



Province of Alberta

## **EMPLOYMENT STANDARDS CODE**

Revised Statutes of Alberta 2000  
Chapter E-9

Current as of January 1, 2018

Office Consolidation

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### Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

### Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2012 cE-0.3 s288 amends ss65(1) and 66.

2013 cP-18.5 s86 amends s109(5).

2017 c9 s44 repeals and substitutes ss65 and 66 and adds ss65.1 to 65.3.

### Regulations

The following is a list of the regulations made under the *Employment Standards Code Act* that are filed as Alberta Regulations under the Regulations Act

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Employment Standards Code</b>		
Employment Standards .....	14/97 .....	158/97, 249/97, 135/98, 88/99, 135/99, 114/2000, 327/2003, 354/2003, 28/2004, 108/2004, 221/2004, 8/2005, 60/2005, 105/2005, 35/2007, 134/2007,

*NOTE: AR 246/2017 s16 comes into  
on the coming into force of s44  
of the Fair and Family-friendly Workplaces Act.*

*39/2008, 68/2008,  
45/2009, 164/2010,  
78/2011, 102/2011,  
31/2012, 93/2012,  
114/2012, 170/2012,  
84/2013, 232/2013,  
97/2014, 130/2015,  
145/2016, 246/2017*



# **EMPLOYMENT STANDARDS CODE**

## Chapter E-9

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**Preamble**

RECOGNIZING that a mutually effective relationship between employees and employers is critical to the capacity of Albertans to prosper in the competitive world-wide market economy of which Alberta is a part;

ACKNOWLEDGING that it is fitting that the worth and dignity of all Albertans be recognized by the Legislature of Alberta through legislation that encourages fair and equitable resolution of matters arising over terms and conditions of employment;

REALIZING that the employee-employer relationship is based on a common interest in the success of the employing organization, best recognized through open and honest communication between affected parties;

RECOGNIZING that employees and employers are best able to manage their affairs when statutory rights and responsibilities are clearly established and understood; and

RECOGNIZING that legislation is an appropriate means of establishing minimum standards for terms and conditions of employment;

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

**Interpretation**

**1(1)** In this Act,

- (a) “administrative penalty” means an administrative penalty required to be paid under section 123.1(1);
- (a.1) “agreement” includes a collective agreement;
- (a.2) “appeal body” means the appeal body established or designated under section 69;
- (a.3) “authorizing or enforcement instrument” means a permit, an order of an officer, an order of the Director, a decision of an appeal body, a variance or an exemption under section 74 or 74.1, a notice of an officer under section 77 or 78.1, a direction under section 79, a single employer declaration under section 80 and a director’s certificate under section 112;
- (b) “average daily wage” means 5% of an employee’s wages, vacation pay and general holiday pay earned in the 4 weeks immediately preceding a general holiday;

- (c) “collection notice” means a notice served by the Director under section 122;
- (d) “collective agreement” means an agreement in writing between an employer or an employers’ organization and a bargaining agent containing terms or conditions of employment, and may include one or more documents containing one or more agreements;
- (d.1) repealed 2017 c9 s1;
- (e) “Court” means the Court of Queen’s Bench;
- (f) repealed 2017 c9 s1;
- (g) “date of delivery” means the date when the pregnancy of an employee terminates with the birth of a child or when the pregnancy otherwise terminates;
- (h) “Director” means the Director of Employment Standards;
- (i) “Director’s demand” means a demand by the Director under section 115 or a further demand under section 116(3);
- (j) “earnings” means wages, overtime pay, vacation pay, general holiday pay and termination pay;
- (k) “employee” means an individual employed to do work who receives or is entitled to wages and includes a former employee;
- (l) “employer” means a person who employs an employee and includes a former employer;
- (m) “employment record” means the employment information required by section 14 to be kept up to date and any other record needed to determine whether an employee is entitled to anything under this Act;
- (n) “hours of work” means
  - (i) the period of time during which an employee works for an employer, and
  - (ii) time off with pay instead of overtime pay provided by an employer and taken by an employee;
- (o) repealed 2017 c9 s1;

- (p) “medical certificate” means a statement signed by a physician who is entitled to practise medicine under the laws of the jurisdiction in which the physician practises or by a member of another health profession authorized by the regulations for the purpose of this clause;
- (q) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (q.1) “notice of administrative penalty” means a notice served under section 123.1(1);
- (r) “officer” means an employment standards officer;
- (s) “overtime agreement” means an agreement between an employer and employees under section 23;
- (s.1) “overtime hours” means overtime hours determined in accordance with section 21;
- (s.2) “overtime rate” means the hourly rate of pay for overtime hours;
- (t) “Registrar” means the Registrar of Appeals;
- (t.1) “reservist” means a member of the reserve force of the Canadian Forces referred to in subsection 15(3) of the *National Defence Act* (Canada);
- (t.2) repealed 2017 c9 s2;
- (t.3) “termination notice period” means the period commencing from the date the termination notice is given by the employer or the employee and ending on the date the employment terminates;
- (u) “termination pay” means the pay given to an employee instead of a termination notice;
- (v) “third party” means a person to whom a Director’s demand is issued, and includes the Crown in right of Alberta;
- (w) repealed 2017 c9 s2;
- (x) “wages” includes salary, pay, money paid for time off instead of overtime pay, commission or remuneration for work, however calculated, but does not include

- (i) overtime pay, vacation pay, general holiday pay and termination pay,
  - (ii) a payment made as a gift or bonus that is dependent on the discretion of an employer and that is not related to hours of work, production or efficiency,
  - (iii) expenses or an allowance provided instead of expenses, or
  - (iv) tips or other gratuities;
  - (y) “wage rate” means the hourly rate of pay for wages;
  - (z) “week” means 7 consecutive days;
  - (aa) “work” includes providing a service;
  - (bb) “work day” means a 24-hour period ending at midnight or a 24-hour period as established by the consistent practice of an employer;
  - (cc) “work month” means a calendar month or the period from a time on a specific day in a month to the same time on the same day in the following month as established by the consistent practice of an employer;
  - (dd) “work week” means the period between midnight on a Saturday and midnight on the following Saturday, or 7 consecutive days as established by the consistent practice of an employer;
  - (ee) “year of employment” means a period of 12 consecutive months.
- (2) A reference to “this Act” includes a regulation made under this Act.

RSA 2000 cE-9 s1;2001 c6 s6;2009 c4 s2;  
2013 c6 s2;2017 c9 s2

## **Part 1**

### **Application and Operation of this Act**

#### **Application of this Act**

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

- (2) Except for provisions relating to leaves under Divisions 7 to 7.6 and other provisions of this Act necessary to give effect to those provisions, this Act does not apply to
- (a) employees who are members of a municipal police service appointed pursuant to the *Police Act* and their employers with respect to the employment of those employees, or
  - (b) employees and employers to the extent that another Act states that this Act or a provision of it does not apply to them.
- (3), (4) Repealed 2017 c9 s3.

RSA 2000 cE-9 s2;2001 c6 s6;2003 c26 s19;  
2009 c4 s3;2013 c6 s3;2011 c12 s33;2017 c9 s3

#### **Farm and ranch exemptions**

**2.1(1)** The following do not apply to employees who are employed in a farming or ranching operation referred to in subsection (4) or to their employer while acting in the capacity of employer of those employees:

- (a) sections 16 and 18 of Part 2, Division 3, Hours of Work;
- (b) Part 2, Division 4, Overtime and Overtime Pay.

(2) Despite subsection (1), this Act does not apply to employees described in subsection (3) who are employed in a farming or ranching operation referred to in subsection (4) or to their employer while acting in the capacity of employer of those employees.

(3) The following are employees that are described for the purpose of subsection (2):

- (a) an employee who is a shareholder of a corporation engaged in a farming or ranching operation of which all shareholders are family members of the same family;
- (b) an employee who is a family member of a shareholder of a corporation engaged in a farming or ranching operation of which all shareholders are family members of the same family;
- (c) an employee who is a family member of a sole proprietor engaged in a farming or ranching operation;
- (d) an employee who is a family member of a partner in a partnership engaged in a farming or ranching operation where all partners are family members of the same family.



(4) For the purposes of subsections (1) and (2) an employee is employed in a farming or ranching operation if the employee's employment is directly related to

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

(5) In this section, "family member", in relation to a shareholder, sole proprietor or partner, means

- (a) the spouse or adult interdependent partner of the shareholder, sole proprietor or partner, or
- (b) whether by blood, marriage or adoption or by virtue of an adult interdependent relationship, a child, parent, grandparent, sibling, aunt, uncle, niece, nephew or first cousin of the shareholder, sole proprietor or partner or of the shareholder's, sole proprietor's or partner's spouse or adult interdependent partner,

and includes any other person who is a member of a class of persons designated in the regulations under the *Employment Standards Code*.

2017 c9 s4

### **Exemptions, modifications and substitutions**

**2.2** Despite anything in this Act, regulations under section 138 may

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

2017 c9 s4

### **Civil remedies and greater benefits**

**3(1)** Nothing in this Act affects

- (a) any civil remedy of an employee or an employer;
- (b) an agreement, a right at common law or a custom that

- (i) provides to an employee earnings, leaves of the types described in Divisions 7 to 7.6 or other benefits that are at least equal to those under this Act, or
- (ii) imposes on an employer an obligation or duty greater than that under this Act.

**(2)** If under an agreement an employee is to receive greater earnings or leaves of the types described in Divisions 7 to 7.6 than those for which this Act provides, the employer must give those greater benefits.

RSA 2000 cE-9 s3;2001 c6 s6;2009 c4 s4;2013 c6 s4;2017 c9 s5

#### **Minimum standards cannot be avoided**

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

1996 cE-10.3 s4

#### **Employment deemed continuous**

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

1996 cE-10.3 s5

## **Part 2 Standards**

**6** Repealed 2017 c9 s6.

### **Division 1 Paying Earnings**

#### **Pay periods**

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

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

1996 cE-10.3 s7

#### **Payment of wages, overtime pay and general holiday pay**

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

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

1996 cE-10.3 s8

#### **Payment of minimum wage**

**8.1** An employer must pay an employee at a wage rate that is at least the minimum wage established by regulation.

2017 c9 s7

#### **Termination of employment by employer - payment of earnings**

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

- (a) a termination notice under section 56 or section 137(1) if that section applies,
- (b) termination pay under section 57(1) instead of a termination notice, or
- (c) a combination of a termination notice and termination pay under section 57(2),

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

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

RSA 2000 cE-9 s9;2017 c9 s8

#### **Termination of employment by employee - payment of earnings**

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

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

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

1996 cE-10.3 s10

#### **Ways of paying earnings**

**11(1)** In this section, "authorized financial institution" means a bank, treasury branch, credit union, loan corporation, trust

corporation or other corporation insured under the *Canada Deposit Insurance Corporation Act* (Canada).

- (2)** An employee's earnings must be paid by an employer in Canadian currency
- (a) in cash or by cheque, bill of exchange or order to pay, payable on demand, drawn on an authorized financial institution, or
  - (b) if the employer so chooses, by direct deposit to the employee's account in an authorized financial institution of the employee's choice.

1996 cE-10.3 s11

### **Deductions from earnings**

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

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

- (a) permitted or required to be deducted by an Act or regulation, including a regulation under this Act, or a judgment or order of a court,
- (b) authorized to be deducted by a collective agreement that is binding on the employee, or
- (c) personally authorized in writing by the employee to be deducted.

**(3)** Despite an authorization in a collective agreement or a written authorization by an employee, an employer must not deduct from earnings a sum for

- (a) faulty work, as defined in the regulations, of the employee or damage caused by the employee,
- (b) cash shortages or loss of property if an individual other than the employee had access to the cash or property,
- (c) cash shortages resulting from a failure to collect all or any part of the purchase price from a purchaser, or
- (d) any other circumstance specified by the regulations.

RSA 2000 cE-9 s12;2017 c9 s9

**Notice required before earnings reduced**

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

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

1996 cE-10.3 s13

**Division 2  
Employment Records****Records to be maintained**

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

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

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

- (a) the information described in subsection (1), and
- (b) the period of employment covered by the statement.

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

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

- (a) name, address and date of birth;

- (b) the date that the present period of employment started;
  - (c) the date on which a general holiday is taken;
  - (d) each annual vacation, showing the date it started and finished and the period of employment in which the annual vacation was earned;
  - (e) the wage rate and overtime rate when employment starts, the date of any change to wage rates or overtime rates, and particulars of every change to them;
  - (f) copies of documentation relating to a leave under Divisions 7 to 7.6;
  - (f.1) copies of overtime agreements under section 23;
  - (f.2) copies of hours of work averaging agreements under section 23.1;
  - (f.3) copies of parental consents under Division 9;
  - (f.4) copies of agreements under section 61.1(1);
  - (f.5) copies of permits issued under this Act and the regulations;
  - (f.6) copies of exemptions or variances issued under section 74 and 74.1;
  - (f.7) any other information required by the regulations;
  - (g) copies of any layoff notices or recall notice after a temporary layoff;
  - (h) copies of any termination notices.
- (5) On request, an employer must give to an employee a detailed statement of how the employee's earnings were calculated and the method of calculating any bonus or living allowance paid, whether or not it forms part of wages.
- (6) No employer, employee or other person shall falsify an employment record or give any false or misleading information in respect of employment records.

