) An employee who has been employed by the same employer for a continuous period of at least 30 days is entitled to three days of unpaid family leave from that employment per year to provide care or support to a family member.

#### No carry over of family leave

- (2) Each day of family leave to which an employee is entitled but does not take during a year of employment does not carry forward to the next year of that employment.

## Compassionate Care Leave

### 50. Entitlement to compassionate care leave

- (1) An employee who has been employed by the same employer for a continuous period of at least 30 days is entitled to up to 28 work weeks of unpaid compassionate care leave from that employment within a 52-week period, taken in increments of not less than one work week, to provide end-of-life care and support to a family member who is at significant risk of death within the next six months due to illness or injury.

#### Application for leave

- (2) An employee shall apply in writing for compassionate care leave before starting the leave, where possible, or as soon as is reasonably practicable in the circumstances.

#### Confirmation of serious illness or injury

- (3) An employee applying for compassionate care leave shall provide the employer with written confirmation from a medical practitioner or nurse practitioner that the family member in relation to whom the leave is requested is at significant risk of death within the next six months due to illness or injury.

#### End of leave

- (4) An entitlement to compassionate care leave ends on the last day of the work week in which one of the following occurs:
  - (a) the family member dies;
  - (b) 28 work weeks of the leave have been taken;
  - (c) 52 work weeks have elapsed since the leave was first taken.

#### Total amount of leave

- (5) The total amount of compassionate care leave taken by two or more employees in respect of the same family member, or one or more employees in respect of multiple family members at the same time, shall not exceed 28 work weeks.

## Leave Related to Critically Ill Child

### 51. Entitlement to leave related to a critically ill child

- (1) An employee who has been employed by the same employer for a continuous period of at least 90 days, is entitled to up to 36 work weeks of unpaid leave from that employment within a 52-



week period, taken in increments of not less than one work week, to provide care and support to the employee's minor child, where the child's life is at risk due to a critical illness or injury.

**Application for leave**

- (2) An employee shall apply in writing for leave under subsection (1) before starting the leave, where possible, or as soon as is reasonably practicable in the circumstances.

**Confirmation of critical illness or injury**

- (3) An employee applying for leave under subsection (1) shall provide the employer with written confirmation from a medical practitioner or nurse practitioner that the child's life is at risk due to a critical illness or injury.

**End of leave**

- (4) The entitlement to leave under subsection (1) ends at the end of the work week in which one of the following occurs:
- (a) 36 work weeks of the leave have been taken;
  - (b) 52 weeks have elapsed since the leave was first taken; or
  - (c) the child dies.

**Total amount of leave**

- (5) The total amount of leave under subsection (1) that may be taken by two or more employees in respect of the same child, or by one or more employees in respect of multiple children at the same time, shall not exceed 36 work weeks.

## Bereavement Leave

**52. Bereavement leave, family member**

- (1) On the death of a family member, other than an immediate family member, an employee is entitled to three consecutive days of unpaid bereavement leave.

**Bereavement leave, immediate family member**

- (2) On the death of an immediate family member, an employee is entitled to one day of paid bereavement leave and two consecutive days of unpaid bereavement leave.

**Bereavement leave, prenatal pregnancy loss or stillbirth**

- (3) An employee is entitled to one day of paid bereavement leave and two consecutive days of unpaid bereavement leave, where
- (a) the employee's pregnancy ends by way of prenatal pregnancy loss or stillbirth; or
  - (b) another person's pregnancy ends by way of prenatal pregnancy loss or stillbirth, and the employee
    - (i) is that person's spouse or partner,
    - (ii) is that person's former spouse or partner and would have been a biological parent of a child born of the pregnancy, or
    - (iii) would have been an intended parent of a child born as a result of the pregnancy under a surrogacy agreement.

**Rate of pay**

- (4) An employer shall pay an employee at the employee's regular wage rate, in accordance with the regulations, for a day of paid bereavement leave taken by the employee.

**Employee may take paid leave before unpaid leave**

- (5) An employee may take paid bereavement leave before taking unpaid bereavement leave.

**Leave for Crime-Related Disappearance or Death of Child**

**53. Entitlement to leave for crime-related disappearance or death of child**

- (1) An employee who has been employed by the same employer for a continuous period of at least 90 days is entitled to unpaid leave from that employment in accordance with subsection (2), where the employee's minor child has disappeared or died and it is probable in the circumstances that the child disappeared or died as a result of a crime.

**Duration of leave**

- (2) An employee referred to in subsection (1) is entitled to unpaid leave for
- (a) up to 52 work weeks, taken in increments of not less than one work week, starting the first day of the work week during which the child disappears; or
  - (b) up to 104 work weeks, taken in increments of not less than one work week, starting the first day of the work week during which the child is found dead.

**Supporting documentation**

- (3) Where requested by the employer, the employee shall provide reasonable documentation in the circumstances to support the employee's entitlement to unpaid leave under this section.

**End of leave**

- (4) Notwithstanding subsection (2),
- (a) the entitlement to leave under clause (2)(a) ends on the last day of the work week in which one of the following occurs:
    - (i) 14 days have elapsed since the child was found,
    - (ii) 14 days have elapsed since circumstances changed and it no longer seemed probable that the disappearance of the child was the result of a crime,
    - (iii) 52 work weeks have elapsed since the first day of the work week in which the child disappeared; and
  - (b) the entitlement to leave under clause (2)(b) ends on the last day of the work week in which one of the following occurs:
    - (i) 14 days have elapsed since circumstances changed and it no longer seemed probable that the death of the child was the result of a crime,
    - (ii) 104 work weeks have elapsed since the first day of the work week in which the child was found dead.

