

1974

## c 112 The Employment Standards Act, 1974

Ontario

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## CHAPTER 112

**The Employment Standards Act, 1974***Assented to December 20th, 1974*

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

## INTERPRETATION

**1.** In this Act,Interpre-  
tation

(a) "Deputy Minister" means the Deputy Minister of Labour;

(b) "Director" means the person appointed by the Minister as Director of Employment Standards for the purposes of this Act;

(c) "employee" includes a person who,

(i) performs any work for or supplies any services to an employer for wages,

(ii) does homework for an employer, or

(iii) receives any instruction or training in the activity, business, work, trade, occupation or profession of the employer,

and includes a person who was an employee;

(d) "employer" includes any person who as the owner, proprietor, manager, superintendent or overseer of any activity, business, work, trade, occupation or profession, has control or direction of, or is directly or indirectly responsible for, the employment of a person therein, and includes a person who was an employer;

(e) "employment standard" means a requirement imposed upon an employer in favour of an employee by this Act or the regulations;

(f) "employment standards officer" means a person appointed for the purposes of this Act, and includes the Director;

(g) "homework" means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof in premises occupied primarily as living accommodation, and "home-worker" has a corresponding meaning;

(h) "Minister" means the Minister of Labour;

(i) "Ministry" means the Ministry of Labour;

(j) "overtime rate" means the hourly rate of pay that an employee is entitled to receive for hours of work in excess of,

(i) the hours of work in a week prescribed in section 25 or the regulations, or

(ii) the regular hours of work in a day or a week under a contract of employment that under subsection 2 of section 4 prevails over the provisions of section 25,

and "overtime pay" has a corresponding meaning;

(k) "premium rate" means the rate of pay to which an employee is entitled for each hour of employment on a public holiday, or a day that is deemed to be a public holiday, and "premium pay" has a corresponding meaning;

(l) "public holiday" means New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Thanksgiving Day and Christmas Day;

(m) "regular rate" means,

(i) the wage rate of an employee for an hour of work in a regular non-overtime work week,

(ii) where subclause i does not apply, the average hourly rate calculated by dividing the wages of an employee earned in a week by the number of hours the employee worked in that week where the employer has made and kept in accordance with this Act complete and accurate records thereof, or

- (iii) where subclauses i and ii do not apply, the hourly rate determined by an employment standards officer;
- (n) "regulations" means the regulations made under this Act;
- (o) "termination pay" means the amount of pay to which an employee is entitled under section 40;
- (p) "wages" means any monetary remuneration payable by an employer to an employee under the terms of a contract of employment, oral or written, express or implied, any payment to be made by an employer to an employee under this Act, and any allowances for room or board as prescribed in the regulations or under an agreement or arrangement therefor but does not include,
  - (i) tips and other gratuities,
  - (ii) any sums paid as gifts or bonuses that are dependent on the discretion of the employer and are not related to hours, production or efficiency,
  - (iii) travelling allowances or expenses,
  - (iv) contributions made by an employer to a fund, plan or arrangement to which Part X of this Act applies;
- (q) "week" means a period of seven consecutive days;
- (r) "work week" means a week of work established by the practice of the employer or determined by an employment standards officer. R.S.O. 1970, c. 147, s. 1, *amended*.

## PART I

### GENERAL APPLICATION

2.—(1) Parts IX, X, XI and XII apply to the Crown, every agency thereof and any board, commission, authority or corporation that exercises any functions assigned or delegated to it by the Crown. R.S.O. 1970, c. 147, ss. 12, 25 (6); 1972, c. 120, s. 1, *part, amended*. Application  
of Act



Idem

(2) This Act applies to every contract of employment, oral or written, express or implied,

(a) where the employment is for work or services to be performed in Ontario; or

(b) where the employment is for work or services to be performed both in and out of Ontario and the work or services out of Ontario are a continuation of the work or services in Ontario.

Non-application of 1971, c. 47

(3) Part I of *The Statutory Powers Procedure Act, 1971* does not apply to the exercise of any power conferred by section 5, 12, 16, 18, 20, 24, subsection 3 of section 25 or section 30, 32, subsection 4 of section 33 or section 39, 47 or 49 of this Act. *New.*

Waiver, etc., to be null and void

3. Subject to section 4, no employer, employee, employers' organization or employees' organization shall contract out of or waive an employment standard, and any such contracting out or waiver is null and void. R.S.O. 1970, c. 147, s. 3, *amended.*

Employment standard deemed minimum

4.—(1) An employment standard shall be deemed a minimum requirement only. *New.*

Greater benefit to prevail

(2) A right, benefit, term or condition of employment under a contract, oral or written, express or implied, or under any other Act or any schedule, order or regulation made thereunder that provides in favour of an employee a higher remuneration in money, a greater right or benefit or lesser hours of work than the requirement imposed by an employment standard shall prevail over an employment standard. R.S.O. 1970, c. 147, s. 9, *amended.*

Provisions of collective agreements R.S.O. 1970, c. 232

5.—(1) Where terms or conditions of employment in a collective agreement as defined in *The Labour Relations Act* confer a higher remuneration in money or a greater right or benefit for an employee respecting holidays than the provisions of Part VII, the terms or conditions of employment shall prevail. 1973, c. 172, s. 1, *amended.*

Terms and conditions that are not in collective agreements

(2) Where the Director finds that terms or conditions of employment in a contract of employment oral or written, express or implied, that are not in a collective agreement confer a higher remuneration in money or a greater right or benefit for an employee respecting holidays than the provisions of Part VII, the terms or conditions of employment shall prevail. *New.*

Civil remedy not suspended or affected

6. No civil remedy of an employee against his employer is suspended or affected by this Act. *New.*

## PART II

## GENERAL PROVISIONS

**7.**—(1) An employer shall pay to an employee all wages <sup>Payment of wages</sup> to which an employee is entitled under,

- (a) an employment standard; or
- (b) a right, benefit, term or condition of employment under a contract of employment, oral or written, express or implied, that prevails over an employment standard,

in cash or by cheque.

(2) All wages shall be paid at the work place of the employee, or at a place agreed upon by the employer and the employee. <sup>Place of payment of wages</sup>

(3) All wages due and owing to an employee shall be paid by an employer on the regular pay day of the employee as <sup>Time of payment of wages</sup> established by the practice of the employer.

