



1980

c 216 Industrial Standards Act

Ontario

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CHAPTER 216

Industrial Standards Act

1. In this Act,

Interpre-
tation

- (a) "Director" means the Director of Labour Standards;
- (b) "employee" means a person who is in receipt of or entitled to wages;
- (c) "employer" includes a person who by himself or his agent or representative is directly or indirectly responsible for the payment of wages to a person who comes within the provisions of a schedule promulgated as hereinafter provided;
- (d) "industry" includes a business, calling, trade, undertaking and work of any nature whatsoever and any branch thereof and any combination thereof that the Minister designates;
- (e) "Minister" means the Minister of Labour or such member of the Executive Council as is for the time being charged with the administration of this Act;
- (f) "officer" means an industrial standards officer appointed under this Act;
- (g) "wages" includes any form of remuneration for labour performed and, without restricting the generality of the foregoing, includes payment at an hourly, daily, weekly or monthly rate or at a piece-work or unit-price rate on an incentive or production basis. R.S.O. 1970, c. 221, s. 1.

2. The Lieutenant Governor in Council may appoint one or more persons as industrial standards officers whose duty it is to assist in carrying out this Act and the regulations and schedules. R.S.O. 1970, c. 221, s. 2.

Appoint-
ment of
industrial
standards
officers

3. Every officer has such powers and duties as are prescribed by this Act and the regulations and has authority to conduct inquiries and investigations respecting all matters coming within the scope of such powers and duties and, for such purposes, has the powers of a commission under Part II

Powers and
duties of
officers

R.S.O. 1980,
c. 411

of the *Public Inquiries Act*, which Part applies to such inquiries and investigations as if they were inquiries under that Act. 1971, c. 50, s. 49.

Director
of Labour
Standards
and
Adminis-
trator of
Industrial
Standards

4. A Director of Labour Standards shall be appointed for the purposes of this Act, and the Minister may designate an officer of the Ministry of Labour as Administrator of Industrial Standards who may perform the duties and exercise the powers of the Director under his direction. R.S.O. 1970, c. 221, s. 4; 1972, c.1, s. 1.

Designation
of zones

5.—(1) The Minister may designate the whole of Ontario, or any part or parts thereof, as a zone or zones for an industry for the purposes of this Act and may enlarge, reduce or divide any designated zone.

Interprovin-
cially com-
petitive
industries

(2) Notwithstanding subsection (1), a zone for an industry that is designated as an interprovincially competitive industry under clause 7 (e) shall be the whole of Ontario, and any schedule for the industry may provide for different wages and hours and days of labour for different areas in the zone. R.S.O. 1970, c. 221, s. 5.

Designation
of industries

6. The Minister may designate an industry for the purposes of this Act and may amend any designation, and, where the designated industry is not enlarged by the amendment, any schedule applying to the industry, when the amendment was made, applies to the amended designation. R.S.O. 1970, c. 221, s. 6.

Powers of
Director

- 7.**—(1) The Director has jurisdiction and authority,
- (a) to administer and enforce this Act, the regulations and the schedules;
 - (b) to hear appeals from the decisions of any advisory committee;
 - (c) subject to subsection (2) and subject to the approval of the Lieutenant Governor in Council, and with the concurrence of the proper advisory committee, to amend any schedule, after giving notice of the terms of the proposed amendment by publication thereof at least once in each of two consecutive weeks in a newspaper having general circulation in the zone in which the schedule is in force;
 - (d) to require any employer to pay to the Director the arrears of wages owing to an employee or employees according to any schedule and in his discretion to direct that the whole or a part of such wages be either forfeited to the Crown or paid to the employee or employees entitled thereto;

(e) to determine and designate which industries are interprovincially competitive, and with respect to any such industry,

(i) may approve or withhold approval of a schedule with respect to the collection of revenue from employers and employees in the industry and with respect to the exercise by the advisory committee of any powers in connection with the collection of such assessments and the disbursement of moneys collected, except that the assessments that may be approved shall not exceed one-half of one per cent of an employee's wages and one-half of one per cent of an employer's pay-roll,

(ii) may require the advisory committee to furnish estimates of receipts and expenses annually, and to furnish quarterly reports, certified by an auditor approved by the Director, accounting for all money collected and disbursed.

