

# 1994

## CHAPTER 39

### An Act to amend *The Labour Standards Act*

(Assented to June 2, 1994)

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

#### Short title

**1** This Act may be cited as *The Labour Standards Amendment Act, 1994*.

#### R.S.S. 1978, c.L-1 amended

**2** *The Labour Standards Act* is amended in the manner set forth in this Act.

#### Section 2 amended

##### **3 Section 2 is amended:**

###### **(a) by repealing clause (a) and substituting the following:**

“(a) `annual holiday pay' means an amount of money to which an employee is entitled pursuant to subsection 33(1);

“(a.01) `corporate director' means a director of a corporation that is an employer”;

###### **(b) by adding the following clauses after clause (l):**

“(l.1) `pay in lieu of notice' means an amount of money that is payable to an employee pursuant to section 44;

“(l.2) `public holiday pay' means an amount of money to which an employee is entitled pursuant to section 39”;

###### **(c) by adding the following clause after clause (m):**

“(m.1) `registrar of appeals' means an employee of the department who is designated by the minister to act as registrar of appeals for the purposes of this Act”;

###### **(d) by adding the following clauses after clause (p):**

“(p.1) `third party' means a person who is, or is about to become, indebted to or liable to pay money to an employer;

“(p.2) `third party demand' means a demand made pursuant to subsection 54(2) or (8)”;

###### **(e) by adding the following clause after clause (q):**

“(q.1) `wage assessment' means a wage assessment issued by the director pursuant to section 60”; and

###### **(f) by adding the following clause after clause (s):**

“(t) `year of employment' means, except where otherwise provided, a period of 52 consecutive weeks in which an employee's employment is not broken by a period greater than 13 consecutive weeks”.

#### Section 4 amended

**4(1) Subsection 4(1) is amended by striking out “subsections (2), (3)” and substituting “subsections (1.1), (2), (3)”.**

**(2) The following subsection is added after subsection 4(1):**

“(1.1) Without limiting the generality of subsection (1) but subject to the exemptions prescribed in the regulations, this Act applies to employees who work at home”.

**(3) Subsection 4(4) is amended by striking out “*The School Act*” and substituting “*The Education Act*”.**

New section 5

**5 Section 5 is repealed and the following substituted:**

Interpretation of Part

**"5** In this Part, 'day' means any period of 24 consecutive hours".

Section 6 amended

**6 Subsection 6(4) is repealed and the following substituted:**

"(4) The hours during which an employee is required or permitted to work or to be at the disposal of his or her employer are deemed not to include any meal break allowed to employees if notice of the meal break is given in accordance with subsection 13.1(1) and if the employee is not in fact at the disposal of his or her employer during the meal break".

Section 9 amended

**7 Section 9 is amended by adding the following subsection after subsection (1):**

"(1.1) Notwithstanding any other provision of this Act, where the director grants an authorization pursuant to subsection (1), the director shall determine when the employer is required to pay wages to the employees at the rate of time and one-half and shall specify that in the authorization".

New sections 13.1 to 13.4

**8 The following sections are added after section 13:**

Work schedules

**"13.1(1)** An employer shall give notice to employees of:

- (a) the time when work begins and ends over a period of at least one week;
- (b) where work is done in shifts, the time when each shift begins and ends; and
- (c) the time when a meal break begins and ends.

(2) Subject to subsection (2.1), the notice required by subsection (1):

- (a) shall be in writing; and
- (b) may be given by posting notices in conspicuous places where employees have ready access to read the notices.

(2.1) The notice required by subsection (1) need not be in writing or posted:

- (a) where posting the notice is impractical due to the small size of the employer's operation;
- or
- (b) in other cases, where written notice is impractical.

(3) An employer shall give an employee at least one week's notice of a change in the employee's work schedule.

(4) On receipt of a written application from an employer and the employees or a representative of the employees, the director may give a written authorization permitting a variation from the requirements of subsection (1) or (3) where the director is satisfied that the application of those provisions would be unsuitable in the circumstances.

(5) The director may permit a variation from the requirements of subsection (1) or (3) where the employer seeks and obtains the written consent to the variation from the trade union representing the employees.

(6) Subsections (1) and (3) do not apply where any sudden or unusual occurrence or condition arises that could not, by the exercise of reasonable judgment, have been foreseen by the employer.

Break between periods of work

**"13.2(1)** Subject to any regulation made by the Minimum Wage Board pursuant to clause 15(4)(c) but notwithstanding any other provision in this Act, no employer shall require an employee to work or to be at the disposal of the employer for periods that are scheduled so that the employee does not have a period of eight consecutive hours of rest in any period of 24 hours, except in emergency circumstances within the meaning of subsection 12(4).

(2) No employer shall take disciplinary action against an employee who refuses to work or to be at the disposal of the employer according to a schedule that does not allow the employee to have a period of eight consecutive hours of rest in a period of 24 hours where no emergency circumstances exist.

(3) Payment of wages at the rate of time and one-half pursuant to section 6 by an employer does not constitute a defence to a charge alleging a contravention of this section.

#### Meal breaks

**13.3(1)** An employer shall grant to each employee who works six hours or more an unpaid meal break of at least 30 minutes within every five consecutive hours of work except:

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

(b) where the director is satisfied that the employer and a majority of employees agree that the employees may:

(i) take their meal break at another time; or

(ii) forego their meal break;

(c) where the employer seeks and obtains the written consent of the trade union representing the employees;

(d) where it is not reasonable for an employee to take a meal break; or

(e) in any other case prescribed in regulations made pursuant to section 84.

(2) Where it is necessary for medical reasons, an individual employee is entitled to take a meal break at a time or times other than the time specified in subsection (1).

(3) Where an employee has worked five hours and the employer is not required to grant a meal break to an employee, the employer shall permit the employee to eat while working.