**Total amount of leave**

- (5) The total amount of unpaid leave that may be taken under this section by two or more employees in respect of the same child, or by one or more employees in respect of multiple children at the same time, shall not exceed 52 work weeks in relation to a disappearance or 104 work weeks in relation to a death.

**Not entitled to leave**

- (6) Notwithstanding subsection (1), an employee is not entitled to leave under this section where the employee is charged with a crime related to the disappearance or death of the child.

**Leave Related to Domestic Violence, Intimate Partner Violence or Sexual Violence****54. Domestic violence, intimate partner violence or sexual violence leave**

- (1) An employee who has been employed by the same employer for a continuous period of at least 90 days is entitled to up to three days of paid leave and up to seven days of unpaid leave from that employment for a prescribed purpose related to domestic violence, intimate partner violence or sexual violence.

**Rate of pay**

- (2) An employer shall pay an employee at the employee's regular wage rate, in accordance with the regulations, for a day of paid leave referred to in subsection (1) taken by the employee.

**Employee may take paid leave before unpaid leave**

- (3) An employee may take paid leave before taking unpaid leave under subsection (1).

**Confirmation of entitlement**

- (4) Where requested by the employer, the employee shall provide written evidence to support the employee's entitlement to leave under this section, in accordance with the regulations.

**Emergency Leave****55. Definitions**

- (1) In this section,
- (a) “**communicable disease**” means a communicable disease prescribed in the *Public Health Act* Notifiable Diseases and Conditions and Communicable Diseases Regulations (EC560/13);
  - (b) “**emergency**” means any of the following:
    - (i) an emergency declared under the *Emergency Measures Act* R.S.P.E.I. 1988, Cap. E-6.1,
    - (ii) a public health emergency declared under the *Public Health Act* R.S.P.E.I. 1988, Cap. P-30.1,
    - (iii) a direction or order of a public health official or the Chief Public Health Officer under the *Public Health Act*,
    - (iv) an emergency declared under Part 1, Part 2 or Part 3 of the *Emergencies Act* (Canada),
    - (v) an order of a quarantine officer under the *Quarantine Act* (Canada),
    - (vi) any other thing prescribed as an emergency.

**Entitlement to emergency leave**

- (2) An employee is entitled to unpaid emergency leave from an employment for any period during which
- (a) the employee is prevented from performing work for an employer due to an emergency; or
  - (b) the employee is prevented from performing work for an employer because
    - (i) a family member is directly affected by an emergency and requires care or assistance due to the emergency, and

- (ii) the employee is the only person reasonably able to provide the care or assistance to the family member.

**Clarification of circumstances preventing an employee from performing work**

- (3) For greater certainty, an employee is considered to be prevented from performing work for an employer where the employee
  - (a) is in isolation or quarantine, or subject to a control measure, including self-isolation, as a result of information or directions issued to individuals or the public by the Chief Public Health Officer in relation to a communicable disease;
  - (b) is subject to a direction given by the employer to limit or prevent the exposure of other persons in the workplace to a communicable disease; or
  - (c) is out of the province, directly affected by a travel restriction related to a communicable disease and, in the circumstances, cannot reasonably be expected to return to the province.

**Notice to employer**

- (4) An employee shall
  - (a) give the employer as much notice as is reasonably practicable of the employee's intention to take emergency leave; and
  - (b) where notice cannot be given in advance, advise the employer as soon as reasonably practicable after the emergency leave begins.

**Confirmation of entitlement**

- (5) Where requested by the employer, the employee shall provide evidence to support the employee's entitlement to leave under this section, in accordance with the regulations.

**Leave for Reservists**

**56. Definitions**

- (1) In this section
  - (a) “**Reserves**” means the component of the Canadian Forces referred to in the *National Defence Act* (Canada) as the reserve force;
  - (b) “**service**” means active duty or training in the Reserves.

**Entitled to unpaid leave**

- (2) Where an employee has been employed by the same employer for a continuous period of at least 90 days and is a member of the Reserves, the employee is entitled to unpaid leave from that employment for the purpose of service, whether voluntary or compulsory.

**Confirmation of entitlement**

- (3) Where requested by an employer, an employee shall provide written confirmation from an official with the Reserves
  - (a) that the employee is a member of the Reserves and is required for service; and
  - (b) where possible, of the expected start and end dates for the period of service.

**Return to work after notice**

- (4) An employee on leave under this section shall provide the employer with written notice of the expected date of the employee's return to work.

- Deferral of employee's return to work**
- (5) The employer may defer the employee's return to work by up to two weeks or one pay period, whichever is longer, after receiving a notice from the employee under subsection (4).

- Pension benefits**
- (6) For greater certainty, an employer is not required to pay pension benefits in respect of any period of leave granted to an employee under this section.

### **Court Leave**

**57. Entitlement to court leave**

An employee is entitled to unpaid leave from an employment for any period that the employee is required to be absent from work because the employee has been

- (a) summoned to serve on a jury;
- (b) selected to serve on a jury; or
- (c) subpoenaed to attend at a hearing or proceeding as a witness.

### **Citizenship Ceremony Leave**

**58. Entitlement to leave to attend citizenship ceremony**

An employee who has been employed by the same employer for a continuous period of at least 90 days is entitled to up to one day of unpaid leave from that employment to attend a citizenship ceremony to receive a certificate of citizenship, as provided for under the *Citizenship Act* (Canada).