(2) Where a schedule applies to a zone that is the whole of Ontario, publication of the terms of the proposed amendment in at least five newspapers designated by the Minister is sufficient notice for the purposes of clause (1) (c). R.S.O. 1970, c. 221, s. 7. Publication of amendment to schedule applying to whole of Ontario

8.—(1) The Minister may, upon the petition of representatives of employers or employees in an industry in a designated zone or zones, authorize an officer to convene a conference of the employers and employees in the industry for the purpose of investigating and considering the conditions of labour and the practices prevailing in the industry and for negotiating with respect to any of the matters enumerated in subsection 9 (1), and, subject to subsection (3), notice of the conference shall be given by publication thereof at least once in each of two consecutive weeks in a newspaper having general circulation in the zone for which the conference is to be held. Officer may convene conference

(2) The conference may submit to the Minister, through the officer who convenes the conference, a schedule in accordance with subsection 9 (1). Submission of schedule

(3) Where the zone referred to in subsection (1) is the whole of Ontario, notice of the conference shall be given by publication thereof at least once in each of two consecutive weeks in at least five newspapers as determined by the Minister. R.S.O. 1970, c. 221, s. 8. Notice of conference where zone is whole of Ontario

What
schedule
may
provide

9.—(1) A schedule may,

- (a) establish the maximum number of hours comprising the regular working day and prescribe the hours of the day during which such hours of work are to be performed;
- (b) establish the maximum number of hours comprising the regular working week;
- (c) establish the minimum rates of wages for the regular working periods;
- (d) establish the particular days in the week for the performance of labour in the industry;
- (e) establish the rates of wages and the periods for, and the conditions governing, overtime work;
- (f) establish vacations with pay or payment in lieu thereof and payment for any day that may be designated as a holiday in the schedule;
- (g) classify the employees and employers and separately provide for each classification with respect to any of the matters that may be dealt with in the schedule;
- (h) define any term used in the schedule;
- (i) specify the particular operations that are included in the industry and prescribe the conditions under which the operations are included;
- (j) prohibit overtime work without a permit and authorize the advisory committee to issue the permits subject to the terms and conditions of the schedule;
- (k) fix the minimum charge that is to be paid, accepted or contracted for with respect to the labour content of any service, work, operation or art and, with the approval of the Director, fix the minimum charge that an employer or employee is to contract for or accept for any service, work, operation or art;
- (l) authorize the advisory committee to fix a minimum rate of wages lower than the rate fixed by the schedule for any classification of employees or for any individual who performs work included in more than one classification of employees, or whose work is only partly subject to the schedule, or who is handicapped;

(m) subject to the approval of the Director and with respect only to an interprovincially competitive industry, assess employers only or employers and employees in any such industry to provide revenue for the enforcement of the schedule, and authorize the advisory committee generally to administer and enforce the schedule, and to collect the assessments, and out of the revenue collected to engage inspectors and other personnel and to make such expenditures as are necessary for such administration and enforcement.

(2) When the advisory committee fixes a minimum rate of wages lower than the rate fixed by the schedule, such lower rate shall be deemed to be the rate fixed by the schedule. When advisory committee fixes rate lower than schedule
R.S.O. 1970, c. 221, s. 9.

10.—(1) The Minister may direct the officer who convenes a conference to conduct further investigations into the conditions of labour and the practices prevailing in the industry, and the officer may recommend variations in the schedule proposed by the conference. Investigation of conditions and practices

(2) If, in the opinion of the Minister, the schedule submitted by the conference is agreed to by a proper and sufficient representation of employers and employees, the Minister may approve the schedule submitted by the conference with such variations recommended by the officer convening the conference as the Minister considers desirable. Approval of schedule by Minister

(3) Upon the recommendation of the Minister, the Lieutenant Governor in Council may declare the schedule to be in force during pleasure and to be binding upon all employers and employees in a designated industry and zone. R.S.O. 1970, c. 221, s. 10. Declaring schedule in force

11. Every employer affected by a schedule shall cause a copy of the schedule to be posted in a conspicuous place where his employees are engaged in their duties so that it may be readily seen and read by them and shall cause the schedule to be there maintained so long as it remains in force. R.S.O. 1970, c. 221, s. 11. Posting of schedule

12. For the purposes of this Act, every person who is in any way engaged in an industry shall, in so far as he personally performs work in the industry, be deemed an employee and, in so far as he employs another person or is the proprietor of a shop or business either alone or in partnership with another person be deemed an employer, and this Act and the regulations and schedules shall, with necessary modifications, be read One man operators and partners within the scope of the Act

and construed accordingly, notwithstanding that he may thereby become both an employer and an employee or may become an employer for one purpose and an employee for another purpose, or that his status may be changed from time to time. R.S.O. 1970, c. 221, s. 12.

Records to
be kept by
employers

13.—(1) An employer to whom a schedule applies shall make and keep, or cause to be made and kept, for a period of at least twelve months after work is performed by an employee, a record of the name, address, wage rate, vacations with pay or payment in lieu of vacations, hours worked and actual earnings of the employee and such other information as the regulations may require.