#### Additional hours of work

**13.4(1)** Where required to do so by the regulations, an employer shall offer to part-time employees in accordance with their length of service and qualifications any additional hours of work that become available, except in the case of emergency circumstances within the meaning of subsection 12(4).

(2) No employer shall take disciplinary action against an employee who refuses to work or to be at the disposal of the employer for additional hours of work offered in accordance with this section and the regulations".

#### Section 15 amended

**9(1) Clause 15(4)(d) is repealed.**

**(2) Clause 15(4)(h) is amended by striking out "require every employer" and substitute "subject to subsection 48(1.1), require every employer".**

**(3) Clause 15(4)(k) is amended:**

**(a) by striking out "a female employee" and substituting "an employee or a member of a class of employees"; and**

**(b) by striking out "the employee shall be provided by her employer" and substituting "the employer shall provide the employee".**

#### Section 22 amended

**10(1) Clauses 22(1)(a) and (b) are repealed and the following substituted:**

"(a) subject to clause (b), to a fine of not more than \$2,000 for an offence; and

"(b) in the case of an offence that is committed within six years after the person is convicted of any offence:

(i) to a fine of not more than \$5,000 for a second offence; and

(ii) to a fine of not more than \$10,000 for a third or subsequent offence”.

**(2) Subsection 22(2) is amended by striking out “The Fair Employment Practices Act” and substituting “The Saskatchewan Human Rights Code”.**

Section 23 amended

**11(1) Clause 23(1)(a) is repealed and the following substituted:**

“(a) is currently employed and has been in the employment of her employer for a total of at least 20 weeks in the 52 weeks immediately preceding the day on which the requested leave is to commence”.

**(2) Subsection 23(2) is repealed and the following substituted:**

“(2) Notwithstanding subsection (1), an employer shall grant to an employee maternity leave from her employment with the employer in accordance with subsection (3) if the employee meets the requirements of clause (1)(a) and provides her employer with a certificate of a duly qualified medical practitioner:

(a) certifying that the employee is pregnant, specifying the estimated date of birth and certifying that there are bona fide medical reasons that require the employee to cease work immediately; or

(b) certifying that the employee was pregnant and that her pregnancy terminated on a specified date, not more than 14 days prior to the date of the certificate, due to a miscarriage or a stillbirth”.

**(3) Clause 23(4)(b) is repealed and the following substituted:**

“(b) the employee has not provided her employer with a certificate of a duly qualified medical practitioner certifying that there are bona fide medical reasons that require the employee to cease work immediately”.

Section 25 amended

**12(1) Subsection 25(1) is amended:**

(a) **by adding** “, if no opportunity exists to modify her duties or reassign her to another job with no loss of wages or benefits,” **after** “may”; **and**

(b) **by striking out** “three months” **and substituting** “13 weeks”.

**(2) Subsection 25(3) is amended by adding** “and that no opportunity exists to modify the employee's duties or to reassign the employee to another job” **after** “duties”.

New section 26

**13 Section 26 is repealed and the following substituted:**

Reinstatement after maternity leave

**“26(1)** An employer who has granted maternity leave to an employee pursuant to this Part shall, at the expiration of the leave, reinstate the employee in the position occupied by the employee at the time the leave commenced, or in a comparable position, with no loss of accrued seniority or benefits or reduction in wages.

(2) For the purposes of seniority and rights of recall, being on maternity leave does not constitute a break in service, and seniority and rights of recall continue to accrue while an employee is taking maternity leave.

(3) Subject to subsection (4), an employee is entitled to continue participating in any benefit plan that is prescribed in the regulations for the purposes of this subsection while taking maternity leave if the employee pays contributions required by the plan.

(4) A benefit plan that does not permit the participation of employees in accordance with subsection (3) must be amended to permit that participation not later than three years after the day on which this section comes into force”.

Section 27 amended

**14 Subsection 27(3) is amended by striking out "magistrate" wherever it appears and in each case substituting "judge".**

Section 29 repealed

**15 Section 29 is repealed.**

New section 29.1

**16 Section 29.1 is repealed and the following substituted:**

Parental leave

**"29.1(1)** An employer shall grant parental leave in accordance with subsection (2) to every employee who:

(a) is currently employed and has been in the employment of the employer for a total of at least 20 weeks during the 52 weeks immediately preceding the day on which the requested leave is to commence; and

(b) submits to the employer a written application for parental leave:

(i) at least four weeks before the day specified by the employee in the application as the day on which the employee intends to commence parental leave; or

(ii) in the case of an employee who is taking maternity leave pursuant to Part IV, at least four weeks before the day on which the employee was scheduled to return from maternity leave, which is deemed to be the day on which the employee intends to commence parental leave.

(2) Subject to subsection (5), parental leave consists of a period of not more than 12 consecutive weeks to be taken in any combination during the month before or eight months following the estimated date of birth or the day on which the child comes into the employee's care, as the case may be.

(3) An employer shall, on application, grant to any employee who fails to comply with clause (1)(b) parental leave for a period of 12 consecutive weeks commencing on a day within three weeks after the date of birth of the child or the day on which the child comes into the employee's care, as the case may be.

(4) Section 26, subsection 27(3) and section 28 apply, with any necessary modification, to parental leave pursuant to this section.

(5) An employee who wishes to take leave pursuant to Part IV and also take leave pursuant to this section shall take the two leaves consecutively".

Section 29.2 amended

**17(1) Subsection 29.2(1) is repealed and the following substituted:**

**"(1)** An employer shall grant adoption leave in accordance with subsection (2) to an employee who:

(a) is currently employed and has been in the employment of the employer for a total of at least 20 weeks in the 52 weeks immediately preceding the day on which the requested leave is to commence;

(b) submits to the employer a written application for leave at least four weeks prior to the day on which the child comes into the employee's care; and

(c) is to be the primary caregiver of the adopted child during the period of the leave".