(4) Any payment to which an employee is entitled upon termination of employment shall be paid by the employer to the employee not later than seven days after termination of employment. *New.* <sup>Payment on termination</sup>

**8.** Except as permitted by the regulations, no employer shall claim a set-off against wages, make a claim against wages for liquidated or unliquidated damages or retain, cause to be returned to himself, or accept, directly or indirectly, any wages payable to an employee. R.S.O. 1970, c. 147, s. 4, *amended.* <sup>No set-off, etc., to be claimed against wages</sup>

**9.** No employer shall dismiss or suspend an employee upon the ground that garnishment proceedings are or may be taken against the employee. R.S.O. 1970, c. 147, s. 5. <sup>Garnishment not grounds for dismissal</sup>

**10.**—(1) An employer shall furnish to an employee at the time wages are paid to the employee a statement in writing, which can be retained by the employee, setting forth, <sup>Statement of wages</sup>

- (a) the period of time or the work for which the wages are being paid;
- (b) the rate of wages to which the employee is entitled unless such information is furnished to the employee in some other manner;

- (c) the amount of the wages to which the employee is entitled;
- (d) the amount of each deduction from the wages of the employee and the purpose for which each deduction is made;
- (e) any living allowance or other payment to which the employee is entitled; and
- (f) the net amount of money being paid to the employee. R.S.O. 1970, c. 147, s. 33, *amended*.

Statement  
of vacation  
pay

(2) Unless the information is given to an employee in some other manner, an employer shall furnish to an employee at the time vacation pay is paid to the employee a statement in writing which can be retained by the employee setting forth,

- (a) the period of time or the work for which the vacation pay is being paid;
- (b) the amount of the wages upon which the vacation pay is being paid;
- (c) the amount of each deduction from the vacation pay and its purpose; and
- (d) the net amount of vacation pay being paid to the employee. *New*.

Records

**11.—**(1) An employer shall,

- (a) make and keep in Ontario or in a place out of Ontario authorized by the Director for a period of twenty-four months after work is performed or services are supplied by an employee complete and accurate records in respect of the employee showing,
  - (i) the employee's name and address,
  - (ii) the employee's date of birth, if the employee is a student under eighteen years of age,
  - (iii) the number of hours worked by the employee in each day and week,
  - (iv) the employee's wage rate and gross earnings,



- (v) the amount of each deduction from the wages of the employee and the purpose for which each deduction is made,
  - (vi) any living allowance or other payment to which the employee is entitled,
  - (vii) the net amount of money being paid to the employee, and
  - (viii) any documents or certificates relating to pregnancy leave under Part XI; and
- (b) make and keep in Ontario or in a place out of Ontario authorized by the Director for a period of five years after work is performed by an employee complete and accurate records in respect of the employee showing,
- (i) the employee's name and address,
  - (ii) the date of commencement of employment and the anniversary date thereof, and
  - (iii) the employee's wages during each pay period and the vacations with pay or payment under section 31. R.S.O. 1970, c. 147, s. 38 (1), *amended*.

(2) Subclause iii of clause *a* of subsection 1 does not apply Exception in respect of the salaried employees of an employer who perform work of a clerical or administrative nature where the employer makes and keeps a record showing the number of hours worked by such employees in excess of eight hours a day and forty-four hours a week. R.S.O. 1970, c. 147, s. 38 (2), *amended*.

**12.** —(1) Where before or after this Act comes into force associated or related activities, businesses, trades or undertakings are or were carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, and a person is or was an employee of such corporations, individuals, firms, syndicates or associations, or any combination thereof, an employment standards officer may treat the corporations, individuals, firms, syndicates or associations as one employer for the purposes of this Act. R.S.O. 1970, c. 147, s. 6, *amended*. Related activities, etc., may be treated as one employer



Individual  
liability

(2) The corporations, individuals, firms, syndicates or associations treated as one employer shall be individually liable for any contravention of this Act and the regulations.  
*New.*

Interpre-  
tation

**13.**—(1) In this section,

(a) “business” includes an activity, trade or undertaking, or a part or parts thereof;

(b) “sells” includes leases, transfers or any other manner of disposition and “sale” has a corresponding meaning.

Continuity of  
employment

(2) Where an employer sells his business to a purchaser who employs an employee of the employer, the employment of the employee shall not be terminated by the sale, and the period of employment of the employee with the employer shall be deemed to have been employment with the purchaser for the purposes of Parts VII, VIII, XI and XII.

Part XII  
to be  
complied  
with

(3) Where an employer sells his business to a purchaser who does not employ an employee of the employer, the employer shall comply with Part XII. R.S.O. 1970, c. 147, s. 7, *amended*.

Priority  
of claims

R.S.C. 1970,  
c. B-4

**14.** Notwithstanding the provisions of any other Act and except upon a distribution made by a trustee under the *Bankruptcy Act* (Canada), wages shall have priority to the claims or rights and be paid in priority to the claims or rights, including the claims or rights of the Crown, of all preferred, ordinary or general creditors of the employer to the extent of \$2,000 for each employee. R.S.O. 1970, c. 147, s. 8 (1), *amended*.

Vacation pay  
deemed to  
be held in  
trust

**15.** Every employer shall be deemed to hold vacation pay accruing due to an employee in trust for the employee whether or not the amount therefor has in fact been kept separate and apart by the employer and the vacation pay becomes a lien and charge upon the assets of the employer that in the ordinary course of business would be entered in books of account whether so entered or not. R.S.O. 1970, c. 147, s. 8 (2), *amended*.

## PART III

## HOMEWORKERS

Application  
for permit

**16.**—(1) An application for a permit to employ homeworkers shall be made by the employer to the Director.

(2) No person shall employ a homeworker without a permit therefor issued by the Director.

(3) The Director may,

(a) issue a permit on such terms and conditions as he considers advisable;

Terms,  
conditions,  
revocation  
and  
suspension  
of permit

(b) revoke or suspend a permit for a breach of a term or condition thereof, or where the holder is liable for a nuisance within the meaning of *The Public Health Act*, or for a contravention of any Act.

R.S.O. 1970,  
c. 377

(4) Every employer shall keep a register and enter therein the name and address of every homeworker to whom the employer gives homework, and the wages paid therefor.

Register of  
homeworkers

R.S.O. 1970, c. 147, s. 32, *amended*.

## PART IV

### HOURS OF WORK

**17.** Except as otherwise provided in this Part, and subject to any schedule in force under *The Industrial Standards Act*, the hours of work of an employee shall not exceed eight in the day and forty-eight in the week.

Maximum  
working  
hours  
R.S.O. 1970,  
c. 221

R.S.O. 1970, c. 147, s. 14 (1), *amended*.

**18.** An employer may, with the approval of the Director, and upon such terms and conditions as the Director prescribes, adopt a regular day of work in excess of eight hours but not in excess of twelve hours, provided that the total hours of work of each employee shall not exceed forty-eight hours in a week.

Variation of  
working  
day

R.S.O. 1970, c. 147, s. 15 (1), *amended*.

**19.** In case of an accident or in case of work urgently required to be done to machinery or plant, the employer may require the limit of hours of work prescribed by section 17 or approved under section 18 to be exceeded but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment.

Exceeding  
maximum  
in case of  
accident

**20.**—(1) The Director may issue a permit authorizing hours of work in excess of those prescribed by section 17 or approved under section 18, but the excess hours of work shall not exceed,

Permits  
for excess  
hours

(a) in the case of an engineer, fireman, full-time maintenance man, receiver, shipper, delivery truck driver or his helper, watchman or other person who, in the opinion of the Director, is engaged in a similar occupation, twelve hours in each week for each employee; and

(b) in the case of all other employees, 100 hours in each year for each employee. R.S.O. 1970, c. 147, s. 16 (1), *amended*.

