CHAPTER E-7.2

Employment Standards Act
Assented to June 17, 1982

Chapter Outline

PART I
DEFINITIONS
Definitions...................................1
agricultural services — services agricoles
Board — Commission
close family relationship — liens familiaux étroits
collective agreement — convention collective
construction industry — industrie de la construction
Director — Directeur
dismissal — licenciement
employee — salarié
employer — employeur
establishment — établissement
forest industry — industrie forestière
industrial undertaking — entreprise industrielle
layoff — mise à pied
midwife — sage-femme
Minister — Ministre
non-bargaining employee — salarié non syndiqué
nurse practitioner — infirmière praticienne
overtime — heures supplémentaires
pay — rémunération
period of employment — période d’emploi
place of employment — lieu d’emploi
public holiday — jour férié
regulation — règlement
suspension — suspension
termination — cessation
wages — salaire

PART II
APPLICATION
Application..................................2
Crown bound by Act.............................3
Act prevails over collective agreement.................4

Loi sur les normes d’emploi
Sanctionnée le 17 juin 1982

Sommaire

PARTIE I
DÉFINITIONS
Définitions...................................1
cessation — termination
Commission — Board
convention collective — collective agreement
Directeur — Director
employeur — employer
entreprise industrielle — industrial undertaking
établissement — establishment
heures supplémentaires — overtime
industrie de la construction — construction industry
industrie forestière — forest industry
infirmière praticienne — nurse practitioner
jour férié — public holiday
licenciement — dismissal
liens familiaux étroits — close family relationship
lieu d’emploi — place of employment
mise à pied — layoff
Ministre — Minister
période d’emploi — period of employment
règlement — regulation
rémunération — pay
sage-femme — midwife
salaire — wages
salarié — employee
salarié non syndiqué — non-bargaining employee
services agricoles — agricultural services
suspension — suspension

PARTIE II
CHAMP D’APPLICATION
Application de la Loi.............................2
Loi applicable à la Couronne........................3
Priorité de la Loi sur toute convention collective........4
Annual vacation

VACATIONS

Employees’ lien

EMPLOYMENT STANDARDS

MINIMUM WAGE

Minimum wage regulations.

Minimum Wage Board.

Posting of applicable regulations.

Right of underpaid employee to sue employer.

Tips and gratuities.

HOURS OF WORK

No limitation on numbers of hours of work.

Maximum number of hours of work at minimum wage rate.

Overtime rate of pay.

MINIMUM REPORTING WAGE

Minimum reporting wage.

WEEKLY REST PERIOD

Requirement of weekly rest period.

Right of refusal to work on a Sunday.

PUBLIC HOLIDAYS

Public holidays.

Rate of wages for work on public holiday.

Cessation of employment before the day to be substituted for public holiday.

Employee’s pay for public holiday where daily wages vary.

Vacation and public holiday benefits.


VACATIONS

Annual vacation.

UNJUST DISMISSAL AND RELATED UNFAIR EMPLOYER ACTION

Unjust dismissal and related unfair employer action.

NOTICE OF TERMINATION

Notice of termination.

PROMPT PAYMENT OF WAGES

Payment of wages.

Statement of pay, method of payment.

Payment of outstanding pay to former employee.

EQUAL PAY FOR EQUAL WORK

Equal pay for equal work.

WAGE PROTECTION

Wage protection.

Employees’ lien.

Filing of certificate in Court of Queen’s Bench.

Payment by mortgagee or judgment creditor.

Renewal statement.

Amending certificate.

Certificate of discharge or partial discharge.

Application of sections 38.1 to 38.6.

Filing of documents.

FOREIGN WORKERS

Registry of employers of foreign workers.

Foreign worker — travailleur étranger

immigration consultant — consultan en immigration

immigration services — services en immigration

Prohibitions on employers of foreign workers.

CHILDREN

Restrictions on employment of children.

Exemption relative aux contrats d’emploi pour les services agricoles.

Loi non applicable aux personnes visées aux articles 7 et 8.

Exemption à l’égard de certaines personnes.

Demande d’exemption de l’employeur.

PART III

NOMES D’EMPLOI

SALAIRE MINIMUM

Salaires minimum fixé par règlements.

Commission du salaire minimum.

Affichage des règlements applicables.

Recours du salarié léssé contre l’employeur.

Pourboires et gratifications.

DURÉE DU TRAVAIL

Nombre d’heures de travail non limité.

Nombre maximum d’heures de travail au taux minimum.

Taux des heures supplémentaires.

SALAIRE DE PRÉSENCE MINIMALE

Salaire de présence minimale.

REPOS HEBDOMADAIRE

Repos hebdomadaire obligatoire.

Droit de refuser de travailler un dimanche.

commerce au détail — retail business

JOURS FÉRIÉS

Jours fériés.

Rémunération du travail pendant les jours fériés.

Cessation d’emploi avant le jour choisi pour remplacer le jour férié.

Rémunération pour les jours fériés lorsque le salaire varie quotidiennement.

Prestations compensatoires des congés annuels et des jours fériés.

Convention collective en vigueur après le 16 juillet 1976.

CONGÉS ANNUELS

Congés annuels.

LICENCIEMENTS ABUSIFS ET AUTRES ACTIONS SIMILAIRES DE L’EMPLOYEUR

Licenciements abusifs et autres actions similaires de l’employeur.

AVIS DE CESSATION

Avis de cessation.

PROMPT PAIEMENT DU SALAIRE

Paiement du salaire.

Bulletin de paie et mode de paiement.

Paiement du reliquat.

RÉMUNÉRATION ÉGALE POUR UN TRAVAIL ÉGAL

Rémunération égale pour un travail égal.

PROTECTION DES SALAIRES

Protection des salaires.

Privilège de salarié.

Dépôt de certificat auprès de la Cour du Banc de la Reine.

Paiement par le créancier hypothécaire ou sur jugement.

Déclaration de renouvellement.

Certificat modificatif.

Certificat de libération ou de libération partielle.

Champ d’application des articles 38.1 à 38.6.

Dépôt des documents.

TRAVAILLEURS ÉTRANGERS

Registre des employeurs de travailleurs étrangers.

consultant en immigration — immigration consultant

services en immigration — immigration services

travailleur étranger — foreign worker

Interdictions — employeurs de travailleurs étrangers.

TRAVAIL DES ENFANTS

Restrictions à l’emploi des enfants.
MATERNITY
Prohibition against dismissal, suspension or lay-off of employee due to pregnancy. ........................................ 42
Leave of absence without pay. .................................... 43
Return to work. .................................................. 44
Repealed. ................................................................ 44.01

CHILD CARE
Child care. .................................................................. 44.02
child — enfant

SICK LEAVE
Sick Leave. ................................................................. 44.021

FAMILY RESPONSIBILITY LEAVE
Family Responsibility Leave. ........................................ 44.022

COURT LEAVE
Court Leave. .............................................................. 44.023

COMPASSIONATE CARE LEAVE
Compassionate Care Leave. ........................................... 44.024
qualified medical practitioner — médecin qualifié
week — semaine

CRITICAL ILLNESS LEAVE
Critical illness leave. ................................................. 44.025
critically ill child — enfant gravement malade
parent — parent
qualified medical practitioner — médecin qualifié
week — semaine

DEATH OR DISAPPEARANCE LEAVE
Death or disappearance leave. ...................................... 44.026
child — enfant
crime — crime
parent — parent
week — semaine

BEREAVEMENT
Bereavement. ............................................................ 44.03
funeral — funérailles

LEAVE FOR RESERVISTS
Leave for reservists. ................................................. 44.031
Reserves — Réserve
annual training — instruction annuelle
service — service

LEAVES GENERALLY
Leaves generally. ...................................................... 44.04, 44.05

LIE DETECTOR TESTS
Lie detector tests. ...................................................... 44.1
employee — salarié
employer — employeur
lie detector test — test de détecteur de mensonge

PART IV
ADMINISTRATION
DIRECTOR
Administration by Minister. ........................................ 45(1)
Appointment of Director. ........................................... 45(2)
Appointment of Deputy Director. ............................... 45(3)
Repealed. ............................................................... 46
Repealed. ............................................................... 47
Repealed. ............................................................... 48
Repealed. ............................................................... 49

LABOUR AND EMPLOYMENT BOARD
Repealed. ................................................................ 50
Repealed. ................................................................ 51
Repealed. ................................................................ 52
Powers of the Board. .................................................. 53
Jurisdiction of the Board. ........................................... 54
Stated case. ................................................................ 55
Repealed. ................................................................ 56

CONGÉS DE MATERNITÉ
Interdiction de licencier, suspendre ou mettre à pied pour cause de grossesse. ................................................. 42
Congé sans solde. ...................................................... 43
Retour au travail. ....................................................... 44
Abrogé. ..................................................................... 44.01

SOIN DES ENFANTS
Soin des enfants. ....................................................... 44.02
enfant — child

CONGÉ DE MALADIE
Congé de maladie. .................................................... 44.021

CONGÉ POUR OBLIGATIONS FAMILIALES
Congé pour obligations familiales. ............................. 44.022

CONGÉ POUR FONCTIONS JUDICIAIRES
Congé pour fonctions judiciaries. ............................... 44.023

CONGÉ DE SOIGNANT
Congé de soignant. .................................................... 44.024
médecin qualifié — qualified medical practitioner
semaine — week

CONGÉ DE GRAVE MALADIE
Congé de grave maladie. .......................................... 44.025
enfant gravement malade — critically ill child
médecin qualifié — qualified medical practitioner
parent — parent
semaine — week

CONGÉ DE DÉCÈS OU DE DISPARITION
Congé de décès ou de disparition. ................................ 44.026
crime — crime
enfant — child
parent — parent
semaine — week

CONGÉ DE DÉCÈS
Congé de décès. .......................................................... 44.03
fournitures — funeral

CONGÉ À L'INTENTION DES RÉSERVISTES
Congé à l’intention des réservistes. .............................. 44.031
Reserve — Réserve
service — service

CONGÉS EN GÉNÉRAL
Congés en général. ..................................................... 44.04, 44.05

TESTS DE DÉTECTEUR DE MENSONGE
Tests de détecteur de mensonge. ................................. 44.1
employeur — employer
salarié — employee
test de détecteur de mensonge — lie detector test

PARTIE IV
APPLICATION DE LA LOI
LE DIRECTEUR
Administration par le Ministre. ................................. 45(1)
Nomination du Directeur. ........................................ 45(2)
Nomination d’un directeur adjoint. ............................. 45(3)
Abrogé. ................................................................. 46
Abrogé. ................................................................. 47
Abrogé. ................................................................. 48
Abrogé. ................................................................. 49

LA COMMISSION DU TRAVAIL ET DE L’EMPLOI
Abrogé. ................................................................. 50
Abrogé. ................................................................. 51
Abrogé. ................................................................. 52
Pouvoirs de la Commission. .................................... 53
Compétence de la Commission. ............................... 54
Exposé de cause. .................................................. 55
Abrogé. ................................................................. 56
EMPLOYMENT STANDARDS OFFICERS
Appointment ........................................... .57
Powers .................................................... .58
Immunity from action .................................. .58.1
Information that may be required from an employer ....... .59

EMPLOYER’S RECORDS
Records required to be kept by an employer ............... .60

PART V
ENFORCEMENT
COMPLAINTS AND ADMINISTRATIVE ORDERS
Complaint to Director .................................. .61
Procedure to be followed by Director ....................... .62
Orders that may be made by Director ....................... .63
Appointment, role of mediator ............................ .64
Notice of non-compliance ................................ .64.1
Administrative penalties ................................ .64.2
Orders that may be made by Director ....................... .65
Corporate directors’ liability ................................ .65.1
Notification to complainant .............................. .66
Referral of matter to the Board ........................... .67
Deposit required for referral ................................ .67.1
Procedure before Board .................................. .68
Parties before Board .................................... .69
Hearings of Board, in public or in camera .................. .70
Employer may be required to provide bond ............... .71
Attaching order issued by Director ....................... .72
Orders that may be issued by Board ....................... .73(1)
Record of Board ........................................ .73(2)
Filing of certificate in Court of Queen’s Bench ............. .74
Failure to comply with order ............................. .75(1), (2)
Further orders that may be issued by Board ............... .75(3)
Remedies available to interested persons ................. .76
Repealed ................................................... .77

OFFENCES
Offences and penalties ................................... .78-84

PART VI
MISCELLANEOUS
Regulations .............................................. .85
Service of documents .................................... .86
Presumption concerning the contents of a certificate ... .87
Proceedings not invalid because of formal, technical defect .88
Continuity of employment ................................ .89
Admissibility of documents .............................. .90
Reciprocal enforcement of orders, certificates and judgments ... .90.1
Conflict with the Right to Information and Protection of Privacy Act ....... .90.2

PART VII
REPEALS AND TRANSITIONAL PROVISIONS
Power of Lieutenant-Governor to grant exemptions .......... .91
Repeal of certain Acts ................................... .92
Repealed ................................................. .93
Commencement .......................................... .94

SCHEDULE A

AGENTS DES NORMES D’EMPLOI
Nomination .............................................. .57
Pouvoirs .................................................. .58
Immunité contre l’action ................................. .58.1
Renseignements à fournir par l’employeur ................. .59

DOSSIERS DE L’EMPLOYEUR
Dossiers de l’employeur ............................... .60

PARTIE V
EXÉCUTION DE LA LOI
PLAINTES ET ORDONNANCES ADMINISTRATIVES
Plainte au Directeur ..................................... .61
Procédure à suivre par le Directeur ......................... .62
Ordonnance du Directeur ................................ .63
Nomination et rôle du médiateur .......................... .64
Avis de non-conformité .................................. .64.1
disposition prescrite — disposition prescrite
Amendes administratives ................................ .64.2
Ordonnance du Directeur ................................ .65
Responsabilité personnelle des administrateurs .......... .65.1
Avis au plaignant ........................................ .66
Renvoi à la Commission ................................. .67
Dépôt exigé dans le cas d’un renvoi ....................... .67.1
Procédure devant la Commission ........................ .68
Parties devant la Commission ............................ .69
Auditions publiques ou à huis clos de la Commission .... .70
Cautionnement fourni par l’employeur .................... .71
Ordonnance de saisie-arrêt signifiée par le Directeur .... .72
Ordonnances de la Commission .......................... .73(1)
Dossier de la Commission ................................ .73(2)
Dépôt du certificat auprès de la Cour du Banc de la Reine ... .74
Inobservation de l’ordonnance ........................... .75(1), (2)
Nouvelles ordonnances de la Commission .................. .75(3)
Recours pour toute personne intéressée .................... .76
Abrogé ..................................................... .77

INFRACTIONS
Infractions et peines .................................... .78-84

PARTIE VI
DIVERS
Règlements .............................................. .85
Signification des documents ................................ .86
Présomption relative au contenu d’un certificat ............ .87
Pas de nullité pour vice de forme ou de procédure ....... .88
Continuité de l’emploi .................................... .89
Admissibilité des documents ............................. .90
Exécution réciproque des ordonnances, certificats et jugements .. .90.1
Incompatibilité avec la Loi sur le droit à l’information et la protection de la vie privée ....... .90.2

PARTIE VII
ABROGATIONS ET DISPOSITIONS TRANSITOIRES
Pouvoir du lieutenant-gouverneur d’accorder une exemption .......... .91
Abrogation de certaines lois ............................ .92
Abrogé ..................................................... .93
Entrée en vigueur ........................................ .94

ANNEXE A
Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

PART I
DEFINITIONS

1 In this Act

“agricultural services” means services associated with the tilling of the soil, the planting and harvesting of crops for food production and the raising of animals for food, and includes services associated with a related activity of an employer if the primary activity of the employer is the business of tilling the soil, of planting and harvesting crops for food production or of raising animals for food, and the primary activity and the related activity can reasonably be treated as part of a single agricultural operation; (services agricoles)

“Board” means the Labour and Employment Board established under the Labour and Employment Board Act; (Commission)

“close family relationship” means the relationship between persons who are married to one another, between parents and their children, between siblings and between grandparents and their grandchildren, and includes a relationship between persons who, though not married to one another and whether or not a blood relationship exists, demonstrate an intention to extend to one another the mutual affection and support normally associated with those relationships first mentioned; (liens familiaux étroits)

“collective agreement” means an agreement in writing between

(a) an employer or an employer’s organization, and

(b) a trade union or a council of trade unions that represents employees of the employer or employees of members of the employers’ organization, on the other hand,

containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers’ organization, the trade union, the council of trade unions or the employees; (convention collective)

“construction industry” means the businesses that are engaged in constructing, altering, decorating, repairing and
or demolishing buildings, structures, roads, sewers, water or gas mains, pipelines, tunnels, bridges, canals or other works at the site thereof; (*industrie de la construction*)

“Director” means the person appointed under subsection 45(2); (*Directeur*)

“dismissal” means the termination of the employment relationship for cause at the direction of the employer; (*licenciement*)

“domestic services” Repealed: 1984, c.42, s.1

“employee” means a person who performs work for or supplies services to an employer for wages, but does not include an independent contractor; (*salarié*)

“employer” means a person, firm, corporation, agent, manager, representative, contractor or sub-contractor having control or direction of or being responsible, directly or indirectly, for the employment of one or more persons and includes employer as defined in the *Public Service Labour Relations Act*, but does not include a person having control or direction of or being responsible, directly or indirectly, for the employment of persons in or about his private home; (*employeur*)

“establishment” means a place or places at or in which all or any part of a business or undertaking of an employer is or has been carried on; (*établissement*)

“forest industry” means all operations in or incidental to the production or manufacture of articles produced from wood; (*industrie forestière*)

“industrial undertaking” includes an undertaking in which articles are manufactured, altered, cleaned, repaired, finished, prepared for sale or demolished, or in which materials are transformed, including shipbuilding and the generation, transformation, transmission and distribution of electricity or motive power of any kind, mines, quarries, and other works for the extraction of minerals from the earth, and undertakings in the construction industry; (*entreprise industrielle*)

“layoff” means a temporary interruption of the employment relationship at the direction of the employer because of a lack of work; (*mise à pied*)

“midwife” means a midwife as defined in the *Midwifery Act*; (*sage-femme*)

production, la transformation, le transport et la distribution de l’électricité et de la force motrice en général, les mines, carrières et industries extractives de toute nature, ainsi que les entreprises appartenant à l’industrie de la construction; (*industrial undertaking*)