**(2) Subsection 29.2(2) is amended by striking out "six" and substituting "18".**

**(3) Subsection 29.2(3) is repealed and the following substituted:**

**"(3)** Where an employee is unable to comply with clause (1)(b), the employee shall give notice to the employer equivalent to the notice given to the adoptive parents by the Department of Social Services, the adoption agency or the birth parent, as the case may be".

Section 29.3 amended

**18 Subsection 29.3(1) is repealed and the following substituted:**

“(1) In this section:

- (a) ‘**immediate family**’ means a spouse, parent, grandparent, child, brother or sister of an employee or of a spouse;
- (b) ‘**spouse**’ means:
  - (i) the wife or husband of an employee; or
  - (ii) a person with whom an employee cohabits and has cohabited as spouses:
    - (A) continuously for a period of not less than two years; or
    - (B) in a relationship of some permanence, if they are the parents of a child”.

New section 29.4

**19 The following section is added before section 30:**

Interpretation of Part

**“29.4** In this Part, ‘**year of employment**’ means a period of 52 consecutive weeks in which an employee's employment is not broken by a period greater than 26 consecutive weeks”.

Section 30 amended

**20(1) Subsection 30(1) is amended:**

- (a) by striking out “his” in clause (a); and
- (b) by repealing clause (b) and substituting the following:

“(b) to an annual holiday of four weeks after the completion of ten years of employment with one employer and after the completion of each subsequent year of employment with that employer”.

**(2) Subsections 30(2) and (3) are repealed.**

Section 33 amended

**21(1) Subsection 33(1) is repealed and the following substituted:**

“(1) An employee is entitled to receive annual holiday pay in the following amounts:

- (a) if the employee is entitled to an annual holiday pursuant to clause 30(1)(a), three fifty-seconds of the employee's total wages for the year of employment immediately preceding the entitlement to the annual holiday;
- (b) if the employee is entitled to an annual holiday pursuant to clause 30(1)(b), four fifty-seconds of the employee's total wages for the year of employment immediately preceding the entitlement to the annual holiday.

“(1.1) With respect to an employee who is entitled to an annual holiday pursuant to section 30 but who does not take that annual holiday, the employer shall pay to the employee the employee's annual holiday pay not later than 11 months after the day on which the employee becomes entitled to the annual holiday”.

**(2) The following subsection is added after subsection 33(3):**

“(4) Where an employee has scheduled a period as an annual holiday at a time agreed to by the employer and the employer does not permit the employee to take the annual holiday as scheduled, the employer shall reimburse the employee for any monetary loss suffered by the employee as a result of the cancellation or postponement of the annual holiday”.

Section 35 amended

**22 Section 35 is amended:**

- (a) by renumbering it as subsection 35(1); and
- (b) by adding the following subsection after subsection (1):

“(2) Where the employment of an employee terminates, the employee is entitled to annual holiday pay calculated in accordance with section 33 with respect to all total wages earned by the employee with respect to which the employee has not previously been paid annual holiday pay”.

Section 38 amended

**23 Section 38 is amended by striking out "Dominion" and substituting "Canada".**

New section 39

**24 Section 39 is repealed and the following substituted:**

Public holiday pay

**"39(1)** The minimum sum of money to be paid for a public holiday or for another day designated for observance of the public holiday by an employer to any employee who does not work on that day:

- (a) where the employer pays to the employee the employee's regular wages for the period that includes that day, is equal to those wages; and
- (b) in any other case, is the amount A calculated in accordance with the following formula:

$$A = \frac{W}{20}$$

where W is the total of the wages earned by the employee during the four weeks immediately preceding the public holiday, exclusive of overtime.

(2) The minimum sum of money to be paid for a public holiday or for another day designated for observance of the public holiday by an employer to any employee who works on that day is the total of:

- (a) the amount to which the employee would be entitled pursuant to subsection (1) if the employee did not work on that day; and
- (b) the amount of wages, calculated at a rate that is 1.5 times the employee's regular rate of wages, for the time worked.

(3) For the purposes of this section, where an employee takes an annual holiday during the four weeks immediately preceding a public holiday, `wages' includes the amount of annual holiday pay that is payable with respect to any annual holidays actually taken during that period".

Section 42 repealed

**25 Section 42 is repealed.**

New sections 43 and 43.1

**26 Section 43 is repealed and the following substituted:**

Notice of discharge

**"43** Subject to section 43.1, except for just cause, no employer shall discharge an employee who has been in the employer's service for at least 13 continuous weeks without giving that employee at least:

- (a) two weeks' written notice, if the employee's period of employment is less than one year of employment; or
- (b) if the employee's period of employment is one year of employment or more, four weeks' written notice plus one additional week's written notice for each year of employment or portion of a year of employment in excess of one year of employment, to a total maximum of 14 weeks' notice.

Notice of lay-off

**"43.1** No employer shall lay off or discharge an employee because of a shortage of work where the employee has been in the employer's service for at least 13 continuous weeks, without giving that employee:

- (a) at least one week's written notice for each year of employment or portion of a year of employment with the employer, to a maximum of 10 weeks' notice; or
- (b) the notice prescribed in the regulations".

Section 44 amended

**27(1) Subsection 44(1) is amended by striking out “section 43” and substituting “section 43 or 43.1”.**

**(2) Subsection 44(2) is amended by striking out “section 43” wherever it appears and in each case substituting “section 43 or 43.1”.**

**(3) The following subsections are added after subsection 44(2):**

“(2.1) After giving notice of lay-off or discharge pursuant to section 43 or 43.1, an employer shall not make any downward adjustment to the normal wages of the employee who is the subject of the notice.

“(2.2) Annual holiday pay is payable with respect to any sum payable pursuant to subsection (2).