RSA 2000 cE-9 s14;2001 c6 s6;2009 c4 s5;  
2013 c6 s5;2017 c9 s10

### Keeping employment records

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

1996 cE-10.3 s15

### Division 3 Hours of Work

#### Hours of work confined

**16(1)** An employer must confine an employee's hours of work within a period of 12 consecutive hours in any one work day unless an accident occurs, urgent work is necessary to a plant or machinery, or other unforeseeable or unpreventable circumstances occur.

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

RSA 2000 cE-9 s16;2017 c9 s11

#### Notice of work times

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

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

1996 cE-10.3 s17

#### Rest periods

**18(1)** An employer must provide each employee who works 5 hours or more with at least 30 minutes of rest, whether paid or unpaid, within every 5 consecutive hours of work unless

- (a) an accident occurs, urgent work is necessary or other unforeseeable or unpreventable circumstances occur,
- (b) different rest provisions are agreed to pursuant to a collective agreement, or
- (c) it is not reasonable for the employee to take a rest period.

**(2)** If an employer and an employee agree, each rest period under subsection (1) may be taken in 2 periods of at least 15 minutes.

RSA 2000 cE-9 s18;2017 c9 s12

#### Days of rest

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

- (a) one day of rest in each work week,
- (b) 2 consecutive days of rest in each period of 2 consecutive work weeks,

- (c) 3 consecutive days of rest in each period of 3 consecutive work weeks, or
- (d) 4 consecutive days of rest in each period of 4 consecutive work weeks.

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

1996 cE-10.3 s19

**20** Repealed 2017 c9 s13.

## **Division 4 Overtime and Overtime Pay**

### **Overtime hours**

**21** Overtime hours in respect of a work week are

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

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

1996 cE-10.3 s21

### **Overtime pay**

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

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

RSA 2000 cE-9 s22;2017 c9 s14

### **Overtime agreements**

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

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



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

**(1.1)** An agreement under subsection (1) applies to an employee in a group of employees bound by the agreement whether or not the employee was employed by the employer at the time the agreement was entered into.

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

- (a) instead of overtime pay, time off, calculated at 1.5 hours off for each hour of overtime, with pay, will be provided, taken and paid at the employee's wage rate at a time that the employee could have worked and received wages from the employer;
- (b) if time off with pay instead of overtime pay is not provided, taken and paid in accordance with clause (a), the employee will be paid overtime pay at an overtime rate of at least 1.5 times the employee's wage rate for the overtime hours worked;
- (c) instead of overtime pay, time off with pay will be provided, taken and paid to the employee within 6 months of the end of the pay period in which it was earned unless the agreement is part of a collective agreement and the collective agreement provides for a longer period within which the time off with pay is to be provided and taken;
- (d) no amendment or termination of the agreement is to be effective without at least one month's written notice given by one party to the agreement to the other.

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

**(4)** An employer must comply with an overtime agreement entered into under this section.

RSA 2000 cE-9 s22;2017 c9 s15

### **Hours of work averaging agreements**

**23.1(1)** Subject to the regulations, an employee or a group of employees may enter into an hours of work averaging agreement that provides that the employer will average an employee's hours of work over a period of one to 12 weeks for the purpose of determining the employee's entitlement to overtime pay or, instead of overtime pay, time off with pay.

- (2) An hours of work averaging agreement under this section may be part of a collective agreement, or if there is no collective agreement, be in a written agreement between an employer and
- (a) an employee, or
  - (b) a group of employees where the majority of the group agrees.
- (3) An agreement under subsection (1) must
- (a) be in writing,
  - (b) provide a start date and end date, which must provide for a term that does not exceed 2 years, except that in the case of an agreement that is part of a collective agreement, the agreement terminates the day a subsequent collective agreement is entered into,
  - (c) specify the number of weeks over which hours will be averaged, which must not exceed 12 weeks unless authorized by a permit issued by the Director,
  - (d) specify the scheduled daily and weekly hours of work, which must not exceed
    - (i) 12 hours per day, and
    - (ii) 44 hours per week if the agreement specifies a one-week period, or an average of 44 hours per week if the agreement specifies a period of more than one week;
  - (e) specify the manner in which overtime pay and time off with pay instead of overtime pay will be calculated as provided for in the regulations.
- (4) An agreement under subsection (1) applies to an employee in a group of employees bound by the agreement whether or not the employee was employed by the employer at the time the agreement was entered into.
- (5) The employer must provide every employee to which the agreement applies a copy of the agreement in accordance with the regulations.
- (6) No employer who is a party to an agreement under subsection (1) shall fail to pay overtime in accordance with the agreement or otherwise fail to comply with the agreement.

(7) The Director may, subject to and in accordance with the regulations, cancel an agreement under subsection (1) and must notify the employer of the cancellation.

(8) An employer may appeal the decision of the Director under subsection (7) to an appeal body.

(9) A compressed work week arrangement entered into before the repeal of section 20 that is in effect when this section comes into force remains valid

(a) until the earlier of the following:

- (i) one year after the date this section comes into force;
- (ii) the termination of the compressed work week arrangement,

or

(b) in the case of a compressed work week agreement made as part of a collective agreement, the day a subsequent collective agreement is entered into.

2017 c9 s16

#### **Incentive pay - hourly wage for calculation of overtime**

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

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

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

1996 cE-10.3 s24

### **Division 5 General Holidays and General Holiday Pay**

#### **General holidays in Alberta**

**25** The following days are general holidays in Alberta:

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

1996 cE-10.3 s25

**Eligibility for general holiday pay**

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

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

RSA 2000 cE-9 s26;2017 c9 s17

**27** Repealed 2017 c9 s18.

**General holiday pay — not working**

**28** If an employee does not work on a general holiday, the employer must pay the employee general holiday pay of an amount that is at least the average daily wage of the employee.

RSA 2000 cE-9 s28;2017 c9 s19

**General holiday pay — working**

**29** If an employee works on a general holiday, the employer must comply with clause (a) or (b):

- (a) pay the employee general holiday pay of
  - (i) an amount that is at least the average daily wage of the employee, and
  - (ii) an amount that is at least 1.5 times the employee's wage rate for each hour of work of the employee on that day,or
- (b) provide the employee with
  - (i) an amount that is at least the employee's wage rate times each hour of work on that day, and
  - (ii) one day's holiday, not later than the employee's next annual vacation, on a day that would normally be a work day for the employee, and general holiday pay for that day of an amount that is at least the employee's average daily wage.

RSA 2000 cE-9 s29;2017 c9 s20

**30** Repealed 2017 c9 s21.

**General holiday during annual vacation**

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

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

1996 cE-10.3 s31

**Incentive pay - hourly wage for calculating general holiday pay**

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

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

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

1996 cE-10.3 s32

**Effect of general holiday on overtime calculation**

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

1996 cE-10.3 s33

**General holiday pay on termination**

**33.1(1)** If an employee has not taken a holiday to which the employee is entitled under section 29(b)(ii) and

- (a) the employment of the employee is terminated by the employer, the employee is entitled to be paid general holiday pay calculated under section 29(a) less the amount paid to the employee under section 29(b)(i), or
- (b) the employment of the employee is terminated by the employee, the employee is entitled to be paid at least the employee's average daily wage.

**(2)** If the employment of an employee is terminated and at the time of termination a general holiday has not been taken under section 31(2), the employer must pay the employee an amount that is at least the employee's average daily wage for each general holiday not taken.

2017 c9 s22

## Division 6 Vacations and Vacation Pay

### Basic vacation entitlement

**34** An employer must provide an annual vacation to an employee of at least

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

unless section 35 applies.

RSA 2000 cE-9 s34;2017 c9 s23

### Vacation pay for employee paid monthly

**34.1** For each week of vacation, the employer must pay an employee paid by the month vacation pay of an amount at least equal to the employee's wages for the employee's normal hours of work in a work month divided by 4 1/3.

2017 c9 s24

### Vacation pay for employee paid other than monthly

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

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

2017 c9 s24

### Vacation entitlements with a common anniversary date

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

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

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

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

- (3)** If an employee has a common anniversary date, the employee becomes entitled to an annual vacation as follows:
- (a) on the first common anniversary date after employment starts with the employer, at least 2 weeks' vacation or a proportionately lesser period of vacation if the employee has been employed for less than one year;
  - (b) on the 2nd, 3rd, 4th and 5th common anniversary date after employment starts with the employer, at least 2 weeks' vacation;
  - (c) on the 6th common anniversary date after employment starts with the employer, at least
    - (i) 3 weeks' vacation, and
    - (ii) vacation for the period that the proportion referred to in clause (a), if any, bears to one week;
  - (d) on the 7th and subsequent common anniversary dates after employment starts with the employer, at least 3 weeks' vacation.

1996 cE-10.3 s35

**Computing 5 or more years of employment**

**36** When it is necessary to determine whether an employee has been employed by an employer for 5 years of employment, or to determine whether the 6th common anniversary date has occurred, any break in the employee's employment with the employer of less than 90 days is to be counted as a period of continuous employment.

RSA 2000 cE-9 s36;2017 c9 s5

**How vacation is to be given**

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

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

RSA 2000 cE-9 s37;2017 c9 s26

**Dates for annual vacations**

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

1996 cE-10.3 s38



**39** Repealed 2017 c9 s27.

**40** Repealed 2017 c9 s28.

**When vacation pay is to be paid**

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

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

1996 cE-10.3 s41

**Vacation pay on termination of employment**

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

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

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

1996 cE-10.3 s42

**When vacation pay is considered to be wages**

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

1996 cE-10.3 s43

**Reductions in vacation and vacation pay**

**44** When an employee is absent from work, an employer may reduce the employee's vacation and vacation pay in proportion to

the number of days the employee was or would normally have been scheduled to work, but did not.

1996 cE-10.3 s44

## **Division 7 Maternity Leave and Parental Leave**

### **Entitlement to maternity leave**

**45** A pregnant employee who has been employed by the same employer for at least 90 days is entitled to unpaid maternity leave.

RSA 2000 cE-9 s45;2001 c6 s2;2017 c9 s29

### **Length of maternity leave**

**46(1)** The maternity leave to which a pregnant employee is entitled is a period of not more than 16 weeks starting at any time during the 12 weeks immediately before the estimated date of delivery.

**(1.1)** A pregnant employee whose pregnancy ends other than as a result of a live birth within 16 weeks of the estimated due date is entitled to maternity leave under this Division.

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

RSA 2000 cE-9 s46;2001 c6 s2;2017 c9 s30

*(NOTE: Please see section 54.3(a) of the Employment Standards Regulation (AR 14/97) for changes to the leave provisions in this section.)*

### **Notice of maternity leave**

**47(1)** A pregnant employee must give her employer at least 6 weeks' written notice of the date she will start her maternity leave, and if so requested by her employer, the pregnant employee must provide her employer with a medical certificate certifying that she is pregnant and giving the estimated date of delivery.

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

RSA 2000 cE-9 s47;2001 c6 s2

### **No notice of maternity leave**

**48** An employee who does not give her employer prior notice of maternity leave before starting it is still entitled to maternity leave

if, within 2 weeks after she ceases to work, she provides her employer with a medical certificate

- (a) indicating that she is not able to work because of a medical condition arising from her pregnancy, and
- (b) giving the estimated or actual date of delivery.

RSA 2000 cE-9 s48;2001 c6 s2

#### **Notice of employer to start maternity leave**

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

RSA 2000 cE-9 s49;2001 c6 s2

#### **Parental leave**

**50(1)** Subject to subsection (2), an employer must grant parental leave to an employee as follows:

- (a) in the case of an employee entitled to maternity leave under this Division other than an employee described in section 46(1.1), a period of not more than 37 consecutive weeks immediately following the last day of maternity leave;
- (b) in the case of a parent who has been employed by the same employer for at least 90 days, a period of not more than 37 consecutive weeks within 53 weeks after the child's birth;
- (c) in the case of an adoptive parent who has been employed by the same employer for at least 90 days, a period of not more than 37 consecutive weeks within 53 weeks after the child is placed with the adoptive parent for the purpose of adoption.

**(2)** If employees described in this section are parents of the same child, the parental leave granted under subsection (1) may

- (a) be taken wholly by one of the employees, or
- (b) be shared by the employees.

**(3)** If employees described in this section are parents of the same child and are employed by the same employer, the employer is not required to grant parental leave to more than one employee at a time.

2001 c6 s2; 2017 c9 s31

*(NOTE: Please see section 54.3(b) of the Employment Standards Regulation (AR 14/97) for changes to the leave provisions in this section.)*

**Notice of parental leave**

**51(1)** An employee must give the employer at least 6 weeks' written notice of the date the employee will start parental leave unless

- (a) the medical condition of the birth mother or child makes it impossible to comply with this requirement;
- (b) the date of the child's placement with the adoptive parent was not foreseeable.

**(2)** If the employee cannot comply with the written notice requirement for any of the reasons stated in subsection (1)(a) or (b), the employee must give the employer written notice at the earliest possible time of the date the employee will start or has started parental leave.

**(3)** An employee is entitled to start parental leave on the date specified in the written notice given to the employer under subsection (1) or (2).

**(4)** Written notice under section 47(1) is deemed to be notice of parental leave under this section unless the notice specifically provides that it is not notice of parental leave, in which case this section applies.

**(5)** Employees who intend to share parental leave must advise their respective employers of their intention to share parental leave.

2001 c6 s2

**Termination of employment prohibited during maternity leave and parental leave**

**52(1)** No employer may terminate the employment of, or lay off,

- (a) an employee who has started maternity or parental leave, or
- (b) an employee because the employee is entitled to maternity or parental leave.