« établissement » désigne le ou les lieux où s’exerce ou s’est exercé tout ou partie de l’activité ou de l’entreprise d’un employeur; (*establishment*)

« heures supplémentaires » désigne les heures effectuées par un salarié au-delà du nombre d’heures de travail fixé à l’article 9 ou 15; (*overtime*)

« industrie de la construction » désigne les entreprises se livrant à la construction, la transformation, la décoration, la réparation ou la démolition de bâtiments, de constructions, de routes, d’égouts, de conduites d’eau ou de gaz, de pipelines, de tunnels, de ponts, de canaux ou d’autres ouvrages sur ces chantiers; (*construction industry*)

« industrie forestière » désigne toutes les opérations se rattachant directement ou accessoirement à la production ou à la fabrication d’articles dérivés du bois; (*forest industry*)

« infirmière praticienne » désigne une personne immatriculée en vertu des lois de la province comme étant autorisée à exercer la profession d’infirmière praticienne; (*nurse practitioner*)

« jour férié » désigne le jour de l’An, le Vendredi saint, la fête du Canada, la fête du Nouveau-Brunswick, la fête du Travail, le jour du Souvenir et le jour de Noël et comprend tout jour qui leur est substitué en vertu de la présente loi; (*public holiday*)

« licenciement » désigne la cessation de la relation d’emploi pour cause selon la directive de l’employeur; (*dismissal*)

« liens familiaux étroits » désigne les liens qui existent entre des personnes mariées l’une à l’autre, entre les parents et leurs enfants, entre frères et sœurs, entre les grands-parents et leurs petits-enfants et s’entend également des liens existant entre des personnes qui, sans être mariées l’une à l’autre ou sans être unies par le sang, manifestent l’intention de se prodiguer l’une à l’autre l’affection et le soutien réciproques qui caractérisent normalement les relations déjà mentionnées; (*close family relationship*)
“Minister” means the Minister of Post-Secondary Education, Training and Labour; (Ministre)

“non-bargaining employee” means an employee whose terms and conditions of employment are not the subject of a collective agreement; (salarié non syndiqué)

“nurse practitioner” means a person who is registered under the laws of the Province as authorized to practice as a nurse practitioner; (infirmière praticienne)

“overtime” means the time worked by an employee in excess of the hours of work established by section 9 or section 15; (heures supplémentaires)

“pay” means wages, public holiday pay, pay in lieu of public holidays, vacation pay and pay in lieu of vacation paid or due to an employee, benefits, initiation fees and union dues checked off by the employer, but does not include deductions from wages that may lawfully be made by an employer; (rémunération)

“period of employment” means the period of time from the last hiring of an employee by an employer to the termination of his employment, and includes any period of layoff or suspension of less than twelve consecutive months; (période d’emploi)

“place of employment” means any building, structure, premises, water, land or other place or thing in or upon which one or more persons are or has been employed for wages; (lieu d’emploi)

“public holiday” means New Year’s Day, Good Friday, Canada Day, New Brunswick Day, Labour Day, Remembrance Day and Christmas Day, and includes any day substituted for one of those days under this Act; (jour férié)

“regulation” means a regulation made by the Lieutenant-Governor in Council under this Act; (règlement)

“suspension” means a temporary interruption of the employment relationship other than a layoff, at the direction of the employer; (suspension)

“termination” means the unilateral severance of the employment relationship at the direction of the employer; (cessation)

“Tribunal” Repealed: 1994, c.52, s.1

« lieu d’emploi » désigne tout bâtiment, ouvrage, local, milieu aquatique, terrain ou autre lieu ou chose où une ou plusieurs personnes sont ou ont été employées moyennant salaire; (place of employment)

« mise à pied » désigne l’interruption temporaire d’une relation d’emploi pour cause de manque de travail selon la directive de l’employeur; (layoff)

« Ministre » désigne le ministre de l’Éducation post-secondaire, de la Formation et du Travail; (Minister)

« période d’emploi » désigne la période de temps qui court de la date du dernier embauchage d’un salarié par un employeur jusqu’à la date de cessation de son emploi et s’entend également de toute mise à pied ou suspension d’une durée inférieure à douze mois consécutifs; (period of employment)

« règlement » désigne un règlement établi par le lieutenant-gouverneur en conseil en vertu de la présente loi; (regulation)

« rémunération » désigne le salaire, les jours fériés payés, l’indemnité compensatrice des jours fériés payés, les congés payés annuels ainsi que l’indemnité compensatrice de congés payés versés ou dus à un salarié, les avantages, les droits d’adhésion et les cotisations syndicales précomptées par l’employeur, mais ne comprend pas les déductions que ce dernier peut légalement opérer sur le salaire; (pay)

« sage-femme » s’entend d’une sage-femme selon la définition que donne de ce terme la Loi sur les sages-femmes; (midwife)

« salaire » comprend le traitement, les commissions ou la rétribution, sous quelque forme que ce soit, versés pour des travaux ou services rémunérés au temps, à la pièce ou selon tout autre mode, à l’exclusion des jours fériés payés, de l’indemnité compensatrice des jours fériés payés, des congés payés annuels, de l’indemnité compensatrice des congés payés et des gratifications ou autres indemnités similaires; (wages)

« salarié » désigne une personne qui, moyennant salaire, exécute des travaux pour un employeur ou lui fournit des services, mais ne s’entend pas d’un entrepreneur indépendant; (employee)

« salarié non syndiqué » désigne un salarié dont les modalités et conditions d’emploi ne font pas l’objet d’une convention collective; (non-bargaining employee)
“wages” includes salary, commissions and compensation in any form for work or services measured by time, piece or otherwise, but does not include public holiday pay, pay in lieu of public holidays, vacation pay, pay in lieu of vacation, gratuities or honoraria. (salaire)

1983, c.10, s.2; 1983, c.30, s.8; 1984, c.42, s.1; 1986, c.8, s.37; 1988, c.59, s.1; 1992, c.2, s.19; 1994, c.52, s.1; 1998, c.41, s.50; 2000, c.26, s.106; 2002, c.23, s.1; 2003, c.4, s.1; 2004, c.10, s.1; 2006, c.16, s.60; 2007, c.10, s.30; 2011, c.26, s.1

« services agricoles » désigne les services se rattachant à la culture du sol, à la plantation et à la récolte des produits destinés à la production alimentaire, à l’élevage d’animaux d’abattage et s’entend également des services se rattachant à une activité connexe d’un employeur qui a pour activité principale l’une de celles prémentionnées si l’activité principale et l’activité connexe peuvent raisonnablement être considérées comme ne faisant partie que d’une seule opération agricole; (agricultural services)

« services domestiques » Abrogé : 1984, ch. 42, art. 1

« suspension » désigne une interruption temporaire d’une relation d’emploi selon la directive de l’employeur, à l’exclusion d’une mise à pied; (suspension)

« Tribunal » Abrogé : 1994, ch. 52, art. 1

1983, ch. 10, art. 2; 1983, ch. 30, art. 8; 1984, ch. 42, art. 1; 1986, ch. 8, art. 37; 1988, ch. 59, art. 1; 1992, ch. 2, art. 19; 1994, ch. 52, art. 1; 1998, ch. 41, art. 50; 2000, ch. 26, art. 106; 2002, ch. 23, art. 1; 2003, ch. 4, art. 1; 2004, ch. 10, art. 1; 2006, ch. 16, art. 60; 2007, ch. 10, art. 30; 2011, ch. 26, art. 1

PART II
APPLICATION

2 Except where exempted under this Act or the regulations, all employers and employees whose relations are subject to the legislative authority of the Legislature are bound by this Act, notwithstanding that the work or services may be performed in whole or in part outside New Brunswick.

3 This Act binds the Crown.

4(1) Subject to subsection (2), this Act applies notwithstanding any agreement to the contrary between an employer and an employee.

4(2) Where there is a conflict between a provision of this Act and a provision of a collective agreement this Act prevails except where the provision of the collective agreement expressly states that a benefit, privilege, right or obligation was agreed to in lieu of the application of a provision of this Act.

1984, c.42, s.2

5 Except with respect to sections 39, 40 and 41, dealing with the employment of persons under the age of six-

PARTIE II
CHAMP D’APPLICATION

2 Sauf lorsque la présente loi ou les règlements les en dispensent, tous les employeurs et salariés dont les relations relèvent de la compétence législative de la Législature sont liés par la présente loi, même si l’exécution des travaux ou la prestation des services peut avoir lieu entièrement ou partiellement à l’extérieur du Nouveau-Brunswick.

3 La présente loi lie la Couronne.

4(1) Sous réserve du paragraphe (2), la présente loi s’applique nonobstant toute convention contraire entre un employeur et un salarié.

4(2) En cas de conflit avec une convention collective, la présente loi l’emporte sauf dans le cas où la disposition de la convention collective énonce expressément que les parties ont convenu de substituer à la présente loi un avantage, un privilège, un droit ou une obligation qu’elle crée.

1984, ch. 42, art. 2

5 Sauf aux articles 39, 40 et 41 visant l’emploi de personnes âgées de moins de seize ans, la présente loi ne
teen years, this Act does not apply to employment contracts for the provision of agricultural services between employees and employers who employ three or fewer employees over a substantial period of the year, exclusive of employees who are in a close family relationship with the employer.

1984, c.42, s.3

6 This Act does not apply to any person exempted under section 7 or 8 to the extent of the exemption granted thereunder.

7 The Lieutenant-Governor in Council may make regulations exempting in whole or in part from the provisions of this Act

(a) persons employed in specified occupations;

(b) persons employed in any specified class of work; and

(c) persons employing employees referred to in paragraphs (a) and (b).

8(1) An employer may apply to the Director

(a) in response to a complaint filed under this Act;

(b) in response to a proceeding initiated by the Director under this Act; or

(c) at any other time;

to be exempted from any provision of this Act, and the Director may grant an exemption if the employer can show to his satisfaction that, in addition to any other requirement that may be established in this Act,

(d) the employer suffers a special hardship in complying with the provision that is not suffered by other employers; and

(e) the employee receives other benefits or advantages that can be viewed as reasonable compensation for the sacrifice of the benefit, advantage, privilege or protection offered by the provision in respect of which the exemption is sought;

8(1) Un employeur peut,

(a) en réponse à une plainte déposée en vertu de la présente loi,

(b) en réponse à une procédure intentée par le Directeur en vertu de la présente loi, ou

(c) à n’importe quel autre moment,

demander au Directeur d’être exempté de l’application d’une disposition de la présente loi; ce dernier peut accorder l’exemption si l’employeur lui démontre, en sus de toute autre prescription que la présente loi peut établir,

(d) que l’obligation de se conformer à la disposition en question lui impose des difficultés particulières qui ne sont pas imposées à d’autres employeurs; et

(e) que le salarié reçoit d’autres prestations ou avantages qui peuvent être considérés comme une indemnisation raisonnable du sacrifice de la prestation, de l’avantage, du privilège ou de la protection que lui offre la disposition donnant lieu à la demande d’exemption,
or that the employment contract in question was entered into voluntarily and without force or coercion between persons having a close family relationship.

(2) In lieu of deciding an application made under subsection (1), the Director may refer the matter to the Board.

(3) Any person affected by a decision of the Director with respect to an application made under subsection (1) may request the Director in writing, within 14 days after notice of the decision, to refer the matter to the Board.

(4) A matter referred to the Board under subsection (2) or (3) shall be disposed of in accordance with section 68.

PART III
EMPLOYMENT STANDARDS
MINIMUM WAGE

1. The Lieutenant-Governor in Council may by regulation

(a) fix the amount of the minimum wage or specify the manner in which the minimum wage is to be determined for all employees or for any category of employees in any industry, business, trade or occupation;

(b) fix the minimum wage upon an hourly, daily, weekly, monthly or other basis;

(c) fix a maximum number of hours of work for which the minimum wage shall be paid;

(d) fix the minimum wage payable for time worked in excess of the maximum number of hours of work established;

(e) fix a special minimum rate of wages for employees in training or in a learning situation, other than apprentices covered by the Apprenticeship and Occupational Certification Act, and limit the number of such employees to whom the special rate may be payable by any employer;

(f) specify when and under what conditions deductions may be made from the minimum wage, and

8(2) Au lieu de statuer lui-même sur une demande présentée en vertu du paragraphe (1), le Directeur peut saisir la Commission.

8(3) Toute personne touchée par une décision que le Directeur a rendue à la suite d’une demande présentée en vertu du paragraphe (1) peut, dans les quatorze jours qui suivent la notification de la décision, lui demander par écrit de saisir la Commission.

8(4) Une affaire soumise à la Commission en vertu du paragraphe (2) ou (3) doit être tranchée conformément à l’article 68.

PARTIE III
NORMES D’EMPLOI
SALAIRE MINIMUM

9. Le lieutenant-gouverneur en conseil peut, par règlement,

a) fixer le montant du salaire minimum à verser à tous les salariés ou à une catégorie donnée de salariés dans une industrie, une activité commerciale, un métier ou une profession ou préciser les modalités de détermination du salaire minimum;

b) fixer le salaire minimum sur une base horaire, quotidienne, hebdomadaire, mensuelle ou autre;

c) fixer le nombre maximum d’heures de travail donnant lieu au paiement du salaire minimum;

(d) fixer le salaire minimum payable en rémunération des heures effectuées au-delà du nombre maximum d’heures de travail fixé;

(e) fixer un taux particulier de salaire minimum pour les salariés en stage de formation ou en situation d’apprentissage, à l’exclusion des apprentis relevant de la Loi sur l’apprentissage et la certification professionnelle, et limiter le nombre de ces salariés auxquels ce taux particulier peut être payé par un employeur;

(f) préciser les dates et conditions auxquelles il peut être opéré des déductions sur le salaire minimum ainsi
what notification the employee should be given thereof prior to employment;

(g) fix the maximum amount, if any, that may be deducted from the minimum wage where the employer furnishes to the employee board, lodging, uniforms, laundry or other services, and prescribe the notification required to be given to the employee prior to employment;

(h) prescribe the periods in respect of which wages shall be paid, whether daily, weekly, monthly or for any other period, and fix the day upon which the wages for any period shall be paid and the manner in which they shall be paid; and

(i) fix a minimum wage applicable only in the part or parts of the Province designated in the regulation.

9(2) A regulation made under subsection (1) may be general or particular in its application.

9(3) Every employer, unless exempted under this Act or the regulations, shall comply with the provisions of a regulation made under subsection (1).

9(4) If a special minimum rate of wages for apprentices fixed in a regulation under the Apprenticeship and Occupational Certification Act is higher than a minimum wage fixed in a regulation made under subsection (1), the special minimum rate of wage shall apply with respect to those apprentices.

1984, c.42, s.5; 1986, c.32, s.1; 1987, c.27, s.22; 2012, c.19, s.62; 2014, c.70, s.1

10(1) Every two years after December 31, 2014, the Minister shall complete a review of the amount of the minimum wage, the manner in which minimum wage is determined and the timeline for any changes to it.

10(2) In conducting a review under subsection (1), the Minister shall

(a) consider the social and economic effects of minimum wage rates in the province, including
(i) data respecting the demographics of employees earning minimum wage, including age and gender,

(ii) any cost of living increase since any previous order or regulation, with respect to the cost to an employee of purchasing the necessities of life, including but not limited to housing, food, clothing, transportation and health care and supplies, and

(iii) economic conditions within the province; and

(b) consult with representatives of employers and employees, and any other person the Minister considers appropriate.

1984, c.42, s.6; 1994, c.52, s.1; 2014, c.70, s.2

11(1) Repealed: 1983, c.8, s.11

11(2) An employer shall post and keep posted in a conspicuous place in his establishment a copy of all applicable minimum wage regulations.

11(3) Additional notice of any regulation made under section 9 shall be given by employers to employees in such manner as the Lieutenant-Governor in Council may by regulation direct.

1983, c.8, s.11

12 An employee to whom an employer has paid wages at a rate less than the minimum rate established by the Lieutenant-Governor in Council in the industry, business, trade or occupation in which he is employed is, in addition to any other remedy provided under this Act, entitled to sue for and recover as an ordinary debt from his employer the difference between the wages he has actually received from his employer and the wages he would have received from his employer if he had been paid in accordance with the minimum rate.

13(1) Subject to subsection (3), tips and gratuities are the property of the employee to whom or for whom they are given, and shall not be withheld by the employer or treated by the employer as wages.

13(2) Where a surcharge or other charge is imposed by the employer in lieu of the payment of tips or gratuities,
all amounts collected in respect thereof shall be deemed to be the property of his employees to be distributed to the employees in accordance with the terms and conditions of employment not later than the time of the next pay; and such amounts shall not be withheld by the employer or treated by the employer as wages.

13(3) An employer may adopt a practice whereby tips and gratuities are pooled, at the option of the employee, for the benefit of some or all of the employees but such practice does not give the employer a proprietary interest in the tips and gratuities so pooled.

1984, c.42, s.7

HOURS OF WORK

14 Subject to sections 17, 39 and 41 and to any other Act, there is no limit on the number of hours an employee may work during any daily, weekly or monthly period.

1984, c.42, s.8

15(1) The Lieutenant-Governor in Council may by regulation prescribe the maximum number of hours an employer may require an employee to work during a daily, weekly or monthly period at the minimum wage rate, and may prescribe the employees or categories of employees in any industry, business, trade or occupation to which the prescribed maximum number of hours will apply.

15(2) A regulation made under this section shall be posted in like manner as a regulation made under section 9.

16 Where a regulation is in effect under subsection 15(1), an employee who works for an employer in excess of the prescribed maximum hours of work shall be paid by the employer at a rate of not less than one and one-half times the minimum wage rate.

MINIMUM REPORTING WAGE

2003, c.4, s.2

16.1(1) An employer shall pay a non-bargaining employee for not less than three hours of work at the minimum wage rate or for the hours the employee works at the employee’s regular wage rate, whichever is greater, if the employee

(a) reports for work as required by his or her employer.

a) le salarié se présente au travail comme il est tenu de le faire par son employeur,

16.1(2) A regulation made under subsection 15(1) is in effect.

16 Lorsqu’un règlement établi en vertu du paragraphe 15(1) est en vigueur, l’employeur doit rémunérer le salarié qui travaille au-delà du nombre maximum d’heures fixé à un taux qui ne peut être inférieur à une fois et demi ce taux minimum.