“(2.3) Notwithstanding any other provision of this Act, where an employee is laid off and is to be paid in lieu of notice pursuant to subsection (2), that payment is to be made as follows:

(a) in accordance with the employee's normal pay periods during the first 30 days after the effective date of lay-off, the lesser of:

(i) the total amount of the pay in lieu of notice; and

(ii) a portion of the pay in lieu of notice that is equal to the employee's normal wages payable for those pay periods; and

(b) immediately on the expiration of 30 days after the effective date of lay-off, the balance, if any, of the pay in lieu of notice to which the employee is entitled.

“(2.4) Where an employee who has been laid off and is receiving or is entitled to receive pay in lieu of notice is called back to work within the period of notice, the pay in lieu of notice will be reduced by the amount of wages earned by the employee from the same employer during that remaining period of notice.

“(2.5) Where an employer, contrary to section 43 or 43.1, discharges or lays off an employee who is employed at a location that is remote with respect to the employee's normal place of residence without giving the notice required by that section, the employer shall, in addition to any other payments required by this section, pay the costs of transporting the employee from the location to the employee's residence”.

**(4) Subsection 44(3) is amended by striking out “four weeks he worked” and substituting “number of weeks worked in the 13 weeks”.**

New sections 44.1 to 44.3

**28 The following sections are added after section 44:**

Notice of group termination

**“44.1(1) In addition to the requirements of sections 43 and 43.1 but subject to subsection (3), an employer who intends to terminate the employment of 10 or more employees in an establishment within any four-week period shall give written notice of that intention, in accordance with subsection (2), to each of the following:**

(a) the minister;

(b) each employee whose employment will be terminated;

(c) if applicable, a trade union that is:

(i) certified to represent any employees whose employment will be terminated; or

(ii) recognized by the employer as bargaining agent for any employees whose employment will be terminated.

(2) The written notice required by subsection (1):

(a) must specify:

(i) the number of employees whose employment will be terminated;

(ii) the effective date or dates of their terminations; and

(iii) the reasons for the terminations; and

(b) must be given within the time prescribed in the regulations.

(3) The notice required by subsection (1) may be given concurrently with the notice required by section 43 or 43.1.



## Dismissal, etc., for illness or injury prohibited

**“44.2(1)** Except for just cause unrelated to injury or illness, no employer shall dismiss, suspend, lay off, demote or discipline an employee because of absence due to the illness or injury of the employee or illness or injury of a member of the employee's immediate family as defined in section 29.3 who is dependent on the employee if:

- (a) the employee has been in the employer's service for at least 13 consecutive weeks prior to the absence;
- (b) either:
  - (i) in the case of serious illness or injury, the absence does not exceed 12 weeks in a period of 52 weeks; or
  - (ii) in the case of illness or injury that is not serious, the absences do not exceed a total of 12 days in a calendar year, except where it can be demonstrated that the employee has a record of chronic absenteeism and there is no reasonable expectation of improved attendance; and
- (c) the employee, if requested in writing by the employer, provides the employer with a certificate of a duly qualified medical practitioner certifying that the employee was incapable of working due to illness or injury or certifying the illness or injury of the member of the employee's immediate family, as the case may be.

(2) The period of absence permitted by clause (1)(b) shall be extended to 26 weeks where the employee is receiving compensation pursuant to *The Workers' Compensation Act, 1979*.

(3) Nothing in this section limits or abrogates an employee's rights at common law or pursuant to *The Saskatchewan Human Rights Code*.

## Reassignment, etc., of disabled employee

**“44.3(1)** Where an employee becomes disabled and the disability would unreasonably interfere with the performance of the employee's duties, the employer shall, where reasonably practicable, modify the employee's duties or reassign the employee to another job.

(2) In any prosecution alleging a contravention of this section, the onus is on the employer to prove that it is not reasonably practicable to modify the employee's duties or reassign the employee to another job”.

## Section 45 amended

**29 Section 45 is amended by adding “or 43.1” after “section 43”.**

## New section 45.1

**30 The following section is added after section 45:**

## Provision of benefits

**“45.1** Where an employer provides a benefit to employees who work at least 30 hours per week or any other number of hours prescribed in the regulations, the employer shall provide benefits in accordance with the regulations to all eligible employees”.

## Section 48 amended

**31 The following subsections are added after subsection 48(1):**

**“(1.1)** Where an employee is paid his or her holiday pay together with the employee's wages at each regular payment of wages, the employer shall, not later than at the time when wages are paid, provide to the employee a written statement that:

- (a) specifies the amount paid as wages and the amounts paid as annual holiday pay and public holiday pay, if any; and

(b) meets any requirements prescribed in the regulations.

“(1.2) Wages and other amounts that are not included in a written statement pursuant to subsection (1.1) are deemed not to have been paid unless the employer can establish that the employee was regularly informed of the amounts of annual holiday pay and public holiday pay, if any, that were paid to the employee at each regular payment of wages”.

New sections 54, 55 and 55.1

**32 Sections 54 and 55 are repealed and the following substituted:**

Third party demand

“54(1) Without limiting the generality of section 82, in this section and in section 55, ‘wages’ includes overtime, annual holiday pay, public holiday pay and pay in lieu of notice.

(2) Subject to the regulations, the director may serve a third party demand on a person where the director has knowledge or reasonable grounds to believe or suspects that:

(a) an employer has failed or is likely to fail to pay wages to an employee as required by this Act; and

(b) the person on whom the demand is served is or is about to become a third party.

(3) Subject to subsection (4) and section 55.1, a third party demand must require the payment of the lesser of:

(a) the amount of the indebtedness of the third party to the employer; and

(b) the amount specified in the demand.

(4) The amount required by a third party demand to be paid to the director must not exceed the director's estimate of the total amount of all wage claims against the employer.

(5) Service of a third party demand on the third party binds any debt due when the demand is served or accruing due while the demand is in force from the third party to the employer to the extent of the amount set out in the demand.