**(2)** Subsection (1) does not apply if an employer suspends or discontinues in whole or in part the business, undertaking or other activity in which the employee is employed, but the obligation of the employer to reinstate the employee or provide the employee with alternative work in accordance with section 53.1 continues to apply.

RSA 2000 cE-9 s51;2001 c6 s2;2017 c9 s32

**Resumption of employment**

**53(1)** Subject to section 46(2), an employee must give the employer at least 4 weeks' written notice of the date on which the

employee intends to resume work and in any event must give notice not later than 4 weeks before the end of the leave period to which the employee is entitled or 4 weeks before the date on which the employee has specified as the end of the employee's leave period, whichever is earlier.

**(2)** If an employee has given notice that she intends to resume work on a date that is before the end of the 6-week period referred to in section 46(2), the employee is entitled without further notice to an additional period of leave sufficient to meet the requirements of section 46(2).

**(3)** The additional period of leave referred to in subsection (2) is to be charged first against any remaining maternity leave to which the employee is entitled and then against parental leave, and if it is charged against parental leave the amount of parental leave referred to in section 50 is reduced accordingly.

**(4)** An employee is not entitled to resume working until the date specified in the written notice referred to in subsection (1) or the end of the additional period referred to in subsection (2), as the case may be.

**(5)** An employee must resume work on the date specified in the written notice or immediately following the end of the additional period, as the case may be, and if the employee fails to return to work on that date the employee is not entitled to resume work subsequently unless the failure to return to work resulted from unforeseeable or unpreventable circumstances.

**(6)** If an employee fails to provide at least 4 weeks' notice before the end of the leave period to which the employee is entitled, the employee is not entitled to resume work unless the failure to provide the notice resulted from unforeseeable or unpreventable circumstances.

**(7)** Where an employee is entitled to resume work under this section, the employer must

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

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

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

RSA 2000 cE-9 s52;2001 c6 s2

### **Suspension of operations**

**53.1** If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during an employee's maternity or parental leave and the employer has not resumed operations when the employee's leave ends, the employer must, if the operation is subsequently resumed within 52 weeks following the end of the leave,

- (a) reinstate the employee in the position occupied at the time the maternity or parental leave started, at not less than the earnings and other benefits that had accrued to the employee, or
- (b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's maternity or parental leave started, with no loss of seniority or other benefits accrued to the employee.

RSA 2000 cE-9 s53;2001 c6 s2

## **Division 7.1 Reservist Leave**

### **Reservist leave**

**53.2(1)** Subject to the regulations, an employee who has completed at least 26 consecutive weeks of employment with an employer and is a reservist is entitled to reservist leave without pay to take part in the following operations or activities:

- (a) deployment to a Canadian Forces operation outside Canada;
- (b) deployment to a Canadian Forces operation inside Canada that is or will be providing assistance in dealing with an emergency or with its aftermath;
- (c) subject to the regulations, annual training, including related travel time, for an amount of up to 20 days in a calendar year;
- (d) an operation or activity set out in the regulations made under subsection (7).

**(2)** Participation, whether inside or outside Canada, in pre-deployment or post-deployment operations or activities that are required by the Canadian Forces in connection with an operation

described in subsection (1)(a) or (b) is considered deployment to the operation for the purposes of that subsection.

**(3)** An employee is entitled to reservist leave for the period of time prescribed by the regulations or, if no period is prescribed, for as long as subsection (1)(a), (b), (c) or (d) applies to the employee.

**(4)** An employee who intends to take reservist leave must give the employer at least 4 weeks' written notice of the date the reservist leave is to start and the notice must also include

- (a) in the case of leave in respect of an operation or activity referred to in subsection (1)(a), (b) or (d), the estimated date on which the employee intends to resume work, or
- (b) in the case of leave for annual training referred to in subsection (1)(c), the actual date on which the employee intends to resume work.

**(5)** If an employee cannot comply with the notice requirement under subsection (4)(a) because of deployment in urgent circumstances, the employee must advise the employer in writing of the reservist leave as soon as is reasonable and practicable in the circumstances.

**(6)** Unless there is a valid reason for not doing so, an employee who takes reservist leave must advise the employer in writing of any change in the length of the leave as soon as is reasonable and practicable in the circumstances.

**(7)** The Minister may make regulations

- (a) setting out operations or activities for the purpose of subsection (1)(d);
- (b) respecting the circumstances in which annual training may be taken and the maximum amount of time that may be taken for training;
- (c) respecting conditions that must be met before a 2nd or subsequent reservist leave may be taken;
- (d) prescribing the period of time for the purposes of subsection (3).

2009 c4 s6

#### **Request for proof**

**53.3** If an employer requests proof that an employee is entitled to reservist leave, the employee must provide the employer with a document from the employee's commanding officer specifying

- (a) that the employee is taking or has taken part in an operation or activity referred to in section 53.2(1),
- (b) the day on which the leave is to start or started, and
- (c) the estimated or actual length of the leave.

2009 c4 s6

**Termination of employment**

**53.4(1)** No employer may terminate the employment of, or lay off, an employee who has started reservist leave.

**(2)** Subsection (1) does not apply if an employer suspends or discontinues in whole or in part the business, undertaking or other activity in which the employee is employed, but the obligation of the employer to reinstate the employee or provide the employee with alternative work in accordance with section 53.6 continues to apply.

2009 c4 s6

**Resumption of employment**

**53.5(1)** If an employee has been on reservist leave for more than 4 weeks, the employee must give at least 4 weeks' written notice of the day on which the employee intends to resume work.

**(2)** If an employee has been on reservist leave for 4 weeks or less, the employee must, as soon as possible before resuming work, give the employer written notice of the date on which the employee intends to resume work.

**(3)** If an employee who has been on reservist leave in respect of annual training referred to in section 53.2(1)(c) intends to resume work on the date set out in the notice referred to in section 53.2(4)(b), the employee is not required to give written notice under subsection (1) or (2).

**(4)** If an employee fails to comply with subsection (1), the employer may postpone the employee's return to work for a period of up to 4 weeks after the day on which the employee notifies the employer of the employee's intention to resume work.

**(5)** If the employer informs the employee in writing that the employee's return to work is postponed, the employee is not entitled to return to work until the day that is indicated by the employer.

**(6)** During the period of postponement, the employee is deemed to continue to be on reservist leave.



(7) Where an employee is entitled to resume work under this section, the employer must

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

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

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

2009 c4 s6

#### **Suspension of operations**

**53.6** If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during an employee's reservist leave and the employer has not resumed operations when the leave ends, the employer must, if the operation is subsequently resumed within 52 weeks following the end of the leave,

- (a) reinstate the employee in the position occupied at the time the leave started, at not less than the earnings and other benefits that had accrued to the employee, or
- (b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's leave started, with no loss of seniority or other benefits accrued to the employee.

2009 c4 s6

#### **Leave and vacation conflict**

**53.7** Notwithstanding section 37(1), if an employee is on reservist leave on the day by which his or her vacation must be used, any unused part of the vacation must be used immediately after the leave expires or, if the employer and employee agree to a later date, by that later date.

2009 c4 s6

#### **Application**

**53.8** This Division applies only if

- (a) the employee's participation in an operation or activity referred to in section 53.2(1) begins on or after the day that subsection comes into force, and

- (b) notice under section 53.2(4) or (5) is given on or after the day described in clause (a).

2009 c4 s6

## **Division 7.2 Compassionate Care Leave**

### **Compassionate care leave**

#### **53.9(1)** In this Division,

- (a) “common-law partner” means a person who at the relevant time cohabits in a conjugal relationship with the employee and has so cohabited with the employee for a continuous period of at least one year;
- (b) “family member”, in relation to an employee, means
  - (i) a spouse or common-law partner of the employee,
  - (ii) a child of the employee or a child of the employee’s spouse or common-law partner,
  - (iii) a parent of the employee or a spouse or common-law partner of the parent, and
  - (iv) any other person who is a member of a class of persons designated in the regulations for the purpose of this definition.

**(2)** Subject to this section, an employee who has been employed by the same employer for at least 90 days is entitled to unpaid compassionate care leave for a period of up to 27 weeks for the purpose of providing care or support to a seriously ill family member.

**(3)** If more than one employee who is employed by the same employer is entitled to compassionate care leave with respect to the same family member, the employer is not required to grant the leave to more than one employee at a time.

**(4)** The employee must provide to the employer a medical certificate stating that

- (a) the family member, named in the certificate, has a serious medical condition with a significant risk of death within 26 weeks from
  - (i) the day the certificate is issued, or

- (ii) if the leave was begun before the certificate was issued, the day the leave began,

and

- (b) the family member requires the care or support of one or more family members.

(5) The employee must provide a copy of the medical certificate under subsection (4) before commencing compassionate care leave unless the employee is unable to do so, in which case the employee must provide the certificate as soon as is reasonable and practicable in the circumstances.

(6) An employee who wishes to take compassionate care leave must give the employer at least 2 weeks' written notice, which notice must also include the estimated date of the employee's return to work, unless a shorter notice period is necessary in the circumstances, in which case the notice must be provided as soon as is reasonable and practicable in the circumstances.

(7) The employee must inform his or her employer of any change in the estimated date of returning to work.

(8) Compassionate care leave may be taken in one or more periods but no period may be less than one week's duration.

(9) Compassionate care leave ends on the earliest of the following occurrences:

- (a) the last day of the work week in which the family member named in the medical certificate referred to in subsection (4) dies;
- (b) the 27 weeks of compassionate care leave ends;
- (c) the last day of the work week in which the employee ceases to provide care or support to the seriously ill family member.

2013 c6 s6;2017 c9 s33

### **Termination of employment**

**53.91(1)** No employer may terminate the employment of, or lay off, an employee who has started compassionate care leave.

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

with alternative work in accordance with section 53.93 continues to apply.

2013 c6 s6

#### **Notice to return to work**

**53.92(1)** If an employee has been on compassionate care leave, he or she must provide at least one week's written notice of the date the employee intends to return to work unless the employer and the employee agree otherwise.

**(2)** When an employee returns to work under this section, the employer must

- (a) reinstate the employee in the position occupied when the leave started, or
- (b) provide the employee with alternative work of a comparable nature at not less than the earnings and other benefits that had accrued to the employee when the leave started.

**(3)** An employee who does not wish to resume employment after the leave ends must give the employer at least 2 weeks' written notice of the employee's intention to terminate employment.

2013 c6 s6;2017 c9 s34

#### **Suspension of operations**

**53.93** If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during an employee's compassionate care leave and the employer has not resumed operations when the leave ends, the employer must, if the operation is subsequently resumed within 52 weeks following the end of the leave,

- (a) reinstate the employee in the position occupied at the time the leave started at not less than the earnings and other benefits that had accrued to the employee, or
- (b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's leave started, with no loss of seniority or other benefits accrued to the employee.

2013 c6 s6

#### **Leave and vacation conflict**

**53.94** Notwithstanding section 37(1), if an employee is on compassionate care leave on the day by which his or her vacation must be used, any unused part of the vacation must be used

immediately after the leave expires or, if the employer and employee agree to a later date, by that later date.

2013 c6 s6

### **Division 7.3 Death or Disappearance of Child Leave**

#### **Death or disappearance of child leave**

**53.95(1)** In this Division,

- (a) “child” means a person who is under 18 years of age;
- (b) “common-law partner” has the same meaning as in section 53.9(1)(a);
- (c) “crime” means an offence under the *Criminal Code* (Canada);
- (d) “parent” means
  - (i) a parent of a child,
  - (ii) the spouse or common-law partner of a parent of a child,
  - (iii) a person with whom a child has been placed for the purposes of adoption,
  - (iv) the guardian or a foster parent of a child, or
  - (v) a person who has the care, custody or control of a child whether or not they are related by blood or adoption.

**(2)** Subject to this section, an employee who has been employed by the same employer for at least 90 days is entitled to an unpaid leave as follows:

- (a) a period of up to 52 weeks if the employee is the parent of a child who has disappeared and it is probable, considering the circumstances, that the child disappeared as a result of a crime, or
- (b) a period of up to 104 weeks if the employee is the parent of a child who has died and it is probable, considering the circumstances, that the child died as a result of a crime.

**(3)** An employee is not entitled to death or disappearance of child leave if he or she is charged with the crime that resulted in the death or disappearance of the child.

(4) The employee must provide the employer with reasonable verification of the employee's entitlement to the leave as soon as is reasonable and practicable in the circumstances.

(5) The period during which an employee may take death or disappearance of child leave

- (a) begins on the day on which the death or disappearance, as the case may be, occurs, and
- (b) ends, subject to subsections (8) to (10),
  - (i) in the case of leave under subsection (2)(a), 52 weeks after the day on which the disappearance occurs, or
  - (ii) in the case of leave under subsection (2)(b), 104 weeks after the day on which the death occurs.

(6) An employee who wishes to take death or disappearance of child leave must give the employer written notice as soon as is reasonable and practicable in the circumstances, which notice must include the estimated date of the employee's return to work.

(7) The employee must inform his or her employer of any change in the estimated date of returning to work.

(8) In the case of a child who disappears and who is subsequently found, the period referred to in subsection (5) ends

- (a) if the child is found alive, 14 days after the day on which the child is found but no later than the end of the 52-week period, or
- (b) if the circumstances in subsection (2)(b) apply, 104 weeks after the day on which the disappearance occurred.