## **PART 6 – INTERRUPTION OR END OF EMPLOYMENT**

**59. Termination or layoff by employer, notice period**

- (1) Subject to subsection (2), an employer shall not terminate or lay off an employee who has been employed by the employer for a continuous period of 90 days or longer without giving the employee, in writing, at least
- (a) one week of notice, where the employee has been employed by the employer for a continuous period of 90 days or longer but less than one year;
  - (b) two weeks of notice, where the employee has been employed by the employer for a continuous period of one year or longer but less than five years;
  - (c) four weeks of notice, where the employee has been employed by the employer for a continuous period of five years or longer but less than 10 years;
  - (d) six weeks of notice, where the employee has been employed by the employer for a continuous period of 10 years or longer but less than 15 years; or
  - (e) eight weeks notice, where the employee has been employed by the employer for a continuous period of 15 years or longer.

**Exceptions, termination or layoff without notice**

- (2) Subsection (1) does not apply where the employee
- (a) is employed to perform a definite task for a period not exceeding one year;

- (b) is laid off for a period not exceeding six consecutive days;
- (c) has been offered other reasonable employment by the employer;
- (d) is terminated or laid off for any unforeseeable reason beyond the control of the employer;
- (e) is terminated or laid off because of labour disputes, weather conditions or actions of any governmental authority that directly affect the operations of the employer; or
- (f) is terminated for cause.

**New notice required where employee continues to work**

- (3) Where, after receiving notice of termination or layoff, the employee continues to work for the employer for 30 days or longer beyond the end of the notice period, the notice is no longer valid and subsection (1) applies.

**Pay during notice period**

- (4) In respect of the period of employment after notice is given under subsection (1), the employer shall pay to the employee, the greater of
- (a) the amount of wages earned for the hours the employee worked during that period at the employee's regular wage rate; or
  - (b) an amount equal to the employee's regular wages, excluding overtime, during a period of time equivalent to the notice period.

**Pay in lieu of notice**

- (5) Where an employer terminates or lays off an employee without giving the notice required under subsection (1), the employer shall pay the employee an amount equal to the employee's regular wages, excluding overtime, for a period of time equivalent to the notice period.

**Vacation**

- (6) No period of vacation to which the employee is entitled shall be counted as part of a required notice period under subsection (1).

**60. Notice of resignation**

- (1) Where an employee has been employed by the same employer for a continuous period of six months or longer, the employee shall not resign without giving the employer, in writing, at least
- (a) one week of notice, where the employee has been employed by the employer for a continuous period of six months or longer but less than five years; or
  - (b) two weeks of notice, where the employee has been employed by the employer for a continuous period of five years or longer.

**Vacation**

- (2) No period of vacation to which the employee is entitled shall be counted as part of a required notice period under subsection (1), unless approved by the employer.

**61. Group termination or layoff**

- (1) Subject to subsection (3), where 10 or more employees representing at least 25 per cent of the employees at a workplace are to be terminated or laid off within a two-month period, the employer shall give notice, in writing, of the group termination or layoff at least six weeks before the first termination or layoff, to

- (a) each employee who will be affected;
- (b) any trade union certified to represent, or recognized by the employer as the bargaining agent of, any affected employees; and
- (c) the Minister.

**Notice to specify**

- (2) The notice of group termination or layoff shall specify
  - (a) the number of employees who will be affected;
  - (b) the effective date or dates of the group termination or layoff; and
  - (c) the reasons for the group termination or layoff.

**Exceptions**

- (3) Subsection (1) does not apply to an employee
  - (a) employed under an arrangement in which
    - (i) the employer may request the employee to come to work at any time for a temporary period, and
    - (ii) the employee has the option of accepting or rejecting one or more of the temporary periods;
  - (b) employed for a definite term;
  - (c) employed for specific work to be completed in a period of up to one year;
  - (d) employed under a contract of service that is impossible to perform due to an unforeseeable event or circumstance other than receivership, action under section 427 of the *Bank Act* (Canada) or a statute related to insolvency;
  - (e) employed at one or more construction sites by an employer whose principal business is construction;
  - (f) employed by an employer who has a normal seasonal reduction, closure or suspension of an operation; or
  - (g) who has been offered and has refused reasonable alternative employment by the employer.

**62. Contract of service or custom**

- (1) Nothing in this Part affects any provision in a contract of service or any recognized custom that entitles an employee or employer to more notice of termination or layoff or to more favourable compensation in lieu of notice than is provided for in this Part.

**Other amounts payable**

- (2) Nothing in this Part affects any other amounts payable to an employee in respect of a termination.

## PART 7 – ENFORCEMENT

### Report

#### 63. Report to chief inspector

Any person who has reasonable grounds to believe that an employer has contravened this Act or the regulations may report it to the chief inspector.

### Complaint

#### 64. Complaint to chief inspector

- (1) An employee may make a complaint, in writing, to the chief inspector alleging that an employer has contravened this Act or the regulations in respect of the employee.

##### Limitation period

- (2) A complaint shall be delivered to the chief inspector within two years of the date of the alleged contravention.

#### 65. Service of copy of complaint

- (1) Subject to section 67, within 15 days after the receipt of a complaint, the chief inspector shall provide to the respondent
- (a) a copy of the complaint; and
  - (b) written notice of the respondent's right to submit a response to the complaint under subsection (2).

##### Written response to complaint

- (2) A respondent may submit a written response to a complaint to the chief inspector within 15 days after being served with a copy of the complaint and the notice under subsection (1).

##### Service of response

- (3) The chief inspector shall promptly provide a copy of any response submitted under subsection (2) to the complainant.

##### Oral hearing not required

- (4) The chief inspector is not required to hold an oral hearing in respect of a complaint.

#### 66. Investigation of complaint

- (1) The chief inspector may investigate a complaint or refer the complaint to another inspector for investigation.

##### Suspension of investigation

- (2) An inspector may postpone or suspend an investigation where a proceeding relating to the subject matter of the complaint has been commenced before a court, a tribunal, an arbitrator or a mediator.