SALAIRE DE PRÉSENCE MINIMALE

2003, ch. 4, art. 2

16.1(1) Un employeur doit payer au salarié non syndiqué pas moins de trois heures de travail au taux de salaire minimum ou les heures qu’il a travaillées à son taux de salaire normal, selon le plus élevé de ces montants, si
(b) has a regular wage rate of less than twice the minimum wage rate, and

(c) is regularly employed for more than three consecutive hours in a shift.

16.1(2) If an employee to whom subsection (1) applies has already worked the maximum hours of work prescribed under paragraph 9(1)(c), the employer shall pay the employee for not less than three hours of work at one and one-half times the minimum wage rate or for the hours the employee works at the employee’s regular wage rate, whichever is greater.

16.1(3) An employee shall be deemed to have worked any hours for which the employee is paid under subsection (1) or (2).

2003, c.4, s.2

WEEKLY REST PERIOD

1984, c.42, s.9

17(1) Where an employer employs an employee other than

(a) an employee who, in the opinion of the Director, is required to cope with an emergency; or

(b) an employee who is not usually employed for more than three hours in any one day;

the employer shall give to the employee a weekly rest period of at least twenty-four consecutive hours, to be taken, if possible, through Sunday or, if the Director approves, to be accumulated and taken later, either part at a time or all together.

17(2) Nothing in this section authorizes any work to be done on Sunday that is now prohibited by law.

1984, c.42, s.10; 1988, c.59, s.2

17.1(1) In this section

“retail business” means a retail business as defined in the Days of Rest Act. (commerce au détail)
17.1(2) Subject to subsections (3) and (4), an employee may refuse to work on a Sunday, whether or not the Sunday is also a prescribed day of rest, if the work is in a retail business or part of a retail business that is exempted from the application of the Days of Rest Act

(a) solely under

(i) a by-law made under paragraph 11(1)(e.1) of the Municipalities Act, or

(ii) a permit issued under section 27.7 of the Municipalities Act,

(b) solely under subsection 7.1(1) of that Act, or

(c) under exemptions referred to in both paragraphs (a) and (b) but under no other provision of the Days of Rest Act.

17.1(3) An employee may, under subsection (2), refuse to work only on a Sunday on which the exemption or exemptions referred to in that subsection apply.

17.1(4) An employee who is permitted to refuse to work on a Sunday under subsection (2) shall give the employer verbal or written notice of refusal at least fourteen days before any Sunday on which the employee refuses to work.

17.1(4.1) An employee may, at one time, give at least fourteen days notice under subsection (4) in relation to one Sunday, more than one Sunday, all Sundays or any combination of Sundays.

17.1(5) Notwithstanding anything in this Act, no employer or person acting on behalf of an employer shall dismiss, suspend, lay off, penalize, discipline or discriminate against an employee because

(a) the employee has refused or attempted to refuse to work on a Sunday, if the employee was permitted to do so under subsection (2), or

17.1(2) Sous réserve des paragraphes (3) et (4), un salarié peut refuser de travailler un dimanche, que le dimanche en question soit ou non également un jour de repos prescrit, s’il doit travailler dans un commerce au détail ou dans une partie d’un commerce au détail qui est exempté de l’application de la Loi sur les jours de repos

a) uniquement en vertu

(i) d’un arrêté municipal pris en vertu de l’alinéa 11(1)e.1) de la Loi sur les municipalités, ou

(ii) d’un permis délivré en vertu de l’article 27.7 de la Loi sur les municipalités,

b) uniquement en vertu du paragraphe 7.1(1) de cette même loi, ou

c) en vertu des exemptions visées à la fois aux alinéas a) et b) mais en vertu d’aucune autre disposition de la Loi sur les jours de repos.

17.1(3) Un salarié peut, en vertu du paragraphe (2), seulement refuser de travailler un dimanche auquel s’applique l’exemption ou les exemptions visées à ce même paragraphe.

17.1(4) Un salarié qui a le droit de refuser de travailler un dimanche en vertu du paragraphe (2) doit donner à l’employeur un avis de refus verbal ou écrit au moins quatorze jours avant le dimanche pendant lequel le salarié refuse de travailler.

17.1(4.1) Un employé peut ne donner qu’un seul avis d’au moins quatorze jours en vertu du paragraphe (4) à l’égard d’un seul dimanche, de plus d’un dimanche, de tous les dimanches ou de toute combinaison de dimanches.

17.1(5) Nonobstant toute disposition de la présente loi, aucun employeur ou aucune personne agissant pour le compte d’un employeur ne doit licencier, suspendre, mettre à pied ou pénaliser un salarié ou lui infliger d’autres mesures disciplinaires ou agir de façon discriminatoire à son égard au motif que

a) le salarié a refusé ou a tenté de refuser de travailler un dimanche, si le salarié a le droit de le faire en vertu du paragraphe (2), ou
(b) the employee seeks to enforce the employee’s rights under this section.

1997, c.29, s.1; 2004, c.24, s.2

**PUBLIC HOLIDAYS**

**18(1)** This section does not apply to an employee who

(a) has been in the employ of his present employer for fewer than ninety days during the previous twelve calendar months immediately preceding a public holiday;

(b) Repealed: 1988, c.59, s.3

(c) without reasonable cause fails to work his scheduled regular day of work preceding or following a public holiday;

(d) has agreed to work on a public holiday and, without reasonable cause, fails to report for and perform the work;

(e) is employed under an arrangement whereby the employee elects to work when requested to do so.

**18(2)** Subject to subsections (3), (4) and (5), an employer shall give to an employee a holiday on each public holiday and pay to the employee his regular wages for each public holiday.

**18(3)** Where a public holiday falls on 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 vacation of the employee, and the day so substituted shall be deemed to be the public holiday.

**18(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 vacation of the employee, and the day so designated shall be deemed to be the public holiday.

**18(5)** Notwithstanding subsection (3), where an employee is employed in a hotel, motel, tourist resort, res-
A restaurant, tavern or any continuous operation, and the employee is required because of the nature of the operation to work, and works on a public holiday, the employer shall

(a) pay the employee in accordance with subsection 19(1); 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 vacation or on a working day agreed upon and pay him his regular wages for that day.

18(6) For the purposes of subsection (5) “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.

19(1) Subject to subsection 18(5), where an employee works on a public holiday the employer shall pay to the employee for time worked not less than one and one-half times his regular rate of wages and, where the employee is entitled to the holiday with pay, his regular wages in addition thereto.

19(1.1) In subsection (1) “regular wages” means the wages the employee would have received had he not worked on the public holiday.

19(2) Where an employee works on a public holiday, the hours that 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.

20 Where the employment of an employee ceases before the day that is substituted, designated or given for the public holiday under subsection 18(3) or paragraphs 18(4)(b) or 18(5)(b), the employer shall pay to his employee, in addition to any other payment to which the employee is entitled upon the ceasing of employment, his regular wages for that day.

1984, c.42, s.11; 1988, c.59, s.3

1984, c.42, s.12; 1988, c.59, s.4

1984, c.42, s.13
21(1) Where the wages of an employee vary from day
to day, his pay for a public holiday on which he has not
worked shall be at least equivalent to his average daily
earnings exclusive of overtime for the days on which he
worked during the thirty calendar days immediately pre-
ceding the public holiday.

21(2) Notwithstanding subsection (1), a route sales-
man’s pay for a public holiday on which he has not
worked shall not increase his earnings for the week of
the holiday above his average weekly wages for the pre-
ceding four weeks.

1984, c.42, s.14

22(1) An employee is not entitled to a vacation with
pay or a public holiday with pay under this Act if under
a collective agreement or contract of employment the
employee receives vacation and holiday benefits which
together equal or exceed the combined vacation and pub-
lic holiday benefits provided under this Act.

22(2) For the purpose of subsection (1) a payment of
three per cent of wages is equivalent to the public holi-
day benefits as prescribed by this Act.

22(3) Notwithstanding subsection (1), an employer
shall pay to an employee who works on a public holiday
for time worked not less than one and one-half times the
employee’s regular rate of wages in accordance with
subsection 19(1).

1988, c.59, s.5

23 Where any class of employers or employees is cov-
ered by a collective agreement that became effective af-
fer July 16, 1976 and provides for a minimum of seven
paid holidays, including New Brunswick Day, that class
of employers and employees are exempt from the appli-
cation of sections 18 to 21.

1984, c.42, s.15; 2004, c.10, s.2

**VACATIONS**

24(1) An employer, not later than four months after
the vacation pay year ends, shall give to an employee
who has less than eight years of continuous employment
with the employer a vacation that as a minimum is equal
to two regular work weeks or one day for each calendar
month during the vacation pay year in which the em-
ployee worked, whichever is less.

24(2) An employer, not later than four months after
the vacation pay year ends, shall give to an employee
who has less than eight years of continuous employment
with the employer a vacation that as a minimum is equal
to two regular work weeks or one day for each calendar
month during the vacation pay year in which the em-
ployee worked, whichever is less.

24(3) An employer, not later than four months after
the vacation pay year ends, shall give to an employee
who has less than eight years of continuous employment
with the employer a vacation that as a minimum is equal
to two regular work weeks or one day for each calendar
month during the vacation pay year in which the em-
ployee worked, whichever is less.

**CONGÉS ANNUELS**

24(1) Un employeur doit, au plus tard quatre mois
après la fin de l’année de référence, donner au salarié qui
a moins de huit ans d’emploi continu auprès de l’em-
ployeur, un congé annuel équivalent à deux semaines
normales de travail au moins ou à une journée au moins
par mois civil au cours de l’année de référence où le sa-
larie a travaillé, le plus court des deux devant être retenu.
24(1.1) An employer, not later than four months after the vacation pay year ends, shall give to an employee who has eight or more years of continuous employment with the employer a vacation that as a minimum is equal to three regular work weeks or one and one-quarter days for each calendar month during the vacation pay year in which the employee worked, whichever is less.

24(2) For the purposes of this section and sections 25 and 26, “vacation pay year” means the period from the first day of July to the last day of June then following.

24(3) Repealed: 1988, c.59, s.6

24(4) Repealed: 1988, c.59, s.6
1988, c.59, s.6; 2000, c.55, s.1

25(1) If an employee qualifies for a vacation under section 24, the employer shall

(a) at least one week in advance, notify the employee of the date the vacation is to begin, and

(b) at least one day before the vacation begins,

(i) if subsection 24(1) applies, pay the employee an amount equal to four per cent of the employee’s wages for the vacation pay year, or

(ii) if subsection 24(1.1) applies, pay the employee an amount equal to six per cent of the employee’s wages for the vacation pay year.

25(2) Repealed: 1988, c.59, s.7
1986, c.32, s.2; 1988, c.59, s.7; 2000, c.55, s.2

26(1) If an employee’s employment with an employer ceases before the end of the vacation pay year, the employer shall pay the employee, not later than at the same time as the employee’s final pay is given,

(a) an amount equal to four per cent of the employee’s wages for the vacation pay year if the employee has less than eight years of continuous employment with the employer, or

Employment Standards Act
Chap. E-7.2
19
(b) an amount equal to six per cent of the employee’s wages for the vacation pay year if the employee has eight or more years of continuous employment with the employer.

26(2) Repealed: 1988, c.59, s.8

1988, c.59, s.8; 2000, c.55, s.3; 2003, c.4, s.3

27 Where provisions for a vacation established under any other Act or by any agreement, contract of service or custom are as favourable to an employee in respect of a vacation pay year as the requirements of this Act, the provisions so established prevail over this Act.

27 Lorsqu’elles assurent à un salarié des conditions aussi favorables en ce qui concerne une année de référence, les dispositions établies en matière de congés annuels en vertu d’une autre loi ou par voie d’accord, de contrat de service ou d’usage l’emportent sur celles de la présente loi.

UNJUST DISMISSAL AND RELATED UNFAIR EMPLOYER ACTION

28 Notwithstanding anything in this Act an employer shall not dismiss, suspend, lay off, penalize, discipline or discriminate against an employee if the reason therefor is related in any way to

(a) the application by an employee for any leave to which the employee is entitled under this Act;

(b) the making of a complaint or the giving of information or evidence by the employee against the employer with respect to any matter covered by this Act; or

(c) the giving of information or evidence by the employee against the employer with respect to the alleged violation of any Provincial or federal Act or regulation by the employer while carrying on the employer’s business;

or if the dismissal, suspension, layoff, penalty, discipline or discrimination constitutes in any way an attempt by the employer to evade any responsibility imposed upon him under this Act or any other Provincial or federal Act or regulation or to prevent or inhibit an employee from taking advantage of any right or benefit granted to him under this Act.

1988, c.59, s.9

28 Nonobstant toute disposition de la présente loi, aucun employeur ne peut licencier, suspendre, mettre à pied ou pénaliser un salarié ou lui infliger d’autres mesures disciplinaires ou agir discriminatoirement à son égard si le motif de cette action se rattache de quelque façon que ce soit

(a) à la demande par le salarié d’un congé auquel la présente loi lui donne droit;

(b) au dépôt d’une plainte ou à la communication de renseignements ou d’éléments de preuve par le salarié contre l’employeur relativement à toute affaire visée par la présente loi; ou

(c) à la communication de renseignements ou d’éléments de preuve par le salarié contre l’employeur relativement à la violation alléguée d’une loi provinciale ou fédérale ou d’un règlement par l’employeur dans l’exercice de ses activités à titre d’employeur;

ou si le licenciement, la suspension, la mise à pied, la mesure disciplinaire ou la discrimination constitue une tentative de l’employeur de se soustraire à une obligation que la présente loi ou toute autre loi provinciale ou fédérale ou tout règlement lui impose ou d’empêcher ou de dissuader le salarié de bénéficier de tout droit ou avantage que la présente loi lui reconnaît.

1988, ch. 59, art. 9
NOTICE OF TERMINATION

29 Sections 30 and 31 apply only where employees are not covered by a collective agreement.

30(1) Except where cause for dismissal exists, and subject to subsection (3) and to sections 31 and 32, an employer shall not terminate or lay off an employee without having given at least

(a) two weeks notice in writing, where the employee has been employed by the employer for a continuous period of employment of six months or more but less than five years; and

(b) four weeks notice in writing, where the employee has been employed by the employer for a continuous period of employment of five years or more.

30(2) Where an employer dismisses an employee for cause he shall do so in writing, setting out the reasons for such action, and, subject to section 31, unless this section is complied with no dismissal without notice is valid notwithstanding that cause for such action exists.

30(3) Where an employee is given notice of termination or layoff by the employer but continues to work for the employer for a period of one month or more beyond the end of the notice period, the notice is extinguished and the employer shall only terminate or lay off the employee after giving a new notice in accordance with subsection (1).

1984, c.42, s.16; 1988, c.59, s.10

31(1) Notwithstanding section 30, an employer may lay off an employee without notice

(a) where there is a lack of work, due to any reason unforeseen by the employer at the time notice would otherwise have been given, for such period as the lack of work continues due to that reason; or

(b) for any reason, for a period of up to six days.

31(2) Notwithstanding section 30, an employer may terminate or lay off without notice an employee who has refused reasonable alternate employment offered by the employer as an alternative to being terminated or laid off.

AVIS DE CESSATION

29 Les articles 30 et 31 ne s’appliquent que dans le cas où les salariés ne sont pas couverts par une convention collective.

30(1) Hors le cas où il existe un motif valable de licenciement et sous réserve du paragraphe (3) et des articles 31 et 32, un employeur ne peut cesser l’emploi d’un salarié ou le mettre à pied sans lui avoir donné un avis écrit minimal

a) de deux semaines, s’il a travaillé pour l’employeur pendant une période d’emploi continu de six mois ou plus mais moins de cinq ans; et

b) de quatre semaines, s’il a travaillé pour l’employeur pendant une période d’emploi continu d’au moins cinq ans.

30(2) L’employeur qui licencie un salarié pour un motif valable doit le faire par écrit en lui indiquant les motifs de cette mesure et, sous réserve de l’article 31 et à défaut de satisfaire au présent article, le licenciement sans avis n’a aucune validité même s’il existe un motif valable.

30(3) Dans le cas où le salarié après avoir reçu de l’employeur un avis de cessation ou de mise à pied continue à travailler pour l’employeur pendant une période d’un mois ou plus après l’expiration du délai d’avis, l’avis est annulé et l’employeur ne peut cesser l’emploi d’un salarié ou le mettre à pied qu’après lui avoir donné un nouvel avis conformément au paragraphe (1).

1984, ch. 42, art. 16; 1988, ch. 59, art. 10

31(1) Par dérogation à l’article 30, un employeur peut mettre à pied un salarié sans avis

a) en cas de manque de travail dû à un motif imprévu par l’employeur, au moment où il aurait autrement donné un avis, pendant la période durant laquelle le manque de travail se poursuit pour le même motif;

b) pour tout autre motif, pour une période maximale de six jours.

31(2) Par dérogation à l’article 30, un employeur peut licencier ou mettre à pied sans avis un salarié qui a refusé un autre travail raisonnable offert par l’employeur comme alternative à la cessation de l’emploi ou à sa mise à pied.
31(3) Section 30 does not apply where

(a) the termination of the employment relationship is due to the completion by the employee of a definite assignment that the employee was hired to perform over a period not exceeding twelve months, whether or not the exact period was stated in the employment contract;

(b) an employee has completed a term of employment that was fixed in the employment contract, unless the employee is employed for a period of three months beyond that period;

(c) an employee retires under a bona fide retirement plan;

(d) the employee is doing construction work in the construction industry;

(e) the termination or layoff results from the normal seasonal reduction, closure or suspension of an operation; or

(f) the termination of the employment relationship arises under such other circumstances as are prescribed by regulation.

1984, c.42, s.17; 1986, c.32, s.3

32(1) No employer shall terminate or lay off in a four week period more than ten employees if they represent at least twenty-five per cent of the employees of the employer in a four week period without first having given to the Minister, the employees affected by the termination or layoff and, where the employees are covered by a collective agreement, to the employees’ bargaining agent, at least six weeks notice of the termination or layoff.

32(1.1) Where the length of notice of termination or layoff which is required by a collective agreement exceeds the length of notice required by subsection (1), the employer shall give to the Minister, the employees affected by the termination or layoff and the employees’ bargaining agent, the notice required by the collective agreement.