(9) For greater certainty, death or disappearance of child leave ends on the day on which the circumstances are such that it is no longer probable that the death or disappearance was the result of a crime.

(10) If an employee takes death or disappearance of child leave and is charged with the crime, leave ends on the day on which the employee is charged.

2017 c9 s35

### **Termination of employment**

**53.951(1)** No employer may terminate the employment of, or lay off, an employee who has started death or disappearance of child leave.

(2) Subsection (1) does not apply if an employer suspends or discontinues in whole or in part the business, undertaking or other activity in which the employee is employed, but the obligation of the employer to reinstate the employee or provide the employee with alternative work in accordance with section 53.953 continues to apply.

2017 c9 s35

**Notice to return to work**

**53.952(1)** If an employee has been on death or disappearance of child leave, he or she must provide at least one week's written notice of the date the employee intends to return to work unless the employer and the employee agree otherwise.

(2) When an employee returns to work under this section, the employer must

- (a) reinstate the employee in the position occupied when the death or disappearance of child leave started, or
- (b) provide the employee with alternative work of a comparable nature at not less than the earnings and other benefits that had accrued to the employee when the death or disappearance of child leave started.

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

2017 c9 s35

**Suspension of operations**

**53.953** If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during the employee's death or disappearance of child leave and the employer has not resumed operations when the leave ends, the employer must, if the operation is subsequently resumed within 52 weeks following the end of the leave,

- (a) reinstate the employee in the position occupied at the time the leave started at not less than the earnings and other benefits that had accrued to the employee, or
- (b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's leave started, with no loss of seniority or other benefits accrued to the employee.

2017 c9 s35

**Leave and vacation conflict**

**53.954** Notwithstanding section 37(1), if an employee is on death or disappearance of child leave on the day by which his or her vacation must be used, any unused part of the vacation must be used immediately after the leave expires or, if the employer and employee agree to a later date, by that later date.

2017 c9 s35

**Division 7.4  
Critical Illness of  
Child Leave****Critical illness of child leave**

**53.96(1)** In this Division,

- (a) “child” means a person who is under 18 years of age;
- (b) “common-law partner” has the same meaning as in section 53.9(1)(a);
- (c) “parent” means
  - (i) a parent of a child,
  - (ii) the spouse or common-law partner of a parent of a child,
  - (iii) a person with whom a child has been placed for the purposes of adoption,
  - (iv) the guardian or a foster parent of a child, or
  - (v) a person who has the care, custody or control of a child whether or not they are related by blood or adoption.

**(2)** Subject to this section, an employee who has been employed by the same employer for at least 90 days and is a parent of a critically ill child is entitled to an unpaid critical illness of child leave of up to 36 weeks for the purpose of providing care or support to the child.

**(3)** If more than one employee who is employed by the same employer is entitled to critical illness of child leave with respect to the same child, the employer is not required to grant the leave to more than one employee at a time.

**(4)** If more than one child of the employee is critically ill as a result of the same event, the period during which the employee may take critical illness of child leave



- (a) begins on the earlier of the dates specified in subsection (5)(b) and (d) on the first medical certificate issued in respect of any of the children that are critically ill, and
  - (b) ends on the earliest of the following occurrences:
    - (i) the last day of the work week in which the last of the critically ill children dies;
    - (ii) the expiry of 36 weeks following the date leave began under clause (a);
    - (iii) the expiry of the latest period referred to in subsection (5)(c) on the medical certificates for the critically ill children;
    - (iv) the last day of the work week in which the employee ceases to provide care or support to the last of the critically ill children.
- (5)** The employee must provide to the employer a medical certificate stating
- (a) that the child is a critically ill child and requires the care or support of one or more parents;
  - (b) the start date of the period during which the child requires that care or support;
  - (c) the end date of the period during which the child requires that care or support;
  - (d) if the leave was begun before the certificate was issued, the day leave began.
- (6)** The employee must provide a copy of the medical certificate under subsection (5) before commencing critical illness of child leave unless the employee is unable to do so, in which case the employee must provide the certificate as soon as is reasonable and practicable in the circumstances.
- (7)** An employee who wishes to take critical illness of child leave must give the employer at least 2 weeks' written notice, which notice must also include the estimated date of the employee's return to work, unless a shorter notice period is necessary in the circumstances, in which case the notice must be provided as soon as is reasonable and practicable in the circumstances.
- (8)** The employee must inform his or her employer of any change in the estimated date of returning to work.

(9) Subject to subsection (4), critical illness of child leave may be taken in one or more periods, but no period may be less than one week's duration.

(10) Critical illness of child leave ends on the earliest of the following occurrences:

- (a) the last day of the work week in which the child named in the medical certificate under subsection (5) dies;
- (b) the period of 36 weeks of leave under this Division ends;
- (c) the period referred to subsection (5)(c) of the certificate ends;
- (d) the last day of the work week in which the employee ceases to provide care or support to the critically ill child.

2017 c9 s35

#### **Termination of employment**

**53.961(1)** No employer may terminate the employment of, or lay off, an employee who has started critical illness of child leave.

(2) Subsection (1) does not apply if an employer suspends or discontinues in whole or in part the business, undertaking or other activity in which the employee is employed, but the obligation of the employer to reinstate the employee or provide the employee with alternative work in accordance with section 53.963 continues to apply.

2017 c9 s35

#### **Notice to return to work**

**53.962(1)** If an employee has been on critical illness of child leave, he or she must provide at least one week's written notice of the date the employee intends to return to work unless the employer and the employee agree otherwise.

(2) When an employee returns to work under this section, the employer must

- (a) reinstate the employee in the position occupied when the leave started, or
- (b) provide the employee with alternative work of a comparable nature at not less than the earnings and other benefits that had accrued to the employee when the leave started.

(3) An employee who does not wish to resume employment after the critical illness of child leave ends must give the employer at

least 2 weeks' written notice of the employee's intention to terminate employment.

2017 c9 s35

### **Suspension of operations**

**53.963** If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during an employee's critical illness of child leave and the employer has not resumed operations when the leave ends, the employer must, if the operation is subsequently resumed within 52 weeks following the end of the leave,

- (a) reinstate the employee in the position occupied at the time the leave started at not less than the earnings and other benefits that had accrued to the employee, or
- (b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's leave started, with no loss of seniority or other benefits accrued to the employee.

2017 c9 s35

### **Leave and vacation conflict**

**53.964** Notwithstanding section 37(1), if an employee is on critical illness of child leave on the day by which his or her vacation must be used, any unused part of the vacation must be used immediately after the leave expires or, if the employer and employee agree to a later date, by that later date.

2017 c9 s35

*(NOTE: Please see section 54.3(c) of the Employment Standards Regulation (AR 14/97) for changes to the leave provisions in this Division.)*

## **Division 7.5 Long-term Illness and Injury Leave**

### **Entitlement to leave**

**53.97(1)** Subject to subsections (2) to (4), an employee who has been employed by the same employer for at least 90 days is entitled to unpaid leave due to the illness, injury or quarantine of the employee.

**(2)** For the purpose of subsection (1) the amount of leave under this Division must not exceed 16 weeks in a calendar year.

**(3)** The employee must provide to the employer a medical certificate stating the estimated duration of the leave.

(4) The employee must provide a copy of the medical certificate under subsection (3) before commencing leave under this Division unless the employee is unable to do so, in which case the employee must provide the certificate as soon as is reasonable and practicable in the circumstances.

(5) An employee who wishes to take leave under this Division must give the employer written notice as soon as is reasonable and practicable in the circumstances, which notice must include the estimated date of the employee's return to work.

(6) The employee must inform his or her employer of any change in the estimated date of returning to work.

2017 c9 s35

#### **Termination of employment**

**53.971(1)** No employer may terminate the employment of, or lay off, an employee who has started leave under this Division.

(2) Subsection (1) does not apply if an employer suspends or discontinues in whole or in part the business, undertaking or other activity in which the employee is employed, but the obligation of the employer to reinstate the employee or provide the employee with alternative work in accordance with section 53.973 continues to apply.

2017 c9 s35

#### **Notice to return to work**

**53.972(1)** If an employee has been on leave under this Division, he or she must provide at least one week's written notice of the date the employee intends to return to work unless the employer and the employee agree otherwise.

(2) When an employee returns to work under this section, the employer must

- (a) reinstate the employee in the position occupied when the leave under this Division started, or
- (b) provide the employee with alternative work of a comparable nature at not less than the earnings and other benefits that had accrued to the employee when the leave under this Division started.

(3) An employee who does not wish to resume employment after the leave under this Division ends must give the employer at least 2 weeks' written notice of the employee's intention to terminate employment.

2017 c9 s35

**Suspension of operations**

**53.973** If the business, undertaking or other activity of an employer is suspended or discontinued in whole or in part during the employee's leave under this Division and the employer has not resumed operations when the leave ends, the employer must, if the operation is subsequently resumed within 52 weeks following the end of the leave,

- (a) reinstate the employee in the position occupied at the time the leave started at not less than the earnings and other benefits that had accrued to the employee, or
- (b) provide the employee with alternative work in accordance with an established seniority system or practice of the employer in force at the time the employee's leave started, with no loss of seniority or other benefits accrued to the employee.

2017 c9 s35

**Leave and vacation conflict**

**53.974** Notwithstanding section 37(1), if an employee is on leave under this Division on the day by which his or her vacation must be used, any unused part of the vacation must be used immediately after the leave expires or, if the employer and employee agree to a later date, by that later date.

2017 c9 s35

**Division 7.6  
Other Leaves****Definition**

**53.98** In this Division,

- (a) "family member" in relation to an employee, means a person who is a member of a class of persons designated in the regulations for the purpose of this Division;
- (b) "protected adult" means an assisted adult, represented adult or supported adult as defined in the *Adult Guardianship and Trusteeship Act*.

2017 c9 s35

**Domestic violence leave**

**53.981(1)** For the purposes of this Division, domestic violence occurs when an employee, the employee's dependent child or a protected adult who lives with the employee is subjected to any of the acts or omissions listed in subsection (2) by another person who

- (a) is or has been married to the employee, is or has been an adult interdependent partner of the employee or is residing

or has resided together with the employee in an intimate relationship,

- (b) is or has been in a dating relationship with the employee, regardless of whether they have lived together at any time,
- (c) is the biological or adoptive parent of one or more children with the employee, regardless of their marital status or whether they have lived together at any time,
- (d) is related to the employee by blood, marriage or adoption or by virtue of an adult interdependent relationship, regardless of whether they have lived together at any time, or
- (e) resides with the employee and has care and custody over the employee pursuant to an order of a court.

**(2)** The following acts and omissions constitute domestic violence for the purposes of this Division:

- (a) any intentional or reckless act or omission that causes injury or property damage and that intimidates or harms a person;
- (b) any act or threatened act that intimidates a person by creating a reasonable fear of property damage or injury to a person;
- (c) conduct that reasonably, in all circumstances, constitutes psychological or emotional abuse;
- (d) forced confinement;
- (e) sexual contact of any kind that is coerced by force or threat of force;
- (f) stalking.

**(3)** An employee who is a victim of domestic violence and has been employed by the same employer for at least 90 days is entitled to unpaid domestic violence leave of up to 10 days in a calendar year.

**(4)** An employee may take domestic violence leave for one or more of the following purposes:

- (a) to seek medical attention for the employee or the employee's dependent child or a protected adult in respect of a physical or psychological injury or disability caused by the domestic violence;

- (b) to obtain services from a victim services organization;
- (c) to obtain psychological or other professional counselling for the employee or the employee's dependent child or a protected adult;
- (d) to relocate temporarily or permanently;
- (e) to seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic violence;
- (f) any other purpose provided for in the regulations.

(5) Before taking a leave under this section, the employee must give the employer as much notice as is reasonable and practicable in the circumstances.

2017 c9 s35

### **Personal and Family Responsibility Leave**

#### **Unpaid leave for personal and family responsibilities**

**53.982(1)** An employee who has been employed by the same employer for at least 90 days is entitled to up to 5 days of unpaid leave in a calendar year, but only to the extent that the leave is necessary

- (a) for the health of the employee, or
- (b) for the employee to meet his or her family responsibilities in relation to a family member.

(2) Before taking a leave under this section, the employee must give the employer as much notice as is reasonable and practicable in the circumstances.

2017 c9 s35

### **Bereavement Leave**

#### **Unpaid bereavement leave**

**53.983(1)** An employee who has been employed by the same employer for at least 90 days is entitled to up to 3 days of unpaid leave in a calendar year on the death of a family member.

(2) Before taking a leave under this section, the employee must give the employer as much notice as is reasonable and practicable in the circumstances.

2017 c9 s35

### Leave for Citizenship Ceremony

#### Unpaid leave for citizenship ceremony

**53.984(1)** An employee who has been employed by the same employer for at least 90 days is entitled to up to a half-day of unpaid leave to attend a citizenship ceremony to receive a certificate of citizenship, as provided for under the *Citizenship Act* (Canada) and regulations made under that Act.

**(2)** Before taking a leave under this section, the employee must give the employer as much notice as is reasonable and practicable in the circumstances.

2017 c9 s35

### Termination of Employment

#### Termination of employment

**53.985** No employer may terminate the employment of, or lay off, an employee who is on leave under this Division.

2017 c9 s35

## Division 8 Termination of Employment

#### Calculating length of employment for termination notice purposes

**54** For the purposes of determining the correct termination notice to be given by an employer or employee or termination pay to be given by an employer, when an employee has been employed by the same employer more than once, the periods of employment with that employer are considered to be one period of employment if not more than 90 days has elapsed between the periods of employment.