**Resolution of complaint**

- (3) An inspector may attempt to resolve a complaint informally, where the inspector considers it appropriate to do so.

**67. Dismissal of complaint**

- (1) An inspector may, at any time, dismiss a complaint where
- (a) the inspector determines that the complaint was not made within the limitation period specified in subsection 64(2);
  - (b) the inspector determines this Act does not apply to the complaint;
  - (c) the inspector determines the complaint is frivolous, vexatious or without merit;
  - (d) a proceeding relating to the subject matter of the complaint has been commenced before a court, a tribunal, an arbitrator or a mediator;
  - (e) a court, a tribunal or an arbitrator has made a decision or an award relating to the subject matter of the complaint;
  - (f) the inspector is not satisfied that the respondent has contravened this Act or the regulations; or
  - (g) the inspector is satisfied that the contravention has been remedied.

**Notice of dismissal**

- (2) Where an inspector dismisses a complaint, the inspector shall provide written notice of the dismissal to the complainant and the respondent, which shall include
- (a) the reasons for the dismissal; and
  - (b) notice of the complainant's right to appeal the dismissal to the Board under section 74.

**68. Notice of contravention or order**

Where an inspector issues a notice of contravention under section 71 or a notice of determination and order under section 72 as a result of a complaint, the inspector shall provide to the complainant

- (a) a copy of the notice of contravention or notice of determination and order; and
- (b) in the case of an order, notice of the complainant's right to appeal the order.

**Powers of Inspectors****69. Entry and inspection, investigation**

- (1) For the purposes of ensuring compliance with this Act and the regulations, an inspector may, whether conducting an inspection pursuant to a report or on the inspector's own initiative, or investigating a complaint, do one or more of the following:
- (a) enter, during regular business hours, any place, including any means of conveyance or transport, where
    - (i) a person is employed, may be employed or has been employed,
    - (ii) an employer carries on business or stores assets relating to that business,
    - (iii) a record required for the purposes of this Act is kept, or
    - (iv) anything to which this Act applies is taking place or has taken place;

- (b) inspect the place in respect of any notices or other documents required to be posted under this Act;
- (c) require a person to produce, or to deliver to a place specified by the inspector, for inspection any records that may be relevant to matters governed by this Act;
- (d) inspect any records that may be relevant to matters governed by this Act;
- (e) remove any records that may be relevant to matters governed by this Act to make copies or extracts;
- (f) interview any person who may have information relevant to matters governed by this Act.

**Entry to private residence**

- (2) Despite subsection (1), an inspector may enter a place occupied as a private residence only with the consent of the occupant or under the authority of a warrant issued under section 88.

**Copying and returning records**

- (3) Where an inspector removes any records to make copies or extracts under clause (1)(e), the inspector shall
  - (a) give a receipt for the records removed;
  - (b) make the copies or extracts as soon as is reasonably practicable; and
  - (c) return the records to the place from which they were removed or a place agreed to by the inspector and the person who produced the records.

**70. Subpoena to attend or produce records**

- (1) For the purpose of investigating a complaint, an inspector may issue a subpoena requiring a person who may have relevant information or records to
  - (a) attend, in person or by electronic means, before the inspector to answer questions on oath or affirmation, or in any other manner; or
  - (b) produce for the inspector a record in the person's possession or control.

**Court order**

- (2) The inspector may apply to the court for an order
  - (a) directing a person to comply with a subpoena issued under subsection (1); or
  - (b) directing any officers or directors of a corporation to cause the corporation to comply with a subpoena issued under subsection (1).

**71. Notice of contravention**

Where an inspector is satisfied that an employer has contravened this Act or the regulations, the inspector may give the employer notice of the contravention, which includes

- (a) the nature of the contravention;
- (b) the reasons for the inspector's determination;
- (c) any action required to remedy the contravention; and
- (d) the administrative penalty the employer could be ordered to pay.

**72. Notice of determination and order of inspector**

- (1) Where an inspector is satisfied that an employer has contravened this Act or the regulations, the inspector may give the employer notice of the determination and order the employer to do one or more of the following:
- (a) cease contravening this Act or the regulations;
  - (b) take specified actions to remedy the contravention;
  - (c) post information about this Act or the regulations in a workplace or place of business;
  - (d) pay to the inspector, in trust, specified amounts owing, with interest, to an employee or employees as a result of the contravention;
  - (e) pay any costs incurred by the inspector in conducting an investigation respecting the contravention;
  - (f) pay an administrative penalty, in accordance with the regulations;
  - (g) do any other thing prescribed by the regulations.

**Terms or conditions**

- (2) The inspector may make an order subject to any terms or conditions that the inspector considers appropriate.

**Contents of notice of determination**

- (3) A notice of determination shall include
- (a) the nature of the contravention;
  - (b) the reasons for the inspector's determination and order;
  - (c) a description of the requirements of, and any terms or conditions imposed on, the order; and
  - (d) notice of the right to appeal the determination and order to the Board under section 74.

**Contents of order**

- (4) An order shall include
- (a) the nature of the contravention;
  - (b) the requirements of, and any terms or conditions imposed on, the order; and
  - (c) where the employer is ordered to pay wages, costs, interest, an administrative penalty or another amount,
    - (i) the amount to be paid,
    - (ii) how it was calculated, and
    - (iii) the payment due date.

**Service of notice and order**

- (5) The inspector shall serve the notice of determination and order on the employer and any other person affected by the order.

**Compliance with order**

- (6) The employer shall comply with an order made and served under this section.

**73. Debt due to Government**

- (1) Where an inspector orders an employer to pay costs or an administrative penalty, the amount payable is a debt due to the Government and may be collected under this Act by the inspector.