Idem

(2) Where the Director is satisfied that the work or the perishable nature of raw material being processed requires hours of work in excess of those permitted under subsection 1, he may issue a permit therefor. R.S.O. 1970, c. 147, s. 16 (2), *amended*.

Permit  
does not  
obligate  
employee

(3) The issuance of a permit under this section does not require an employee to work any hours in excess of those prescribed by section 17 or approved under section 18 without the consent or agreement of the employee or his agent to hours in excess of eight in the day or forty-eight in the week. R.S.O. 1970, c. 147, s. 18 (2), *amended*.

Terms and  
conditions  
of permit

(4) A permit issued under this section shall contain such terms, conditions and limitations as the Director prescribes. R.S.O. 1970, c. 147, s. 17, *amended*.

Agreements  
subject to  
maximums

**21.** Except as otherwise provided in this Part, no employer may require or permit work, and no employee may work or agree to work, any hours that exceed the maximum hours established under this Act. R.S.O. 1970, c. 147, s. 18 (1), *amended*.

Eating  
periods

**22.** Every employer shall provide eating periods of at least one-half hour, or such shorter period as is approved by the Director, at such intervals as will result in no employee working longer than five consecutive hours without an eating period. R.S.O. 1970, c. 147, s. 20, *amended*.

## PART V

### MINIMUM WAGES

Statutory  
agreement  
for minimum  
wage

**23.** Every employer who permits any employee to perform work or supply any services in respect of which a minimum wage is established shall be deemed to have agreed to pay to the employee at least the minimum wage established under this Act. R.S.O. 1970, c. 147, s. 22, *amended*.



**24.** For the purpose of enabling a handicapped person to be gainfully employed, the Director may, upon the application of the handicapped person or his employer and with the consent of the handicapped person, his parent or guardian, authorize the employment of such handicapped person to perform such work as is authorized at a wage lower than the minimum wage prescribed under this Act. R.S.O. 1970, c. 147, s. 23, *amended*. <sup>Handicapped employees</sup>

## PART VI

### OVERTIME PAY

**25.**—(1) Except as otherwise provided in the regulations, where an employee works for an employer in excess of forty-four hours in any week, he shall be paid for each hour worked in excess of forty-four hours overtime pay at an amount not less than one and one-half times the regular rate of the employee. <sup>Overtime pay</sup>

(2) In complying with subsection 1, no employer shall reduce the regular rate of wages payable to an employee: 1973, c. 172, s. 3, *amended*. <sup>Idem</sup>

(3) Where an employer has not made and kept complete and accurate records in respect of an employee pursuant to clause *a* of subsection 1 of section 11, an employment standards officer may determine the regular rate of and the number of hours worked by the employee in each day and week. *New*. <sup>Employment standards officer may determine regular rate</sup>

## PART VII

### PUBLIC HOLIDAYS

**26.** (1) This section does not apply to an employee who, <sup>Application</sup>

(a) is employed for less than three months;

(b) has not earned wages on at least twelve days during the four work weeks immediately preceding a public holiday;

(c) fails to work his scheduled regular day of work preceding or his scheduled regular day of work following a public holiday;



- (d) has agreed to work on a public holiday and who, without reasonable cause, fails to report for and perform the work; or
- (e) is employed under an arrangement whereby the employee may elect to work or not when requested so to do. 1973, c. 172, s. 7, *part, amended*.

Holiday  
with pay

(2) Subject to subsections 3, 4 and 5, an employer shall give to an employee a holiday on and pay to the employee his regular wages for each public holiday.

Working day  
substituted  
for holiday

(3) Where a public holiday falls upon a working day for an employee, an employer may with the agreement of the employee or his agent substitute another working day for the public holiday which day shall not be later than the next annual vacation of the employee, and the day so substituted shall be deemed to be the public holiday.

Holiday  
that is a  
non-working  
day

(4) Where a public holiday falls on a non-working day for an employee or in his vacation an employer shall,

- (a) with the agreement of the employee or his agent pay the employee his regular wages for the public holiday; or
- (b) designate a working day that is not later than the next annual vacation of the employee and the day so designated shall be deemed to be the public holiday. 1973, c. 172, s. 7, *part, amended*.

Holiday  
pay

(5) Notwithstanding subsection 3, where an employee is employed in a hotel, motel, tourist resort, restaurant, tavern, continuous operation or a hospital, and the employee is required to work and works on a public holiday, the employer shall,

- (a) pay the employee in accordance with subsection 1 of section 27; or
- (b) pay the employee for each hour worked on a public holiday an amount not less than his regular wages and give to the employee a holiday on his first working day immediately following his next annual vacation or on a working day agreed upon and pay him his regular wages for that day.

Interpre-  
tation

(6) For the purposes of subsection 5,

- (a) "continuous operation" means that part of an establishment, industry or service in which in each seven day period operations once commenced

normally continue day and night without cessation until the completion of the regularly scheduled operations for that period;

- (b) "hospital" means a hospital as defined in *The Hospital Labour Disputes Arbitration Act. New.* R.S.O. 1970.  
c. 206

**27.**—(1) Subject to subsection 5 of section 26, where an employee works on a public holiday, the employer shall pay to the employee for each hour worked a premium rate of not less than one and one-half times his regular rate and, where the employee is entitled to the holiday with pay, his regular wages in addition thereto. 1973, c. 172, s. 7, *part, amended.* Premium  
rate for  
holiday

(2) Where an employee works on a public holiday, the hours the employee works on the public holiday shall not be taken into consideration in calculating any overtime pay to which the employee is entitled for the work week in which the public holiday occurs. *New.* Work on  
holiday not  
overtime

**28.** Where the employment of an employee ceases before the day that is substituted, designated or given for the public holiday under subsection 3, clause *b* of subsection 4, or clause *b* of subsection 5, of section 26, the employer shall pay to the employee in addition to any other payment to which the employee is entitled upon the ceasing of employment his regular wages for that day. *New.* Payment  
for holiday  
where  
employment  
ceases

## PART VIII

### VACATION WITH PAY

**29.**—(1) Every employer shall give to each employee a vacation with pay of at least two weeks upon the completion of each twelve months of employment. Vacations

(2) The amount of pay for such vacation shall be not less than an amount equal to 4 per cent of the wages of the employee in the twelve months of employment for which the vacation is given and in calculating wages no account shall be taken of any vacation pay previously paid. 1973, c. 172, s. 5, *part, amended.* Idem

**30.**—(1) The employer shall determine the period when an employee may take the vacation to which he is entitled under section 29, which may be a two week period or two periods of one week each, but in any case the employee shall be given his vacation not later than ten months after the end of the twelve month period for which the vacation was given. When  
vacation  
to be taken

Director  
may require  
employer  
to pay

(2) Notwithstanding subsection 1 of this section and subsection 3 of section 7, the Director may require an employer to pay to an employee at any time the vacation pay to which the employee is entitled under section 29. 1973, c. 172, s. 7, *part, amended*.