Inspection
of records

(2) The employer shall,

- (a) produce the record for inspection by any person authorized by the Director, and shall for this purpose provide access to his premises for such person at all reasonable times and at any time his employees are engaged in their work; and
- (b) furnish such information from the record at such time and place as the Director may require.

Notice to
furnish
information

(3) No employer is required to furnish information under clause (2) (b) unless the Director sends a notice to the employer requiring him to furnish the information within the time specified in the notice, and the information furnished shall be verified by a statutory declaration made by the employer or, where the employer is a corporation, by an officer thereof.

Extracts
from
records

(4) Any person who inspects a record under subsection (2) may take extracts from or make copies of any entry in the record.

False or
misleading
information

(5) An employer shall not make, keep or furnish, or cause to be made, kept or furnished, false or misleading entries on any records that he is required to make, keep or furnish by this Act or the regulations and shall not supply or cause to be supplied false or misleading information to the Director or any person acting under his authority. R.S.O. 1970, c. 221, s. 13.

Admis-
sibility of
extracts
furnished by
employer

14. Any extract, copy or information furnished by an employer under section 13 is admissible in evidence as *prima facie* proof of the contents of the record and has the same force and effect as the original record would have if produced. R.S.O. 1970, c. 221, s. 14.

15.—(1) A certificate of the Director certifying,

Admissibility of Director's certificate

- (a) that a notice was sent in accordance with subsection 13 (3) is admissible in evidence as *prima facie* proof that the notice was sent to and received by the employer to whom it was addressed; or
- (b) that the information required under subsection 13 (3) has not been furnished is admissible in evidence as *prima facie* proof that the information required has not been furnished.

(2) A certificate signed or purporting to be signed by the Director is admissible in evidence as *prima facie* proof of the facts stated therein and of the authority of the Director to make the certificate without proof of appointment or signature. R.S.O. 1970, c. 221, s. 15. Idem

16. The sending of a notice or document to any person for the purposes of this Act or the regulations or any schedule shall be effected, Method of serving or sending

- (a) by serving it personally on such person ;
- (b) by leaving it at the place of his last known or usual residence or, alternatively in the case of an employer, by leaving it at the office or business premises of the employer ; or
- (c) by mailing it by prepaid first-class mail addressed to the person at his last known or usual residence or, alternatively in the case of an employer, addressed to the office or business premises of the employer without naming him in the address,

and the leaving or mailing shall be deemed conclusively to be good and sufficient sending on the date of the leaving or mailing. R.S.O. 1970, c. 221, s. 16.

17. The Lieutenant Governor in Council may make such regulations as he considers necessary for carrying out this Act and for its efficient administration. R.S.O. 1970, c. 221, s. 17. Regulations

18.—(1) For every zone or group of zones to which a schedule applies, the Minister may establish an advisory committee of not more than five members, one of whom shall be designated as chairman, and the committee may hear complaints of employers and employees to whom such schedule applies and may generally assist in carrying out this Advisory committee

Act and the regulations and have jurisdiction and authority to do anything that it is authorized to do by such schedule, notwithstanding that one or more members are employers or employees in the industry or zone to which the schedule applies, and shall be deemed to be a corporation for the purpose of collecting any money that it is authorized to collect or paying any money that it is authorized to pay.

Quorum

(2) Three members of an advisory committee constitute a quorum whether or not a vacancy exists in the membership of the committee.

Expenses

(3) The expenses of the members of an advisory committee properly incurred in carrying out their duties may be paid out of the moneys appropriated therefor by the Legislature.

Issuance of overtime permits

(4) Where a schedule authorizes an advisory committee to issue permits for overtime work, the permits may be issued by such person or persons as the committee designates.

Appeal from decision of advisory committee

(5) An employer or employee aggrieved by a decision of an advisory committee has a right of appeal from the decision to the Director, and the Director has jurisdiction to hear and determine the appeal, and his decision is final. R.S.O. 1970, c. 221, s. 18.

Offence

19.—(1) Every employer who contravenes a schedule that is applicable to him or who permits or condones work in contravention thereof is guilty of an offence and on conviction is liable, for a first offence, to a fine of not less than \$50 and not more than \$200 and, in default of payment, to imprisonment for a term of not more than two months, and, for any subsequent offence, to a fine of not less than \$100 and not more than \$1,000 and, in default of payment, to imprisonment for a term of not more than six months, and, where the conviction is for failing to pay the minimum rate of wages prescribed by the schedule, shall be ordered to pay to the Director, as an additional penalty, the full amount of the wages found to be unpaid to any employee under the schedule, and the Director, in his discretion, may direct that the whole or a part of such wages be either forfeited to the Crown or paid to the employee or employees entitled thereto.