32(2) A copy of the notice required to be given under subsection (1) or subsection (1.1) shall be posted so as to be available for the information of all employees.

31(3) L’article 30 ne s’applique pas

a) lorsque la cessation de la relation d’emploi est entraînée par l’achèvement par le salarié d’une tâche définie pour laquelle il a été embauché pendant une période maximale de douze mois, que la période exacte ait été ou non indiquée dans le contrat d’emploi;

b) lorsque le salarié a achevé une période d’emploi qui était fixée dans le contrat d’emploi, à moins qu’il ne soit employé pour une période de trois mois au-delà de cette période;

c) lorsque le salarié prend sa retraite dans le cadre d’un régime de retraite effectif;

d) lorsque le salarié effectue des travaux de construction dans l’industrie de la construction;

e) lorsque la cessation ou la mise à pied résulte de la réduction, fermeture ou suspension saisonnière normale d’une exploitation; ou

f) lorsque la cessation de la relation d’emploi résulte de toutes autres circonstances prescrites par règlement.

1984, ch. 42, art. 17; 1986, ch. 32, art. 3

32(1) Un employeur ne peut cesser l’emploi ou mettre à pied plus de dix salariés s’ils représentent au moins vingt-cinq pour cent des salariés de l’employeur, sur une période de quatre semaines, sans donner au préalable au Ministre, aux salariés affectés par la cessation d’emploi ou la mise à pied et, lorsque les salariés sont couverts par une convention collective, à l’agent négociateur des salariés, un avis d’au moins six semaines de la cessation d’emploi ou de la mise à pied.

32(1.1) Lorsque la durée de l’avis de cessation d’emploi ou de mise à pied qui est requis par une convention collective dépasse la durée de l’avis requis par le paragraphe (1), l’employeur doit donner au Ministre, aux salariés affectés par la cessation d’emploi ou la mise à pied et à l’agent négociateur des salariés, l’avis requis par la convention collective.

32(2) Une copie de l’avis qui doit être donné en vertu du paragraphe (1) ou paragraphe (1.1) doit être affichée de façon à être disponible pour l’information de tous les salariés.
32(3) Subsection (1) does not apply where

(a) the termination of the employment relationship is due to the completion by the employee of a definite assignment that the employee was hired to perform over a period not exceeding twelve months, whether or not the exact period was stated in the employment contract;

(b) an employee retires under a bona fide retirement plan;

(c) the employee is doing construction work in the construction industry;

(d) the termination or layoff results from the normal seasonal reduction, closure or suspension of an operation; or

(e) the termination of the employment relationship arises under such other circumstances as are prescribed by regulation.

32(4) Nothing in this section shall defeat a right that any employee may have under a collective agreement.

1983, c.30, s.8; 1984, c.42, s.18; 1986, c.8, s.37; 1988, c.59, s.11

32(3) Le paragraphe (1) ne s’applique pas lorsque

(a) la cessation de la relation d’emploi est entraînée par l’achèvement par le salarié d’une tâche définie pour laquelle il a été embauché pendant une période maximale de douze mois, que la période exacte ait été ou non indiquée dans le contrat d’emploi;

(b) le salarié prend sa retraite dans le cadre d’un régime de retraite effectif;

(c) le salarié effectue des travaux de construction dans l’industrie de la construction;

(d) la cessation ou la mise à pied résulte de la réduction, fermeture ou suspension saisonnière normale d’une exploitation; ou

(e) la cessation de la relation d’emploi résulte de toutes autres circonstances prescrites par règlement.

32(4) Rien dans le présent article ne peut annuler un droit qu’un salarié peut avoir en vertu d’une convention collective.

1983, ch. 30, art. 8; 1984, ch. 42, art. 18; 1986, ch. 8, art. 37; 1988, ch. 59, art. 11

33 Notwithstanding section 32 an employer may lay off an employee without notice being given

(a) where there is a lack of work, due to any reason unforeseen by the employer at the time the notice would otherwise have been given, for such period as the lack of work continues due to that reason; or

(b) for any reason, for a period of up to six days.

34(1) Notwithstanding sections 30 and 32 an employer may terminate or layoff an employee without notice upon payment in lieu of notice of an amount equal to the pay the employee would have earned during the notice period provided under section 30 as though he were entitled to notice under that section.

1984, c.42, s.19; 1988, c.59, s.12

34(1) Par dérogation aux articles 30 et 32, un employeur peut mettre à pied un salarié sans avis

(a) en cas de manque de travail dû à un motif imprévu par l’employeur au moment où il aurait autrement donné un avis, pendant la période durant laquelle le manque de travail se poursuit pour le même motif; ou

(b) pour toute autre motif, pour une période de six jours.

34(2) Where an employer does not comply with either section 30 or subsection (1) he is liable to the employee for the pay the employee would have earned during the notice period.

1984, c.42, s.19; 1988, c.59, s.12

34(2) L’employeur qui ne se conforme pas à l’article 30 ou au paragraphe (1) doit au salarié la rémunération qu’il aurait gagnée pendant la période d’avis.
PROMPT PAYMENT OF WAGES

35(1) Subject to subsection (4), an employer shall pay his employees at such times that the interval between pays is of not more than sixteen days.

35(2) An employer shall, when paying an employee, include all wages earned up to and including a day that is not more than seven calendar days prior to the time fixed for payment.

35(3) An employee who is absent at the time fixed for payment or who, for any other reason, is not paid at that time, is entitled to be paid on demand any time thereafter during regular hours of work.

35(4) An employer is not required to comply with subsections (1) and (2) if the payments are otherwise made in accordance with the terms of a practice existing at the time this section comes into force or under the terms of a collective agreement or in accordance with the provisions of an order of the Director with respect thereto granted on application.

1984, c.42, s.20; 1988, c.59, s.13

36(1) An employer shall give to each employee, not later than the time the employee is paid in accordance with subsection 35(1), a statement showing

(a) the dates of the pay period;
(b) the gross pay of the employee for the pay period;
(c) the particulars of each deduction and the amount thereof; and
(d) the net pay after deductions have been taken out.

36(1.1) An employer may only provide a statement referred to in subsection (1) to an employee electronically if the employer provides to the employee, through the employee’s place of employment,

(a) confidential access to the electronic statement, and
(b) a means of making a paper copy of the electronic statement.

36(2) An employer shall pay all pay

PROMPT PAIEMENT DU SALAIRE

35(1) Sous réserve du paragraphe (4), un employeur doit payer les salariés qu’il emploie à seize jours d’intervalle au plus.

35(2) Un employeur doit, lorsqu’il paie un salarié, lui verser la totalité du salaire qu’il a gagné jusqu’au septième jour civil inclus qui précède la date fixée pour le paiement.

35(3) Un salarié qui est absent à la date fixée pour le paiement ou qui, pour toute autre raison, n’est pas payé à cette date, a droit d’obtenir paiement sur simple demande durant les heures normales de travail.

35(4) Un employeur n’est pas tenu de se conformer aux paragraphes (1) et (2) si le paiement du salaire se fait autrement selon un usage existant à la date d’entrée en vigueur du présent article, ou selon les clauses d’une convention collective ou selon une ordonnance que le Directeur a rendue à ce sujet à la suite d’une demande qui lui a été adressée.

1984, ch. 42, art. 20; 1988, ch. 59, art. 13

36(1) Un employeur doit remettre au salarié, au plus tard à la date à laquelle celui-ci est payé conformément au paragraphe 35(1) un bulletin de paie indiquant

a) les dates de la période de rémunération;
b) la rémunération brute du salarié pour cette période;
c) la nature et le montant des déductions opérées; et
d) la rémunération nette après soustraction des déductions.

36(1.1) L’employeur ne peut remettre sur support électronique le bulletin de paie prévu au paragraphe (1) que s’il fournit au salarié, à son lieu d’emploi :

a) un accès confidentiel au bulletin de paie électronique;
b) un moyen d’impression lui permettant d’obtenir une copie papier du bulletin.

36(2) L’employeur verse les rémunérations:
37 Where an employee ceases to be employed by an employer the employer shall pay to the employee all outstanding pay not later than at the time the employee would have been paid had he continued to be employed, and in no case shall the employer delay payment of outstanding pay or other outstanding benefits beyond twenty-one days after the last day the employee was employed.

EQUAL PAY FOR EQUAL WORK

37.1(1) No employer shall pay an employee of one sex at a different rate of pay from that which he pays to an employee of the other sex for work that

(a) is performed in the same establishment,

(b) is substantially the same in nature,

(c) requires substantially the same skill, effort and responsibility, and

(d) is performed under similar working conditions

except where the payment is made pursuant to

(e) a seniority system,

(f) a merit system,

(g) a system that measures earnings by quantity or quality of production, or

sauf si le versement est fait conformément à

(a) est exécuté dans un même lieu d’emploi,

(b) est substantiellement du même genre,

(c) exige substantiellement les mêmes aptitudes, le même effort et les mêmes responsabilités, et

(d) est exécuté dans des conditions similaires de travail

37.1(1) Nul employeur ne peut verser à des salariés de sexes différents un taux de rémunération différent pour du travail qui

(a) est exécuté dans un même lieu d’emploi,

(b) est substantiellement du même genre,

(c) exige substantiellement les mêmes aptitudes, le même effort et les mêmes responsabilités, et

(d) est exécuté dans des conditions similaires de travail

sauf si le versement est fait conformément à

(e) un système d’ancienneté,

(f) un système de mérite,

(g) un système qui détermine les gains selon la quantité ou la qualité de la production, ou
(h) any other system or practice that is not otherwise unlawful.

37.1(2) No employer shall reduce the rate of pay of an employee in order to comply with subsection (1).

37.1(3) No person shall attempt to influence an employer to violate subsection (1).

37.1(4) Where an employer’s violation of this section results in an employee receiving a lower amount of pay than he would have received if the employer had not committed the violation, the Director may make any order that he considers appropriate and just in the circumstances, including an order that the employer compensate the employee for the loss in pay.

1986, c.32, s.4

**WAGE PROTECTION**

38 Any assignment of wages or any portion thereof made after this section comes into force and used as security for the payment of a debt is invalid.

38.1(1) The Director, having knowledge or reason to believe that an employer is insolvent or is on the eve of insolvency, may, if satisfied that pay due and owing an employee of the employer remains and is likely to remain unpaid, issue a certificate in the form prescribed by regulation stating the amount of money that appears to the Director to be due and owing by the employer to the employee.

38.1(2) A certificate referred to in subsection (1) may be issued in relation to more than one employee and more than one certificate may be issued in relation to the same employer.

38.1(3) A certificate referred to in subsection (1) is, in the absence of evidence to the contrary, proof that the amount of money stated in the certificate was due and owing by the employer to the employee in respect of whom the certificate was issued when the certificate was issued.

38.1(4) The Director may cause a certificate referred to in subsection (1) to be filed with the registrar of deeds for the county or counties in which the employer named in the certificate owns real property or carries on business.

38.1(2) S’il sait ou a tout lieu de croire que l’employeur est insolvable ou qu’il est sur le seuil de l’insolvabilité, le Directeur peut, s’il est convaincu que la rémunération que l’employeur doit à son salarié demeure impayée et le demeurera vraisemblablement, délivrer un certificat au moyen de la formule réglementaire indiquant la somme d’argent que doit, selon lui, l’employeur au salarié.

PROTECTION DES SALAIRES

38 Est invalide la cession de salaire ou d’une fraction de salaire faite, pour garantir le remboursement d’une dette, après l’entrée en vigueur du présent article.

38.1(2) Un certificat visé au paragraphe (1) peut être délivré relativement à plus d’un salarié et plus d’un certificat peut être délivré relativement au même employeur.

38.1(3) Un certificat visé au paragraphe (1) constitue, en l’absence de preuve contraire, la preuve à l’effet que la somme établie au certificat était due par l’employeur au salarié à l’égard duquel le certificat a été délivré au moment où le certificat a été délivré.

38.1(4) Le Directeur peut faire déposer un certificat visé au paragraphe (1) auprès du conservateur des titres de propriété du comté ou des comtés dans lesquels l’employeur mentionné au certificat fait des affaires ou est propriétaire de biens réels.
38.1(5) The registrar of deeds shall file the certificate describing it as an “Employee Lien” and shall index the certificate in the appropriate registration index.

38.1(6) A certificate referred to in subsection (1) when filed with the registrar of deeds constitutes a lien in favour of the employee in respect of whom the certificate was issued for the amount of money stated in the certificate or as amended by an amending certificate referred to in subsection 38.5(1) against all the real property of the employer situate in the county or counties in which the certificate is filed.

38.1(6.1) The Director may register a notice of the certificate referred to in subsection (1) in the Personal Property Registry in accordance with the regulations under the Personal Property Security Act.

38.1(6.2) A notice of a certificate when registered in the Personal Property Registry constitutes a lien in favour of the employee in respect of whom the certificate was issued against all the personal property of the employer for the amount of money stated in the certificate or, where applicable, for the amount as amended by an amending certificate referred to in subsection 38.5(1).

38.1(7) Notwithstanding any other Act including, but not limited to, the Mechanics’ Lien Act, the Real Property Tax Act, the Revenue Administration Act, the Wage-Earners Protection Act, the Storer’s Lien Act, the Woods Workers’ Lien Act and the Workers’ Compensation Act, a lien referred to in subsection (6) or (6.2) has, subject to subsection (8), priority over every security interest, claim, lien, privilege or encumbrance of any person including any security interest, claim, lien, privilege or encumbrance of the Crown in right of the Province, a Crown corporation or a Crown agency.

38.1(8) Where more than one lien referred to in subsection (6) or in subsection (6.2) has been constituted with respect to the same employer the liens rank on an equal footing.

38.1(9) Pay due and owing under a lien referred to in subsection (6) or in subsection (6.2) shall be paid to the

38.1(8) Les privilèges visés au paragraphe (6) ou (6.2) qui ont été constitués à l’égard du même employeur prennent rang sur un pied d’égalité.

38.1(9) La somme d’argent due en vertu d’un privilège visé au paragraphe (6) ou (6.2) doit être versée au Directeur au nom du salarié bénéficiaire du privilège.
Director on behalf of the employee in respect of whom the lien was constituted.

38.1(10) Where a certificate referred to in subsection (1) is filed under subsection (4) and a notice of that certificate is registered under subsection (6.1), the total amount secured by the liens so constituted against both the real and personal property of the employer shall not exceed the amount of money stated in the certificate or, where applicable, the amount as amended by an amending certificate referred to in subsection 38.5(1).

1988, c.59, s.15; 1994, c.50, s.2; 2003, c.4, s.4; 2007, c.2, s.8; 2007, c.3, s.2; 2013, c.13, s.3

38.2(1) The Director may obtain from the registrar of deeds a certified copy of a certificate filed under subsection 38.1(4) and may cause the certified copy to be filed in The Court of Queen’s Bench of New Brunswick, and the certified copy shall be entered and recorded in the Court, and when so entered and recorded becomes a judgment of the Court and may be enforced by the Director as a judgment obtained in the Court against the employer named in the certified copy for a debt of the amount of money stated in the certified copy.

38.2(1.1) The Director may obtain from the Personal Property Registry a verification statement showing that a notice of the certificate has been registered under subsection 38.1(6.1) and may cause the certificate or a certified copy of it to be filed in The Court of Queen’s Bench of New Brunswick, and the certificate or certified copy shall be entered and recorded in the Court, and when so entered and recorded becomes a judgment of the Court and may be enforced by the Director as a judgment obtained in the Court against the employer named in the certificate for a debt of the amount of money stated in the certificate.

38.2(2) Where a certified copy of a certificate has been filed in accordance with subsection (1), any person may challenge the certified copy in interpleader proceedings or on application to set aside any execution thereunder as provided for by the rules of The Court of Queen’s Bench of New Brunswick and The Court of Appeal of New Brunswick.

38.2(2) Lorsqu’une copie certifiée conforme d’un certificat a été déposée conformément au paragraphe (1), toute personne peut contester la copie certifiée conforme par voie d’entreplaiderie ou par voie de demande en annulation de toute exécution en vertu de ce certificat suivant les modalités prévues par les règles de la Cour du Banc de la Reine du Nouveau-Brunswick et de la Cour d’appel du Nouveau-Brunswick.
38.2(3) Where a certificate has been filed in accordance with subsection (1.1), any person may challenge the certificate in interpleader proceedings or on application to set aside any execution under it as provided for by the rules of The Court of Queen’s Bench of New Brunswick and The Court of Appeal of New Brunswick.
1988, c.59, s.15; 2003, c.4, s.5

38.3 Any mortgagee, judgment creditor, secured party or other person having any claim, lien, privilege or encumbrance upon or against any real or personal property to which is attached a lien under subsection 38.1(6) or (6.2)

(a) may pay to the Director the amount secured by the lien or liens,

(b) may add the amount to the original obligation secured, and

(c) has the same enforcement rights and remedies with respect to the amount added to the obligation secured as are available with respect to the original obligation secured.
1988, c.59, s.15; 1994, c.50, s.2

38.4(1) A lien referred to in subsection 38.1(6) ceases to be valid after the expiration of five years from the date of the filing of the certificate under subsection 38.1(4) unless before the expiration of that period the Director causes a renewal statement in the form prescribed by regulation to be filed with the registrar of deeds for the county or counties in which the certificate is filed.

38.4(2) The registrar of deeds shall file the renewal statement and shall index it in the appropriate registration index.

38.4(3) A lien renewed in accordance with subsection (1) shall not be further renewed and ceases to be valid after the expiration of five years from the date of the filing of the renewal statement.

38.4(4) A registration under subsection 38.1(6.1) is effective for the period of years, not exceeding ten years, that is specified in the registration.

38.4(5) A registration that is effected for a period of less than ten years may be renewed, at any time before

38.4(1) Un privilège visé au paragraphe 38.1(6) cesse d’être valide à l’expiration de cinq ans à compter de la date du dépôt du certificat en vertu du paragraphe 38.1(4) sauf si avant l’expiration de ce délai le Directeur fait déposer une déclaration de renouvellement au moyen de la formule prescrite par règlement auprès du conservateur des titres de propriété pour le comté ou les comtés dans lesquels le certificat est déposé.

38.4(2) Le conservateur des titres de propriété doit déposer la déclaration de renouvellement et la répertorier au répertoire d’enregistrement approprié.