**Amount payable regardless of conviction or fine**

- (2) An employer who is ordered to pay an amount under section 72, shall pay the amount whether or not the employer
- (a) has been convicted of an offence under this Act; or
  - (b) is also liable to pay a fine for an offence under section 93.

**No other proceedings**

- (3) Where an inspector orders an employer to pay an amount under section 72, no person may commence another proceeding to recover that amount, unless
- (a) the inspector has consented in writing; or
  - (b) the inspector or the Board has cancelled the order.

**Appeal**

**74. Right of appeal**

- (1) Subject to this section,
- (a) a complainant may appeal the dismissal of a complaint by an inspector under section 67 or a determination and order of an inspector under section 72; and
  - (b) an employer may appeal a determination and order of an inspector under section 72.

**Grounds of appeal**

- (2) An appeal shall be made on one or more of the following grounds:
- (a) the inspector erred in law;
  - (b) the inspector failed to observe the principles of natural justice;
  - (c) evidence has become available that was not available at the time of the dismissal or the determination and order.

**Form of appeal**

- (3) An appeal may be filed within 30 days after the notice of dismissal or the notice of determination and order were served, by delivering to the offices of the Board
- (a) a written notice of appeal, specifying the grounds on which the appeal is based; and
  - (b) a copy of the notice of dismissal or notice of determination and order appealed.

**Notice to inspector, other parties**

- (4) Subject to subsection 76(1), the Board shall provide a copy of the notice of appeal to
- (a) the inspector who issued the notice of dismissal or notice of determination and order; and
  - (b) any other person who received a copy of the notice of dismissal or notice of determination and order.

**Inspector to provide records**

- (5) On receiving a notice of appeal, the inspector shall provide to the Board, the record that was before the inspector at the time of the dismissal or the determination and order, including any witness statement or other documents considered by the inspector.

**Inspector is a party**

- (6) The inspector is a party to an appeal under this section.

**Filing with court does not prevent appeal**

- (7) The filing of an order under section 81 does not prevent the order being appealed.

**75. Request to suspend inspector's order**

- (1) An appellant may request the Board to suspend the effect of an order under appeal pending the Board's decision on appeal.

**Board may suspend order**

- (2) The Board may suspend an order under appeal pending the Board's decision on appeal and impose any terms or conditions on the suspension that the Board considers appropriate, including requiring the appellant to deposit with the inspector all or part of any amount the appellant has been ordered to pay.

**76. Board may dismiss appeal**

- (1) The Board may, at any time after an appeal is filed and without a hearing of any kind, dismiss all or part of the appeal, where the Board determines that
- (a) the appeal is not within the jurisdiction of the Board;
  - (b) the appeal was not filed within the applicable time limit;
  - (c) the appeal is frivolous, vexatious or without merit;
  - (d) the appellant failed to diligently pursue the appeal or failed to comply with an order of the Board;
  - (e) the substance of the appeal has been appropriately dealt with in another proceeding; or
  - (f) one or more of the requirements of section 74 have not been met.

**Board may recommend further investigation or settlement**

- (2) Before considering an appeal, the Board may
- (a) refer the matter back to the inspector for further investigation; or
  - (b) recommend that an attempt be made to settle the matter.

**Notice of dismissal**

- (3) Where the Board dismisses all or part of an appeal under subsection (1), the Board shall give the parties notice of its decision, in writing, including the reasons for that decision.

**77. Decision of the Board**

- (1) After considering whether the grounds for appeal have been met, the Board may
- (a) confirm the dismissal of the complaint under appeal;
  - (b) confirm, vary or cancel the order under appeal; or
  - (c) refer the complaint or matter back to the inspector.

**Notice of decision and order**

- (2) The Board shall give the parties notice of its decision, in writing, including the reasons for that decision, and a copy of any order made by the Board pursuant to the decision.

**78. Reconsideration of dismissal, decision or order**

- (1) On the application of a party or on its own motion, within 30 days of the date of the dismissal of an appeal or a decision or order of the Board in respect of an appeal, the Board may reconsider the dismissal, decision or order and
  - (a) confirm, vary or cancel the dismissal, decision or order; or
  - (b) refer the matter back to the original panel, where applicable, or another panel.

**One-time application**

- (2) An application for reconsideration may be made only once with respect to the same matter.

**Parties**

- (3) The parties to an appeal are parties to a reconsideration under this section.

**Recovery of Monetary Remedies**

**79. Lien for amounts owing**

- (1) Despite any other Act, an amount owing under an order of an inspector, or the Board on appeal, constitutes a lien, charge and secured debt in favour of the inspector, in trust, from the date of the contravention specified in the order, against all the real and personal property of the person named in the order, including money due or accruing due to the person from any source.

**Priority over other claims**

- (2) Despite any other Act, the amount of a lien, charge and secured debt referred to in subsection (1) is payable and enforceable in priority over all liens, judgments, charges and security interests or any other claims or rights, including the following:
  - (a) any claim or right of the Government or the Workers Compensation Board;
  - (b) any claim or right arising through contract, account receivable, insurance claim or sale of goods;
  - (c) any security interest within the meaning of the *Personal Property Security Act* R.S.P.E.I. 1988, Cap. P-3.1.

**Priority despite date of perfection or creation**

- (3) Subsection (2) applies regardless of when the lien, judgment, charge, security interest, claim or right was perfected within the meaning of the *Personal Property Security Act*, or was created or made.