RSA 2000 cE-9 s54;2017 c9 s36

#### Options for employer to terminate employment

**55(1)** An employer may terminate the employment of an employee only by giving the employee

- (a) a termination notice of at least the period of notice required under section 137(1) if that section applies, or in any other case, a termination notice under section 56,
- (b) termination pay under section 57(1), or
- (c) a combination of termination notice and termination pay under section 57(2).

**(2)** Termination notice is not required

- (a) if the employment of the employee is terminated for just cause,



- (b) when an employee has been employed by the employer for 90 days or less,
- (c) when the employee is employed for a definite term or task for a period not exceeding 12 months on completion of which the employment terminates,
- (d) when the employee is laid off after refusing an offer by the employer of reasonable alternative work,
- (e) if the employee refuses work made available through a seniority system,
- (f) if the employee is not provided with work by the employer by reason of a strike or lockout occurring at the employee's place of employment,
- (g) when the employee is employed under an agreement by which the employee may elect either to work or not to work for a temporary period when requested to work by the employer,
- (h) if the contract of employment is or has become impossible for the employer to perform by reason of unforeseeable or unpreventable causes beyond the control of the employer,
- (i) if the employee is employed on a seasonal basis and on the completion of the season the employee's employment is terminated, or
- (j) when employment ends in the circumstances described in sections 62 to 64.

RSA 2000 cE-9 s55;2017 c9 s37

**Employer's termination notice**

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

- (a) one week, if the employee has been employed by the employer for more than 90 days but less than 2 years,
- (b) 2 weeks, if the employee has been employed by the employer for 2 years or more but less than 4 years,
- (c) 4 weeks, if the employee has been employed by the employer for 4 years or more but less than 6 years,
- (d) 5 weeks, if the employee has been employed by the employer for 6 years or more but less than 8 years,

- (e) 6 weeks, if the employee has been employed by the employer for 8 years or more but less than 10 years, or
- (f) 8 weeks, if the employee has been employed by the employer for 10 years or more.

RSA 2000 cE-9 s56;2017 c9 s38

### **Termination pay**

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

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

**(3)** If the wages of an employee vary from one pay period to another, the employee's termination pay must be determined by calculating the average of the employee's wages during the previous 13 weeks in which the employee worked preceding the date of termination of employment.

RSA 2000 cE-9 s57;2017 c9 s39

### **Termination of employment by an employee**

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

- (a) one week, if the employee has been employed by the employer for more than 90 days but less than 2 years, or
- (b) 2 weeks, if the employee has been employed by the employer for 2 years or more.

**(2)** Subsection (1) does not apply when

- (a) there is an established custom or practice in any industry respecting the termination of employment that is contrary in whole or in part to subsection (1),
- (b) an employee terminates employment because the employee's personal health or safety would be in danger if the employee continued to be employed by the employer,

- (c) the contract of employment is or has become impossible for the employee to perform by reason of unforeseeable or unpreventable causes beyond the control of the employee,
- (d) the employee has been employed by the employer for 90 days or less,
- (e) the employee is temporarily laid off,
- (f) the employee is laid off after refusing an offer by the employer of reasonable alternative work,
- (g) the employee is not provided with work by the employer by reason of a strike or lockout occurring at the employee's place of employment,
- (h) the employee is employed under an agreement by which the employee may elect either to work or not to work for a temporary period when requested to work by the employer, or
- (i) an employee terminates the employment because of a reduction in wage rate, overtime rate, vacation pay, general holiday pay or termination pay.

RSA 2000 cE-9 s58;2017 c9 s40

#### **Expediting termination of employment after an employee's termination notice**

**59(1)** If an employee gives a termination notice that is less than the notice that the employer would have been required to give and the employer wishes to expedite the termination, the employer must pay the wages that the employee would have earned if the employee had worked regular hours for the remainder of the termination notice period that has been given by the employee.

**(2)** If an employee gives a termination notice that is equal to or more than the notice that the employer would have been required to give and the employer wishes to expedite the termination, the employer must pay the wages that the employee would have earned if the employee had worked regular hours for the remainder of the termination notice period that would have been required to be given by the employer.

RSA 2000 cE-9 s59;2017 c9 s41

#### **Continuation of employment after termination**

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

1996 cE-10.3 s60

**Earnings not to change after termination notice given**

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

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

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

1996 cE-10.3 s61

**Use of entitlements during the notice period**

**61.1(1)** An employer must not require an employee to use banked overtime during the termination notice period unless the employer and employee agree otherwise in writing.

**(2)** Unless an employer has, prior to the giving of a termination notice, provided the employee with notice to take annual vacation in accordance with section 38, the employer must not require the employee to take the vacation during the termination notice period.

**(3)** Where an employee has not taken the day's holiday referred to in section 29(b)(ii), an employer must not require the employee to use it during the termination notice period.

2017 c9 s42

## Layoff and Recall

### Temporary layoff

**62(1)** An employer who wishes to maintain an employment relationship without terminating the employment of an employee may temporarily lay off the employee only by giving the employee a written layoff notice.

**(2)** Unless a collective agreement provides otherwise, a layoff notice must be given to the employee

- (a) at least one week prior to the date that the layoff is to commence, if the employee has been employed by the employer for less than 2 years,
- (b) at least 2 weeks prior to the date that the layoff is to commence, if the employee has been employed by the employer for 2 years or more, or
- (c) if unforeseeable circumstances prevent an employer from providing the notice in accordance with clause (a) or (b), as soon as is practicable in the circumstances.

**(3)** The layoff notice must

- (a) state that it is a temporary layoff notice,
- (b) state the date that the layoff is to commence,
- (c) include a copy of this section and sections 63 and 64, and
- (d) include any other information provided for in the regulations.

RSA 2000 cE-9 s62;2017 c9 s43

### Termination pay after temporary layoff

**63(1)** The employment of an employee who is laid off for one or more periods exceeding, in total, 60 days within a 120-day period is deemed to have been terminated unless

- (a) during the layoff the employer, by agreement with the employee,
  - (i) pays the employee wages or an amount instead of wages, or
  - (ii) makes payments for the benefit of the laid-off employee in accordance with a pension or employee insurance plan or similar plan,

or

- (b) there is a collective agreement binding the employer and employee containing recall rights for employees following layoff.

(2) When payments under subsection (1)(a) cease or recall rights under subsection (1)(b) expire, the employment of the employee terminates and termination pay is payable.

RSA 2000 cE-9 s63;2017 c9 s43

### Recall

**64(1)** An employer may request an employee to return to work by providing the employee with a recall notice.

(2) A recall notice must

- (a) be in writing,
- (b) be served on the employee, and
- (c) state that the employee must return to work within 7 days of the date the recall notice is served on the employee.

(3) If an employee fails to return to work within 7 days of being served with the recall notice, the employee is not entitled to termination notice or termination pay if the employer decides to terminate the employee's employment as a result of the employee's failure to return to work in accordance with the notice.

(4) Subsection (3) does not apply to an employee bound by a collective agreement containing recall rights for employees following a layoff.

RSA 2000 cE-9 s64;2017 c9 s43

## Division 9 Restriction on Employment of Children

### Employment of children

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

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

1996 cE-10.3 s65

**Conditions of a child's employment**

**66** The condition referred to in section 65 is that the individual must be enrolled in an off-campus education program provided under the *School Act*.

1996 cE-10.3 s66;1998 c27 s6

**Division 10** Repealed 2017 c9 s45.

**Part 3  
Administration****Division 1  
General****Director and Registrar**

**68(1)** The Minister must appoint an individual who is an employee under the *Public Service Act* as the Director of Employment Standards.

**(2)** The Minister must appoint an individual as the Registrar of Appeals.

1996 cE-10.3 s68

**Establishment of appeal body**

**69(1)** The Lieutenant Governor in Council may

- (a) establish an appeal body consisting of one or more persons who meet the qualifications established by the regulations;
- (b) designate a body established under another Act or regulation as the appeal body for the purpose of this Act;
- (c) designate a class of persons, the members of which are deemed to be an appeal body for the purpose of this Act, which may include, with the approval of the Chief Judge of The Provincial Court of Alberta, judges of The Provincial Court of Alberta or justices of the peace.

**(2)** Where an existing body is designated under subsection (1)(b) as the appeal body, the existing body, despite the enactment under which it was established, may carry out the functions of the appeal body under this Act.

**(3)** The Minister may, by order, establish a code of ethics for members of the appeal body.

**(4)** An appeal body established under subsection (1)(a) or an appeal body designated under subsection (1)(c) may establish rules

of practice and procedures relating to the conduct of appeals under this Act, including establishing panels and quorums for the purpose of its proceedings.

**(5)** An appeal body designated under subsection (1)(b) may adopt the practice and procedures under the enactment under which it was established and may modify them as required for the purpose of conducting appeals under this Act, including establishing panels and quorums for the purpose of its proceedings.

RSA 2000 cE-9 s69;2017 c9 s46

#### **Liability of officials**

**70** No action for damages may be commenced against the Director, an officer, the Registrar or an appeal body for anything done or not done in good faith in the performance or exercise or purported performance or exercise of their functions, powers or duties under this Act.

RSA 2000 cE-9 s70;2017 c9 s94

#### **Delegation**

**71(1)** The Director may delegate the performance or exercise of any function, power or duty of the Director to one or more individuals.

**(2)** A delegation may be

- (a) general or specific to one or more functions, powers or duties, and
- (b) subject to conditions or applicable in the circumstances specified by the Director.

**(3)** Repealed 2017 c9 s47.

RSA 2000 cE-9 s71;2017 c9 s47

#### **Services by others**

**72(1)** The Director may engage persons

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

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

1996 cE-10.3 s72



**Alternative dispute resolution**

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

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

**(2)** The Registrar may

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

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

1996 cE-10.3 s73

**Director's variance or exemption**

**74(1)** Subject to subsection (3), the Director may on application by an employer issue a variance or exemption to vary or exempt the application of one or more provisions of this Act or the regulations

- (a) with respect to that employer and the employees referred to in the application, or
- (b) with respect to a type of employment carried on by that employer.

**(2)** Subsection (1) does not apply to an application by an employer association or to a group of employers.

**(3)** The Director may issue a variance or exemption under this section only if

- (a) the provision to be varied or exempted and the extent to which it may be varied or exempted is authorized by the regulations to be varied or exempted under this section, and
  - (b) the Director is satisfied that issuing the variance or exemption meets the criteria established by the regulations.
- (4)** The Director must notify the employer of the decision respecting the issuance of a variance or exemption.
- (5)** A variance or exemption must
- (a) specify the provisions of this Act or the regulations the application of which is varied or exempted and the extent to which the application of the provisions is varied or exempted,
  - (b) identify the employer and the employees of the employer to whom the variance or exemption applies or the employment to which the variance or exemption applies, as the case may be,
  - (c) specify the date on which the variance or exemption commences and the date it expires,
  - (d) include any terms or conditions that the Director considers appropriate, and
  - (e) include any other information required by the regulations.
- (6)** If the Director grants a variance or exemption, the employer must notify the employees affected by the variance or exemption by
- (a) personally giving a copy of the variance or exemption to the employees,
  - (b) posting a copy of the variance or exemption in the employees' workplace,
  - (c) posting a copy of the variance or exemption online on a secure website to which the employees have access, or
  - (d) providing a copy of the variance or exemption in any other manner that informs the employees of the variance or exemption.
- (7)** The employer and the employees affected by the variance or exemption must comply with the variance or exemption and any terms and conditions of the variance or exemption.

- (8) The Director may, at any time, amend or revoke a variance or exemption issued under this section.
- (9) A decision by the Director respecting the amendment or revocation of a variance or exemption must be given to the employer.
- (10) The employer must provide notice of the amendment or revocation of the variance or exemption to every employee affected by the variance or exemption by
- (a) personally giving it to the employee,
  - (b) posting it in the employee's workplace,
  - (c) posting it online on a secure website to which the employee has access, or
  - (d) providing it in any other manner that informs the employee of the notice.

RSA 2000 cE-9 s74;2017 c9 s48

**Minister's variance or exemption**

**74.1(1)** Subject to the regulations, the Minister may, by order, on application by an employer association or a group of employers, vary or exempt the application of one or more provisions of this Act or the regulations

- (a) with respect to the employers and the employees referred to in the application, or
  - (b) with respect to a type of employment carried on by the employers.
- (2) An order made under subsection (1) must
- (a) specify the provisions of this Act or the regulations the application of which is varied or exempted and the extent to which the application of the provisions is varied or exempted,
  - (b) identify the employers and the employees to whom the order applies or the employment to which the order applies, as the case may be,
  - (c) specify the term of the order, which must not exceed 2 years,
  - (d) include any terms or conditions that the Minister considers appropriate, and

- (e) include any other information required by the regulations.
- (3) An order made under subsection (1) shall not be renewed.
- (4) The employers and the employees affected by an order must comply with the order and any terms and conditions of the order.
- (5) The Minister may, at any time, amend or revoke an order made under this section.
- (6) A copy of an order made under subsection (1) or an amendment or revocation made under subsection (5) must be given to the affected employers and employees in accordance with the regulations.