(6) The director may serve a third party demand pursuant to subsection (2) notwithstanding that:

(a) the director has not issued a wage assessment against the employer; or

(b) a wage assessment has been issued and:

(i) the appeal period has expired; or

(ii) the person against whom the wage assessment was issued has commenced an appeal pursuant to section 62 or 62.3 and:

(A) the appeal is still pending; or

(B) the appeal has been dismissed.

(7) Unless it is revoked by the director, a third party demand remains in force for:

(a) 90 days after the day on which the demand is served; or

(b) any longer period that the director may specify in the demand.

(8) Where a third party demand has expired or been revoked, but the circumstances set out in subsection (2) exist, the director may serve a further third party demand on the same third party.

(9) The receipt of the director for moneys paid pursuant to a third party demand is a good and sufficient discharge of the liability of the third party to the employer to the extent of the payment by the third party pursuant to the demand.

(10) Where a third party is served with a third party demand and subsequently discharges any liability to the employer or fails to comply with the third party demand, the third party is liable to the director to the extent of the lesser of:

(a) the amount of liability discharged to the employer; or

(b) the amount specified in the demand.

(11) The amount mentioned in clause (10)(a) or (b) may be recovered from the third party in accordance with section 62.4.

Moneys received by director pursuant to third party demand

“55(1) Where the director receives moneys pursuant to a third party demand that is served after a wage assessment is issued, the director shall:

(a) where the employer and the employees agree on the amount of the unpaid wages due and

- owing to the employees, pay to the employees the amount agreed on;
- (b) where the employer does not appeal the wage assessment, pay to the employees the amount of their outstanding wages, or a pro-rata share, after the expiration of the appeal period; or
- (c) where the employer appeals the wage assessment, pay to the employees the amount of their outstanding wages, or a pro-rata share, on the final determination of the appeal.
- (2) Where the director issues a third party demand prior to issuing a wage assessment against the employer, the director shall, promptly after receiving moneys pursuant to the demand:
- (a) where the employer and the employees agree on the amount of the unpaid wages due and owing to the employees, pay to the employees the amount agreed on; or
- (b) where the employer and the employees do not agree on the amount of the unpaid wages due and owing to the employees, issue a wage assessment against the employer, and:
- (i) where the employer does not appeal the wage assessment, pay to the employees the amount of their outstanding wages, or a pro-rata share, after the expiration of the appeal period; or
- (ii) where the employer appeals the wage assessment, pay to the employees the amount of their outstanding wages, or a pro-rata share, on the final determination of the appeal.

#### Dispute of liability by third party

- “55.1(1)** Where a third party disputes his or her liability to an employer, the third party may apply to a judge of the Court of Queen's Bench to set aside the third party demand, and the application is deemed to be an application pursuant to section 10 of *The Attachment of Debts Act*.
- (2) For the purposes of subsection (1):
- (a) the third party demand is deemed to be a garnishee summons;
- (b) the third party is deemed to be a garnishee;
- (c) the director, acting on behalf of employees, is deemed to be a plaintiff; and
- (d) the employer is deemed to be a defendant.
- (3) Sections 15 to 21 of *The Attachment of Debts Act* apply, with any necessary modification, where a third party disputes his or her liability pursuant to subsection (1).”

#### New sections 60 to 62.4

##### **33 Sections 60 to 62 are repealed and the following substituted:**

#### Wage assessment

- “60(1)** Without limiting the generality of section 82, in this section and in sections 61 to 62.4, **‘wages’** includes overtime, annual holiday pay, public holiday pay, pay in lieu of notice, monetary losses described in subsection 33(4) and transportation costs described in subsection 44(2.5).
- (2) The director may issue a wage assessment:
- (a) against an employer where the director has knowledge or has reason to believe or suspects that an employer has failed or is likely to fail to pay wages as required by this Act; or
- (b) against a corporate director where the director has knowledge or has reason to believe or suspects that the corporate director is liable for wages in accordance with section 63.
- (3) The director shall issue a wage assessment against an employer where:
- (a) the director has served a third party demand;
- (b) the third party has paid money to the director in response to the third party demand;
- (c) the director has not already issued a wage assessment against the employer in accordance with subsection (2); and
- (d) there is no agreement pursuant to clause 55(2)(a).
- (4) Where the director has issued a wage assessment pursuant to subsection (2) or (3), the director shall cause the wage assessment to be served on the employer or corporate director named in the wage assessment and on each employee who is affected by the wage assessment.
- (5) A wage assessment must:

- (a) indicate the amount claimed against the employer or corporate director;
  - (b) direct the employer or corporate director to:
    - (i) pay the amount claimed within 21 days after the date of service of the wage assessment; or
    - (ii) commence an appeal pursuant to section 62; and
  - (c) in the case of a wage assessment issued pursuant to subsection (3), set out the amount paid to the director by the third party.
- (6) The director may, at any time, amend or revoke a wage assessment.

#### Adjudicators

- “61(1)** The Lieutenant Governor in Council, on the recommendation of the minister after consultation with labour organizations and employer associations, shall establish a list of adjudicators who are designated to hear appeals from wage assessments.
- (2) In addition to any powers conferred on the adjudicators by this Act, the adjudicator has:
- (a) the powers of a commissioner pursuant to *The Public Inquiries Act*; and
  - (b) any powers conferred on adjudicators by the regulations.