38.4(3) Un privilège renouvelé conformément au paragraphe (1) ne peut être renouvelé de nouveau et cesse d’être valide à l’expiration de cinq ans à compter de la date de dépôt de la déclaration de renouvellement.

38.4(4) Un enregistrement en vertu du paragraphe 38.1(6.1) est valide pendant la période de temps précisée dans l’enregistrement, sans pour autant dépasser dix ans.

38.4(5) Un enregistrement dont la période de validité est inférieure à dix ans peut être renouvelé à tout mo-
the registration expires, for the period of years specified in the registration by which the renewal is effected, but the registration shall not have an aggregate registration life of more than ten years.

1988, c.59, s.15; 1994, c.50, s.2; 2003, c.4, s.6

38.5(1) Where the Director is satisfied that the amount of money stated in a certificate referred to in subsection 38.1(1) was incorrectly stated, the Director shall cause an amending certificate in the form prescribed by regulation to be filed with the registrar of deeds for the county or counties in which the certificate is filed.

38.5(2) The amending certificate shall be filed by the registrar of deeds and shall be indexed in the appropriate registration index and a notation of the amending certificate shall be made opposite the entry of the certificate or the renewal statement to which the amending certificate refers.

38.5(3) Section 38.2 applies mutatis mutandis in relation to an amending certificate filed under subsection (1).

38.5(4) When an amending certificate referred to in subsection (1) is filed under that subsection, the Director shall amend the registration in the Personal Property Registry of the notice of the certificate to which the amending certificate relates.

1988, c.59, s.15; 1994, c.50, s.2; 2003, c.4, s.7

38.6(1) Where the amount of money stated in a certificate referred to in subsection 38.1(1) or as amended by an amending certificate referred to in subsection 38.5(1) has been paid to the Director, the Director

(a) shall cause the lien referred to in subsection 38.1(6) to be discharged by filing with the registrar of deeds a certificate of discharge in the form prescribed by regulation, and

(b) shall cause the lien referred to in subsection 38.1(6.2) to be discharged by discharging the registration in the Personal Property Registry of the notice of the certificate to which the discharge relates.

1988, c.59, s.15; 1994, c.50, s.2; 2003, c.4, s.7

38.5(1) Lorsque le Directeur est convaincu que la somme d’argent établie au certificat visé au paragraphe 38.1(1) a été établie de façon inexacte, le Directeur doit faire déposer un certificat modificatif au moyen de la formule prescrite par règlement auprès du conservateur des titres de propriété pour le comté ou les comtés dans lesquels le certificat est déposé.

38.5(2) Le certificat modificatif doit être déposé par le conservateur des titres de propriété et doit être répertorié au répertoire d’enregistrement approprié et une mention du certificat modificatif doit être faite vis-à-vis de l’inscription du certificat ou de la déclaration de renouvellement auquel le certificat modificatif renvoie.

38.5(3) L’article 38.2 s’applique mutatis mutandis relativement à un certificat modificatif déposé en vertu du paragraphe (1).

38.5(4) Lorsqu’un certificat modificatif visé au paragraphe (1) est déposé en vertu de ce paragraphe, le Directeur doit modifier l’enregistrement de l’avis du certificat auquel le certificat modificatif se rapporte au Réseau d’enregistrement des biens personnels.

1988, ch. 59, art. 15; 1994, ch. 50, art. 2; 2003, ch. 4, art. 7

38.6(1) Lorsque la somme d’argent mentionnée au certificat visé au paragraphe 38.1(1) ou telle que modifiée par un certificat modificatif visé au paragraphe 38.5(1) a été versée au Directeur, celui-ci doit

(a) faire libérer le privilège visé au paragraphe 38.1(6) en déposant auprès du conservateur des titres de propriété un certificat de libération au moyen de la formule prescrite par règlement, et

(b) faire libérer le privilège visé au paragraphe 38.1(6.2) en faisant la mainlevée de l’enregistrement de l’avis du certificat auquel la mainlevée se rapporte au Réseau d’enregistrement des biens personnels.
38.6(2) Where an amount of money less than the amount of money stated in a certificate referred to in subsection 38.1(1) or, where applicable, as amended by an amending certificate referred to in subsection 38.5(1) has been paid to the Director, the Director shall

(a) cause a certificate of partial discharge in the form prescribed by regulation to be filed with the registrar of deeds,

(b) amend the registration in the Personal Property Registry of the notice of the certificate to which the payment relates to disclose the amended amount, and

(c) where the certificate was issued in relation to more than one employee, distribute pro rata to the employees in respect of whom the lien or liens was or were constituted the amount of money paid.

38.6(3) In a case within paragraph (1)(a) or (2)(a) the certificate of discharge or partial discharge, as the case may be, shall be filed by the registrar of deeds and shall be indexed in the appropriate registration index and a notation of the certificate of discharge or partial discharge shall be made by the registrar opposite the entry of the certificate, the amending certificate or the renewal statement to which the certificate of discharge or partial discharge refers.

1988, c.59, s.15; 1994, c.50, s.2; 2003, c.4, s.8

38.7 Nothing contained in sections 38.1 to 38.6 shall be construed so as to entitle an employee to receive payment for more than the total amount of pay due and owing the employee by the employer.

1988, c.59, s.15

38.8 Notwithstanding the provisions of the Registry Act, any document referred to in sections 38.1 to 38.6 that is required to be filed by the registrar of deeds shall be filed by the registrar of deeds in the manner provided in sections 38.1 to 38.6 and when so filed has the same effect as if registered under the Registry Act.

1988, c.59, s.15; 1994, c.50, s.2

1988, c.59, s.15; 1994, ch. 50, art. 2; 2003, ch. 4, art. 8

38.8 Nonobstant les dispositions de la Loi sur l’enregistrement, tout document visé aux articles 38.1 à 38.6 dont le dépôt par le conservateur des titres de propriété est requis doit être déposé par celui-ci de la manière prévue aux articles 38.1 à 38.6 et ce document a, dès son dépôt, le même effet que s’il était enregistré en vertu de la Loi sur l’enregistrement.

1988, ch. 59, art. 15; 1994, ch. 50, art. 2
38.9(1) The following definitions apply in this section and in section 38.91.

“foreign worker” means a person who is not a Canadian citizen or permanent resident of Canada, and who is working in or seeking employment in the Province. (travailleur étranger)

“immigration consultant” means a person who, for a fee or compensation, provides immigration services. (consultant en immigration)

“immigration services” means services to assist a foreign worker to immigrate to the Province, including,

(a) researching and advising on immigration opportunities, laws or processes,

(b) preparing, filing and presenting applications and documents related to immigration,

(c) assisting in the preparation, filing and presentation of applications and documents related to immigration,

(d) representing a foreign worker before immigration authorities, and

(e) providing or procuring settlement services. (services en immigration)

38.9(2) An employer who recruits or engages the services of another person to recruit foreign workers for employment with the employer shall register with the Director in accordance with this section.

38.9(3) Subsection (2) does not apply to the Crown in right of the Province, any Crown corporation or Crown agency.

38.9(4) An employer shall register by providing to the Director the following information:

(a) with respect to the employer,

(i) the legal name,
(ii) the principal business activity according to
the North American Industry Classification System
(NAICS) maintained for Canada by Statistics Can-
da as amended from time to time,

(iii) the place in which the employer is regis-
tered, whether in the Province or outside the Prov-
ince,

(iv) the address, mailing address, phone number,
email address and website,

(v) the name of a primary contact person,

(vi) the name of an alternate contact person, and

(vii) the preferred official language of corre-
respondence;

(b) with respect to the position for which a foreign
worker is employed or is to be employed,

(i) the type of occupation, according to the Na-
tional Occupational Classification (NOC) pub-
lished by Statistics Canada as revised from time to
time,

(ii) the location, identified by municipality, rural
community or local service district,

(iii) whether an employee in the position is sub-
ject to a collective agreement,

(iv) the educational requirements,

(v) the language requirements,

(vi) the wage rate,

(vii) the vacation leave and sick leave provided,

(viii) any benefits not referred to in subparagraph
(vi) or (vii),

(ix) the hours of work per day and per week,

(x) the duration of the contract or the period of
employment;

(ii) son activité commerciale principale selon le
Système de classification des industries de l’Amé-
rique du Nord (SCIAN) maintenu pour le Canada
par Statistique Canada, ensemble ses modifications,

(iii) son lieu d’enregistrement, qu’il soit dans la
province ou ailleurs,

(iv) ses adresse postale, adresse de voirie, numé-
ro de téléphone, adresse de courriel et site Internet,

(v) le nom de la personne de contact principale,

(vi) le nom de la deuxième personne de contact,

(vii) la langue officielle de son choix pour la cor-
respondance;

(b) à l’égard du poste dans lequel un travailleur
étranger est employé ou le sera :

(i) le type de profession selon la Classification
nationale des professions (CNP) publiée par Statis-
tique Canada, ensemble ses modifications,

(ii) son emplacement, décrit selon la municipali-
té, la communauté rurale ou le district de services
locaux,

(iii) si l’employé en poste est assujetti à une con-
vention collective,

(iv) les exigences éducatives,

(v) les exigences linguistiques,

(vi) le taux de salaire,

(vii) les congés annuels et les congés de maladie
offerts,

(viii) tout avantage qui n’est pas mentionné au
sous-alinéa (vi) ou (vii),

(ix) les heures de travail quotidiennes et hebdo-
madaires,

(x) la durée du contrat ou la période d’emploi;
(c) with respect to the employment of foreign workers,

(i) the program under which foreign workers are employed or are to be employed,

(ii) whether the employer engages the services of another person to recruit foreign workers,

(iii) whether the employer provides training to foreign workers,

(iv) the number of foreign workers employed or to be employed,

(v) if known, the country of origin of the foreign workers employed or to be employed,

(vi) whether the foreign workers employed or to be employed are already in Canada or in the Province,

(vii) whether the employer pays a foreign worker’s costs of transportation

(A) from their country of origin or elsewhere in Canada to the Province, and

(B) to their country of origin or elsewhere in Canada from the Province,

(viii) whether the employer has employed foreign workers in previous years and, if yes,

(A) the number of years the employer has employed foreign workers, and

(B) the number of foreign workers employed in previous years, if the number of foreign workers employed or to be employed is different from the number employed in previous years,

(ix) whether the employer has attempted to employ Canadian citizens or permanent residents of Canada for the positions filled by foreign workers,

(x) whether the employer has employed any foreign worker who has previously been employed by the employer and, if yes, the total length of the foreign worker’s employment with the employer,

c) à l’égard de l’emploi de travailleurs étrangers :

(i) le programme sous le régime duquel les travailleurs étrangers sont employés ou le seront,

(ii) s’il retient les services d’une autre personne pour recruter les travailleurs étrangers,

(iii) s’il fournit de la formation aux travailleurs étrangers,

(iv) le nombre de travailleurs étrangers employés ou qui le seront,

(v) s’il est connu, le pays d’origine des travailleurs étrangers employés ou qui le seront,

(vi) si les travailleurs étrangers employés ou qui le seront sont déjà au Canada ou dans la province,

(vii) s’il acquitte les frais de transport des travailleurs étrangers :

(A) à partir de leur pays d’origine ou d’ailleurs au Canada jusque dans la province,

(B) à partir de la province jusqu’à leur pays d’origine ou ailleurs au Canada,

(viii) s’il a employé des travailleurs étrangers dans les années précédentes et, le cas échéant :

(A) le nombre d’années depuis qu’il en emploie,

(B) le nombre employé dans les années précédentes, si ce nombre diffère du nombre employé ou qui le sera dans l’année en cours,

(ix) s’il a tenté d’emply des citoyens canadiens ou des résidents permanents du Canada dans les postes en question,

(x) s’il emploie un travailleur étranger qu’il a déjà employé et, le cas échéant, la durée totale de son emploi chez lui,
whether the employer provides accommodations to foreign workers employed or to be employed, and, if yes,

(A) the amount the employer charges the foreign workers for board and lodging,

(B) whether the accommodations are shared or private, and

(C) whether the accommodations are located at the worksite or off the worksite.

38.9(5) A registration is valid for one calendar year from the date the employer provides the information in subsection (4) and the employer shall provide an update of the information provided each year on or before the anniversary date of the registration.

38.9(6) For the purposes of administering and enforcing the provisions of this Act with respect to foreign workers or of administering and enforcing provisions of similar legislation of another jurisdiction with respect to foreign workers, the Minister may disclose the information collected under subsection (4) to the following persons:

(a) another Minister of the Crown in right of the Province or his or her servant;
(b) an agent of the Government of Canada or his or her servant;
(c) an employee of an agency of the Province;
(d) a government of another province or territory of Canada or of another country or state or territory of that country; or
(e) a law enforcement agency.

38.9(7) In addition to the purposes prescribed under subsection (6) the Minister may use the information collected under subsection (4) for the following purposes:

(a) for providing employment development programs;
(b) for making labour market supply and demand projections; and

(xi) whether the employer provides accommodations to foreign workers employed or to be employed, and, if yes,

(A) the amount the employer charges the foreign workers for board and lodging,

(B) whether the accommodations are shared or private, and

(C) whether the accommodations are located at the worksite or off the worksite.

38.9(5) L’inscription est valide pour une année civile à partir de la date de la communication des renseignements énumérés au paragraphe (4) par l’employeur, lequel en fournit une mise à jour annuelle au plus tard à la date anniversaire de l’inscription.

38.9(6) Aux fins d’application et d’exécution des dispositions de la présente loi relatives aux travailleurs étrangers ou des dispositions d’une loi semblable d’une autre compétence législative, le Ministre peut divulguer aux personnes ci-dessous les renseignements recueillis en application du paragraphe (4) :

(a) un autre ministre de la Couronne du chef de la province ou l’un de ses employés;
(b) un mandataire du gouvernement du Canada ou l’un de ses employés;
(c) tout employé d’un organisme de la province;
(d) le gouvernement ou bien d’une autre province ou d’un territoire du Canada ou d’un pays étranger, ou bien d’un État ou d’un territoire de ce pays;
(e) un organisme d’application de la loi.

38.9(7) Outre les fins prescrites au paragraphe (6), le Ministre peut se servir des renseignements recueillis en application du paragraphe (4) pour :

(a) la fourniture de programmes de développement de l’emploi;
(b) l’élaboration de projections de l’offre et de la demande sur le marché du travail;
(c) for identifying employers who have foreign worker employees who could be candidates for permanent residency in the Province.

38.9(8) In addition to the purposes prescribed under subsection (6) the Minister may disclose the information collected under subsection (4) to the Workplace Health, Safety and Compensation Commission for the purpose of enforcing provisions of the Occupational Health and Safety Act with respect to foreign workers.

38.9(9) If subsection (6), (7) or (8) is inconsistent with or in conflict with a provision of the Right to Information and Protection of Privacy Act, subsection (6), (7) or (8), as the case may be, prevails.

2014, c.3, s.1

38.91(1) No employer shall require a foreign worker to use an immigration consultant as a condition of employment with the employer.

38.91(2) No employer shall, directly or indirectly, recover from a foreign worker any cost incurred by the employer in recruiting the foreign worker that is not allowed under the program under which the employer has recruited the foreign worker.

38.91(3) No employer shall reduce the rate of wages, reduce or eliminate any other benefit, or change the terms and conditions of employment of a foreign worker that the employer undertook to provide to the foreign worker when the employer recruited the foreign worker for employment.

38.91(4) No employer and no person who recruits foreign workers for employment on behalf of an employer shall misrepresent employment opportunities, including misrepresentations with respect to the position to be filled by a foreign worker, the duties of the position, the length of employment, the rate of wages, benefits and other terms and conditions of employment.

38.91(5) No employer and no person who recruits foreign workers for employment on behalf of an employer shall supply or cause to be supplied false or misleading information to a foreign worker about employer and employee rights and responsibilities.

c) l’identification des employeurs qui emploient des travailleurs étrangers qui pourraient être candidats à la résidence permanente dans la province.

38.9(8) Outre les fins prescrites au paragraphe (6), le Ministre peut divulguer les renseignements recueillis en application du paragraphe (4) à la Commission de la santé, de la sécurité et de l’indemnisation des accidents au travail aux fins d’exécution des dispositions de la Loi sur l’hygiène et la sécurité au travail relatives aux travailleurs étrangers.

38.9(9) Les paragraphes (6), (7) et (8) emportent sur toute disposition incompatible de la Loi sur le droit à l’information et la protection de la vie privée.

2014, ch. 3, art. 1
38.91(6) No employer and no person who recruits foreign workers for employment on behalf of an employer shall take possession of or retain property that the foreign worker is entitled to possess, including the foreign worker’s passport or work permit.

38.91(7) No employer that provides accommodations to a foreign worker shall refuse to allow the foreign worker to vacate the employer-provided accommodations for other accommodations.

38.91(8) No employer and no person who recruits foreign workers for employment on behalf of an employer shall threaten a foreign worker with deportation or another action for which there is no lawful cause.

2014, c.3, s.1

CHILDREN

39 Subject to section 41, no employer shall employ a person who is under the age of sixteen years

(a) in employment that is or is likely to be unwholesome or harmful to the person’s health, welfare or moral or physical development;

(b) for more than six hours in any day;

(c) for more than three hours on any school day;

(d) on any day for a period which, when added to the time required for attendance at school on that day, would require the person to spend more than a total of eight hours attending school and working;

(e) between the hour of ten o’clock in the afternoon of any day and the hour of six o’clock in the forenoon of the following day.

1984, c.42, s.22

40 Subject to section 41, no employer shall employ a person who is under fourteen years of age

(a) in any industrial undertaking;

(b) in the forest industry;

(c) in the construction industry;

(d) in a garage or automotive service station;

40 Sous réserve de l’article 41, aucun employeur ne peut employer une personne âgée de moins de quatorze ans

(a) dans une entreprise industrielle;

(b) dans l’industrie forestière;

(c) dans l’industrie de la construction;

(d) dans un garage ou une station-service;
(e) in a hotel or restaurant;

(f) in a theatre, dance hall or shooting gallery;

(g) as an elevator operator;

(h) in any location or occupation prescribed by regulation.

