

1970

c 486 Wages Act

Ontario

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CHAPTER 486

The Wages Act

1. In this Act, "wages" means wages or salary whether the employment in respect of which the same is payable is by time or by the job or piece or otherwise. R.S.O. 1960, c. 421, s. 1.

Interpretation

2. Where an assignment of any real or personal property is made for the general benefit of creditors, the assignee shall pay, in priority to the claims of the ordinary or general creditors of the assignor, the wages of all persons in the employment of the assignor at the time of the making of the assignment or within one month before the making thereof, not exceeding three months wages, and such persons rank as ordinary or general creditors for the residue, if any, of their claims. R.S.O. 1960, c. 421, s. 2.

Priority of wages or salaries in case of assignments for benefit of creditors

3. All persons who, at the time of the seizure by the sheriff or who within one month prior thereto, were in the employment of the execution debtor, and who become entitled to share in the distribution of money levied out of the property of a debtor within the meaning of *The Creditors' Relief Act* are entitled to be paid out of such money the wages due to them by the execution debtor, not exceeding three months wages, in priority to the claims of the other creditors of the execution debtor, and are entitled to share *pro rata* with such other creditors as to the residue, if any, of their claims. R.S.O. 1960, c. 421, s. 3.

Priority over execution creditors

R.S.O. 1970, c. 97

4. All persons in the employment of an absconding debtor at the time of a seizure by the sheriff under *The Absconding Debtors Act*, or within one month prior thereto, are entitled to be paid by the sheriff, out of any moneys realized out of the property of the debtor, the wages due to them by the debtor, not exceeding three months wages, in priority to the claims of the other creditors of the debtor, and are entitled to share *pro rata* with such other creditors as to the residue, if any, of their claims. R.S.O. 1960, c. 421, s. 4.

Priority in case of attachment
R.S.O. 1970, c. 2

5. In the administration of the estate of any person dying on or after the 13th day of April, 1897, any person in the employment of the deceased at the time of his death, or within one month prior thereto, who is entitled to share in the distribution of the estate, is entitled to his wages, not exceeding three months wages, in priority to the claims of the ordinary or general creditors of the deceased, and such person is entitled to rank as an ordinary or general creditor of the deceased for the residue, if any, of his claim. R.S.O. 1960, c. 421, s. 5.

Priority in administration of estates

When wages to be payable on distribution of estate

6.—(1) Wages in respect of which priority is conferred by this Act become due and are payable by the assignee, liquidator, sheriff, executor, administrator or other person charged with the duty of winding up or distributing the estate within one month from the time the estate was received by him or placed under his control, unless it appears to him that the estate is not of sufficient value to pay the claims or charges thereon having by law priority over the claims for wages and the ordinary expenses and disbursements of winding up and distributing the estate.

Ordinary expenses, meaning

(2) Ordinary expenses do not include the cost of litigation or other unusual expenses concerning the estate or any part thereof unless the same were incurred with the consent in writing of the person entitled to the wages or are afterwards adopted or ratified by him in writing.

Protection of assignee, etc., paying claims for wages in good faith

(3) Any such assignee, liquidator, sheriff, executor, administrator or other person may forthwith, upon such estate coming to his hands, pay the prior claims for wages without being chargeable in case it in the end appears that the estate was insufficient to have justified such payment, if he acted in good faith and had reasonable grounds to believe that the estate would prove sufficient.

Joinder of claims

(4) Any number of claimants in respect of such prior claims for wages upon the same estate may join in any action, suit or other proceeding for the enforcement of their claims. R.S.O. 1960, c. 421, s. 6.

Extent of exemption from seizure or attachment

7.—(1) Seventy per cent of any debt due or accruing due to any mechanic, workman, labourer, servant, clerk or employee for or in respect of his wages is exempt from seizure or attachment, provided that if a creditor of any such mechanic, workman, labourer, servant, clerk or employee, who has initiated proceedings by way of seizure or attachment of the wages of any such mechanic, workman, labourer, servant, clerk or employee, desires to contend that having regard to the nature of the debt and the circumstances of the debtor, it is unreasonable that as much as 70 per cent of such debtor's wages should be exempt, the judge may in any particular case, upon a hearing of the matter, reduce such percentage of exemption, and provided further that this section applies only where the amount of such exemption exceeds the sum of \$2.50 for each working day represented by the wages seized or attached and that a portion of such debtor's wages not exceeding the sum of \$2.50 for each working day represented by the wages seized or attached is in all cases exempt from seizure or attachment.

When no exemption

(2) Nothing in this section applies to any case where the debt to the creditor has been contracted for board or lodging, or where the debtor is an unmarried person and the judge, upon inquiry, finds that he has no one dependent upon him for support.

(3) If the debtor desires to contend that in the circumstances of any particular case, having regard to the size of his family, the wages he is earning and any other matter or thing that the judge may consider proper to take into account, the exemption allowed by this section should be increased, the judge has power to increase and to make an order providing for an increase of exemption that he may consider just and reasonable under all the circumstances.

Increase of exemption

(4) Where the creditor intends to apply for a reduction in the amount of the exemption, he shall give notice of the intention to the employer at the time of the service of the notice or other process garnishing or attaching the wages, and if he fails to give the notice, the employer may pay into court so much only of the wages of the debtor as would not be exempt under subsection 1 and may pay the balance of the wages to the debtor.

Notice of application for reduction of exemption

(5) Subject to subsection 4, the debtor or creditor without waiting for the regular sittings of the court may apply to the judge upon at least five days notice in writing to the other party or his solicitor for an order fixing the amount of the debtor's exemption, and upon the making of the order, if the employer has paid the whole or any part of the wages into court and the amount so paid in equals or exceeds the amount allowed by way of exemption, such sum shall be forthwith paid out to the debtor, and in case the amount paid in is less than the amount so allowed, the whole amount paid in shall be paid out to the debtor. R.S.O. 1960, c. 421, s. 7 (1-5).

Application to judge to fix exemption

(6) Subject to subsection 7, an assignment of wages or any portion thereof to secure payment of a debt is invalid.

Wage assignments

(7) A debtor may assign to a credit union to which *The Credit Unions Act* applies such portion of his wages as does not exceed the portion thereof that is liable to attachment or seizure under this section. 1968, c. 142, s. 1.

Idem, credit unions
R.S.O. 1970, c. 96

8.—(1) Where a garnishment order has been made against the debtor, he may apply to the judge for an order for the release of the garnishment and for the payment of the judgment by instalments and, if the judge considers it proper in all the circumstances of the case, he may make the order, fixing therein the amounts and times of payment, and, so long as the debtor is not in default under the order, no further garnishment of the debtor's wages shall be had in respect of the judgment debt.

Release of garnishment on terms

(2) An order under subsection 1 may be made *ex parte*, but the judge may vary it at any time upon the application of the debtor or creditor with at least two days notice in writing to the other party.

Idem

Copy to
judgment
creditor

(3) Forthwith after an order is made under subsection 1, a copy thereof shall be sent by prepaid mail by the clerk of the court to the judgment creditor or his agent. R.S.O. 1960, c. 421, s. 8.

Attachment
of wages
only after
judgment

9. Proceedings to attach any debt due or accruing due to any mechanic, workman, servant, clerk or employee for or in respect of his wages shall be taken only where the claim of the creditor against the debtor is upon a judgment. R.S.O. 1960, c. 421, s. 9.