Idem

(3) Subsection 2 applies notwithstanding that there is a strike or lock-out as a result of a labour dispute. *New*.

Vacation  
pay

**31.** Where the employment of an employee ceases before the completion of a twelve month period of employment or the employee has not been given a vacation with pay pursuant to section 29, the employer shall pay to the employee an amount equal to 4 per cent of the wages of the employee in any twelve month period or periods or part thereof and in calculating wages no account shall be taken of any vacation pay previously paid. 1973, c. 172, s. 5, *part, amended*.

Agreements  
respecting  
vacation or  
vacation  
pay

**32.** Any agreement between an employer and an employee or employees or his or their agent respecting the method of providing funds for paying vacation pay, or payment in lieu of vacation, or of any arrangements for the taking of vacation, is subject to the approval of the Director. 1973, c. 172, s. 5, *part*.

## PART IX

### EQUAL PAY FOR EQUAL WORK

Equal pay  
for equal  
work

**33.—(1)** No employer or person acting on behalf of an employer shall differentiate between his male and female employees by paying a female employee at a rate of pay less than the rate of pay paid to a male employee, or *vice versa*, for substantially the same kind of work performed in the same establishment, the performance of which requires substantially the same skill, effort and responsibility and which is performed under similar working conditions, except where such payment is made pursuant to,

- (a) a seniority system;
- (b) a merit system;
- (c) a system that measures earnings by quantity or quality of production; or
- (d) a differential based on any factor other than sex.

Pay not to  
be reduced

(2) No employer shall reduce the rate of pay of an employee in order to comply with subsection 1.



(3) No organization of employers or employees or its agents shall cause or attempt to cause an employer to agree to or to pay to his employees rates of pay that are in contravention of subsection 1.

Employer not to be requested to contravene subs. 1

(4) Where an employment standards officer finds that an employer has failed to comply with subsection 1, the employment standards officer may determine the amount of moneys owing to an employee because of such non-compliance, and such amount shall be deemed to be unpaid wages. R.S.O. 1970, c. 147, s. 25 (1-4), *amended*.

Determination by employment standards officer

## PART X

### BENEFIT PLANS

**34.**—(1) This Part applies to a fund, plan or arrangement provided, furnished or offered or to be provided, furnished or offered by an employer to his employees,

Application

(a) under a term or condition of employment; or

(b) in which an employee may elect to participate or not and to which the employer contributes or does not contribute,

that directly or indirectly provides benefits to his employees, their beneficiaries, survivors or dependants, whether payable periodically or not, for superannuation, retirement, unemployment, income replacement, death, disability, sickness, accident, or medical, hospital, nursing or dental expenses, or other similar benefits or benefits under a deferred profit sharing plan in which employees participate in profits of the employer where the profits accumulated under the plan are permitted to be withdrawn or distributed upon death or retirement or upon contingencies other than death or retirement.

(2) Except as provided in the regulations, no employer or person acting directly on behalf of an employer shall provide, furnish or offer any fund, plan, arrangement or benefit that differentiates or makes any distinction, exclusion or preference between his employees or a class or classes of his employees or their beneficiaries, survivors or dependants because of the age, sex or marital status of his employees.

No differentiation because of age, etc.

(3) No organization of employers or employees, or person acting directly on behalf of an organization of employers

Employer not to be requested to contravene subs. 2



or employees, shall cause or attempt to cause an employer, directly or indirectly, to act contrary to subsection 2.

Powers of  
Director

(4) Where, in the opinion of the Director, an employer, an organization of employers or employees or a person acting directly on behalf of an employer or such organization may have acted contrary to subsection 2, the Director may exercise the power conferred by subsection 1 of section 51, and section 51 applies *mutatis mutandis*.

Regulations

(5) In addition to the powers conferred by section 65, the Lieutenant Governor in Council may make regulations respecting any matter or thing necessary or advisable to carry out the intent and purpose of this Part, and without restricting the generality of the foregoing, may make regulations,

- (a) exempting any fund, plan or arrangement or part thereof, heretofore or hereafter in existence, or any benefits thereunder from the application of this Part or any provision thereof;
- (b) permitting a fund, plan or arrangement to provide, furnish or offer a benefit or benefits that differentiate or make a distinction, exclusion or preference between employees or a class thereof or their beneficiaries, survivors or dependants;
- (c) suspending the application of this Part or any provision thereof to any fund, plan or arrangement or any benefits thereunder, whether provided, furnished or offered under a collective agreement or not, for such period or periods of time as may be prescribed;
- (d) providing that an employer may not reduce any benefits to an employee or class of employees under any fund, plan or arrangement provided, furnished or offered in order that the employer may comply with subsection 2;
- (e) providing the terms or conditions under which an employee may be entitled or disentitled to a benefit under a fund, plan or arrangement;
- (f) defining any expression used in this Part, or in the regulations under this Part. *New.*

## PART XI

## PREGNANCY LEAVE

**35.** No employer shall terminate the employment of or lay off an employee who is entitled to a leave of absence under section 36, but the employer may require the employee to commence a leave of absence pursuant to section 36 at such time as the duties of her position cannot reasonably be performed by a pregnant woman or the performance of her work is materially affected by the pregnancy. 1972, c. 120, s. 1, *part, amended*. <sup>Pregnancy leave</sup>

**36.—(1)** An employee who is pregnant and who has been employed by her employer for a period of at least twelve months and eleven weeks immediately preceding the estimated day of her delivery, whether such employment commenced before or after the coming into force of this Act, shall be entitled upon her application therefor to a leave of absence of at least seventeen weeks from her employment or such shorter leave of absence as the employee may request commencing during the period of eleven weeks immediately preceding the estimated day of her delivery. <sup>When leave to be taken</sup>

(2) Notwithstanding subsection 1 and subject to subsection 5, where the actual date of her delivery is later than the estimated day of her delivery, the leave of absence shall not end before the expiration of six weeks following the actual date of her delivery. <sup>Leave after delivery</sup>

(3) The employee shall give her employer two weeks notice in writing of the day upon which she intends to commence her leave of absence and furnish her employer with the certificate of a legally qualified medical practitioner stating that she is pregnant and giving the estimated day upon which delivery will occur in his opinion. <sup>Notice</sup>

(4) Subject to subsection 5, an employee may, with the consent of her employer, shorten the duration of the leave of absence requested under subsection 1. <sup>Leave may be shortened</sup>

(5) An employee may shorten the duration of the six week period mentioned in subsection 2 upon giving her employer one week's notice of her intention so to do and furnishing her employer with the certificate of a legally qualified medical practitioner stating that she is able to resume her work. 1972, c. 120, s. 1, *part, amended*. <sup>Furnishing of certificate</sup>

