



1937

c 196 Wages Act

Ontario

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CHAPTER 196.

The Wages Act.

Interpretation.

"Wages."

1. In this Act, "wages" shall mean and include wages and 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. 1927, c. 176, s. 1.

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

To what extent.

2. Where an assignment is made for the general benefit of creditors of any real or personal property 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 shall rank as ordinary or general creditors for the residue, if any, of their claims. R.S.O. 1927, c. 176, s. 2.

(NOTE.—*As to wages in case of winding up a company see The Companies Act, Rev. Stat. c. 251.*)

Priority over execution creditors.

Rev. Stat., c. 126.

To what extent.

3. All persons who, at the time of the seizure by the sheriff or who within one month previous thereto, have been in the employment of the execution debtor, and who shall 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* shall be 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 shall be entitled to share *pro rata* with such other creditors as to the residue, if any, of their claims. R.S.O. 1927, c. 176, s. 3.

Priority in case of attachment.

Rev. Stat., c. 127.

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 previous thereto, shall be 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 shall be

entitled to share *pro rata* with such other creditors as to the residue, if any, of their claims. R.S.O. 1927, c. 176, s. 4.

To what extent.

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 previous thereto, who is entitled to share in the distribution of the estate, shall be entitled to his wages, not exceeding three months thereof, in priority to the claims of the ordinary or general creditors of the deceased, and such person shall be entitled to rank as an ordinary or general creditor of the deceased for the residue, if any, of his claim. R.S.O. 1927, c. 176, s. 5.

Priority in administration of estates.

To what extent.

6.—(1) Wages in respect of which priority is herein conferred shall become due and be 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 when the estate has been 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.

When wages to be payable on distribution of estate.

(2) Ordinary expenses shall 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.

Ordinary expenses, meaning of.

(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 shall in the end appear that the estate was insufficient to have justified such payment, provided he has acted in good faith and has reasonable grounds to believe that the estate would prove sufficient.

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

(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. 1927, c. 176, s. 6.

Joinder of claims

(NOTE.—As to wages payable to employees of contractors for public works, see *The Public and Other Works Wages Act, Rev. Stat. c. 198.*)

Extent of exemption from seizure or attachment.

7.—(1) Seventy per centum of any debt due or accruing due to any mechanic, workman, labourer, servant, clerk or employee for or in respect of his wages shall be exempt from seizure or attachment, provided however, 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 seventy per centum of such debtor's wages should be exempt, the judge may, upon a hearing of the matter reduce the percentage of exemption herein allowed in any particular case, and provided further, that this section shall only apply 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 shall in all cases be exempt from seizure or attachment. R.S.O. 1927, c. 176, s. 7 (1); 1935, c. 73, s. 2.

Proviso. Reduction of exemption.

No exemption where debt is for board or lodging or single debtor has no dependents.

(2) Nothing in this section shall apply 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.

Increase of exemption.

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

Notice of application for reduction of exemption.

(4) Where the creditor intends to apply for a reduction in the amount of the exemption he shall give notice of such intention to the employer at the time of the service of the notice or other process garnisheeing or attaching the wages, and if he fails to give such 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 such wages to the debtor.

Application to judge to fix exemption.

(5) Subject to subsection 4, the debtor or creditor without awaiting 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 such 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. 1927, c. 176, s. 7 (2-5).

8. 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. 1936, c. 65, s. 2.

Attachment
of wages
only after
judgment.