**Priority respecting mortgage**

- (4) The lien, charge and secured debt referred to in subsection (1) has priority over a mortgage of, or debenture charging, land that was registered in a land title office before registration against that land of a certificate of judgment obtained on the filing, under section 81, of an order of an inspector or the Board, but only with respect to money advanced under the mortgage or debenture after the certificate of judgment was registered.

**80. Payment of interest on order**

- (1) Subject to subsection (2), where a person owes an amount under an order of an inspector or the Board to a complainant, the debtor shall pay interest at the prescribed rate on the amount owed from the date the complaint is delivered to the chief inspector to the date of payment.

**No interest during appeal period**

- (2) No interest accumulates under subsection (1) from the date an order is made by an inspector requiring payment of an amount until the appeal period expires 30 days later.

**Payment of interest on money held in trust**

- (3) An amount collected under this Part earns interest at the prescribed rate, payable by the Minister of Finance from the date the amount is deposited in a savings institution to the date of payment to the person entitled to it.

**81. Order may be filed in court registry**

- (1) An inspector may at any time file in the court registry an order of the inspector or the Board.

**Order of inspector enforceable**

- (2) Unless varied, cancelled or suspended by the inspector or the Board, a filed order of the inspector is enforceable in the same manner as a judgment of the court in favour of the inspector for the recovery of a debt in the amount stated in the order.

**Order of Board enforceable**

- (3) Unless varied or cancelled by the Board, a filed order of the Board is enforceable in the same manner as a judgment of the court in favour of the inspector for the recovery of a debt in the amount stated in the order.

**Withdrawal of order from court registry**

- (4) Where an order filed under this section is varied, cancelled or suspended, the inspector shall promptly withdraw the order from filing in the court registry.

**82. Liability of directors for pay**

- (1) Despite any other Act, the directors and former directors of a corporation employer, other than a corporation that carries on business without the purpose of gain, are jointly and severally liable to the employees of the corporation, up to an amount equal to six months' pay, for pay earned by the employees while the directors or former directors were in office, where
- (a) the corporation is insolvent, the employee has filed a claim for unpaid pay with the receiver or trustee in bankruptcy and the claim has not been paid; or
  - (b) an inspector or the Board has made an order pursuant to this Act requiring the corporation to pay an amount of unpaid pay to the employees by a specified date and the corporation has not complied with the order.

**Exception, due diligence**

- (2) A director or former director of a corporation employer is not liable for unpaid pay under subsection (1) where the director exercised the care, diligence and skill of a reasonably prudent person to ensure that the corporation paid the employees any pay owing.

**No avoidance of liability**

- (3) A provision in the letters patent, articles of incorporation, or bylaws of a corporation, a resolution of a corporation, or a contract made by a corporation that purports to relieve a director or former director of the corporation employer from liability for unpaid pay under subsection (1) is of no force and effect.

**Service on directors**

- (4) The chief inspector may serve on each of the directors and former directors of a corporation employer who, in the opinion of the chief inspector, are liable under subsection (1) for unpaid pay
- (a) a copy of the proof of claim or order against the corporation;
  - (b) notice that pay in the amount stated in the proof of claim or order is due and unpaid by the corporation; and
  - (c) an order requiring the directors and former directors to pay the specified amount of unpaid pay for which they are liable.

**Appeal**

- (5) A director or former director of a corporation who is served with an order under subsection (4) may exercise the same rights of appeal under this Act in respect of that order as the corporation employer has in respect of an order made under section 72.

**Certificate filed with the court**

- (6) The chief inspector may file the order in the court registry and the order is then enforceable as a judgment of the court in favour of the chief inspector, in trust for the employees, for the recovery of a debt in the amount stated in the order.

**83. Associated employers**

Where an inspector considers that businesses, trades or undertakings are carried on by or through more than one individual, corporation, firm, syndicate or association, or any combination of them, under common control or direction,

- (a) the inspector may treat them as one employer for the purposes of this Act; and
- (b) where the inspector does so, they are jointly and severally liable for payment of the amount stated in an order of the inspector or the Board, and sections 79 to 82 apply to the recovery of that amount from any or all of them.

**84. Money received paid to Minister**

- (1) An inspector shall pay to the Minister of Finance all money received by the inspector under this Act, including money to be held in trust for the persons named in an order of the inspector or the Board.

**Attribution of money by Minister**

- (2) Money received by the Minister of Finance in respect of an order of an inspector or the Board shall be attributed
- (a) first, to the amount required to be paid for which an order was made under clause 72(1)(d) or 82(4)(c);
  - (b) second, to any other amount, other than interest or an administrative penalty, required to be paid by the order;
  - (c) third, to interest required to be paid by the order; and
  - (d) fourth, to an administrative penalty required to be paid by the order.

**Payment of money in trust**

- (3) The Minister of Finance shall pay, according to the direction of the inspector, to the persons named in an order of the inspector or the Board, money received in trust for those persons.



**Proportional attribution**

- (4) Money attributed under clause (2)(a) shall be attributed proportionally among the persons to whom money is owing under the order according to the amount owing as shown on the order.

**Payment priority**

- (5) The money attributed to a person under subsection (4) shall then be paid according to the following priority:
- (a) to a person who was assigned all or part of the attributed money by the person to whom the money was attributed;
  - (b) to the person to whom the money was attributed or, if deceased,
    - (i) to that person's estate, or
    - (ii) under the *Probate Act* R.S.P.E.I. 1988, Cap. P-21.

**Proportional payment**

- (6) Where there is not enough money to pay all the persons entitled under a clause of subsection (5), the money available under that clause shall be divided among them in proportion to the amount each of them is entitled to.

**Applies to interest**

- (7) Subsections (4) to (6) apply also to interest required to be paid on an amount owed to a person by an order of an inspector or the Board.