Leave  
where  
employee  
ceases work

**37.** An employee who does not apply for leave of absence under section 36, and who is otherwise entitled to pregnancy leave thereunder, shall be entitled to and shall be granted leave of absence in accordance with section 36 upon providing her employer before the expiry of two weeks after she ceased to work with a certificate of a legally qualified medical practitioner stating that she was not able to perform the duties of her employment because of a medical condition arising from her pregnancy, and giving the estimated day upon which, in his opinion, delivery will occur or the actual date of her delivery. *New.*

Reinstatement and  
preservation  
of seniority

**38.**—(1) An employee who intends to resume her employment on the expiration of a leave of absence granted to her under this Part shall so advise her employer and on her return to work her employer shall reinstate the employee to her position or provide her with alternative work of a comparable nature at not less than her wages at the time her leave of absence began and without loss of seniority or benefits accrued to the commencement of her leave of absence. 1972, c. 120, s. 1, *part, amended.*

Idem

(2) Where the employer has suspended or discontinued operations during the leave of absence and has not resumed operations upon the expiry thereof, the employer shall, upon resumption of operations, reinstate the employee to her employment or to alternate work in accordance with an established seniority system or practice of the employer in existence at the time her leave of absence began with no loss of seniority or benefits accrued to the commencement of her leave of absence, and in the absence of such a system or practice shall reinstate the employee in accordance with subsection 1. *New.*

Employment  
standards  
officer may  
make order

**39.** Where an employer fails to comply with the provisions of this Part, an employment standards officer may order what action, if any, the employer shall take or what he shall refrain from doing in order to constitute compliance with this Part and may order what compensation shall be paid by the employer to the Director in trust for the employee. *New.*

## PART XII

### TERMINATION OF EMPLOYMENT

Notice of  
termination

**40.**—(1) No employer shall terminate the employment of an employee who has been employed for three months or more unless he gives,

- (a) one week's notice in writing to the employee if his period of employment is less than two years;



- (b) two weeks notice in writing to the employee if his period of employment is two years or more but less than five years;
- (c) four weeks notice in writing to the employee if his period of employment is five years or more but less than ten years; and
- (d) eight weeks notice in writing to the employee if his period of employment is ten years or more,

and such notice has expired. R.S.O. 1970, c. 147, s. 13 (1), *amended*.

(2) Notwithstanding subsection 1, the notice required <sup>Idem</sup> by an employer to terminate the employment of fifty or more employees in any period of four weeks or less shall be given in the manner and for the period prescribed in the regulations, and until the expiry of such notice the termination shall not take effect. R.S.O. 1970, c. 147, s. 13 (2).

(3) Subsections 1 and 2 do not apply to,

Exceptions

- (a) an employee employed for a definite term or task;
  - (b) an employee who is temporarily laid off, as defined in the regulations;
  - (c) an employee who has been guilty of wilful misconduct or disobedience or wilful neglect of duty that has not been condoned by the employer;
  - (d) a contract of employment that is or has become impossible of performance or is frustrated by a fortuitous or unforeseeable event or circumstance; or
  - (e) an employee employed in an activity, business, work, trade, occupation or profession, or any part thereof, that is exempted by the regulations.
- R.S.O. 1970, c. 147, s. 13 (3).

(4) Notwithstanding clause *d* of subsection 3, subsections 1 and 2 shall apply to an employee whose contract of employment is or has become impossible of performance or frustrated by an order, direction or notice made, given or issued against an employer under *The Environmental Protection Act, 1971*. <sup>Application of subss. 1, 2</sup> 1971, c. 86  
1973, c. 172, s. 2.



Employer to  
co-operate  
with Minister

(5) Where an employer is required to give the notice referred to in subsection 2 he shall co-operate with the Minister during the period of the notice in any action or program intended to facilitate the re-establishment in employment of the employees whose employment is to be terminated. R.S.O. 1970, c. 147, s. 13 (4).

Rate of  
wages, etc.,  
not to be  
altered

(6) Where the notice referred to in subsection 1 or 2 has been given,

- (a) no employer shall alter the rates of wages or any other term or condition of employment of any employee to whom notice has been given;
- (b) an employer shall pay to the employee during the period of notice 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
- (c) upon the expiry of the notice, the employer shall pay to the employee any wages or vacation pay to which he is entitled. R.S.O. 1970, c. 147, s. 13 (5), *amended*.

Where  
employment  
terminated  
contrary  
to section

(7) Where the employment of an employee is terminated contrary to this section, the employer shall pay the employee termination pay of 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. *New*.

Notice by  
employee

(8) An employee to whom notice has been given under subsection 2 shall not terminate his employment until after the expiry of,

- (a) one week's notice in writing to the employer if the period of employment is less than two years; or
- (b) two weeks notice in writing to the employer if the period of employment is two years or more,

unless his employer has been guilty of a breach of the terms and conditions of employment. R.S.O. 1970, c. 147, s. 13 (9, 10), *amended*.

## PART XIII

## ADMINISTRATION

**41.**—(1) The Minister is responsible for the administration of this Act. R.S.O. 1970, c. 147, s. 2 (1). Minister responsible for administration

(2) The Minister shall appoint a person to be the Director of Employment Standards for the purposes of the general administration of this Act and the regulations including the supervision and direction of employment standards officers. R.S.O. 1970, c. 147, s. 2 (2), *amended*. Director to be appointed

(3) Such persons as are considered necessary to enforce this Act and the regulations may be appointed as employment standards officers under *The Public Service Act*. *New*. Appointment of employment standards officers  
R.S.O. 1970, c. 386

(4) Where the Director is absent or unable to act or where the office is vacant, the powers and duties of the Director shall be exercised and performed by an employee of the Ministry designated by the Minister. R.S.O. 1970, c. 147, s. 11, *amended*. Acting Director

**42.**—(1) The Minister shall appoint during his pleasure such persons to a panel of referees as he considers necessary for the purposes of this Act. Appointment of referees

(2) A referee shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine. *New*. Remuneration

**43.**—(1) The Director may exercise the powers conferred and shall perform the duties imposed upon him under this Act. Powers and duties of Director

(2) The Director may authorize an employment standards officer orally or in writing to exercise a power conferred upon the Director under this Act. Authority to exercise power

(3) An employment standards officer may exercise the powers conferred and shall perform the duties imposed upon him under this Act. *New*. Powers and duties of employment standards officer

**44.**—(1) The Deputy Minister shall issue a certificate of appointment bearing his signature or a facsimile thereof to every employment standards officer. Certificate of appointment

(2) Every employment standards officer, in the exercise of any of his powers or the performance of any of his duties under this Act, shall produce his certificate of appointment upon request. *New*. Production of certificate

Powers of  
employment  
standards  
officer

**45.**—(1) An employment standards officer may, for the purpose of ensuring that the provisions of this Act and the regulations are being complied with,

- (a) subject to subsection 2, enter in or upon the lands or premises of a person at any reasonable time or times without a warrant for the purpose of carrying out an inspection, audit or examination;
- (b) require the production for inspection, audit or examination of all books of account, documents, vouchers, payrolls, records, letters patent, by-laws, minutes of directors' meetings, or documents that are or may be relevant to the inspection, audit or examination;
- (c) upon giving a receipt therefor, remove any books, papers, records or documents examined under clause *b* for the purpose of making copies or extracts of such books, papers, documents, or things, but such copying shall be carried out with reasonable dispatch and the books, papers, records or documents shall be promptly returned thereafter to the person who produced or furnished them;
- (d) make any inquiries of any person separate or apart from another person that are or may be relevant to the inspection, audit or examination.