41(1) Notwithstanding paragraphs 39(b) to (e) and section 40, the Director may, on application, issue a permit allowing the employment of a person where he is satisfied on reasonable grounds that the employment of the person

(a) will not be in contravention of paragraph 39(a) or of the Occupational Health and Safety Act;

(b) will not prejudice the person’s attendance at school or his capacity to benefit from instruction at school; and

(c) has been assented to by the person’s guardian.

41(2) If the Director refuses to issue a permit any interested person may, in the manner set out in section 67, require the Minister to refer the matter to the Board.

41(3) Sections 39 and 40 are subject to the provisions of the Occupational Health and Safety Act respecting the employment of persons under sixteen years of age.

1983, c.O-0.2, s.53; 1984, c.42, s.23; 1986, c.32, s.5; 1994, c.52, s.1

MATERNITY

42 An employer shall not dismiss, suspend or lay off an employee who is pregnant, or refuse to employ a person who is pregnant, for reasons arising from her pregnancy alone.

1984, c.42, s.24

43(1) Subject to subsection (2), an employer shall at any time from a day eleven weeks before the specified date of delivery to the day of actual delivery, upon the request of a pregnant employee and upon receipt of a certificate by a medical practitioner, nurse practitioner or midwife stating that the employee is pregnant and specifying the date upon which delivery will, in his or her

CONGÉS DE MATERNITÉ

42 Un employeur ne peut licencier, suspendre ou mettre à pied une salariée enceinte ni refuser de l’employer pour des raisons découlant uniquement de sa grossesse.

1984, ch. O-0.2, art. 53; 1984, ch. 42, art. 23; 1986, ch. 32, art. 5; 1994, ch. 52, art. 1

43(1) Sous réserve du paragraphe (2), lorsqu’une salariée enceinte en fait la demande sur présentation du certificat d’un médecin, d’une infirmière praticienne ou d’une sage-femme attestant la grossesse et indiquant la date que le médecin, l’infirmière praticienne ou la sage-femme estime être celle de l’accouchement, l’employeur lui accorde un congé sans rémunération de dix-sept se-
opinion, occur, grant the employee leave of absence without pay of seventeen weeks or such shorter period as the employee requests.

43(2) An employee intending to take leave of absence under this section shall

(a) advise her employer four months before the projected date of delivery or as soon as her pregnancy is confirmed, whichever is the later, of her intent to take leave and the anticipated commencement date in the absence of an emergency; and

(b) in the absence of an emergency, give two weeks’ notice to the employer of the commencement date of the leave.

43(3) Subject to subsection (4), leave of absence under subsection (1) may be taken during the period of time the employee stipulates in her request as long as the anticipated date of delivery falls within the stipulated period.

43(4) An employer may, where no alternative employment is available, before or after commencement of the period referred to in subsection (1), require the employee to commence a leave of absence at the time when the duties of her position cannot reasonably be performed by a pregnant woman or the performance of the work of the employee is materially affected by the pregnancy.

43(5) Repealed: 1991, c.52, s.1

43(6) Repealed: 1991, c.52, s.1

43(7) Repealed: 1991, c.52, s.1

1984, c.42, s.24; 1988, c.59, s.16; 1991, c.52, s.1; 2002, c.23, s.1; 2011, c.26, s.1

44(1) Where an employee reports for work upon the expiration of the period of leave granted under section 43, the employer shall permit the employee to resume work in the position the employee held immediately before the commencement of the leave or an equivalent position with no decrease in pay and with no loss of benefits accrued up to the commencement of the leave.

Employment Standards Act

Chap. E-7.2

39
44(2) For the purposes of subsection (1), alternative employment referred to in subsection 43(4) shall not be considered as the position the employee held immediately before the commencement of the leave.

1984, c.42, s.24; 1988, c.59, s.17

ADOPTION
Repealed: 1991, c.52, s.2
1991, c.52, s.2

44.01 Repealed: 1991, c.52, s.3
1988, c.59, s.18; 1991, c.52, s.3

CHILD CARE
1991, c.52, s.4

44.02(1) In this section
“child” means a person under the age of nineteen. (enfant)

44.02(2) Subject to subsections (3), (4) and (8), an employer shall, upon the request of an employee,

(a) who is the natural parent of a newborn or unborn child, or

(b) who is adopting or has adopted a child,

grant the employee a leave of absence without pay of thirty-seven consecutive weeks or such shorter period as the employee requests so as to enable the employee to care for the child.

44.02(3) An employee intending to take a leave of absence under paragraph (2)(a) shall

(a) provide the employer with a certificate of a medical practitioner, nurse practitioner or midwife specifying the date upon which delivery will, in the medical practitioner’s, nurse practitioner’s or midwife’s opinion, occur or the date upon which the birth has occurred, and

(b) in the absence of an emergency, give four weeks written notice to the employer of the commencement date and duration of the leave.

44.02(4) An employee intending to take a leave of absence under paragraph (2)(b) shall

(a) furnish to the employer the certificate of a medical physician, an obstetrician or a midwife indicating the date at which the child is born, in the opinion of the medical physician, an obstetrician or a midwife or that the birth has occurred, and

(b) in the absence of an emergency, give four weeks written notice to the employer of the commencement date and duration of the leave.
(a) on being approved in accordance with the *Family Services Act* as a prospective adopting parent or, in the case of a private adoption, four months before, or in the event of an emergency as soon as possible before, the anticipated day on which the child will be placed with the employee for adoption, give written notice to the employer of the employee’s intention to take leave,

(b) provide the employer with proof that a child has been or will be placed with the employee for the purposes of adoption, and

(c) notify the employer of the commencement date and duration of the leave on being made aware of the date on which the child will be placed with the employee for adoption or at the time the child is placed with the employee for adoption, whichever occurs first.

44.02(5) Repealed: 2000, c.55, s.4

44.02(6) Repealed: 2000, c.55, s.4

44.02(7) Repealed: 2000, c.55, s.4

44.02(8) A leave of absence granted under subsection (2) shall commence not earlier than the date on which the newborn or adopted child came into the employee’s care and custody and end not later than fifty-two weeks after that date.

44.02(9) Repealed: 2000, c.55, s.4

44.02(10) Where an employee intends to take a leave of absence under paragraph (2)(a) in addition to a leave of absence under section 43, the employee must commence the leave of absence under paragraph (2)(a) immediately on the expiry of the leave of absence taken under section 43 unless the employer and employee agree otherwise.

44.02(11) Subsection (10) does not apply where a newborn child is hospitalized at the time the leave of absence under section 43 expires.

44.02(12) If both parents are employees, the leave of absence granted under subsection (2) may

(a) be taken wholly by one of the employees, or

(b) be shared by the employees.
44.02(12.1) The aggregate amount of leave that may be taken by two employees under this section with respect to the same birth or adoption shall not exceed thirty-seven weeks.

44.02(12.2) The aggregate amount of leave that may be taken by one or two employees under this section and section 43 with respect to the same birth shall not exceed fifty-two weeks.

44.02(13) Subsection 44(1) applies with the necessary modifications with respect to a leave of absence granted under this section.

1988, c.59, s.18; 1991, c.52, s.5; 2000, c.26, s.106; 2000, c.55, s.4; 2002, c.23, s.1; 2011, c.26, s.1

SICK LEAVE

2000, c.55, s.5

44.021(1) An employer shall, upon the request of an employee, grant the employee leaves of absence without pay of up to five days during a twelve calendar month period for sick leave if the employee has been in the employ of the employer for more than ninety days.

44.021(2) If an employee requests a leave of absence under subsection (1) that is four or more consecutive calendar days in length, the employer may require the employee to provide the employer with a certificate of a medical practitioner, nurse practitioner or midwife certifying that the employee is incapable of working due to illness or injury.

44.021(3) An employee requesting a leave of absence under this section shall advise the employer, subject to subsections (1) and (2), of the anticipated duration of the leave.

44.021(4) The duties of an employer under this section are in addition to and do not derogate from the duties of an employer under section 42.1 of the Workers' Compensation Act.

2000, c.55, s.5; 2002, c.23, s.1; 2011, c.26, s.1

FAMILY RESPONSIBILITY LEAVE

2000, c.55, s.5

44.022(1) An employer shall, upon the request of an employee, grant the employee leaves of absence without pay of up to five days during a twelve calendar month period for family responsibility leave if the employee has been in the employ of the employer for more than ninety days.

44.022(2) If an employee requests a leave of absence under subsection (1) that is four or more consecutive calendar days in length, the employer may require the employee to provide the employer with a certificate of a medical practitioner, nurse practitioner or midwife certifying that the employee is incapable of working due to illness or injury.

44.022(3) An employee requesting a leave of absence under this section shall advise the employer, subject to subsections (1) and (2), of the anticipated duration of the leave.

44.022(4) The duties of an employer under this section are in addition to and do not derogate from the duties of an employer under section 42.1 of the Workers' Compensation Act.

2000, c.55, s.5; 2002, c.23, s.1; 2011, c.26, s.1

CONGÉ DE MALADIE

2000, ch. 55, art. 5

44.021(1) Un employeur doit, à la demande d’un salarié, lui accorder un congé sans solde d’une durée maximale de cinq jours par période de douze mois civils comme congé de maladie si le salarié a été à l’emploi de l’employeur pour plus de quatre-vingt-dix jours.

44.021(2) Si un salarié demande un congé en vertu du paragraphe (1) d’une durée de quatre jours civils consécutifs ou plus, l’employeur peut exiger que le salarié lui fournisse un certificat d’un médecin, d’une infirmière praticienne ou d’une sage-femme attestant qu’il est incapable de travailler en raison de maladie ou de blessure.

44.021(3) Un salarié qui demande un congé en vertu du présent article doit, sous réserve des paragraphes (1) et (2), aviser son employeur de la durée prévue du congé.

44.021(4) Les obligations d’un employeur en vertu du présent article sont en sus des obligations en vertu de l’article 42.1 de la Loi sur les accidents du travail et n’y dérogent point.

2000, ch. 55, art. 5; 2002, ch. 23, art. 1; 2011, ch. 26, art. 1

CONGÉ POUR OBLIGATIONS FAMILIALES

2000, ch. 55, art. 5

44.022(1) Un employeur doit, à la demande d’un salarié, lui accorder un congé sans solde d’une durée maxi-
pay of up to three days during a twelve calendar month period to meet responsibilities related to the health, care or education of a person in a close family relationship with the employee.

44.022(2) An employee intending to take a leave of absence under this section shall advise the employer of the employee’s intention to take the leave, the anticipated commencement date of the leave and, subject to subsection (1), the anticipated duration of the leave.

2000, c.55, s.5

COURT LEAVE

2000, c.55, s.5

44.023(1) An employer shall grant an employee a leave of absence without pay for any period that the employee is absent from work as a result of being summoned to serve on a jury, selected to serve on a jury, or served with a summons to attend at the hearing of an action, application or proceeding as a witness.

(a) summoned to serve on a jury,

(b) selected to serve on a jury, or

(c) served with a summons to attend at the hearing of an action, application or proceeding as a witness.

44.023(2) If an employer grants an employee a leave of absence with pay in the circumstances set out in subsection (1), the employer may require the employee to reimburse the employer for any amount that the employee receives as a jury or witness fee, exclusive of any amount that the employee receives as compensation for travel, meal or accommodation expenses.

2000, c.55, s.5

COMPASSIONATE CARE LEAVE

2003, c.30, s.1

44.024(1) In this section

“qualified medical practitioner” means a person who is entitled to practise medicine under the laws of a jurisdiction in which care or treatment of a person with whom the employee has a close family relationship is provided; (médecin qualifié)

“week” means the period between midnight on Saturday and midnight on the immediately following Saturday. (semaine)
44.024(2) Subject to subsections (3) to (6), an employer shall, upon the request of an employee, grant the employee a leave of absence without pay from employment of up to twenty-eight weeks to provide care or support to a person with whom the employee has a close family relationship, if a qualified medical practitioner issues a certificate stating that the person with whom the employee has a close family relationship has a serious medical condition with a significant risk of death within twenty-eight weeks from

(a) the day the certificate is issued, or

(b) if the leave was commenced before the certificate was issued, the day the leave was commenced.

44.024(3) The leave of absence may only be taken during the period

(a) that starts with

(i) the first day of the week in which the certificate is issued, or

(ii) if the leave was commenced before the certificate was issued, the first day of the week in which the leave was commenced if the certificate is valid from any day in that week, and

(b) that ends with the last day of the week in which either of the following first occurs:

(i) the person with whom the employee has a close family relationship dies; or

(ii) the expiration of twenty-eight weeks following the first day of the week referred to in paragraph (a).

44.024(4) A leave of absence under this section may only be taken in periods of at least one week’s duration.

44.024(5) The aggregate amount of leave that may be taken by two or more employees under this section for the care or support of the same person with whom the employee has a close family relationship shall not exceed twenty-eight weeks in the period referred to in subsection (3).

44.024(6) An employee shall provide the employer with a copy of the certificate referred to in subsec-
tion (2), if the employer requests this in writing within fifteen days after an employee’s return to work.

44.024(7) An employee intending to take a leave of absence under this section shall advise the employer as soon as possible of the employee’s intention to take the leave, the anticipated commencement date of the leave, and, subject to subsection (2), the anticipated duration of the leave.

2003, c.30, s.1; 2016, c.20, s.2

CRITICAL ILLNESS LEAVE

44.025(1) The following definitions apply in this section.

“critically ill child” means a person who is under 18 years of age on the day on which the qualified medical practitioner certifies that the person’s baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury. (enfant gravement malade)

“parent” means a person who, in law, is the parent of, has the custody of or is the guardian of a child or a person with whom a child is placed for the purposes of adoption. (parent)

“qualified medical practitioner” means a person who is entitled to practise medicine under the laws of a jurisdiction in which care or treatment of a critically ill child is provided. (médecin qualifié)

“week” means the period between midnight on Saturday and midnight on the immediately following Saturday. (semaine)

44.025(2) Subject to subsections (3) to (7), on the request of an employee who is the parent of a critically ill child, an employer shall grant the employee a leave of absence without pay of up to 37 weeks to provide care or support to that child if a qualified medical practitioner has issued a certificate that

(a) states that the child is a critically ill child and requires the care or support of one or more of his or her parents, and

(b) sets out the period during which the child requires that care or support.

44.024(7) Un salarié qui a l’intention de prendre un congé en vertu du présent article doit aviser son employeur de son intention de prendre un tel congé, de la date prévue pour le début du congé, et sous réserve du paragraphe (2), la durée prévue du congé.

2003, ch. 30, art. 1; 2016, ch. 20, art. 2

CONGÉ DE GRAVE MALADIE

44.025(1) Les définitions qui suivent s’appliquent au présent article.

« enfant gravement malade » Personne qui a moins de 18 ans le jour où le médecin qualifié atteste qu’un changement important est survenu dans son état de santé habituel et que sa vie se trouve en danger du fait d’une maladie ou d’une blessure. (critically ill child)

« médecin qualifié » Personne autorisée à exercer la médecine en vertu des lois d’un territoire où des soins ou des traitements médicaux sont prodigués à un enfant gravement malade. (qualified medical practitioner)

« parent » Personne qui, en droit, est le père ou la mère d’un enfant, en a la garde légale, en est le tuteur ou chez qui il est placé en vue de l’adoption. (parent)

« semaine » S’entend de la période comprise entre minuit le samedi et minuit le samedi suivant. (week)

44.025(2) Sous réserve des paragraphes (3) à (7), à la demande d’un salarié qui est le parent d’un enfant gravement malade, l’employeur est tenu de lui accorder un congé non rémunéré d’une durée maximale de trente-sept semaines pour qu’il lui fournisse des soins ou du soutien, si un médecin qualifié délivre un certificat qui :

a) d’une part, atteste que l’enfant est gravement malade et qu’il a besoin des soins ou du soutien d’un ou de plus d’un de ses parents;

b) d’autre part, fixe la période pendant laquelle il a besoin de ces soins ou de ce soutien.

45
The leave of absence may only be taken during the period:

(a) that starts with the first day of the week in which either of the following occurs:

(i) the day on which the first certificate in respect of the child that meets the requirements of subsection (2) is issued; or

(ii) if the leave is commenced before the certificate is issued, the date from which the qualified medical practitioner certifies that the child is a critically ill child; and

(b) that ends with the last day of the week in which either of the following first occurs:

(i) the child dies; or

(ii) the expiration of 37 weeks following the first day of the week referred to in paragraph (a).

If both parents of a critically ill child are employees of the same employer, the aggregate amount of leave that may be taken under subsection (2) for the care or support of the same critically ill child shall not exceed 37 weeks and may

(a) be taken wholly by one of the employees, or

(b) be shared by the employees.

An employee intending to take a leave of absence under subsection (2) shall advise the employer in writing as soon as possible of the employee’s intention to take the leave, the anticipated commencement date of the leave, the anticipated duration of the leave and shall provide the employer with the certificate referred to in subsection (2).

If circumstances beyond the control of the employee require a change in the duration of the leave of absence, the employee shall advise the employer in writing of the change as soon as possible.

An employer is not required to extend an employee’s leave of absence beyond the date that would result in the employee’s total period of leave of absence exceeding 37 weeks from the commencement date of that leave.

Le congé ne peut être pris qu’au cours de la période qui :

a) commence le premier jour de la semaine durant laquelle surviennent :

(i) la date de délivrance du premier certificat relatif à l’enfant qui satisfait aux conditions du paragraphe (2),

(ii) si le congé commence avant la date de délivrance du certificat, la date à partir de laquelle le médecin qualifié atteste que l’enfant est gravement malade;

b) se termine le dernier jour de la semaine durant laquelle se produit l’un ou l’autre des éventualités suivantes :

(i) l’enfant décède,

(ii) la période de trente-sept semaines qui suit le premier jour de la semaine visée à l’alinéa a) prend fin.

Si les deux parents d’un enfant gravement malade sont les salariés du même employeur, la durée maximale totale du congé pouvant être pris en vertu du paragraphe (2) pour le soin ou le soutien de cet enfant est de trente-sept semaines et peut :

a) être pris dans son ensemble par l’un des salariés;

b) être partagé entre les salariés.

Le salarié qui entend prendre un congé en vertu du paragraphe (2) est tenu d’avisé par écrit l’employeur dès que possible de son intention, de la date prévue du début du congé ainsi que de la durée prévue du congé et de lui fournir le certificat mentionné au paragraphe (2).