**Payment of other claims**

- (8) Despite subsections (5) and (7), where money is received for an amount owing to a person who owes money under another order of an inspector or the Board, the inspector may direct that the amount received be used to pay the claims of anyone entitled to payment under that other order.

**PART 8 - GENERAL****85. Compiling information about contraventions**

- (1) The Minister may compile information about contraventions of this Act or the regulations, including information identifying the persons who, according to an order of an inspector or the Board, committed the contraventions.

**Publication of information**

- (2) The Minister may publish information compiled under subsection (1) and make it available for public inspection during regular business hours of the Department.

**Request for search, outstanding matters**

- (3) On the written request of a person, the Minister may
- (a) conduct a search, in respect of the person who made the request, of the records maintained by the Minister of reports, complaints or contraventions of this Act or the regulations; and
  - (b) provide the results of the search to the person who made the request.

**86. Posting orders**

Every employer shall keep posted in a conspicuous place at any workplace where the employees of the employer are engaged in their duties,

- (a) copies of all orders under this Act relating to wages, hours of work or any other term or condition of employment governed by this Act and the regulations; and
- (b) a prescribed document or notice.

**87. Right to sue preserved**

Subject to subsection 73(3), nothing in this Act or the regulations affects a person's right to commence and maintain an action that, but for this Act, the person would have had the right to commence and maintain.

**88. Warrant to enter private residence**

Where satisfied by evidence given on oath or affirmation that there are reasonable grounds to believe there are, in a private residence, records or other things that are relevant for the purposes of an inspection or investigation under this Act, a judicial justice of the peace may issue a warrant authorizing an inspector to enter the private residence to exercise the powers referred to in section 69.

**89. Inspector cannot be compelled to provide evidence**

- (1) Except for the purposes of a prosecution under this Act or an appeal to the Board, an inspector shall not be required by a court, board, tribunal or person to give evidence or produce records relating to information obtained for the purposes of this Act.

**No liability of inspector**

- (2) No legal proceeding for damages lies or may be commenced or maintained against an inspector because of anything done or omitted in good faith in the performance or intended performance of the inspector's duties, or the exercise or intended exercise of the inspector's powers, under this Act.

**90. Service**

- (1) A notice, order or demand that is required to be served on a person under this Act is deemed to have been served where it is
  - (a) served on the person;
  - (b) sent by ordinary mail or registered mail to the person's last known business address according to the records of the Department;
  - (c) transmitted by email to the person's last known email address according to the records of the Department;
  - (d) transmitted by fax to the person's last known fax number according to the records of the Department; or
  - (e) sent, transmitted or delivered by any other prescribed method of service.

**Service by mail**

- (2) Where service is by ordinary mail or registered mail, the notice, order or demand is deemed to be served eight days after it is mailed.

**Service electronically**

- (3) Where service is by email or fax, the notice, order or demand is deemed to be served three days after it is transmitted.

**91. Irregularities**

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

**92. Reprisal**

No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so because the employee

- (a) inquires about the employee's pay, or inquires or requests information about the employer's pay policies;
- (b) discloses the employee's pay to another employee;
- (c) inquires about the employee's rights under this Act or the regulations;
- (d) exercises or attempts to exercise a right under this Act or the regulations;
- (e) asks the employer to comply with this Act or the regulations;
- (f) provides information to or otherwise assists an inspector in an inspection or investigation;
- (g) makes a report or a complaint about a contravention of this Act or the regulations by the employer; or
- (h) participates or plans to participate in a proceeding under this Act or the regulations.

**93. Offences**

(1) A person is guilty of an offence if the person

- (a) contravenes a provision of this Act or the regulations;
- (b) gives a false or misleading statement or record to an inspector or the Board;
- (c) destroys documents required to be made or retained under this Act; or
- (d) hinders, obstructs or interferes with a person acting under the authority of this Act.

**Penalties**

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction

- (a) in the case of an individual, to a fine of not less than \$200 and not more than \$5,000; and
- (b) in the case of a corporation, to a fine of not less than \$1,000 and not more than \$25,000.

**Notice to Board**

(3) No prosecution for an offence shall be instituted without the Board having notice of the intent to prosecute.

**94. Corporate offences**

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 commission of the offence is guilty of the offence, whether or not the corporation has been prosecuted for or convicted of the offence.

**95. Limitation period**

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

**96. Evidence of payment not made**

- (1) The production of a cheque, bill of exchange or order to pay on which is marked “Pursuant to clearing rules, this item shall not be cleared again unless certified”, or other words signifying that payment was not made by a savings institution, is evidence that payment was not made.

**Document issued by inspector**

- (2) A copy of a document issued under this Act by an inspector, and certified by the inspector as a true copy, is, without proof of the inspector’s appointment or signature,
- (a) evidence of the document; and
  - (b) evidence that the person issuing the document was authorized to do so.

**Document issued by Board**

- (3) Subsection (2) applies also in respect of a copy of a document issued under this Act by the Board and certified by the secretary of the Board as a true copy.

**97. Copy of Board document as evidence**

The production in a court of a document purporting to be or to contain a copy of an order of the Board and purporting to be signed by a member of the Board or certified by its secretary is *prima facie* proof of the document without proof of the appointment, authority or signature of the person who signed or certified the document.

**98. Certificate of Minister**

A certificate purporting to be signed by the Minister or by an employee of the Department stating that a report, request, or notice was or was not received or given by the Minister pursuant to this Act, and if so received or given, the date upon which it was so received or given is *prima facie* evidence of the facts stated in the certificate without proof of the signature or of the official character of the person appearing to have signed it.