Entry into  
dwelling

(2) No employment standards officer shall enter any room or place actually being used as a dwelling without the consent of the occupier except under the authority of a search warrant issued under section 16 of *The Summary Convictions Act*. R.S.O. 1970, c. 147, s. 40, *amended*.

R.S.O. 1970,  
c. 450

Employment  
standards  
officer not  
competent or  
compellable  
as witness

(3) No employment standards officer is a competent or compellable witness in a civil suit or proceeding respecting any information, material or statements acquired, furnished, obtained, made or received under the powers conferred under this Act except for the purposes of carrying out his duties under this Act.

Production of  
documents

(4) No employment standards officer shall be compelled or required to produce in a civil suit or proceeding any document, extract, report, material or statement acquired, furnished, obtained, made or received under the powers conferred under this Act except for the purposes of carrying out his duties under this Act. *New*.



**46.**—(1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with an employment standards officer in the exercise of a power or the performance of a duty under this Act. Obstruction

(2) Every person shall furnish all necessary means in his power to facilitate any entry, production, inspection, audit, examination or inquiry by an employment standards officer in the exercise of a power or the performance of a duty under this Act. Assistance to officer

(3) No person shall neglect or refuse to produce all books, ledgers, vouchers, payrolls, records, letters patent, minutes of directors' meetings, or documents that are or may be relevant to an inspection, audit or examination. *New.* Production of records

**47.**—(1) Where an employment standards officer finds that an employee is entitled to any wages from an employer, he may, Powers

- (a) arrange with the employer that the employer pay directly to the employee the wages to which the employee is entitled;
- (b) receive from the employer on behalf of the employee any wages to be paid to the employee as the result of a compromise or settlement; or
- (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, provided that the order shall not order the employer to pay a sum exceeding \$4,000 for an employee.

(2) Where an employment standards officer issues an order under subsection 1, the order shall contain or have attached thereto information indicating the nature of the amount to be paid to an employee. Contents of order

(3) An order issued under subsection 1 may order an employer to pay wages to one or more than one employee to which one or more than one employee is entitled for one or more than one failure to comply with a contract or more than one contract of employment or with this Act and the regulations. Idem



Delivery  
or service  
of order

(4) An order issued under subsection 1 shall be delivered to the employer by registered mail addressed to the employer at his or its last known place of business or served personally in the case of an individual and if the employer is a corporation upon the president, vice-president, secretary, treasurer, director, manager or person in charge of any branch of the corporation.

Certificate  
of service

(5) A certificate of the Director certifying that the order was served upon or sent by registered mail to the employer and accompanied by a true copy of the order is admissible as evidence of the issue, service, mailing and receipt of the order.

Compliance  
with order

(6) Every employer to whom an order is issued under subsection 1 shall comply with it in accordance with its terms. R.S.O. 1970, c. 147, s. 34, *amended*.

Payment to  
Director in  
trust

**48.**—(1) Where an employer has made an arrangement with an employment standards officer for the payment of wages to an employee under clause *a* of subsection 1 of section 47, or an employment standards officer has received wages from an employer for or on behalf of an employee under clause *b* of subsection 1 of section 47, and the employee cannot be conveniently located, the employer shall pay the wages to the Director in trust.

Wages to  
be held  
in trust

(2) Where wages have been received or collected for or on behalf of an employee by the Director in trust and the employee cannot be located, the wages shall be vested in and held in trust for Her Majesty and paid into the Consolidated Revenue Fund but may without interest thereon be paid out to the employee, his estate, or such other person as the Director considers is entitled thereto. *New*.

Order  
may be  
refused

**49.**—(1) Where, following a complaint in writing by an employee, an employment standards officer finds that an employer has paid the wages to which an employee is entitled under this Act he may refuse to issue an order to an employer and upon refusing to do so shall advise the employee of the refusal by prepaid letter addressed to the employee at his last known address.

Review of  
refusal to  
issue order

(2) An employee who considers himself aggrieved by the refusal to issue an order to an employer may apply to the Director in writing within fifteen days of the date of the mailing of the letter mentioned in subsection 1 for a review of the refusal and the Director shall cause the complaint to be reviewed by an employment standards officer who may exercise any power conferred under subsection 1 of section 47

or may refuse to issue an order, in which case he shall advise the employee of the refusal in accordance with subsection 1. *New.*

**50.**—(1) An employer who considers himself aggrieved by an order made under section 39 or 47, upon paying the wages ordered to be paid and the penalty thereon, if any, may, within a period of fifteen days after the date of delivery or service of the order, or such longer period as the Director may for special reasons allow and provided that the wages have not been paid out pursuant to subsection 2 of section 53, apply for a review of the order by way of a hearing. Review of order

(2) An application for review shall be made in writing to the Director and shall specify the grounds for the application. Application for review

(3) The review shall be heard as soon as is practicable by a referee selected by the Director from the panel of referees. Hearing

(4) The employer, the employment standards officer from whose order the application for review is taken and such other persons as the referee may specify are parties to an application for review under this section and on the review the employer shall be the applicant and the employment standards officer and such other persons specified by the referee, if any, shall be the respondents. Parties

(5) Where a group or groups of persons having the same or substantially the same interest may be affected by the findings or opinions of the referee, the referee may specify one or more of the persons comprising the group or groups to represent the group or groups and the one or more so specified are parties to the review. Persons to represent groups

(6) On a review under this section, the referee may substitute his findings or opinions for those of the employment standards officer who issued the order being reviewed and may amend, rescind or affirm the order. Powers of referee

(7) A decision of the referee under this section is final and binding upon the parties thereto and such other parties as the referee may specify. R.S.O. 1970, c. 147, s. 34, *part, amended.* Decision final and binding

**51.**—(1) Where an employment standards officer reports to the Director that an employer may have failed to pay the wages owing to an employee under this Act or to comply with this Act and the regulations, or is of the opinion that an act, agreement, arrangement or scheme is intended to have or has the effect, directly or indirectly, of defeating the Appointment of referee



true intent and purpose of this Act and the regulations, the Director may appoint a referee selected by him from the panel of referees who shall hold a hearing.

Powers of  
referee

(2) The referee holding the hearing under subsection 1, may, *mutatis mutandis*, exercise the powers conferred upon an employment standards officer under this Act and in addition thereto or substitution therefor, where the referee determines that an act, agreement, arrangement or scheme is intended to have or has the effect, directly or indirectly, of defeating the true intent and purpose of this Act and the regulations, he shall state his findings of fact and issue to and cause to be served upon such person as he may direct an order requiring such person to cease and desist from the act, agreement, arrangement or scheme and may order what action, if any, the person shall take or what he shall refrain from doing in order to comply with this Act and the regulations.