Si des circonstances indépendantes de sa volonté l’obliger à modifier la durée de son congé, le salarié est tenu d’en aviser l’employeur par écrit dès que possible.

L’employeur n’est pas tenu de prolonger la durée du congé du salarié au delà d’une durée totale de trente-sept semaines à compter de la date du début du congé.
44.025(8) When an employee reports for work on the expiration of the period of leave granted under subsection (2), the employer shall permit the employee to resume work in the position the employee held immediately before the commencement of the leave or an equivalent position with no decrease in pay and with no loss of benefits accrued up to the commencement of the leave.

2014, c.3, s.2

DEATH OR DISAPPEARANCE LEAVE

2014, c.3, s.2

44.026(1) The following definitions apply in this section.

“child” means a person who is under 18 years of age. (enfant)

“crime” means an offence under the Criminal Code (Canada). (crime)

“parent” means a person who, in law, is the parent of, has the custody of or is the guardian of a child or a person with whom a child is placed for the purposes of adoption. (parent)

“week” means the period between midnight on Saturday and midnight on the immediately following Saturday. (semaine)

44.026(2) Subject to subsections (5) and (6), on the request of an employee who is the parent of a child who has died and it is probable, considering the circumstances, that the child died as a result of a crime, an employer shall grant the employee a leave of absence without pay of up to 37 weeks.

44.026(3) Subject to subsections (5) and (6), on the request of an employee who is the parent of a child who has disappeared and it is probable, considering the circumstances, that the child disappeared as a result of a crime, an employer shall grant the employee a leave of absence without pay of up to 37 weeks.

44.026(4) If both parents are employees of the same employer, each is entitled to the leave of absence under this section.

44.026(5) An employee is not entitled to a leave of absence under this section if the employee is charged with the crime.

44.025(8) Lorsque le salarié se présente au travail à l’expiration du congé accordé en application du paragraphe (2), l’employeur est tenu de lui permettre de reprendre son travail dans le poste qu’il occupait tout juste avant de prendre son congé ou dans un poste équivalent, sans diminution de rémunération ni perte des avantages accumulés jusqu’au début de son congé.

2014, ch. 3, art. 2

CONGÉ DE DÉCÈS OU DE DISPARITION

2014, ch. 3, art. 2

44.026(1) Les définitions qui suivent s’appliquent au présent article.

« crime » S’entend de toute infraction prévue au Code criminel (Canada). (crime)

« enfant » Personne âgée de moins de 18 ans. (child)

« parent » Personne qui, en droit, est le père ou la mère d’un enfant, en a la garde légale, en est le tuteur ou chez qui il est placé en vue de l’adoption. (parent)

« semaine » S’entend de la période comprise entre minuit le samedi et minuit le samedi suivant. (week)

44.026(2) Sous réserve des paragraphes (5) et (6), sur demande du salarié qui est le parent d’un enfant décédé dans des circonstances qui permettent de tenir pour probable qu’il résulte de la perpétration d’un crime, l’employeur est tenu de lui accorder un congé non rémunéré d’une durée maximale de trente-sept semaines.

44.026(3) Sous réserve des paragraphes (5) et (6), sur demande du salarié qui est le parent d’un enfant disparu dans des circonstances qui permettent de tenir pour probable qu’il résulte de la perpétration d’un crime, l’employeur est tenu de lui accorder un congé non rémunéré d’une durée maximale de trente-sept semaines.

44.026(4) Les deux parents qui sont salariés du même employeur ont chacun droit au congé prévu au présent article.

44.026(5) Le salarié qui est accusé du crime n’a pas droit au congé prévu au présent article.
Subject to subsections (7) to (9), a leave of absence under this section may only be taken during the period

(a) that starts with the day on which the death or disappearance, as the case may be, is discovered, and

(b) that ends 37 weeks after the day on which the death or the disappearance, as the case may be, is discovered.

If a child who has disappeared is found alive during the 37-week period, the leave of absence ends 14 days after the day on which the child is found.

If a child who has disappeared is found dead during the 37-week period, and it is probable, considering the circumstances, that the child died as a result of a crime, the leave of absence ends 37 weeks after the day on which the child is found.

A leave of absence under this section ends 14 days after the day that, considering the circumstances, it is no longer probable that the child disappeared or died, as the case may be, as a result of a crime, unless the employer and employee agree to an earlier date to return to work.

An employee intending to take a leave of absence under this section shall advise the employer in writing as soon as possible of the employee’s intention to take the leave, the anticipated commencement date of the leave and the anticipated duration of the leave.

An employer may require an employee to provide documentation that is reasonable in the circumstances in support of the employee’s entitlement to a leave of absence under this section.

If circumstances beyond the control of the employee require a change in the duration of the leave of absence, the employee shall advise the employer in writing of the change as soon as possible.

Subject to subsection (8), an employer is not required to extend an employee’s leave of absence beyond the date that would result in the employee’s total period of leave of absence exceeding 37 weeks from the commencement date of that leave.

When an employee reports for work on the expiration of the period of leave of absence granted un-
der this section, the employer shall permit the employee to resume work in the position the employee held immediately before the commencement of the leave or an equivalent position with no decrease in pay and with no loss of benefits accrued up to the commencement of the leave.

2014, c.3, s.2

**BEREAVEMENT**

44.03(1) In this section

“funeral” includes a memorial service. (funérailles)

44.03(2) An employer shall grant to an employee a leave of absence without pay of up to five consecutive calendar days on the death of a person in a close family relationship with the employee to be taken during the period of bereavement and to begin not later than the day of the funeral.

44.03(3) An employee intending to take a leave of absence under this section shall advise the employer of the employee’s intention to take the leave, the anticipated commencement date of the leave and, subject to subsection (2), the anticipated duration of the leave.

1988, c.59, s.18; 2000, c.55, s.6

**LEAVE FOR RESERVISTS**

2007, c.74, s.1

44.031(1) The following definitions apply in this section.

“annual training” means the training referred to in paragraph 9.04(2) of the Queen’s Regulations and Orders for the Canadian Forces (Canada), and includes the period of time required for travel to attend that training. (instruction annuelle)

“Reserves” means the component of the Canadian Forces referred to in the National Defence Act (Canada) as the reserve force. (Réserve)

“service” means

(a) deployment to a Canadian Forces operation, inside or outside Canada, or engagement, inside or outside Canada, in a pre-deployment or post-deployment activity required by the Canadian Forces in connection with such an operation, and

**CONGÉ DE DÉCÈS**

44.03(1) Dans le présent article

«funérailles» s’entend également d’un service commémoratif. (funeral)

44.03(2) Un employeur doit accorder à un salarié un congé sans solde d’une durée maximale de cinq jours civils consécutifs lors du décès d’une personne avec laquelle le salarié a des liens familiaux étroits; ce congé doit être pris au cours de la période de deuil et commencer au plus tard le jour des funérailles.

44.03(3) Un salarié qui se propose de prendre un congé en vertu du présent article doit aviser son employeur de son intention de prendre un congé, de la date prévue du début de ce congé et, sous réserve du paragraphe (2), de la durée prévue du congé.

1988, ch. 59, art. 18; 2000, ch. 55, art. 6

**CONGÉ À L’INTENTION DES RÉSERVISTES**

2007, ch. 74, art. 1

44.031(1) Les définitions qui suivent s’appliquent au présent article.

«instruction annuelle» S’entend de l’instruction que prévoit l’alinéa 9.04(2) des Ordonnances et règlements royaux applicables aux Forces canadiennes (Canada) et s’entend également du temps de déplacement nécessaire pour s’y rendre. (annual training)

«Réserve» L’élément constitutif des Forces canadiennes appelé force de réserve dans la Loi sur la défense nationale (Canada). (Reserves)

«service» S’entend:

(a) d’un déploiement auquel il est procédé dans le cadre d’une opération menée par les Forces canadiennes au Canada ou à l’étranger ou d’une participation, au Canada ou à l’étranger, à des activités préalables au déploiement ou liées au postdéploie-
(b) a period of time for treatment, recovery or rehabilitation in respect of a physical or mental health problem that results from an activity referred to in paragraph (a). (service)

44.031(2) An employer shall not dismiss, suspend or lay off an employee who is a reservist, or refuse to employ a person who is a reservist, for the sole reason that the employee or the person is a reservist.

44.031(3) On the request of an employee who is a reservist, an employer shall grant the employee a leave of absence without pay of up to 18 months for the purpose of service if,

(a) in the case of a first leave of absence, the employee has been in the employ of the employer for at least six months, or

(b) in the case of a second or subsequent leave of absence, at least 12 months have elapsed since the date the employee returned to work from the most recent leave of absence granted under this subsection.

44.031(4) On the request of an employee who is a reservist, an employer shall grant the employee a leave of absence without pay for a continuous period of up to 30 days in a calendar year, for the purpose of annual training, if the employee has been in the employ of the employer for at least six months.

44.031(5) An employee who intends to take a leave of absence under subsection (3) or (4) shall give written notice to the employer of his or her intention

(a) at least four weeks prior to the anticipated commencement date of the leave, or

(b) if the employee receives notice of the service or annual training for which the leave of absence is requested less than four weeks before the commencement date of that service or annual training, as soon as practicable after the employee receives the notice.

44.031(6) A notice under subsection (5) shall include the anticipated commencement date of the leave of absence and the employee’s expected date of return to work.
Employment Standards Act

44.031(7) An employer may require the employee to provide the employer with a certificate from an official with the Reserves stating

(a) that the employee is a reservist and

(i) is selected for service, or

(ii) is required to attend annual training, and

(b) if possible, the expected start and end dates for the period of service or annual training.

44.031(8) Subject to subsections (9) and (11), if circumstances beyond the employee’s control require a change in the dates specified in a notice under subsection (5), the employee shall advise the employer of the change.

44.031(9) Subject to subsection (10), if circumstances beyond the employee’s control require a leave of absence under subsection (3) to be extended beyond the date specified in a notice under subsection (5), the employee shall provide a notice to the employer in accordance with subsection (11) and the employer shall grant the employee an extension.

44.031(10) An employer is not required to extend an employee’s leave of absence beyond the date that would result in the employee’s total period of leave of absence exceeding 18 months from the commencement date of that leave.

44.031(11) An employee who amends the expected date of return to work specified in a notice under subsection (5) shall give written notice to the employer of the amended expected date

(a) at least four weeks prior to the amended expected date of return to work, or

(b) if the employee receives notice of the requirement to amend the expected return to work date less than four weeks before that date, as soon as practicable after the employee receives the notice.

44.031(12) Subject to subsection (13), if an employee gives notice of an amended expected date of return to work that is not in accordance with subsection (11), the employer may postpone the employee’s date of return to

44.031(7) L’employeur peut exiger que le salarié lui fournisse le certificat d’un dirigeant de la Réserve indiquant ce qui suit :

a) le salarié est un réserviste et :

(i) ou bien il a été sélectionné pour service,

(ii) ou bien il est tenu de participer à l’instruction annuelle;

b) dans la mesure du possible, les dates prévues du début et de la fin de la période de service ou de l’instruction annuelle.

44.031(8) Sous réserve des paragraphes (9) et (11), si des circonstances indépendantes de sa volonté l’obligent à modifier les dates indiquées dans l’avis mentionné au paragraphe (5), le salarié doit en aviser l’employeur.

44.031(9) Sous réserve du paragraphe (10), si des circonstances indépendantes de sa volonté l’obligent à prendre le congé non rémunéré que prévoit le paragraphe (3) d’une durée plus longue que celle indiquée dans l’avis mentionné au paragraphe (5), le salarié en avise l’employeur conformément au paragraphe (11), lequel doit lui accorder un congé prolongé.

44.031(10) L’employeur n’est pas tenu de prolonger la durée du congé du salarié au delà d’une durée totale de plus de dix-huit mois à compter de la date du début du congé.

44.031(11) Le salarié qui modifie la date prévue de son retour au travail indiquée dans l’avis mentionné au paragraphe (5) doit en donner avis écrit à l’employeur :

a) quatre semaines au moins avant la date modifiée de son retour au travail;

b) s’il reçoit un avis l’obligeant à modifier la date prévue de son retour au travail moins de quatre semaines avant cette date, dès que possible après réception de l’avis.

44.031(12) Sous réserve du paragraphe (13), si le salarié donne un avis de modification de la date prévue de son retour au travail qui n’est pas conforme au paragraphe (11), l’employeur peut reporter la date de retour au
work by up to two weeks after the date on which the employee gives the notice to the employer.

44.031(13) An employer shall not postpone an employee’s date of return to work under subsection (12) if the postponement would result in a return to work date that is earlier than the amended expected return to work date of the employee.

44.031(14) When an employee reports for work on the expiration of the period of leave granted under this section, the employer shall permit the employee to resume work in the position the employee held immediately before the commencement of the leave or an equivalent position with no decrease in pay and with no loss of benefits accrued up to the commencement of the leave.

44.031(15) An employer who receives a request to grant or extend a leave of absence under this section may apply to the Director to be exempted from the application of this section if granting the leave or the extension

(a) would adversely affect the health or safety of the workplace or the public, or

(b) would cause the employer undue hardship.

44.031(16) The Director may grant an application made under subsection (15) if he or she is satisfied that the conditions of that subsection are met.

44.031(17) Instead of deciding an application made under subsection (15), the Director may refer the application to the Board.

44.031(18) A person affected by a decision of the Director with respect to an application made under subsection (15) may make a written request to the Director, within 14 days after notice of the decision, to refer the matter to the Board.

44.031(19) Within ten days after receiving a request under subsection (18), the Director shall refer the matter to the Board.

44.031(20) A matter referred to the Board under subsection (17) or (19) shall be disposed of in accordance with section 68.

2007, c.74, s.1; 2011, c.48, s.1; 2013, c.13, s.4
44.04(1) An employer shall not dismiss, suspend or lay off an employee who has been granted a leave of absence under this Act

(a) during the leave of absence, or

(b) for reasons arising from the leave alone.

44.04(2) An employee who has been granted a leave of absence under this Act

(a) retains seniority accrued up to the commencement of the leave,

(b) continues to accrue seniority during the leave at the same rate of accrual that would have occurred had the employee worked during the leave, and

(c) shall be deemed to have been continuously employed with the same employer during the leave of absence.

44.04(3) Notwithstanding subsection (2), if an employee would have been dismissed, suspended or laid off had the employee not been granted a leave of absence under this Act the seniority of the employee

(a) ceases to accrue as of the date the dismissal would have occurred had the employee not been granted the leave of absence, and

(b) does not accrue during the period of the suspension or lay off that would have occurred had the employee not been granted the leave of absence.

44.04(4) Subsections (1), (2) and (3) apply with the necessary modifications in relation to

(a) an employee who has been granted a leave of absence with or without pay under a collective agreement or a contract of employment similar to a leave of absence to which an employee is entitled under this Act, and

(b) an employee who is absent from work, with or without pay, on a day of vacation or a public holiday to which the employee is entitled under this Act, a collective agreement or a contract of employment.

1988, c.59, s.18; 2000, c.55, s.7
An employee shall be deemed to have worked on a day of vacation and a public holiday for which the employee was paid.

1988, c.59, s.18

### LIE DETECTOR TESTS

44.1(1) In this section

“employee” means an employee as defined in section 1 and includes an applicant for employment; *(salarié)*

“employer” means an employer as defined in section 1 and includes a prospective employer; *(employeur)*

“lie detector test” means an analysis, examination, interrogation or test taken or performed by means of or in conjunction with a device, instrument or machine, whether mechanical, electrical, electromagnetic, electronic or otherwise, and that is taken or performed for the purpose of assessing or purporting to assess the credibility of a person. *(test de détecteur de mensonge)*

44.1(2) An employee has a right not to take or be asked or required to take or submit to a lie detector test.

44.1(3) No person shall require, request, enable or influence, directly or indirectly, an employee to take or submit to a lie detector test.

44.1(4) No person shall communicate or disclose to an employer that an employee has taken a lie detector test, or communicate or disclose to an employer the results of a lie detector test taken in any other jurisdiction.

44.1(5) Where an employer violates a provision of this section the Director may order the employer to do or to refrain from doing anything in order to comply with this section and may order the employer to reinstate or to hire the employee concerned, with or without compensation, or to compensate the employee in lieu of reinstatement or hiring for loss of earnings or other employment benefits in an amount not exceeding four thousand dollars that may be assessed by the Director against the employer.

1984, c.42, s.25
PART IV
ADMINISTRATION
DIRECTOR

45(1) The Minister is charged with the general administration of this Act.

45(2) The Minister shall appoint a person from within the Civil Service as the Director.

45(3) The Minister may appoint an Employment Standards Officer as Deputy Director, and during the absence of the Director from his or her office or when the office of the Director is vacant, the Deputy Director has all the powers and is subject to all the duties of the Director.

1983, c.30, s.8; 1986, c.8, s.37; 1992, c.2, s.19; 1998, c.41, s.50; 2003, c.4, s.9

MINIMUM WAGE BOARD
Repealed: 2014, c.70, s.3
2014, c.70, s.3

46 Repealed: 2014, c.70, s.4
1984, c.42, s.26; 1994, c.52, s.1; 2014, c.70, s.4

47 Repealed: 2014, c.70, s.5
1984, c.42, s.27; 1994, c.52, s.1; 2014, c.70, s.5

48 Repealed: 2014, c.70, s.6
1994, c.52, s.1; 2014, c.70, s.6

49 Repealed: 2014, c.70, s.7
1994, c.52, s.1; 2014, c.70, s.7

LABOUR AND EMPLOYMENT BOARD
1994, c.52, s.1

50 Repealed: 1994, c.52, s.1
1984, c.42, s.28; 1987, c.18, s.1; 1994, c.52, s.1

51 Repealed: 1994, c.52, s.1
1994, c.52, s.1

PARTIE IV
APPLICATION DE LA LOI
LE DIRECTEUR

45(1) Le Ministre est chargé de l’application générale de la présente loi.

45(2) Le Ministre nomme le Directeur au sein de la Fonction publique.

45(3) Le Ministre peut nommer un agent des normes d’emploi à titre de directeur adjoint, et quand le Directeur s’absente de son bureau ou que le poste de Directeur est vacant, le directeur adjoint possède tous les pouvoirs et assume toutes les fonctions du Directeur.