2017 c9 s48

## **Division 2 Employment Standards Officers**

### **Certification and appointment of officers**

- 75(1)** The Director must establish competency and eligibility requirements to be met by individuals wishing to provide employment standards services, including those that are a function of an officer or that entail a power or duty of an officer.
- (2) When an individual satisfies the Director that the individual meets the competency and eligibility requirements referred to in subsection (1), the Director may certify the individual as eligible for appointment as an officer.
- (3) The Minister may appoint as employment standards officers only those individuals who are certified as eligible for appointment by the Director.
- (4) The authority of an officer under this Act may be limited by conditions imposed by the Minister.

1996 cE-10.3 s75

### **Director exercising powers, etc. of officer**

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

1996 cE-10.3 s76

### **Inspections, investigations, inquiries**

- 77(1)** An officer may conduct an inspection, investigation or inquiry to determine whether this Act, the regulations or an authorizing or enforcement instrument has been or is being complied with, whether or not the officer has received a complaint.

**(2)** In conducting an inspection, investigation or inquiry, an officer may do any one or more of the following:

- (a) subject to subsection (6), enter, at any reasonable time, any place other than a private dwelling, including any means of conveyance or transport, where an officer has reason to believe that
  - (i) work is or has been done by employees,
  - (ii) an employer carries on business, or
  - (iii) an employment record or any other relevant record or thing is kept;
- (b) examine an employment record or any other relevant record or thing;
- (c) by written notice, require the employer or any other person to produce, at a time, date and place specified in the notice, an employment record or any other relevant record or thing;
- (d) by written notice, require the employer or any other person to create a report from any employment record or any other relevant record or thing, by a date and in the manner set out in the notice;
- (e) subject to subsection (5), remove for review and copying an employment record or any other relevant record or thing;
- (f) use data storage, information processing or retrieval devices or systems that are used by an employer in order to examine a record in readable form;
- (g) conduct an audit of compliance, or other examination, of employment records or any other relevant records or things or of any employer practices;
- (h) subject to clause (i), question any person on matters the officer believes may be relevant;
- (i) question an employee, during the employee's regular hours of work or otherwise, without the employer's being present;
- (j) require an employer, employee or other person to provide oral or written statements, whether under oath or otherwise, at a specified time, date and place.

**(3)** An officer may, by a notice issued to an employer, require the employer to post and to keep posted in a conspicuous place or

places where it is likely to come to the attention of the employer's employees, at locations at the employer's place of business specified in the notice,

- (a) any notices, information bulletins or extracts from this Act or the regulations relating to the administration or enforcement of this Act or the regulations, or
- (b) a copy of a report or part of a report made by the officer concerning the results of an investigation or inspection.

(4) If a notice, information bulletin or extract referred to in subsection (3)(a) or a copy of a report or part of a report referred to in subsection (3)(b) posted at the employer's place of business is unlikely to come to the attention of employees at the employer's place of business, the officer may by notice to the employer require the employer to provide a copy to those employees.

(5) An officer who removes a record or thing under subsection (2)(e) must provide a receipt and return the record or thing to the person who provided it within a reasonable time.

(6) An officer may enter a private dwelling under subsection (2)(a) only with the consent of the occupant of the private dwelling or pursuant to an order under subsection (7).

(7) If the consent required under subsection (6) is refused or cannot reasonably be obtained, the officer may apply to a justice as defined in the *Provincial Offences Procedure Act* for an order directing the occupant to permit the officer to enter the private dwelling to exercise the officer's powers and perform the officer's duties and functions, and the justice may make the order accordingly.

RSA 2000 cE-9 s77;2017 c9 s49

#### **Assistance to officers**

**78(1)** Every employer and person acting on the employer's behalf and every employee must give whatever assistance is necessary to an officer to enable the officer to make an entry, inspection, investigation or inquiry.

(2) An employer, employee or other person, as the case may be, must comply with the requirements referred to in section 77(2)(c), (d) and (j).

(3) No employer, employee or other person shall

- (a) interfere with or in any manner hinder an officer, or attempt to interfere with or hinder an officer, in the exercise of a power or performance of a duty or function under this Act;
- (b) make a false statement or give false or misleading information to an officer in response to the exercise of a power or the performance of a duty or function under this Act.

(4) If a person interferes with or in any manner hinders an officer in the exercise of a power or performance of a duty or function under this Act, the Director may apply to the Court for an order restraining that person from interfering with or in any manner hindering the officer in the exercise of that power or the performance of that duty or function.

RSA 2000 cE-9 s78;2017 c9 s50

#### **Officer directed audit**

**78.1(1)** During the course of, or as a result of, an inspection, investigation or inquiry, an officer may, by written notice, require an employer to conduct an audit of compliance, or other examination,

- (a) of the employment records or any other records or thing, or
- (b) of any employer practices

to determine whether this Act, the regulations or an authorizing or enforcement instrument has been or is being complied with.

(2) If an employer is required to conduct an audit or examination under subsection (1), the employer must, in accordance with the notice and subject to the regulations, conduct the audit or examination and report the results to the officer in the form and manner acceptable to the officer.

(3) The notice must specify

- (a) the period to be covered by the audit or examination,
- (b) what is to be covered by the audit or examination and the manner in which the audit or examination is to be conducted,
- (c) the date by which the employer must provide a report of the results of the audit or examination to the officer, and
- (d) any other matter provided for in the regulations.

2017 c9 s50

**Directions**

**79(1)** An officer as a result of an inspection, investigation or inquiry under section 77 or an audit of compliance or other examination under section 78.1 may, in writing, direct an employer or employee to comply with this Act, the regulations or an authorizing or enforcement instrument.

**(2)** A direction may be made with or without conditions and may be revoked or amended at any time.

**(3)** A person to whom a direction is given must comply with the direction.

RSA 2000 cE-9 s79;2017 c9 s51

**Single employer declaration**

**80(1)** If, in the opinion of an officer, a business, undertaking or other activity is carried on or has been carried on by or through 2 or more employers or other persons, or a combination of them, the officer may make a single employer declaration, declaring that the employers or persons named, or combination of them, are a single employer for the purposes of this Act.

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

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

RSA 2000 cE-9 s80;2017 c9 s94

**Effect of declaration**

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

RSA 2000 cE-9 s81;2017 c9 s94

### **Division 3**

## **Employment Standards Complaints, Investigations and Determinations**

**Employee complaints**

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

- (a) an employer failed to pay earnings to an employee or to provide anything to which an employee is entitled under this Act;



- (b) the employment of the employee was suspended or terminated or the employee was laid off
  - (i) repealed 2017 c9 s52,
    - (i.1) contrary to section 52.91 of the *Public Health Act*,
    - (i.2) contrary to section 52, 53.4, 53.91, 53.951, 53.961, 53.971 or 53.985;
    - (i.3) repealed 2017 c9 s52;
  - (ii) for the sole reason that garnishment proceedings are being or might be taken against the employee,
  - (iii) because the employee gave evidence or may give evidence at any inquiry or in any proceeding or prosecution under this Act,
  - (iv) because the employee requested or demanded anything to which the employee is entitled under this Act, or
  - (v) because the employee made or is about to make any statement or disclosure that may be required of the employee under this Act.

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

**(3)** A complaint must be made in the form and manner determined by the Director and must contain the required information, including the complainant's contact information.

**(3.1)** The employee must notify the Director of any changes to the information provided under subsection (3) as soon as reasonable and practicable under the circumstances.

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

**(5)** No employee shall make a complaint to an officer knowing it to be untrue.

RSA 2000 cE-9 s82;2001 c6 s3;2007 c23 s2;  
2009 c4 s7;2013 c6 s7;2017 c9 s52

#### **When complaints may be refused**

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

- (a) the officer considers that
  - (i) the complaint is frivolous or vexatious,
  - (ii) there is insufficient evidence to substantiate the complaint, or
  - (iii) there are other means available to the employee to deal with the subject-matter of the complaint that should be pursued before the complaint is accepted or investigated,

or

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

1996 cE-10.3 s83

**Mediation by officer**

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

- (a) receive from an employer, on behalf of an employee, the money agreed on by the parties in settlement of their differences;
- (b) pay to an employee money received on the employee's behalf;
- (c) do any other things necessary to assist an employer and employee to settle their differences.

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

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

1996 cE-10.3 s84

**Decision of officer**

**85(1)** If an officer

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

the officer must, unless the complaint has been withdrawn by the complainant or deemed to have been withdrawn under subsection (1.1), serve the employee with notice of that decision.

**(1.1)** The Director may deem a complaint to have been withdrawn if an employee refuses or fails to participate in an investigation and reasonable efforts have been made to contact the employee.

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

RSA 2000 cE-9 s85;2017 c9 s53

#### **Complaints referred to Director**

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

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

in the circumstances or for any of the reasons described in section 82(1)(b), the officer must, unless the matter has been settled, refer the complaint to the Director.

RSA 2000 cE-9 s86;2017 c9 s54

#### **Order of an officer**

**87(1)** If an officer determines that earnings are due to an employee, whether or not a complaint has been made, the officer must, unless the matter has been settled, make an order requiring the employer to pay to the employee, or to pay to the Director on behalf of the employee, earnings to which the employee is entitled and specify the date by which the order must be complied with.

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

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

RSA 2000 cE-9 s87;2017 c9 s55

#### **Appeal to Director**

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

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

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

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

(4) The Director or the reviewing officer may

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

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

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

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

RSA 2000 cE-9 s88;2017 c9 s94

#### **Order for reinstatement or compensation**

**89(1)** This section applies when a complaint that

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

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

**(2)** If the Director determines that

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

in the circumstances or for any of the reasons described in section 82(1)(b), the Director must, unless the matter has been settled, make an order for reinstatement or compensation or both and specify the date by which the order must be complied with.

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

- (a) reinstate an employee, or
- (b) pay to the employee, or to the Director on the employee's behalf, compensation of an amount not exceeding the sum the employee would have earned if
  - (i) the employment of the employee had not been suspended or terminated, or
  - (ii) the employee had not been laid off

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

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

**(5)** If the Director determines that

- (a) the employment of the employee was not suspended or terminated, or
- (b) the employee was not laid off

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

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

**Limitation periods for orders**

**90(1)** An order under this Division may direct the payment of wages, overtime pay, vacation pay and general holiday pay, as applicable, earned during the assessment periods.

**(2)** An order under this section may be made with respect to an employee who has not made a complaint only if, at the time that the officer informed the employer of the inspection, investigation or inquiry that resulted in the order, the employee was eligible to make a complaint under section 82(2).

**(3)** In this section,

- (a) “claim date” means the earlier of
  - (i) the date the complaint was made, and
  - (ii) the date the officer informed the employer of the inspection, investigation or inquiry that resulted in the order;
- (b) “assessment period” means
  - (i) in the case of determining the payment of wages or overtime pay, or both, the period
    - (A) commencing 6 months before the earlier of
      - (I) the claim date, and
      - (II) the date the employee’s employment is terminated, if applicable,
    - and
    - (B) ending on a date before the date of the order, as determined appropriate by the officer;
  - (ii) in the case of determining the payment of vacation pay or general holiday pay, or both, the period
    - (A) commencing 2 years before the earlier of
      - (I) the claim date, and
      - (II) the date the employee’s employment is terminated, if applicable,
    - and

(B) ending on a date before the date of the order, as determined appropriate by the officer.

(4) An order of the Director for compensation under section 89(3)(b) may direct payment for a period not exceeding 6 months from the date that the employment of the employee was suspended or terminated, that the employee was laid off or that the employer failed to reinstate the employee or to provide the employee with alternative work, in accordance with Part 2, Division 7, Division 7.1, Division 7.2, Division 7.3, Division 7.4, Division 7.5 or Division 7.6.

RSA 2000 cE-9 s90;2005 c28 s4;2009 c4 s8;2013 c6 s8;  
2017 c9 s57

#### **General provisions about orders**

**91(1)** An order under this Division must

- (a) name the employer to whom the order is directed,
- (b) name the one or more employees in respect of whom the order is made, and
- (c) specify the amount payable in respect of each employee named in the order.

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

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

- (a) the employer to whom it is directed, and
- (b) each employee in respect of whom it is made.

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

(5) Subject to the right to appeal under section 95, an employer must comply with an order under this Division within 21 days of the date of service of the order on the employer.

RSA 2000 cE-9 s91;2017 c9 s58

#### **Revocations or amendments by officer**

**92(1)** An officer may revoke or amend an officer's order issued by the officer who made it at any time before the time for an appeal to the appeal body has expired.

(2) An officer may revoke or amend a single employer declaration issued by the officer who made it at any time before the time for an appeal to the appeal body has expired.

RSA 2000 cE-9 s92;2017 c9 s59

#### **Revocations or amendments by Director**

**92.1(1)** The Director may revoke or amend an officer's order or a Director's order at any time before the order is filed with the Court, but if the order has been appealed to the appeal body, at any time before the appeal body issues its decision.

(2) The Director may revoke or amend a director's certificate referred to in section 112 at any time before the certificate is filed with the Court, but if the certificate has been appealed to the appeal body, at any time before the appeal body issues its decision.

(3) The Director may revoke or amend a single employer declaration at any time, but if the declaration has been appealed to the appeal body, at any time before the appeal body issues its decision.

(4) The Director may revoke or amend a collection notice at any time before the time for an appeal to the appeal body has expired.

(5) The Director may revoke or amend a notice of administrative penalty at any time before the appeal body issues its decision.

