

1981

# c 22 Employment Standards Amendment Act, 1981

Ontario

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## CHAPTER 22

## An Act to amend the Employment Standards Act

*Assented to July 3rd, 1981*

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 40 (5) of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor: s. 40 (5),  
re-enacted

(5) An employer who has terminated or who proposes to terminate the employment of employees shall, when required by the Minister for the purpose of facilitating the re-establishment of the employees in employment, Duty of  
employer

- (a) participate in such actions or measures as the Minister may direct;
- (b) participate in the establishment and work of a committee upon such terms as the Minister considers necessary; and
- (c) contribute to the reasonable cost or expense of any committee referred to in clause (b) in such amount or proportion as the Minister directs.

- (2) Clause 40 (6) (b) of the said Act is repealed and the following substituted therefor: s. 40 (6) (b),  
re-enacted

- (b) an employer shall pay during the period of notice,
  - (i) the wages the employee is entitled to receive, which in no case shall be less than his regular wages for a regular non-overtime work week, and
  - (ii) those contributions to be made with respect to a fund, plan or arrangement to which Part X

applies in order to maintain the benefits to which the employee is entitled; and

s. 40 (7), re-enacted

(3) Subsection 40 (7) of the said Act is repealed and the following substituted therefor:

Payments where employment terminated without notice

(7) Where the employment of an employee is terminated contrary to this section,

(a) the employer shall pay termination pay in an amount equal to the wages that the employee would have been entitled to receive at his regular rate for a regular non-overtime work week for the period of notice prescribed by subsection (1) or (2), and any wages to which he is entitled;

(b) the employer shall pay during the period of notice prescribed by subsection (1) or (2) those contributions to be made with respect to a fund, plan or arrangement to which Part X applies in order to maintain the benefits to which the employee is entitled during the period of notice; and

(c) the employee shall be deemed during the period of notice prescribed by subsection (1) or (2) to be actively employed on the same terms and conditions in existence during his employment for the purpose of entitlement to benefits under a plan, fund or arrangement to which Part X applies.

s. 40, amended

(4) Section 40 of the said Act is amended by adding thereto the following subsection:

Employer's contributions deemed wages

(9) Notwithstanding subclause 1 (p) (iv), the contributions to be made under subsection (6) or (7) with respect to a fund, plan or arrangement to which Part X applies shall, for the purposes of Part XIII, be deemed to be wages to which an employee is entitled.

s. 40a, enacted

2.—(1) Part XII of the said Act is amended by adding thereto the following section:

Severance pay

40a.—(1) Where,

(a) fifty or more employees have their employment terminated by an employer in a period of six months or less; and

- (b) the terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment,

the employer shall pay severance pay to each employee whose employment has been terminated and who has been employed by the employer for five or more years in an amount equal to the amount the employee would have received at his regular rate for a regular non-overtime work week multiplied by the number of years of employment with the employer to a maximum of twenty-six years.

(2) Subsection (1) applies to,

Application

- (a) a regular full-time employee and a regular part-time employee;
- (b) an employee whose employment is terminated as a result of a strike or lock-out except where the employer establishes that the permanent discontinuance of all or part of the business at an establishment is caused by the economic consequences of the strike;
- (c) an employee who is temporarily absent due to illness or injury;
- (d) an employee who received or was entitled to receive notice of termination but who died before his employment was terminated or would have been terminated if notice of termination had been given;
- (e) a permanent discontinuance of all or part of a business at an establishment however caused, whether fortuitous, unforeseen or by act of God;
- (f) an employee who loses his employment by the exercise by another employee of a seniority right; and
- (g) an employee who, upon having his employment terminated, retires and is entitled to receive a reduced pension benefit.

(3) Subsection (1) does not apply to,

Exceptions

- (a) an employee who refuses an offer by his employer of reasonable alternative employment with his employer;
- (b) an employee who refuses to exercise his seniority rights to obtain reasonable alternative employment;

- (c) an employee who refuses to waive any right to be recalled for employment;
- (d) an employee who, upon having his employment terminated, retires and receives an actuarially unreduced pension benefit;
- (e) an employee whose employer is engaged in the construction, alteration, maintenance or demolition of buildings, structures, roads, sewers, pipelines, mains, tunnels or other works where the employee works at the site thereof; or
- (f) an employee who is employed under an arrangement whereby the employee may elect to work or not when requested to do so.

Severance  
pay in  
addition  
to other  
payment

(4) Severance pay under this section is payable to the employee in addition to any other payment under this Act or contract of employment without set-off or deduction, except for,

- (a) supplementary unemployment benefits payable to and received by the employee; or
- (b) payments made to the employee under a contractual severance pay scheme under which payments for loss of employment based upon length of service are provided.

Prior  
employment  
included

(5) Employment before the coming into force of this section shall be taken into account in calculating the years of employment of an employee to whom this section applies.

Employment  
not  
included

(6) A year of employment for which an employee has been paid severance pay shall be excluded in any subsequent calculation of severance pay for that employee.

Transitional

(2) Notwithstanding subsection 40a (1) of the *Employment Standards Act*, as enacted by subsection (1), the period of six months shall be deemed to be a period of four weeks in respect of termination of employment within the period of time from and including the 1st day of January, 1981, to and including the day immediately before the day this Act receives Royal Assent.

Idem

(3) Section 40a of the said Act does not apply to an employer who became a bankrupt or an insolvent person within the meaning of the *Bankruptcy Act* (Canada) and whose assets have been distributed among his creditors or to an employer whose proposal within the meaning of the *Bankruptcy Act* (Canada) has been accepted by his creditors in the period from and

including the 1st day of January, 1981, to and including the day immediately before the day this Act receives Royal Assent.

3. Clause 47 (1) (c) of the said Act is repealed and the following <sup>s. 47 (1) (c), re-enacted</sup> substituted therefor:

(c) issue an order in writing to the employer to pay forthwith to the Director in trust any wages to which an employee is entitled and such order shall provide in addition for payment by the employer to the Director of a penalty of 10 per cent of the wages or the sum of \$25, whichever is the greater, but the wages ordered to be paid in respect of each employee shall not exceed,

- (i) the sum of \$4,000 with respect to any wages other than the employee's severance pay, plus
- (ii) the amount of the employee's severance pay, if any.

4.—(1) This Act, except section 2, comes into force on the day it <sup>Commence-</sup> receives Royal Assent. <sub>ment</sub>

(2) Section 2 shall be deemed to have come into force on the 1st <sup>Idem</sup> day of January, 1981.

5. The short title of this Act is the *Employment Standards Amend-* <sup>Short title</sup> *ment Act, 1981.*

