

1973

c 172 The Employment Standards Amendment Act, 1973

Ontario

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CHAPTER 172

An Act to amend The Employment Standards Act

*Assented to December 17th, 1973
Session Prorogued March 5th, 1974*

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

1. *The Employment Standards Act*, being chapter 147 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following section: s. 5a,
enacted

5a. Where the Director finds that a term or condition of employment in a collective agreement as defined in *The Labour Relations Act* confers a higher remuneration in money or a greater right or benefit respecting vacation pay or holidays with pay than the provisions of Part VII or VII-A, the term or condition of employment in the collective agreement shall prevail. Provisions
of
collective
agreements
R.S.O. 1970,
c. 232

2. Section 13 of the said Act is amended by adding thereto the following subsection: s. 13,
amended

(3a) Notwithstanding clause *d* of subsection 3, subsections 1 and 2 shall apply to a person 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*. Application
of subss. 1, 2
1971, c. 86

3. Section 21 of the said Act is repealed and the following substituted therefor: s. 21,
re-enacted

21.—(1) 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 an amount not less than one and one-half times his regular rate. Overtime
pay

(2) In complying with subsection 1, no employer shall reduce the regular rate of wages payable to an employee. idem

- Application 4. Notwithstanding section 3, subsection 1 of section 21 of *The Employment Standards Act*, being chapter 147 of the Revised Statutes of Ontario, 1970, continues to apply in the year 1974.
- ss. 27-30, re-enacted; s. 31, repealed 5. Sections 27, 28, 29, 30 and 31 of the said Act are repealed and the following substituted therefor:
- Vacations 27.—(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.
- Idem (2) The amount of pay for such vacation shall be not less than an amount equal to 4 per cent of the total wages of the employee earned in the twelve months of employment for which the vacation is given.
- When vacation taken 28.—(1) The employer shall determine the period when an employee may take the vacation provided by section 27, 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.
- Director may require employer to pay (2) Notwithstanding subsection 1, 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 27.
- Vacation pay 29. Where the employment of an employee by an employer ceases before the completion of a twelve month period of employment or the employee has not been paid or given a vacation with pay pursuant to section 27, the employer shall pay to the employee an amount equal to 4 per cent of the total wages of the employee earned in any twelve month period or part thereof in respect of which no vacation with pay has been given under this Part.
- Agreements for pay in lieu of vacation 30. Any agreement between an employer and his employee 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.
- Application 6. Notwithstanding section 5, sections 27, 29 and 30 of *The Employment Standards Act*, being chapter 147 of the Revised Statutes of Ontario, 1970, continue to apply for the purpose of calculating the vacation and vacation pay to which an employee is entitled under the said sections 27 and 29 or the amount to which an employee is entitled under the said section 30, for the period of his employment before the 1st day of January, 1974.

7. The said Act is amended by adding thereto the following ^{Part VII-A, (ss. 31a-31c), enacted} Part:

PART VII-A

HOLIDAYS WITH PAY

31a.—(1) For the purposes of section 31b and subsection 1 <sup>Interpre-
tation</sup> of section 31c, “holiday” shall in the year 1974 mean Good Friday, Dominion Day, Labour Day and Christmas Day and where Dominion Day or Christmas Day falls on a Sunday, the day next following is the holiday.

(2) Where an employee to whom subsection 1 of section 31b applies is required to work and does work on New Year’s Day, Victoria Day and Thanksgiving Day in the year 1974, the employer shall pay the employee for each hour worked an amount not less than one and one-half times his regular rate. <sup>Application
of Part</sup>

31b.—(1) Subject to subsection 2, and except as otherwise <sup>Holiday
with pay</sup> provided by this Part, an employer shall give to each of his employees a holiday on a day that is a holiday and pay the employee his regular wages for the holiday.

(2) Subsection 1 does not apply to an employee who, ^{Application}

- (a) is employed for less than three months;
- (b) has not earned wages for at least twelve working days during the thirty calendar days immediately preceding the holiday;
- (c) does not work on his regular day of work preceding and following the holiday; or
- (d) is employed under an arrangement whereby he may elect to work or not when requested so to do.

(3) The employer may, with the consent of the employee <sup>Substituted
day</sup> or his agent, substitute for the holiday another working day that is earlier than or not later than thirty days from the date of the holiday, and the substituted day shall be the holiday for the purposes of this Part.

(4) Where a holiday falls upon a non-working day for an ^{Idem} employee or during the vacation of an employee, the employer shall designate a working day for the holiday that is earlier than or not later than thirty days from the date of the holiday, and the designated day shall be a holiday for the purposes of this Part.

Work on
holiday

31c.—(1) Where an employee to whom subsection 1 of section 31b applies is required to work and works on a holiday, the employer shall pay the employee for his work his wages at his regular rate, an additional amount of one and one-half times his regular rate as holiday pay, and in addition any overtime pay to which the employee is entitled under Part IV.

Idem

(2) Where an employee to whom subsection 1 of section 31b does not apply is required to work, and works on a holiday, the employer shall pay the employee for each hour worked an amount not less than one and one-half times his regular rate.

s. 32 (2).
amended

8. Subsection 2 of section 32 of the said Act is amended by striking out "homemaker" in the first line and inserting in lieu thereof "homeworker".

Commence-
ment

9. This Act comes into force on the 1st day of January, 1974.

Short title

10. This Act may be cited as *The Employment Standards Amendment Act, 1973*.