#### Commencement of appeal to adjudicator

- “62(1)** An employer or corporate director who disputes liability for the amount stated in a wage assessment, or an employee who disputes the amount of wages owing as set out in a wage assessment, may serve a notice of appeal on the registrar of appeals within 21 days after the date of service of the wage assessment.
- (2) A notice of appeal must set out the grounds of appeal.
- (3) Except in cases where moneys have been paid in pursuant to a third party demand, where the appellant is an employer or a corporate director, the employer or corporate director shall deposit with the registrar of appeals the amount set out in the wage assessment or any other amount that is prescribed in the regulations.
- (4) On the final determination of an appeal, the deposit:
- (a) shall be returned to the employer or corporate director if the determination is in favour of the employer or corporate director; or
  - (b) shall be applied to the wage claims of the employees if the determination is in favour of the employees.
- (5) On receipt of a notice of appeal and on the deposit of the required amount by the appellant, the registrar of appeals shall:
- (a) select an adjudicator from the list mentioned in section 61;
  - (b) set a time, date and place for the appeal; and
  - (c) give written notice of the time, date and place for the hearing of the appeal to:
    - (i) the appellant;
    - (ii) the adjudicator;
    - (iii) the director; and
    - (iv) each employee on whose behalf the wage assessment is issued or, if an employee is the appellant, the employer or corporate director.
- (6) The registrar of appeals shall give the adjudicator a copy of the wage assessment and a copy of the notice of appeal.
- (7) The copy of the wage assessment provided pursuant to subsection (6) is proof, in the absence of evidence to the contrary, that the amount stated in the wage assessment is due and owing, without proof of the signature or official position of the person appearing to have signed the wage assessment.

#### Hearing by adjudicator

- “62.1(1)** An adjudicator who is selected pursuant to subsection 62(5) shall conduct a hearing of the appeal.

- (2) Subject to any regulations made pursuant to section 84, the adjudicator may determine the procedures by which the hearing is to be conducted.
- (3) An adjudicator is not bound by the rules of law concerning evidence and may accept any evidence that the adjudicator considers appropriate.
- (4) An adjudicator may adjourn the hearing of an appeal from time to time and for any period that the adjudicator considers necessary.
- (5) Notwithstanding that a person who is directly affected by a hearing is neither present nor represented at the hearing, where notice of the hearing has been given to the person pursuant to subsection 62(5), the adjudicator may proceed with the hearing and make any decision as though that person were present.
- (6) *The Arbitration Act, 1992* does not apply to adjudications conducted pursuant to this Act.

#### Decision of adjudicator

**“62.2(1)** Within 30 days after a hearing, the adjudicator shall:

- (a) either:
    - (i) dismiss the appeal and confirm the amount claimed in the wage assessment; or
    - (ii) allow the appeal and:
      - (A) vary the amount claimed in the wage assessment; or
      - (B) revoke the wage assessment; and
  - (b) provide written reasons for the decision to the registrar of appeals.
- (2) The adjudicator:
- (a) may award interest at a rate prescribed in the regulations; and
  - (b) shall not award costs against any of the parties.
- (3) On receipt of the decision from the adjudicator, the registrar of appeals shall promptly serve a copy of the decision on the director, the appellant and:
- (a) on each employee who is directly affected by the decision; or
  - (b) where the appellant is an employee, on the employer or corporate director.

#### Further appeals

- “62.3(1)** An employer, a corporate director, an employee named in a wage assessment or the director on behalf of employees may, by notice of motion, appeal a decision of the adjudicator on a question of law or of jurisdiction to a judge of the Court of Queen's Bench within 21 days after the date of the decision.
- (2) An employer, a corporate director, an employee named in a wage assessment or the director on behalf of employees may, with leave of a judge of the Court of Appeal, appeal the decision of a judge of the Court of Queen's Bench on a question of law or of jurisdiction to the Court of Appeal within 30 days after the date of the decision.
- (3) Unless otherwise ordered by a judge of the Court of Queen's Bench, or in the case of an appeal taken pursuant to subsection (2), a judge of the Court of Appeal, enforcement of the decision of the adjudicator or the decision of the judge of the Court of Queen's Bench is not stayed by the appeal.
- (4) The record of an appeal consists of:
- (a) the wage assessment;
  - (b) the notice of appeal served on the registrar of appeals;
  - (c) the written decision of the adjudicator;
  - (d) the notice of motion commencing the appeal to the Court of Queen's Bench; and
  - (e) in an appeal to the Court of Appeal, the decision of the Court of Queen's Bench and the notice of appeal to the Court of Appeal.

#### Director's certificate

- “62.4(1)** The director may issue a certificate setting out the amount of wages owed to employees, together with interest awarded by an adjudicator or a judge, where:
- (a) 21 days have elapsed after the date of service of a wage assessment and no notice of

- appeal has been served on the registrar of appeals in accordance with section 62;
- (b) the adjudicator has provided written reasons for the decision in accordance with section 62.2 and a judge has not stayed the effect of that decision in accordance with subsection 62.3(3); or
- (c) the stay granted by a judge in accordance with subsection 62.3(3) has expired.
- (2) The director may issue a certificate setting out the amount of a third party's liability to the director pursuant to subsection 54(10).
- (3) A certificate issued pursuant to subsection (1) or (2) may be filed with a local registrar of the Court of Queen's Bench.
- (4) A certificate filed pursuant to subsection (3) has the same force and effect as if it were a judgment obtained in the Court of Queen's Bench for the recovery of a debt".

Section 63 amended

**34(1) Subsection 63(1) is amended:**

- (a) **by striking out** ", not exceeding six months' wages," **after** "debts"; **and**
- (b) **by adding** ", not exceeding six months' wages," **after** "for the corporation".
- (2) The following subsection is added after subsection 63(1):**
- "(1.1) For the purposes of this section, `debts due for services performed for the corporation' means all remuneration payable by an employer to an employee pursuant to this Act and, without limiting the generality of the foregoing, includes wages, annual holiday pay, public holiday pay and pay in lieu of notice".
- (3) Subsections 63(2) to (4) are repealed.**

Sections 64 and 65 repealed

**35 Sections 64 and 65 are repealed.**

New sections 68.1 to 68.4

**36 The following sections are added after section 68:**

Fee re wage assessment

- "68.1(1)** Where the director issues a wage assessment against an employer or a corporate director and the wage assessment is not appealed or is upheld on appeal, the person against whom the wage assessment is issued is liable to pay to the director a fee in an amount determined in accordance with the regulations.
- (2) Where a person who is liable to pay the fee mentioned in subsection (1) fails to pay that fee within the time prescribed in the regulations, the director may issue a certificate setting out the amount of the fee, and the certificate may be filed with a local registrar of the Court of Queen's Bench.
- (3) A certificate filed pursuant to subsection (2) has the same force and effect as if it were a judgment obtained in the Court of Queen's Bench for the recovery of a debt.