Compliance  
with order

(3) Every employer or person to whom an order is given under subsection 2 shall comply with it in accordance with its terms.

Decision  
final and  
binding

(4) The order of the referee is final and not subject to review under section 50. R.S.O. 1970, c. 147, ss. 10, 34, *amended*.

Payment to  
Director

**52.**—(1) Where the Director has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to an employer who is liable to make any payment under this Act, he may, by registered letter or by a letter served personally, demand that the person pay the moneys otherwise payable to the employer in whole or in part to the Director in trust on account of the liability under this Act. R.S.O. 1970, c. 147, s. 35 (1), *amended*.

Receipt of  
Director

(2) The receipt of the Director for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment. R.S.O. 1970, c. 147, s. 35 (2).

Liability  
to pay

(3) Every person who has discharged any liability to an employer who is liable to make a payment under this Act without complying with a demand under this section is liable to pay an amount equal to the liability discharged or the amount that he was required under this section to pay, whichever is the lesser. *New*.

Payment to  
employee

**53.**—(1) Where wages are received under clause *b* of subsection 1 of section 47, the Director shall pay to the employee or employees the wages received on his or their behalf.



(2) Where compensation or wages have been paid by an employer under an order issued under section 39 or clause c of subsection 1 of section 47, and no application for review has been made to the Director under section 50 within a period of fifteen days from the date of delivery of the order or such longer period as the Director has allowed, the Director shall pay to the employee or employees the compensation or wages obtained on his or their behalf. Idem

(3) Where an application for review under section 50 has been made to the Director, the Director shall pay to the employee or the employees the wages owing, if any, in accordance with the decision of the referee and shall pay to the employer any moneys to which the employer is entitled under the decision. Payment after review

(4) Where the moneys received by the Director under this Act are insufficient to pay the wages due employees of an employer in full, the Director shall distribute the moneys received by him, including any penalty, rateably among those employees on whose behalf the moneys were received. Moneys to be distributed rateably

(5) No action or proceeding lies or shall be instituted against the Director for acting in compliance with this section. No action to lie

**54.**—(1) Where an order has been made under this Act requiring an employer to pay any moneys to the Director for or on behalf of an employee or employees, the Director may issue a certificate thereof and cause the same to be filed in a court of competent jurisdiction and thereupon the certificate shall be enforceable as a judgment or order of the court at the instance and in favour of the Director in the same manner as a judgment or order of the court. Certificate of order

(2) The Director shall send a copy of the certificate to the employer by registered mail and advise the employer of the date the certificate was filed. *New.* Copy of certificate

**55.**—(1) The Director, for any purpose relating to the administration or enforcement of this Act and the regulations, may, by registered letter addressed to an employer at his or its last known place of business or by demand served personally in the case of an individual and if the employer is a corporation upon the president, vice-president, secretary, treasurer or a director or the manager or person in charge of any branch of the corporation require the production for inspection, audit or examination of such books, papers, records or documents within such time and at such place as are stipulated in such letter or demand. R.S.O. 1970, c. 147, s. 41 (1), *amended.* Demand for information

Neglect  
or refusal  
to produce

(2) No employer shall neglect or refuse to produce the books, papers, records or documents at the time and place stipulated in the letter or demand. *New.*

Proof  
of service  
or mailing

(3) A certificate of the Director certifying that the letter or demand was served upon or sent by registered letter to the employer to whom it was addressed, accompanied by a true copy of the letter or demand, is admissible as evidence of the service, mailing and receipt of the notice. R.S.O. 1970, c. 147, s. 41 (2), *amended.*

Posting of  
notices

**56.** The Director may require an employer to post and keep posted a notice relating to the administration or enforcement of this Act or the regulations in a conspicuous place where it is most likely to come to the attention of his employees, and the employer shall post and keep posted any such notice. R.S.O. 1970, c. 147, s. 37, *amended.*

## PART XIV

### OFFENCES AND PENALTIES

No  
discipline,  
dismissal,  
etc., by  
employer

**57.** — (1) No employer shall,

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend an employee;
- (c) impose any penalty upon an employee; or
- (d) intimidate or coerce an employee,

because the employee,

- (e) has sought the enforcement of this Act or the regulations;
- (f) has given information to an employment standards officer;
- (g) has participated in or is about to participate in a proceeding or hearing under this Act; or
- (h) testifies or is required to testify in a proceeding or hearing under this Act. R.S.O. 1970, c. 147, s. 42 (1), *amended.*

Penalty for  
offence

(2) Where an employer is convicted of an offence under subsection 1, the provincial judge making the conviction shall, in addition to the penalty, order what action the employer

shall take or what the employer shall refrain from doing and such order may include the reinstatement in employment of the employee with or without compensation or compensation in lieu of reinstatement for loss of wages and other benefits to be assessed against the employer. R.S.O. 1970, c. 147, s. 42 (2), *amended*.

(3) An employer who fails to comply with an order made under subsection 2 is guilty of an offence and on summary conviction is liable to a fine not exceeding \$100 for each day during which the failure continues. R.S.O. 1970, c. 147, s. 42 (3), *amended*. Offence,  
penalty

**58.** No person shall make, keep or produce or participate in, assent to or acquiesce in the making, keeping or producing of a false or deceptive book of account, payroll, record or other document required to be made, kept or produced under this Act or the regulations. R.S.O. 1970, c. 147, s. 43 (1), *part, amended*. Offence to  
keep false  
records, etc.

**59.**—(1) Every person who contravenes any provision of this Act or the regulations or a decision, requirement or order made under this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1970, c. 147, s. 43 (1), *part, amended*. Offence

(2) Where an employer is convicted of an offence under subsection 1, the provincial judge making the conviction shall, in addition to any other penalty, assess the amount unpaid in respect of an employee or employees and shall order the employer to pay the amount so assessed to the Director who shall collect and distribute to the employee or employees the amount ordered to be paid. R.S.O. 1970, c. 147, s. 43 (3), *amended*. Order for  
payment

(3) An order for payment under subsection 2 may be filed by the Director in a court of competent jurisdiction and thereupon the order shall be deemed to be an order of that court for the purposes of enforcement. R.S.O. 1970, c. 147, s. 43 (4), *amended*. Enforcement  
of order

**60.**—(1) Where a corporation contravenes any provision of this Act or the regulations, an officer, director or agent of the corporation or a person purporting to act in any such capacity who authorizes, permits or acquiesces in the contravention is a party to and guilty of the offence and is liable on conviction to the penalty provided for the offence whether or not the corporation has been prosecuted or convicted. Officers,  
etc., liable



Onus of  
proof

(2) In determining whether for the purposes of subsection 1 an officer, director or agent of the corporation or a person purporting to act in any such capacity authorized, permitted or acquiesced in the contravention of any provision of this Act or the regulations, it shall be for the officer, director or agent or person purporting to act in any such capacity to prove that he did not authorize, permit or acquiesce in the contravention.