2017 c9 s59

#### **Amendments and appeals from amendments**

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

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

RSA 2000 cE-9 s93;2017 c9 s60

#### **Settlement or compromise by Director**

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

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



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

1996 cE-10.3 s94

## **Division 4 Appeals to the Appeal Body**

### **Appeal to appeal body**

**95(1)** A person who has a right of appeal to the appeal body may appeal by serving on the Registrar written notice of appeal specifying the reasons for the appeal and providing to the Registrar the fee, if any, and any amount referred to in subsection (3).

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

- (a) a single employer declaration,
- (b) an order under Division 3,
- (c) a notice of administrative penalty,
- (d) a notification of a cancellation referred to in section 23.1(7),
- (e) a collection notice, or
- (f) a certificate under section 112(4)(b).

(3) The following must be received by the date referred to in subsection (2), in a form and manner acceptable to the Registrar:

- (a) any fee payable under the regulations;
- (b) any amount the employer is required to pay under an order under Division 3;
- (c) any amount the employer is required to pay under section 112(4)(b).

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

- (a) waive or reduce a fee or other amount required to be paid when the notice of appeal is served,
- (b) extend the time to pay a fee or other amount referred to in clause (a), or

- (c) accept security for the amount payable in another form and amount acceptable to the Registrar.

RSA 2000 cE-9 s95;2017 c9 s62

#### **Appeal referred to appeal body**

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

- (a) refer the appeal to the appeal body, and
- (b) give to the appellant and to each party to the appeal, written notice of the date, time and place at which the appeal will be considered.

**(2)** The Director is a party to every appeal to the appeal body and to every proceeding resulting from an order or resulting from a decision of the appeal body.

RSA 2000 cE-9 s96;2017 c9 s63

#### **Abandonment of appeal**

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

RSA 2000 cE-9 1996 cE-10.3 s97

### **Conduct of Proceedings**

#### **Fair process**

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

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

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

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

RSA 2000 cE-9 s98;2017 c9 s94

#### **Conduct of appeal**

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

RSA 2000 cE-9 s99;2017 c9 s94

**Evidence**

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

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

**(3)** For the purpose of hearing appeals under this Act, the members of the appeal body have the same power as is vested in the Court for the trial of civil actions

- (a) to summon and enforce the attendance of witnesses,
- (b) to compel witnesses to give evidence under oath or otherwise,
- (c) to compel witnesses to give evidence in person or otherwise, and
- (d) to compel witnesses to produce any record, object or thing that relates to the matter being heard.

**(4)** Repealed 2017 c9 s64.

RSA 2000 cE-9 s100;2017 c9 ss64,94

**101** Repealed 2017 c9 s65.

**Obtaining evidence**

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

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

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

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

RSA 2000 cE-9 s102;2017 c9 s94

**Failure to appear**

**103** At a hearing,

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

RSA 2000 cE-9 s103;2017 c9 s94

**Form of decision**

**104(1)** An appeal body's decision must be in writing.

**(2)** The decision must indicate the place at which and the date on which it is made and must be signed by the appeal body.

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

**(4)** The Registrar must keep, as a public record, a copy of all decisions issued by an appeal body.

RSA 2000 cE-9 s104;2017 c9 s66

**Settlement**

**105(1)** If the parties settle the matters in dispute themselves after an appeal has been referred to the appeal body, the appeal body may record the settlement in the form of a decision.

**(2)** This section does not apply to an administrative penalty.

RSA 2000 cE-9 s105;2017 c9 s67

**Correction of errors**

**106(1)** An appeal body may

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

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

RSA 2000 cE-9 s106;2017 c9 ss68,94

**Appeal body's decision**

**107(1)** An appeal body may make a decision

- (a) confirming, varying, revoking or substituting anything that is the subject of an appeal;

- (b) doing anything that an officer or the Director could have done under this Act;
- (c) ordering an employer or any employee of the employer to attend an educational program in employment standards specified by the appeal body, and determining who is to pay the costs of the program and the attendance;
- (d) imposing costs, subject to the regulations;
- (e) providing a date by which the decision of the appeal body must be complied with.

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

(3) There is no appeal of an appeal body's decision.

RSA 2000 cE 9 s107;2017 c9 ss69,94

#### **Disbursement of money held by Director**

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

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

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

RSA 2000 cE-9 s108;2017 c9 s94

### **Part 4 Orders and Decisions and Director's Demands to Third Parties**

#### **Application of Part**

**108.1** This Part does not apply in respect of the failure to pay an administrative penalty under Part 4.1.

2017 c9 s71

## Division 1 Enforcement of Orders and Decisions

### Deemed trust

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

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

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

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

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

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

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

**(5)** This section and section 111 apply despite any other Act but with the same force as sections 58, 60 and 61 of the *Employment Pension Plans Act*.

RSA 2000 cE-9 s109;2012 cE-8.1 s160

**Filing of order****110** If

- (a) an order of an officer or of the Director is not complied with and the time for an appeal has expired, or
- (b) a decision of an appeal body is not complied with by the date specified under section 107(1)(e),

the Director may file the order or decision with the clerk of the Court, and the order or decision is then enforceable as an order or judgment of the Court.

RSA 2000 cE-9 s110;2009 c53 s58;2017 c9 s72

**Registration of order in land titles office**

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

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

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

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

RSA 2000 cE-9 s111;2017 c9 s94

**Liability of directors of corporate employers**

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

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

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

- (a) the person was not a director when the unpaid wages were earned,
- (b) for the reasons stated in section 119(2) or (3)(b) or (c) of the *Business Corporations Act* the person would not be liable, or
- (c) for the reasons stated in section 79(2) or (3)(b) or (c) of the *Cooperatives Act* the person would not be liable.

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

- (a) a copy of the order or decision filed in the Court, and
- (b) a certificate stating that wages in a stated amount are due and unpaid by the employer and that the directors or former directors are liable for that amount.

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

(6) If a director or former director does not appeal within 21 days from the date on which the director or former director is served with the certificate, or if a director or former director appeals but is unsuccessful, the Director of Employment Standards may file the certificate with the clerk of the Court and the certificate is then enforceable against the director or former director as an order or judgment of that Court.

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

(8) Section 119(6) and (7) of the *Business Corporations Act* and section 79(6) and (7) of the *Cooperatives Act* apply to a director who has satisfied a claim under this section.

RSA 2000 cE-9 s112;2001 cC-28.1 s450;2017 c9 s94

#### **Reciprocal enforcement of orders**

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

- (a) declare that jurisdiction to be a reciprocating jurisdiction for the purpose of enforcing orders, awards, certificates or



judgments for the payment of earnings made under an enactment of that jurisdiction, and

- (b) designate an authority within that jurisdiction as the authority who may make applications or issue certificates under this section.

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

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

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

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

RSA2000 cE-9 s113;2017 c9 s73

## **Division 2**

### **Director's Demand to Third Parties**

#### **Definitions**

**114** In this Division,

- (a) "account" means a chequing, savings, demand or similar account at a bank, treasury branch, trust corporation, loan corporation, credit union or other deposit-taking financial institution in Alberta, but does not include an account or arrangement under which money is deposited for a fixed term whether or not the term may be abridged, extended or renewed;
- (b) "employer" includes a director or former director in respect of whom a certificate has been filed in the Court under section 112(6);
- (c) "joint debt or account" means a debt or account that is co-owned by an employer and one or more other persons as joint owners or joint and several owners.

RSA 2000 cE-9 s114;2017 c9 s74

**Director's demand to third party**

**115(1)** If the Director knows or has reason to believe that

- (a) an employer has failed or is likely to fail to pay
  - (i) earnings to an employee, or
  - (ii) an amount of compensation that the Director may order to be paid under section 89(3)(b) to or on behalf of an employee,
- and
- (b) a third party is or is about to become indebted to the employer for a sum of money or is about to pay a sum of money to the employer,

the Director may, even though the Director has not determined the amount to which an employee is entitled, issue a demand and serve it on the third party.

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

- (a) an employer has failed to pay any fees and costs payable under this Act, and
- (b) a third party is or is about to become indebted to the employer for a sum of money or is about to pay a sum of money to the employer,

the Director may issue a demand and serve it on the third party.

**(3)** Demands referred to in subsection (1) and (2) may be combined into one demand if they both relate to the same employer.

**(4)** A Director's demand may direct the third party to remit to the Director the amount specified in the demand.

**(5)** A Director's demand with respect to a joint debt or account does not attach to the joint debt or account unless an order or decision relating to the amount owing has been filed in the Court.

RSA 2000 cE-9 s115;2017 c9 s74

**Duties of third party**

**116(1)** On service of the Director's demand, the third party must

- (a) if the third party is indebted to the employer, pay the Director the amount of the indebtedness or the amount specified, whichever is less,

- (b) if the third party is not indebted to the employer and will not or is not likely to become indebted to the employer, reply to the Director accordingly, or
- (c) if the third party is not indebted to the employer but indebtedness is likely to arise or will arise at a future date or on the happening of a future specified event, reply to the Director accordingly.

(2) If the Director is satisfied that the third party is neither indebted nor likely to become indebted to the employer, the Director must revoke the Director's demand.

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

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

1996 cE-10.3 s116

#### **Joint debt or account**

**116.1(1)** On service of a Director's demand under section 116, the third party must, if the indebtedness is a joint debt or account,

- (a) inform the Director of the following:
  - (i) that the indebtedness is a joint debt or account;
  - (ii) the names of and contact information for all persons who are co-owners of the joint debt or account,

and

- (b) pay the Director the amount of the indebtedness that is presumed under subsection (8) to be owned by the employer, or the amount specified in the demand, whichever is less.

(2) On receipt of the information referred to in subsection (1)(a), the Director must give written notice of the demand to all persons identified under subsection (1)(a)(ii).

(3) If disclosure of a name or contact information of a person identified under subsection (1)(a)(ii) would be unlawful or a breach of a legal duty owed by the third party to that person, the third party must promptly

- (a) give written notice of the demand to that person, and
- (b) certify to the Director that the third party has done so.

**(4)** The Director, the employer or any other person identified under subsection (1)(a)(ii) may, within 21 days after receipt of the written notice under subsection (2) or (3), as applicable, apply to the Court for an order to determine either or both of the following:

- (a) that the share in the joint debt or account is other than that presumed under subsection (8);
- (b) that the employer or any other person identified under subsection (1)(a)(ii) is not a co-owner of the joint debt or account,

and the Court may determine any other matter and do any other thing that the Court considers necessary or appropriate.

**(5)** Notice of an application under subsection (4) must be served,

- (a) if the applicant is the employer or any other person identified under subsection (1)(a)(ii), on the third party, the Director and all other persons identified under subsection (1)(a)(ii), or
- (b) if the applicant is the Director, on the third party and all persons identified under subsection (1)(a)(ii).

**(6)** The onus is on the person who brings the application under subsection (4) to establish

- (a) that the share in the joint debt or account is other than that presumed under subsection (8), or
- (b) that the employer or other person identified under subsection (1)(a)(ii) is not a co-owner of the joint debt or account.

**(7)** A Director's demand that attaches a joint account only attaches the portion of the joint account that is in the joint account at the time the demand is received.

**(8)** For the purposes of this section, it is presumed that an equal portion of the joint debt or account is owned by each person identified under subsection (1)(a)(ii).

2017 c9 s75

**Right of third party to make deductions**

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

1996 cE-10.3 s117

**Debt created**

**118(1)** A Director's demand constitutes a debt owed by the third party

- (a) in respect of a demand referred to in section 115(1), to the Director on behalf of the employees, and
- (b) in respect of a demand referred to in section 115(2), to the Crown.

**(2)** A debt referred to in subsection (1) arises

- (a) at the time the demand is received, if the third party is indebted to the employer at that time, or
- (b) when the third party becomes indebted to the employer, if the third party is not indebted to the employer when the demand is received and the demand has not been revoked.

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

**(4)** A debt arising under this section is discharged if

- (a) the third party pays to the Director the amount required to be paid in the Director's demand,
- (b) the employer pays to the employee or the Crown the amount owing under section 115(1) or (2), as the case may be, or
- (c) the Director's demand is revoked.

RSA 2000 cE-9 s118;2017 c9 s76

**Liability of third party not discharged**

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

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

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

RSA 2000 cE-9 s119;2017 c9 s77

#### **Receipt issued by Director**

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

1996 cE-10.3 s120

#### **Payment priorities**

**120.1** Money received in accordance with a Director's demand referred to in section 115(1), (2) or (3) or paid under section 121 or 123 must be paid, subject to the regulations, in the following order of priority:

- (a) first to the employees concerned;
- (b) second to the Crown;
- (c) the remaining balance, if any, to the employer.

2017 c9 s78

#### **Payment of money received**

**121(1)** When money is received in accordance with a Director's demand and an order or appeal body's decision has been filed in the Court, the Director may pay the money in accordance with the order or decision.

**(2)** In the case of a joint debt or account,

- (a) if no application is made in accordance with section 116.1(4), the Director may pay the money in accordance with the order or decision, or
- (b) if an application is made in accordance with section 116.1(4), the Director must hold the money pending disposition of the matter by the Court and pay the money in accordance with the order of the Court.