Director as representative of employees

**"68.2(1)** The director has standing to represent any or all employees of an employer:

- (a) in proceedings pursuant to this Act:
- (i) before an adjudicator;
  - (ii) in the Court of Queen's Bench; or
  - (iii) in the Court of Appeal; and
- (b) in proceedings pursuant to any other Act or any Act of the Parliament of Canada with respect to claims for unpaid wages or for other amounts that are payable to employees pursuant to this Act.
- (2) Subsection (1) does not require the director to represent employees in any proceedings.
- (3) In exercising the power set out in subsection (1), the director shall act in a reasonable manner.

**Negotiation and settlement by director**

**“68.3(1)** Subject to subsections (2) and (3) but notwithstanding any other provision of this Act, the director may negotiate and settle any difference between an employer or corporate director and an employee pursuant to this Act and receive moneys on behalf of the employee in settlement of the difference.

(2) The director may act pursuant to subsection (1) only where:

- (a) evidence is produced by the employer that satisfies the director that full settlement of the difference will lead to cessation of the employer's operation; or
- (b) there is a considerable advantage to the employee and the employee requests the director to act.

(3) Where clause (2)(a) applies, no settlement shall be made for an amount that is less than the amount for which corporate directors would be liable pursuant to subsection 63(1).

**Time limit for certain claims**

**“68.4(1)** A claim pursuant to this Act with respect to unpaid wages must be made to the director or a duly authorized representative of the minister within one year after the last day on which payment of wages was to be made to an employee and an employer failed to make payment.

(2) Recovery of wages pursuant to this Act is limited:

- (a) to wages that became payable in the year immediately preceding the day on which the claim was made to the director or duly authorized representative of the minister; or
- (b) where the employment with the employer has ceased, to wages that became payable within the last year of employment with that employer”.

**Section 69 amended**

**37 Subsection 69(2) is repealed.**

**Section 70 amended**

**38 Section 70 is amended by adding the following subsection after subsection (1):**

**“(1.1)** Without limiting the generality of subsection (1), an employer shall keep a register of every employee whose work is ordinarily performed at home, setting out the address where that work is performed and the portion of the labour or services performed by the employee that was performed at home”.

**Section 71 amended**

**39 Subsection 71(1) is amended by adding “and corporate directors” after “employers”.**

**New section 72**

**40 Section 72 is repealed and the following substituted:**

**Minimum standards set by Act**

**“72(1)** Each requirement imposed by this Act is a minimum requirement only, and every employee is entitled to the benefit of each requirement, regardless of any other term or condition of the employee's employment that may exceed a minimum requirement imposed by this Act.

(2) A right, benefit, term or condition of employment pursuant to a custom or contract, whether oral or written, express or implied, or pursuant to any other Act or regulations made pursuant to any other Act that provides an employee with higher wages or a greater right or benefit or requires fewer hours of work to be entitled to a right or benefit than is required by this Act or the regulations shall prevail over the provision of this Act or the regulations that imposes the lesser requirement.

(3) Where a collective bargaining agreement entered into before the coming into force of this section contains a provision setting out a requirement that is less than a minimum requirement imposed by *The Labour Standards Amendment Act, 1994*, the collective bargaining agreement is deemed to be amended to provide for the minimum requirement imposed by *The Labour Standards Amendment*

*Act, 1994*".

New section 74

**41 Section 74 is repealed and the following substituted:**

Discrimination by employer prohibited

**"74(1)** No employer shall discharge or threaten to discharge or in any manner discriminate against an employee because the employee:

- (a) has reported or proposed to report to a lawful authority any activity that is or is likely to result in an offence pursuant to an Act or an Act of the Parliament of Canada; or
- (b) has testified or may be called on to testify in an investigation or proceeding pursuant to an Act or an Act of the Parliament of Canada.

(2) Subsection (1) does not apply where the actions of an employee are vexatious".

Section 77 amended

**42 Section 77 is amended by adding "and every adjudicator" after "committee".**

Section 80 amended

**43(1) Subsection 80(1) is amended by adding "or an election for a school division, conseil scolaire or district health board" after "election".**

**(2) Subsection 80(2) is amended by adding "or a board of education, conseil scolaire or district health board" after "government".**

**(3) Subsection 80(3) is amended by striking out "magistrate" wherever it appears and in each case substituting "judge".**

New sections 83.1 to 83.3

**44 The following sections are added after section 83:**

Service of documents

**"83.1(1)** Unless otherwise provided in this Act, any document or notice required by this Act or the regulations to be served on any person other than the director may be served:

- (a) by personal service on the person by delivery of a copy of the document or notice;
- (b) by sending a copy of the document or notice by registered or certified mail to the last known address of the person or to the address of the person as shown in the records of the department;
- (c) by sending a copy of the document or notice to an employee by ordinary mail to the last known address of the employee;
- (d) by any of the methods set out in Rule 22 of *The Queen's Bench Rules*; or
- (e) by delivering a copy to the person's lawyer if the lawyer accepts service by endorsing his or her name on a true copy of the document or notice indicating that he or she is the lawyer for that person.

(2) A document or notice to be served on the director or the registrar of appeals must be served in the manner prescribed in the regulations.

(3) A document or notice served by registered mail, certified mail or ordinary mail is deemed to have been received on the third day following the day of its mailing, unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the document or notice.

(4) Where the director is unable to effect service by the methods set out in subsection (1) after making reasonable efforts to do so, the director may serve a document or notice by publishing it in a newspaper of general circulation in the area in which the person was last known to reside.