Enforcement of order to pay wages

(2) A copy of an order for payment of wages made under subsection (1) that has become final, certified as a true copy, may be filed by the Director with the clerk of the county or district court of a county or district in which the employer carries on business or, where the amount ordered to be paid does not exceed \$1,000, with the clerk of a like small claims court, and, when so filed and upon payment of the fees of the clerk of the court, such order becomes an

order of the court in which it is filed and may be enforced as a judgment of the court against the employer for the amount mentioned in the order and the fees so paid.

(3) Every employee who contravenes a provision of a schedule is guilty of an offence and on conviction is liable to a fine of not less than \$25 and not more than \$100 and, in default of payment, to imprisonment for a term of not more than ten days. ^{Offence}

(4) No prosecution shall be instituted under this Act without the consent of the Director, and the production of a consent purporting to be signed by the Director is admissible in evidence as *prima facie* proof of his consent. R.S.O. 1970, c. 221, s. 19. ^{Consent to prosecution}

20. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction, where no penalty has been specifically provided, is liable, for a first offence, to a fine of not less than \$50 and not more than \$200 and, in default of payment, to imprisonment for a term of not more than thirty days, and, for any subsequent offence, to a fine of not less than \$100 and not more than \$1,000 and, in default of payment, to imprisonment for a term of not more than six months. R.S.O. 1970, c. 221, s. 20. ^{Offence}

21.—(1) No employer may discharge or threaten to discharge or in any way discriminate against an employee because the employee, ^{Intimidation}

- (a) has testified or is about to testify in any proceeding or investigation had or taken under this Act; or
- (b) has given any information to the Director or to any person authorized by the Director regarding earnings, hours, days or conditions of labour of employees in an industry.

(2) In addition to the penalty prescribed for a breach of subsection (1), the court, in its discretion, may order the employer to reinstate the employee with or without the payment of compensation by the employer for loss of earnings and other employment benefits. ^{Reinstatement}

(3) Where an order is made under subsection (2), the employee in respect of whom the order is made may file a copy of the order, certified as a true copy, in the office of the Registrar of the Supreme Court, whereupon the order shall be entered in the same way as a judgment of the Supreme Court and is enforceable as such, but the part of the order requiring payment of compensation is not enforceable until the order has become final. ^{Enforcement of order for reinstatement}

Appeal not
to operate
as stay

(4) Where an order made under subsection (2) requires an employer to reinstate an employee in employment and the employer appeals from the order, the appeal shall not operate as a stay of execution of the part of the order requiring the reinstatement. R.S.O. 1970, c. 221, s. 21.

Application
of other
Acts
R.S.O. 1980,
cc. 137, 321,
302, 536

22.—(1) Subject to subsection (2), the *Employment Standards Act*, the *Occupational Health and Safety Act*, sections 211, 212 and 213 of the *Municipal Act* and the *Woodmen's Employment Act* shall be read and construed as being subject to this Act and any schedule or regulation made thereunder.

Rates of
wages

(2) Where a schedule under this Act prescribes rates of wages, vacations with pay or hours of labour that are different from those prescribed by or under any Act referred to in subsection (1), the greater rate of wages and vacations with pay and the lesser hours of labour shall prevail.

Apprentices
R.S.O. 1980,
c. 24

(3) The rates of wages for apprentices to whom the *Apprenticeship and Tradesmen's Qualification Act* applies shall be the rates provided under that Act and the regulations thereunder. R.S.O. 1970, c. 221, s. 22.

Where
schedules
not to
apply

23. No schedule shall apply to the mining industry or to the agricultural industry. R.S.O. 1970, c. 221, s. 23.

Interpre-
tation

24.—(1) In this section, "retail gasoline service industry" means the business of operating retail gasoline service stations, gasoline pumps or outlets where gasoline is offered for sale at retail, including washing, waxing, oiling or lubricating automotive vehicles, repairing or changing tires and other services and undertakings incidental thereto, but does not include a gasoline outlet on the premises of an employer and used in the fueling of automotive vehicles owned or operated by the employer.

Exception
as to retail
gasoline
service
industry

(2) Notwithstanding anything in this Act, no schedule applicable to the retail gasoline service industry shall prescribe the hours of the day during which the hours of work may be performed or shall establish the particular days of the week for the performance of labour in the industry. R.S.O. 1970, c. 221, s. 24.