RSA 2000 cE-9 s121;2017 c9 s79

#### **Director's collection notice**

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

- (a) the date of receipt of the money,

- (b) the amount received,
  - (c) the amount, as the case may be, of either or both of the following:
    - (i) the earnings claimed by the employees or amount of compensation claimed by the employees that the Director may order payable or, if an order or appeal body's decision has been made, the amount of earnings or compensation that the employer is required to pay under the order or decision;
    - (ii) the fees and costs payable to the Crown,
- and
- (d) that, unless an appeal is made, the Director will, on expiration of the period for appeal, pay the lesser of
    - (i) the amount received under the Director's demand, and
    - (ii) the amount referred to in clause (c)

to the employees concerned and the Crown, as applicable, and any balance remaining to the employer.

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

RSA 2000 cE-9 s122;2017 c9 s79

#### **Disposition of money received**

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

(2) If there is an appeal to the appeal body, the Director must hold the money pending disposition of the appeal by the appeal body and pay the money in accordance with the decision of the appeal body.

RSA 2000 cE-9 s123;2017 c9 s79

### **Part 4.1 Administrative Penalties**

#### **Administrative penalties**

**123.1(1)** If the Director is of the opinion that an employer

- (a) has contravened or failed to comply with this Act or the regulations, or

- (b) has failed to comply with an authorizing or enforcement instrument,

the Director may, subject to the regulations, serve on the employer a notice of administrative penalty requiring the employer to pay to the Crown an administrative penalty in the amount set out in the notice for each contravention or failure to comply.

**(2)** A notice of administrative penalty may require the person to whom it is directed to pay either or both of the following:

- (a) a daily amount for each day or part of a day on which the contravention or failure to comply occurs or continues;
- (b) a one-time amount to address economic benefit where the Director is of the opinion that the person has derived an economic benefit directly or indirectly as a result of the contravention or failure to comply.

**(3)** An administrative penalty referred to in subsection (2)(a) may not exceed \$10 000 for each contravention or failure to comply or for each day or part of a day on which the contravention or failure to comply occurs or continues, as the case may be.

**(4)** An employer who pays an administrative penalty in respect of a contravention or a failure to comply shall not be charged under this Act with an offence in respect of the same contravention or failure to comply that is described in the notice of administrative penalty.

**(5)** A notice of administrative penalty may be served within 2 years after the alleged contravention or non-compliance occurs, but not afterwards.

**(6)** Subject to the right to appeal, where an employer fails to pay an administrative penalty in accordance with the notice of administrative penalty and the regulations, the Director may file a copy of the notice of administrative penalty with the clerk of the Court, and the notice of administrative penalty is then enforceable as an order or judgment of the Court.

**(7)** An employer who is served with a notice of administrative penalty may appeal the administrative penalty to the appeal body.

**(8)** When an appeal from an administrative penalty is commenced, the commencement of that appeal operates to stay the administrative penalty until the appeal body renders its decision on the appeal or the appeal is withdrawn.



## **Part 5 Offences, Procedures and Regulations**

### **Division 1 Offences and Penalties**

#### **No dismissal for garnishment proceedings**

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

1996 cE-10.3 s124

#### **Adverse effect on employment prohibited**

**125** No employer and no other person may terminate or restrict the employment of or in any manner adversely affect an individual's employment or working conditions because the individual

- (a) has made or is about to make a complaint under this Act,
- (b) has given evidence or may give evidence in any proceeding or prosecution under this Act,
- (c) requests or demands anything to which the person is entitled under this Act, or
- (d) has provided or is about to provide any information to an officer.

RSA 2000 cE-9 s125;2017 c9 s81

**126** Repealed 2017 c9 s82.

#### **Premium for employment prohibited**

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

1996 cE-10.3 s127

#### **Employer prohibitions**

**128** No employer may

- (a) fail to pay earnings to an employee or to provide anything to which an employee is entitled under this Act;
- (b) require an employee to work hours in excess of the hours of work permitted under this Act.

RSA 2000 cE-9 s128;2001 c6 s4;2009 c4 s9;2013 c6 s9;2017 c9 s83

**Offences**

**129** Any person who contravenes or fails to comply with this Act or the regulations or fails to comply with an authorizing or enforcement instrument is guilty of an offence.

RSA 2000 cE-9 s129;2001 c6 s5;2009 c4 s10;2013 c6 s10; 2017 c9 s84

**130** Repealed 2017 c9 s85.

**Corporate offences**

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

RSA 2000 cE-9 s131;2017 c9 s86

**Penalty**

**132(1)** A person who is guilty of an offence under this Act is liable,

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

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

RSA 2000 cE-9 s132;2017 c9 s87

**Prosecutions**

**133** A prosecution for an offence under this Act may be commenced within 2 years after the date on which the alleged offence occurred, but not afterwards.

RSA 2000 cE-9 s133;2017 c9 s88

## **Division 2 Procedural Matters**

**Non-compellable witness**

**134(1)** In this section, “adjudicator” means the Court or any other court and includes the Labour Relations Board in matters relating to labour relations or any other board or person having by law or by the consent of the parties authority to hear, receive and examine

evidence, but does not include a commissioner making an inquiry under the *Public Inquiries Act* or an appeal body under this Act.

(2) The following are not compellable witnesses in a proceeding, other than a prosecution, before an adjudicator respecting any information, material or report obtained by the Minister or any other person under this Act:

- (a) the Minister;
- (b) a person employed or engaged in the administration of this Act;
- (c) any person designated by the Minister or the Director or selected by the parties to endeavour to effect settlement of any matter to which this Act applies.

RSA 2000 cE-9 s134;2017 c9 s89

#### **Service of documents**

**135** If anything is required or permitted to be served under this Act it may, in addition to any other method provided by law, be served in accordance with the regulations.

RSA 2000 cE-9 s135;2017 c9 s90

#### **Certification of copies**

**136** In a proceeding or prosecution under this Act,

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

is to be admitted in evidence as proof, in the absence of evidence to the contrary, of the matters stated in it without proof that the certificate was signed by the person purporting to sign it or of the appointment of the person signing.

RSA 2000 cE-9 s136;2017 c9 s94

#### **Publication**

**136.1** Subject to the regulations, the Director must publish

- (a) any permits issued under this Act and the regulations,

- (b) any exemptions or variances issued under section 74 or 74.1, and
- (c) particulars of enforcement action taken under this Act or the regulations.

2017 c9 s91

**Group termination**

**137(1)** Subject to the regulations, if an employer intends to terminate the employment of 50 or more employees at a single location and the terminations will occur within a 4-week period, the employer must give the Minister at least the following amount of written notice before the date on which the first termination is to take effect:

- (a) 8 weeks, if there are 50 or more but fewer than 100 affected employees;
- (b) 12 weeks, if there are 100 or more but fewer than 300 affected employees;
- (c) 16 weeks, if there are 300 or more affected employees.

**(2)** A notice under subsection (1) must include the following:

- (a) the number of employees whose employment will be terminated,
- (b) the effective dates of the terminations, and
- (c) any other information required by the regulations.

**(3)** An employer giving notice under subsection (1) must immediately

- (a) give a copy of the notice to the bargaining agent for the affected employees, and
- (b) if any of the affected employees do not have a bargaining agent, give a copy of the notice to the affected employees in accordance with the regulations.

**(4)** A copy of a notice given by an employer under subsection (3) constitutes termination notice to an employee under section 55 only if the copy of the notice is given to the employee and the employee is identified as an affected employee.

RSA 2000 cE-9 s137;2017 c9 s92

### Division 3 Regulations

#### Regulation-making authority

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

- (a) respecting the exemption of any employment, employer or category of employers from any or all of the provisions of Part 2, conditionally or unconditionally;
  - (a.1) respecting the exemption of any employee or category of employees from any or all of the provisions of Part 2, conditionally or unconditionally;
  - (a.2) respecting the varying or substituting of any provision of Part 2 in respect of any employment, any employer or any employee or any category of employers or employees;
  - (a.3) prescribing the period during which a regulation made pursuant to clause (a), (a.1) or (a.2) applies;
  - (a.4) respecting terms and conditions that may be imposed with respect to an employment, employer or employee or category of employers or employees exempted pursuant to clause (a) or (a.1);
  - (a.5) respecting terms and conditions that may be imposed with respect to the varying or substituting of any provision of Part 2 pursuant to clause (a.2) in respect of any employment, any employer or any employee or any category of employers or employees;
  - (a.6) varying or substituting any provision of Part 2, Divisions 7 to 7.6 to reflect amendments made to the *Employment Insurance Act* (Canada) or the regulations under that Act that relate to an entitlement or any condition of entitlement under any of those Divisions;
- (b) designating a class or classes of persons for the purpose of the definition of “family member” in section 2.1(5), 53.9(1) or 53.98;
  - (b.1) for the purpose of section 12(2), authorizing purposes for which money may be deducted from earnings and for the purpose of section 12(3), specifying other circumstances where deductions from earnings cannot be made;
  - (b.2) respecting further records that must be kept up-to-date by an employer under section 14(1) or (4);

- (b.3) respecting hours of work averaging agreements including, without limitation, regulations
  - (i) respecting the manner in which overtime is to be calculated;
  - (ii) respecting work schedules;
  - (iii) respecting terms and conditions that must be included in an agreement;
  - (iv) respecting scheduled daily and weekly hours of work;
  - (v) respecting the methods of providing copies of an agreement to, and otherwise informing employees, affected by the agreement;
  - (vi) the circumstances under which the Director may cancel an agreement and the process by which the cancellation is to take place;
- (b.4) prescribing other purposes for which a domestic violence leave may be taken under section 53.981(4);
- (b.5) specifying what constitutes “health of an employee” and “family responsibilities” for the purpose of section 53.982;
- (c) respecting fees for the purposes of this Act, including who may establish the fees, who is liable to pay the fees and the manner in which the fees may be recovered;
- (d) requiring an employer in an employment described in the regulations to provide an amount of money instead of providing an annual vacation and vacation pay or an amount of money instead of giving a general holiday with general holiday pay, the conditions of entitlement, what constitutes vacation pay and general holiday pay, the method of computing them, and when they must be paid, and designating days as general holidays;
- (d.1) respecting information required to be included in a layoff notice in addition to the information specified in section 62(3)(a) to (c);
- (d.2) respecting variances or exemptions issued by the Director under section 74 or ordered by the Minister under section 74.1, including regulations
  - (i) respecting the process for applying for a variance or exemption,

- (ii) with respect to a variance or exemption issued by the Director, specifying the provisions of this Act or the regulations in respect of which a variance or exemption may be issued, the extent to which they may be varied or exempted and the criteria required to be met for issuing a variance or exemption,
  - (iii) respecting information to be included in a variance or exemption, and
  - (iv) respecting the method of providing copies of an order or of the amendment or revocation of an order under section 74.1 to affected employers and employees;
- (d.3) respecting the circumstances under which a notice under section 137 is not required, respecting the information to be provided in a notice for the purpose of section 137(2)(c) and respecting the method of giving affected employees a copy of the notice;
- (e) respecting the employment of individuals under 18 years of age, including defining “artistic endeavours”, the form and content of a permit required under Division 9, any terms and conditions to be included in a permit and the form and manner of consultation referred to in section 65(2);
  - (f) respecting the establishment of one or more minimum wages to be paid by employers to employees, respecting the wages to be paid for periods of employment of less than 3 consecutive hours and prohibiting or permitting deductions from the minimum wage;
- (f.1) respecting the qualifications for appointment as a member of an appeal body established under section 69(1)(a);
- (g) authorizing the appeal body to make a decision concerning the imposition of costs specified in the regulations, and specifying how those costs are to be recovered;
- (g.1) respecting payment priorities for the purpose of section 120.1;
- (h) authorizing a person who collects money owing to an employee under an order filed in the Court to recover the costs of collection from the person against whom the order was made and respecting the manner in which the costs may be recovered;

- (i) respecting appeals from decisions of the Director on the certification of an individual under section 75 and the circumstances under which a certification under section 75 may be reviewed or revoked;
- (i.1) respecting administrative penalties, including regulations
  - (i) respecting notices of administrative penalty, their form and contents and the manner in which they are required to be given;
  - (ii) respecting any other matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purpose of the system of administrative penalties;
- (j) respecting the conduct of officers;
- (k) respecting the collection of the fees charged by a person engaged by the Director under section 72, who is liable to pay the fees and the manner in which they may be recovered;
- (k.1) respecting the conducting of an audit of compliance or other examination referred to in section 78.1, including providing for any other matter to be included in a notice under section 78.1(3);
- (l) specifying an operation to be a “primary agricultural operation” for the purpose of section 2.1;
- (m) for the purposes of section 1(1)(p), authorizing members of other health professions to sign a medical certificate in respect of one or more provisions of this Act;
- (n) defining any term used but not defined in this Act, including terms required to be defined by the regulations;
- (o) respecting methods of service for the purpose of section 135 and when service by those methods is effected;
- (p) providing with respect to any provision of the regulations that its contravention constitutes an offence and prescribing penalties in respect of any such offence;
- (q) respecting, for the purposes of section 136.1, the publishing of permits, of exemptions and variances issued under section 74 and 74.1 and of the particulars of enforcement actions;



(r) respecting any other matter the Lieutenant Governor in Council considers necessary to carry out the intent and purposes of this Act.

**(2)** A regulation may be of particular or general application and applicable at particular times or in particular circumstances, may be subject to conditions and may delegate to or impose on the Director functions, powers or duties.

**(3)** A regulation made under subsection (1)(a) to (a.5) and any action or decision taken under or in accordance with the regulations made under subsection (1)(a) to (a.5) apply despite anything in this Act to the contrary, except that no regulation overrides section 2 or 2.1.

RSA 2000 cE-9 s138;2017 c9 s93







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