(5) Any person who is required to serve a document or notice pursuant to this Act or the regulations may apply *ex parte* to a judge of the Court of Queen's Bench for an order for substitutional service or for an order dispensing with service.



- (6) On an application pursuant to subsection (5), a judge of the Court of Queen's Bench may make an order for substitutional service by any means that the judge considers appropriate or an order dispensing with service, where the judge is satisfied that:
- (a) prompt service of the document or notice cannot be effected;
  - (b) the whereabouts of the person to be served cannot be determined; or
  - (c) the person to be served is evading service.

Conflict with *The Pension Benefits Act, 1992*

**“83.2** If there is a conflict between any provision of this Act and *The Pension Benefits Act, 1992* or any regulations made pursuant to that Act, that Act or those regulations shall prevail.

Vote to approve variation

**“83.3** Subject to the regulations, where the director is authorized by any provision of this Act to grant an approval, authorization, permit or licence that would permit an employer to vary a standard imposed by this Act, the director may require a vote to be taken by secret ballot of employees affected by the proposed variation before exercising that authority”.

Section 84 amended

**45 Subsection 84(1) is amended:**

**(a) by adding “, conditionally or unconditionally” after “this Act” in clause (a);**

**(b) by adding “, conditionally or unconditionally” after “this Act” in clause (b);**

**(c) by adding the following clause after clause (b):**

“(b.1) defining, enlarging or restricting any word or phrase used in this Act but not defined in this Act”;

**(d) by adding the following clauses after clause (e):**

“(e.1) prescribing circumstances in which employers are not required to provide meal breaks in accordance with subsection 13.3(1);

“(e.11) governing meal breaks required to be granted in circumstances prescribed pursuant to clause (e.1);

“(e.2) for the purposes of section 13.4:

(i) requiring an employer or any class of employers to offer additional hours of work to part-time employees;

(ii) governing the circumstances in which an employer or class of employers is required to offer additional hours of work to part-time employees;

(iii) respecting the length of service and qualifications of part-time employees to whom an offer of additional work must be made and any other requirements with respect to the eligibility of employees for an offer of additional work;

(iv) respecting the work schedules of employees to whom an offer of additional work is made;

“(e.21) prescribing benefit plans for the purposes of subsection 26(3);

“(e.3) for the purposes of Part VI, requiring the observance of a public holiday on a day other than the calendar day on which it would otherwise fall;

“(e.4) authorizing the establishment by an employer of a uniform entitlement date for the annual holidays of employees and modifying the requirements of Part VII to accommodate the use of a uniform entitlement date;

“(e.5) for the purposes of clause 43.1(b), prescribing the length of notice required to be given by employers or any class of employers;

“(e.6) for the purposes of clause 44.1(2)(b), prescribing the time within which notice of group termination must be given;

“(e.7) exempting any establishment or any class of establishments from the application of section 45.1, conditionally or unconditionally;

“(e.8) governing the provision of benefits to eligible employees pursuant to section 45.1;

“(e.9) for the purposes of subsection 54(2), prescribing conditions with respect to the circumstances in which a third party demand may be served”; **and**

**(e) by repealing clause (i) and substituting the following:**

“(i) conferring powers on adjudicators for the purposes of section 61;

“(j) prescribing the amount of money that an appellant must deposit with the registrar of appeals for the purposes of subsection 62(3);

- “(k) governing procedures by which hearings are to be conducted for the purposes of subsection 62.1(2);
- “(l) prescribing an interest rate for the purposes of subsection 62.2(2);
- “(m) for the purposes of section 68.1, prescribing:
  - (i) the amounts of fees payable or the manner of determining the amounts of fees;
  - (ii) the time within which fees must be paid;
- “(n) for the purposes of subsection 83.1(2), prescribing the manner of serving documents on the director or the registrar of appeals;
- “(o) for the purposes of section 83.3, respecting the circumstances in which the director may require a vote by secret ballot and governing the conduct of a vote;
- “(p) governing the keeping of records by employers for the purposes of this Act;
- “(q) governing written statements required pursuant to this Act;
- “(r) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- “(s) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act”.

Section 85 amended

**46 Subsection 85(1) is repealed and the following substituted:**

- “(1) Every person who:
  - (a) fails to comply with or violates any provision of this Act or of any order, authorization, directive or regulation made pursuant to this Act;
  - (b) with intent to deceive, makes a false or misleading statement in any communication, whether in writing or otherwise, to the minister, the minister's duly authorized representative or an adjudicator; or
  - (c) interferes with or obstructs the minister, the minister's duly authorized representative or an adjudicator in the exercise of a power conferred by this Act or by a regulation made pursuant to this Act;is guilty of an offence.
- “(1.1) Every person who is guilty of an offence mentioned in subsection (1) is liable on summary conviction:
  - (a) subject to clause (b), to a fine of not more than \$2,000 for an offence; and
  - (b) in the case of an offence that is committed within six years after the person is convicted of any offence:
    - (i) to a fine of not more than \$5,000 for a second offence; and
    - (ii) to a fine of not more than \$10,000 for a third or subsequent offence”.

Section 87 amended

**47 Section 87 is amended by striking out “magistrate”:**

- (a) in subsection (1) wherever it appears;
  - (b) in subsection (2); and
  - (c) in subsection (3);
- and in each case substituting “judge”.**

Section 88 amended

**48 Section 88 is amended by striking out “magistrate” and substituting “judge”.**

Section 89 amended

**49 Section 89 is amended:**

- (a) **by striking out** “discharging or suspending” **and substituting** “discharging, laying off or suspending”;
- (b) **by striking out** “magistrate” **and substituting** “judge”; **and**
- (c) **by striking out** “discharged or suspended” **and substituting** “discharged, laid off or suspended”.

Section 90 amended

**50 Section 90 is amended by striking out** “three” **and substituting** “two”.

Coming into force

**51** This Act comes into force on proclamation.

Mr. Shillington