**99. Reciprocal enforcement of orders**

- (1) Where the Lieutenant Governor in Council is satisfied that reciprocal provisions will be made by another province for the enforcement of orders of an inspector or the Board issued under this Act, the Lieutenant Governor in Council may, by order
- (a) declare the province to be a reciprocating province for the purpose of enforcing orders, certificates or judgments for the payment of wages, overtime pay or other entitlements made under an enactment of that province; and
  - (b) designate an authority within that province as the authority who may make applications or certificates under this section.

**Application to chief inspector**

- (2) Where an order, certificate or judgment for the payment of wages, overtime pay or other entitlements has been obtained under an enactment of a reciprocating province, the designated authority may apply to the chief inspector to enforce the order, certificate or judgment.

**Filing with the court**

- (3) Where the chief inspector
- (a) receives a copy of the order, certificate or judgment for the payment of wages, overtime pay or other entitlements that is

- (i) certified to be a true copy by the court in which the order, certificate or judgment is registered; or
  - (ii) where there is no provision in the reciprocating province for registration of the order, certificate or judgment in a court, certified to be a true copy by the designated authority; and
- (b) is satisfied that the wages, overtime pay or other entitlements are still owing, the chief inspector shall file the copy of the order, certificate or judgment with the court registry and the order is then enforceable as if it were an order of an inspector or the Board.

## 100. Regulations

The Lieutenant Governor in Council may make regulations

- (a) prescribing a day as a paid holiday;
- (b) excluding an employer or a type or class of employer, or an employee or a type or class of employee, from the application of this Act or a part or provision of it;
- (c) prescribing a power or duty of the chief inspector or an inspector;
- (d) prescribing a duty of the secretary to the Board;
- (e) prescribing factors the Board shall take into account when making an order establishing a standard number of hours of work exceeding 44 hours;
- (f) respecting unpaid hours of rest in a week;
- (g) respecting the calculation of pay for a paid holiday for a prescribed type or class of employee;
- (h) prescribing a type or class of employee for the purpose of clause (f);
- (i) prescribing a method of payment for pay;
- (j) prescribing a person or class of persons as a family member or an immediate family member;
- (k) prescribing persons as qualified practitioners;
- (l) prescribing a benefit plan or class of benefit plans for the purpose of section 42;
- (m) respecting the calculation of pay for a day of paid sick leave;
- (n) prescribing medical treatment or procedures for the purpose of medical leave under section 44;
- (o) respecting the calculation of pay for a day of paid bereavement leave;
- (p) respecting leave related to domestic violence, intimate partner violence or sexual violence under section 54, including
  - (i) the purposes for which the leave may be taken,
  - (ii) the calculation of pay for a day of paid leave under that section,
  - (iii) the information or documentation that an employee is required to provide to an employer, if any, in support of entitlement to the leave, and when it is to be provided, and
  - (iv) the confidentiality, disclosure or sharing of any information or documentation provided by the employee in relation to the leave;
- (q) respecting an emergency leave of absence under section 55, including
  - (i) additional circumstances that constitute an emergency, and
  - (ii) the information or documentation that an employee is required to provide to an employer as evidence in support of entitlement to the leave, and when it is to be provided;

- (r) prescribing things an inspector may order an employer to do under subsection 72(1);
- (s) prescribing the rate of interest charged on amounts owing or earned on amounts held in trust under Part 7;
- (t) prescribing a notice or other document that an employer is required to post in the workplace;
- (u) prescribing other methods of service;
- (v) prescribing administrative penalties;
- (w) defining any word or expression that is used but not defined in this Act;
- (x) prescribing any other thing that, by this Act, is to be prescribed or is to be determined or regulated by regulation;
- (y) providing for any transitional matters the Lieutenant Governor in Council considers necessary or advisable.

**101. Transitional, order**

- (1) An order made under the former Act that is valid and in force on the coming into force of this section, may be appealed, reconsidered, varied, cancelled, or enforced in accordance with this Act as if the order were issued under this Act.

**Transitional, proceeding**

- (2) A proceeding commenced under the former Act but not finally disposed of before the coming into force of this section, is continued and shall be disposed of under this Act.

**Transitional, Board member**

- (3) A person who is a member of the Employment Standards Board under the former Act immediately before the coming into force of this section, continues to be a member of the Board under this Act until the member's term expires or the member sooner ceases to hold office.

**Transitional, inspector**

- (4) The appointment of a person as an inspector under the former Act that was in effect immediately before the coming into force of this section, is continued as the appointment of the person as an inspector under this Act.

**102. Business Corporations Act**

- (1) This section amends the *Business Corporations Act* R.S.P.E.I. 1988, Cap. B-6.01.
- (2) Subsection 94(1) of the Act is amended by the deletion of the words "section 5.7 of the *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.2" and the substitution of the words "section 82 of the *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.3".

**103. Non-disclosure Agreements Act**

- (1) This section amends the *Non-disclosure Agreements Act* R.S.P.E.I. 1988, Cap. N-3.02.
- (2) Subsection 4(6) of the Act is amended by the deletion of the words "Cap. E-6.2" and the substitution of the words "Cap. E-6.3".

**104. Temporary Foreign Worker Protection Act**

- (1) This section amends the *Temporary Foreign Worker Protection Act* S.P.E.I. 2022, c. 65.
- (2) Section 1 of the Act is amended
  - (a) in clause (b), by the deletion of the words “section 4 of the *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.2” and the substitution of the words “section 7 of the *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.3”; and
  - (b) in clause (j), by the deletion of the words “section 3” and the substitution of the words “section 6”.
- (3) Section 60 of the Act is amended by the deletion of the words “Section 4” and the substitution of the words “Sections 7, 97 and 98”.

**105. Repeal**

The *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.2, is repealed.

**106. Commencement**

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.