Additional  
penalty

(3) Where an officer, director or agent of the corporation or a person purporting to act in any such capacity is convicted of an offence under subsection 1, the provincial judge making the conviction may, in addition to any other penalty, assess the amount unpaid by the corporation in respect of the employee and shall order the officer, director or agent to pay the amount so assessed to the Director who shall collect and distribute to the employee the amount ordered to be paid.

No prosecu-  
tion without  
consent

(4) No prosecution under this section shall be instituted 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. *New.*

Copies  
constitute  
evidence

**61.—**(1) In any proceeding or prosecution under this Act,

- (a) a copy of an order purporting to have been made under this Act or the regulations and purporting to have been signed by an employment standards officer or a referee; or
- (b) a document purporting to be a copy of a book, payroll, record or other document, or any extract therefrom, and purporting to be certified by an employment standards officer,

is evidence of the order or document, and the facts appearing in the order or document without proof of the signature or official character of the person appearing to have signed the order or the certificate and without further proof.

Certificate  
constitutes  
evidence

(2) In any proceeding or prosecution under this Act, a certificate purporting to be signed by the Director certifying that an employer has failed to make any payment under an order issued under this Act is evidence of the failure to pay without further proof. *New.*

Where  
information  
may be heard

**62.** An information in respect of an offence under this Act or the regulations may, at the election of the informant, be heard, tried and determined by the Provincial Court

(Criminal Division) having jurisdiction in the county or district in which the accused is resident or carries on business although the subject-matter of the information did not arise in that county or district. *New.*

**63.**—(1) No proceeding or prosecution under this Act shall be commenced more than two years after the facts upon which the proceeding or prosecution is based first came to the knowledge of the Director. R.S.O. 1970, c. 147, s. 43 (5), *amended.* Limitation

(2) In a proceeding or prosecution under this Act, no employee shall be entitled to recover any moneys due to him more than two years before the facts upon which the proceeding or prosecution is based first came to the knowledge of the Director. Idem

(3) A statement as to the time when the facts upon which the proceeding or prosecution is based first came to the knowledge of the Director purporting to be certified by the Director, is, without proof of the office or signature of the Director, evidence of the facts stated therein. *New.* Evidence

**64.** Notwithstanding anything contained in this Act, the Director may in his discretion refuse to institute any proceeding or prosecution for the failure of an employer to comply with this Act where a remedy therefor is available to an employee under the terms of a collective agreement. *New.* Director may exercise discretion

## PART XV

### REGULATIONS

**65.**—(1) The Lieutenant Governor in Council may make regulations for carrying out the purposes of this Act and, without restricting the generality of the foregoing, may make regulations, Regulations

- (a) establishing minimum rates of wages for employees or classes of employees;
- (b) designating or defining any industry, activity, business, work, trade, occupation or profession or class of employers or employees, for the purposes of this Act or any Part thereof, or the regulations or any provision thereof;
- (c) designating or defining the zone or zones within Ontario in which this Act, a Part of this Act, or the regulations or any provision thereof, is applicable;

- (d) exempting any industry, activity, business, work, trade, occupation, profession, or class of employers or employees from the application of this Act, a Part of this Act, or the regulations or any provision thereof;
- (e) prescribing what constitutes the performance of work in respect of which wages shall be paid;
- (f) prescribing the deductions that may be made from wages or any other payment or allowance to an employee;
- (g) prescribing the maximum number of hours that may elapse between the commencement and the termination of the daily work period or periods of an employee;
- (h) prescribing the particulars of employment that shall be given to an employee;
- (i) prescribing rates of pay and hours of work for the whole or part of any industry, business or trade in a designated part or parts of Ontario;
- (j) providing for and requiring the approval of the Director of any agreement or arrangement between an employer and an employee or his agent providing for the averaging of daily hours of work for a work week or daily or weekly hours of work over a longer period of time than a work week;
- (k) providing for the averaging of wages over a longer period of time than a work week for the purpose of determining a regular rate under this Act;
- (l) providing for the setting up of committees to advise the Minister on any matters arising in relation to the administration of this Act;
- (m) prescribing the manner of giving notice of termination and the period and the form and content of such notice;
- (n) prescribing what constitutes termination of employment;
- (o) prescribing what constitutes "a definite term or task", "lay-off", "temporary lay-off", "indefinite lay-off", and a "period of employment";



- (p) providing that any payments to an employee by way of pension, insurance, workman's compensation, bonus, severance, supplementary unemployment benefits, or similar arrangements shall or shall not be taken into account on termination of employment;
- (q) notwithstanding Part VI, prescribing when overtime pay shall be paid to an employee or class of employees by an employer, a class of employers; or an industry, business or trade for any hours of work in excess of a specified number of hours of work in a work week or a longer period of time than a work week;
- (r) prescribing the hours of work after which overtime is payable in a work week to an employee who does two or more kinds of work for which different hours of work in a work week upon which overtime is payable are prescribed under this Act;
- (s) prescribing maximum allowances for living accommodation, fuel, heat, utility charges or room or board to be taken into account in calculating minimum wages;
- (t) prescribing the minimum number of hours for which an employee is entitled to be paid wages and providing for conditions and exemptions in respect thereof;
- (u) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 147, s. 36 (1), *amended*.

(2) A regulation made under subsection 1 or any provision thereof may be confined in its application to any class of employer, employee or establishment defined in the regulation. R.S.O. 1970, c. 147, s. 36 (2).

**66.** -(1) Every agreement or arrangement between an employee and his employer for the averaging of hours over an extended period for the purpose of determining overtime hours of work heretofore approved by the Director under *The Employment Standards Act, 1968* or *The Employment Standards Act*, being chapter 147 of the Revised Statutes of Ontario, 1970, shall, on and after the 1st day of January, 1975, be deemed to provide for overtime pay for any hours worked in the extended period in excess of forty-four hours multiplied by the number of weeks in the extended period.

Averaging  
of hours  
of work

1968, c. 35

Idem

(2) Notwithstanding subsection 1, any agreement or arrangement between an employee and his employer for the averaging of hours of work over an extended period for the purpose of determining overtime hours of work heretofore approved by the Director under *The Employment Standards Act, 1968* or *The Employment Standards Act*, being chapter 147 of the Revised Statutes of Ontario, 1970, is null and void three months after the date this Act comes into force.

Repeals

**67.** The following are repealed:

1. *The Employment Standards Act*, being chapter 147 of the Revised Statutes of Ontario, 1970.
2. *The Employment Standards Amendment Act, 1972*, being chapter 120.
3. *The Employment Standards Amendment Act, 1973*, being chapter 172.
4. Section 37 of *The Civil Rights Statute Law Amendment Act, 1971*, being chapter 50.

Commence-  
ment

**68.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**69.** This Act may be cited as *The Employment Standards Act, 1974*.