1983, ch. 30, art. 8; 1986, ch. 8, art. 37; 1992, ch. 2, art. 19; 1998, ch. 41, art. 50; 2003, ch. 4, art. 9

LA COMMISSION DU SALAIRE MINIMUM
Abrogé : 2014, ch. 70, art. 3
2014, ch. 70, art. 3

46 Abrogé : 2014, ch. 70, art. 4
1984, ch. 42, art. 26; 1994, ch. 52, art. 1; 2014, ch. 70, art. 4

47 Abrogé : 2014, ch. 70, art. 5
1984, ch. 42, art. 27; 1994, ch. 52, art. 1; 2014, ch. 70, art. 5

48 Abrogé : 2014, ch. 70, art. 6
1994, ch. 52, art. 1; 2014, ch. 70, art. 6

49 Abrogé : 2014, ch. 70, art. 7
1994, ch. 52, art. 1; 2014, ch. 70, art. 7

LA COMMISSION DU TRAVAIL ET DE L’EMPLOI
1994, ch. 52, art. 1

50 Abrogé : 1994, ch. 52, art. 1
1984, ch. 42, art. 28; 1987, ch. 18, art. 1; 1994, ch. 52, art. 1

51 Abrogé : 1994, ch. 52, art. 1
1994, ch. 52, art. 1
52 Repealed: 1994, c.52, s.1  
1994, c.52, s.1

53(1) The Board and each member has the powers, privileges, immunities and responsibilities of a commissioner under the *Inquiries Act* and regulations thereunder.

53(2) The Board may receive and accept any evidence and information on oath, affidavit or otherwise as in its discretion it considers fit and proper, whether admissible as evidence in a court or not.

53(3) The Board may make rules governing its procedure.

53(4) Repealed: 1994, c.52, s.1  
1991, c.27, s.15; 1994, c.52, s.1

54(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it under this Act and to determine all questions of fact or law that arise in any matter before it including any question as to whether

(a) a person is an employer or employee;

(b) an employer or other person is doing or has done anything contrary to this Act or the regulations, or has failed to do something required by this Act or the regulations;

(c) this Act applies to an employment contract, having regard to section 5; or

(d) the facts of any situation give rise to an exemption under this Act or the regulations.

54(2) A decision, determination, direction, declaration or ruling of the Board is final and conclusive and, except on the grounds of an excess of jurisdiction or a denial of natural justice, shall not be questioned or reviewed in any court, and no order shall be made or proceedings taken in any court, whether by way of injunction, declaratory judgment, order on judicial review or otherwise to question, review, prohibit or restrain the Board or any of its proceedings.

54(3) Where a decision of the Board is reviewed and set aside because of an excess of jurisdiction or a denial

52 Abrogé : 1994, ch. 52, art. 1  
1994, ch. 52, art. 1

53(1) La Commission et chacun de ses membres sont investis des pouvoirs, prérogatives, immunités et attributions que la *Loi sur les enquêtes* et ses règlements d’application confèrent à un commissaire.

53(2) La Commission peut recevoir et accepter des éléments de preuve ou des renseignements sous serment, par affidavit ou par tout autre moyen à sa discrétion, indépendamment de leur admissibilité devant une cour.

53(3) La Commission peut établir des règles réglementant sa procédure.

53(4) Abrogé : 1994, ch. 52, art. 1  
1991, ch. 27, art. 15; 1994, ch. 52, art. 1

54(1) La Commission a compétence exclusive pour exercer les pouvoirs qu’elle tient de la présente loi et pour statuer sur toutes les questions de fait ou de droit qui surviennent dans toute affaire dont elle est saisie, notamment sur la question de savoir

(a) si une personne est un employeur ou un salarié;

(b) si un employeur ou une autre personne contrevenait ou a contrevenu aux dispositions de la présente loi ou des règlements d’application, ou a omis de se conformer à l’une de leurs prescriptions;

(c) si la présente loi s’applique à un contrat d’emploi au regard de l’article 5; ou

(d) si une situation donnée donne lieu à une exemption aux termes de la présente loi et des règlements.

54(2) Les décisions, ordonnances, directives ou déclarations de la Commission sont définitives et sans appel; elles ne peuvent être contestées devant les tribunaux judiciaires ni être révisées par eux sauf pour excès de juridiction ou déni de justice naturelle et ces tribunaux ne peuvent rendre d’ordonnance ni être saisis d’une procédure tendant, par voie d’injonction, de jugement déclaratoire, d’ordonnance en révision judiciaire ou par tout autre moyen, à contester, réviser, empêcher ou limiter l’action de la Commission.

54(3) Lorsqu’une décision de la Commission est révisée et annulée pour excès de juridiction ou déni de justice naturelle, il ne sera prononcé aucune condamnation
of natural justice, no costs shall be awarded against any party to the matter before the Board.
1984, c.42, s.29; 1986, c.32, s.6; 1994, c.52, s.1

55(1) Notwithstanding section 54, the Board may of its own motion state a case in writing for the opinion of The Court of Appeal of New Brunswick on any question that, in the opinion of the Board, is a question of law.

55(2) The Court of Appeal of New Brunswick shall hear and determine the question or questions of law arising in the stated case and remit the matter to the Board, with the opinion of the Court thereon; and the opinion of the Court on a question of law is binding on the Board and the parties.

55(3) No costs shall be awarded in any case stated under this section.
1994, c.52, s.1

56 Repealed: 1994, c.52, s.1
1994, c.52, s.1

EMPLOYMENT STANDARDS OFFICERS
57(1) The Minister may appoint persons who are employees under the Civil Service Act as Employment Standards Officers.

57(2) The Minister shall cause to be published in The Royal Gazette the names of persons appointed as Employment Standards Officers.

57(3) Any action in the performance of his duty or exercise of his authority by a person appointed under subsection (1) before the publication required by subsection (2) is not invalid by reason only of the absence of publication.
1984, c.42, s.30

58(1) For the purpose of ensuring that the provisions of this Act and the regulations are complied with the Director, or an Employment Standards Officer, may

(a) at any reasonable time enter into or upon any place of employment for the purpose of inspection, investigation or examination of conditions of employment;

58(1) Afin d’assurer l’observation des dispositions de la présente loi et des règlements, le Directeur ou un agent des normes d’emploi peut

(a) pénétrer, à toute heure raisonnable, dans tout lieu d’emploi en vue d’y procéder à des contrôles, enquêtes ou vérifications relativement aux conditions d’emploi;

57
(b) between the hours of nine o’clock in the fore-
noon and four o’clock in the afternoon enter into any
office or premises where he has reason to believe em-
ployment records are kept or stored, and

(i) require the production for inspection, audit or
examination of all books of account, vouchers,
payroll records, incorporation certificates, by-laws,
minutes of directors’ meetings or other documents
that are or may be relevant to the inspection, audit
or examination;

(ii) upon giving a receipt therefor, remove any-
thing referred to in sub-paragraph (i) or any other
books, papers, records or documents for the pur-
pose of making copies of extracts; but such copies
or extracts shall be made with reasonable dispatch
and the books, papers, records or documents prop-
erly returned thereafter to the person who produced
or furnished them not later than five working days
after the date on which they were removed; and

(iii) make copies or take abstracts from all such
books, papers, records or documents; and

(c) require an employer to provide information upon
request, in which case the employer shall, within ten
days after receipt of a written request from the Direc-
tor or from an Employment Standards Officer, or
within such longer time as may be allowed by the Di-
rector or Employment Standards Officer, file a state-
ment setting forth the information which is required.

58(2) Neither the Director nor an Employment Stand-
ards Officer nor a mediator referred to under sec-
tion 64 is in any civil proceeding a compellable witness
respecting any information, statements, books, papers,
records or documents acquired, furnished, obtained,
made or received under the powers conferred under this
Act.

58(3) Neither the Director nor an Employment Stand-
ards Officer nor a mediator referred to under sec-
tion 64 shall be compelled or required to produce in any
civil proceeding, any statements, books, papers, records
or documents acquired, furnished, obtained, made or re-
ceived under the powers conferred under this Act.

1984, c.42, s.31; 1996, c.86, s.1

58(2) Le Directeur et un agent des normes d’emploi et
le médiateur mentionné à l’article 64 ne peuvent, dans
une instance civile, être contraints à rendre témoignage
sur tous renseignements, déclarations, livres, pièces, dos-
siers ou documents qu’ils ont obtenus, fournis, faits ou
reçus dans le cadre de l’exercice des pouvoirs qu’ils tien-
nent de la présente loi.

58(3) Le Directeur et l’agent des normes d’emploi et
le médiateur mentionné à l’article 64 ne peuvent être
contraints ni tenus de produire dans une instance civile,
tous livres, pièces, dossiers, documents ou déclarations
qu’ils ont obtenus, fournis, faits ou reçus dans le cadre
de l’exercice des pouvoirs qu’ils tiennent de la présente
loi.

1984, ch. 42, art. 31; 1996, ch. 86, art. 1
58.1 No action for damages lies against the Province, the Director, an Employment Standards Officer or a mediator referred to under section 64 with respect to anything done or purported to be done in good faith, or with respect to anything omitted in good faith, under this Act or the regulations by the Director, the Employment Standards Officer or the mediator.

1988, c.59, s.18.1

59 Information that may be requested and that shall be provided by an employer under section 58(1) includes, but is not limited to,

(a) the names and addresses of the employer’s employees;

(b) the ages of the employer’s employees, supported by a certificate of birth of any person who, in the opinion of the Director or an Employment Standards Officer, is apparently under the age of sixteen years and is employed in a place of employment of the employer or, in lieu thereof where production of such certificate is impossible or impracticable, the affidavit of some person having personal knowledge of the facts;

(c) the duties performed by each employee;

(d) the hours of work per day and per week performed by each employee;

(e) the rate of wages per hour, day, week or other period of each employee;

(f) any agreement between the employer and his employees in relation to wages, hours of work or working conditions; and

(g) such other information as to wages paid or, in the case of prospective employment, to be paid, hours of work, working conditions as may be required by notice.

1986, c.32, s.7

EMPLOYER’S RECORDS

60(1) Every employer shall make and keep in the Province for at least thirty-six months after work is performed or service is rendered by an employee, complete and accurate records in respect of the employee suffi-
cient to meet the requirements of a request under section 58(1), including

(a) the employee’s name and address;  
   a) les nom et adresse du salarié,
(b) the employee’s date of birth;  
   b) sa date de naissance,
(c) the employee’s social insurance number;  
   c) son numéro d’assurance sociale;
(d) the date of commencement of employment for the employee;  
   d) sa date d’entrée en service;
(e) the number of hours worked by the employee each day and each week;  
   e) le nombre d’heures qu’il a effectuées par jour et par semaine;
(f) the employee’s wage rate and gross earnings for each pay period;  
   f) son taux de salaire et ses gains bruts par période de paie;
(g) the amount of each deduction from the gross earnings of the employee and the purpose for which each deduction is made;  
   g) le montant et la nature de chaque déduction opérée sur ses gains bruts;
(h) Repealed: 2016, c.20, s.3  
   h) Abrogé : 2016, ch. 20, art. 3
(i) any period during which the employee was on vacation;  
   i) les congés annuels qu’il a pris;
(j) any vacation pay due or paid to the employee;  
   j) les indemnités de congés annuels qui lui sont dues ou lui ont été versées;
(j.1) any public holiday pay due or paid to the employee;  
   j.1) les indemnités de jours fériés qui lui sont dues ou lui ont été versées;
(k) the net amount of money paid to the employee;  
   k) le montant net qui lui est versé;
(k.1) any period during which the employee was on a leave of absence and the reason for the leave of absence;  
   k.1) la période pendant laquelle il était en congé et la raison du congé;
(l) any document or certificates relating to a leave of absence of the employee;  
   l) les documents ou certificats concernant toute autorisation d’absence du salarié;
(m) the dates of all dismissals or layoffs of the employee and the dates of any notices of dismissals or layoffs; and  
   m) les dates de toutes les mises à pied ou de tous les licenciements qu’il a subis et les dates des avis donnés à cet effet; et
(n) the date of cessation of employment.  
   n) la date à laquelle son emploi a pris fin.

60(2) Where the original records referred to in subsection (1) are maintained by a person, firm, company or partnership other than the employer, the employer shall have and produce on request made under subsection (3)
a true and accurate copy of the employment records in respect of each employee required under subsection (1).

60(3) The Labour and Employment Board, the Director and an Employment Standards Officer may at any time request from any employer, or from any person, firm, company or partnership maintaining an employee’s records, information required to be kept under subsection (1) with respect to any employee, and such request shall forthwith be complied with.

60(4) Where the employer fails to maintain accurate records in accordance with this Act, the Labour and Employment Board or the Director may accept the evidence of an employee with respect to his employment, and the onus of proving the contrary shall be on the employer.

1988, c.59, s.19; 1994, c.52, s.1; 2003, c.4, s.10; 2014, c.70, s.8; 2016, c.20, s.3

PART V
ENFORCEMENT

COMPLAINTS AND ADMINISTRATIVE ORDERS

61(1) Any person who believes that

(a) there has been a violation of Part III by an employer, an employee or any other person; or

(b) he has been denied a right or benefit arising under Part III;

may, within twelve months after the alleged violation or denial, make a complaint to the Director in any form.

61(2) The Director may agree to keep confidential the identity of a complainant where he is satisfied that there exists a possibility of intimidation or retaliation by any person towards the complainant.

62(1) Subject to subsections (2) and (3), where the Director is satisfied that the allegations contained in a complaint disclose a violation of Part III, or a denial of a right or benefit arising under Part III, he shall act upon the complaint and, where mediation is not attempted under section 64 or is unsuccessful, shall cause an investigation to be undertaken with respect thereto.

PARTIE V
EXÉCUTION DE LA LOI

PLAINTES ET ORDONNANCES ADMINISTRATIVES

61(1) Quiconque estime

(a) qu’il y a eu violation de la Partie III par un employeur, un salarié ou toute autre personne; ou

(b) qu’un droit ou avantage découlant de la Partie III lui a été refusé

peut, dans les douze mois qui suivent la violation ou le refus, déposer, sous quelque forme que ce soit, une plainte auprès du Directeur.

61(2) Le directeur peut convenir de conserver confidentiellement l’identité de l’auteur de la plainte s’il est convaincu qu’il se pourrait que des mesures d’intimidation ou de représailles soient exercées à son égard.

62(1) Sous réserve des paragraphes (2) et (3), le Directeur doit, lorsqu’il est convaincu que les allégations faites dans une plainte révèlent une violation de la Partie III ou le refus d’un droit ou avantage qu’elle prévoit, donner suite à la plainte et, s’il n’est pas procédé à une médiation en vertu de l’article 64 ou que celle-ci échoue, faire entreprendre une enquête sur la plainte.
62(1.1) The Director may cause an investigation to be undertaken in subsection (1) by referring the complaint to an Employment Standards Officer under section 64.1.

62(2) The Director shall not act upon a complaint unless he is satisfied that the person making the complaint, or the person identified in the complaint as the person who has been denied a right or benefit under Part III or in respect of whom it is alleged that Part III was violated, is unable to grieve the subject matter of the complaint under the provisions of a collective agreement.

62(3) The Director shall not act upon a complaint if it is or has been the subject matter of a proceeding before a court of competent jurisdiction within New Brunswick.

62(4) Where the Director has agreed to keep confidential the identity of the complainant he may refuse to act upon the complaint or to proceed with an investigation where he is satisfied that to keep confidential the identity of the complainant would unduly impede the investigation of the complaint or would be unfair to a person against whom an allegation has been made in the complaint.

1984, c.42, s.32; 2013, c.13, s.5

63(1) When the Director investigates pursuant to a complaint made under subsection 61(1) he may make an order respecting any violation of Part III or any denial of a right or benefit arising under Part III disclosed in his investigation and occurring within twelve months preceding the complaint.

63(2) Where the Director’s investigation is not pursuant to a complaint made under subsection 61(1), any order made by the Director shall only relate to a violation or denial occurring within twelve months prior to the date of the order.

64(1) The Director may, at any point after a complaint has been made, appoint, on such terms and conditions as may be established in the appointment, a mediator to attempt to settle the subject matter of the complaint.

64(2) In the event that the parties reach an agreement with respect to the disposition of the complaint the mediator shall report to the Director the terms and conditions of such agreement.
64(3) The Director may make an order to implement the terms and conditions of such an agreement and an order so made shall have the same force and effect as an order made under section 65.

64(4) In the event that mediation is unsuccessful in assisting the parties to reach an agreement within such period as may be established by the Director, the mediator shall report that fact to the Director, but he shall not report to the Director, nor reveal to anyone, any communications that were made during the mediation process, or any information derived from such communications.

64(5) A mediator who deals with a complaint made to the Director shall not, upon the completion of his mediation role, participate in any way in any subsequent investigation into the alleged complaint.

1984, c.42, s.33

64.1(1) In this section, “prescribed provision” means a provision of this Act or the regulations prescribed by regulation for the purposes of this section. (disposition prescrite)

64.1(2) At any point after a complaint is made involving the contravention of a prescribed provision, the Director may refer the complaint to an Employment Standards Officer.

64.1(3) An Employment Standards Officer may issue a notice of non-compliance to a person with respect to the contravention of a prescribed provision

(a) after an investigation of a complaint referred under subsection (2); or

(b) after an investigation that is not the result of a complaint.

64.1(4) A person who is issued a notice of non-compliance shall comply with the prescribed provision set out in the notice within 30 days after receiving the notice and if the person fails to comply before the expiry of that time, the Director may impose an administrative penalty on the person in accordance with section 64.2.

64.1(5) A notice of non-compliance issued under paragraph (3)(a) may only be in respect of contraventions occurring within 12 months preceding the date of the complaint.

64(3) Le Directeur peut rendre une ordonnance, qui a le même effet que celles rendues en application de l’article 65, en vue de mettre en application les modalités de l’accord intervenu.

64(4) Si la médiation ne réussit pas à aider les parties à arriver à un accord dans le délai imparti par le Directeur, le médiateur en fait rapport au Directeur mais il ne peut communiquer au Directeur ni révéler à qui que ce soit les échanges effectués au cours de la médiation ni aucun renseignements obtenus à l’occasion de ces échanges.

64(5) Un médiateur saisi d’une plainte adressée au Directeur ne peut, après accomplissement de sa mission de médiation, participer de quelque manière que ce soit à l’enquête ultérieure au sujet de la plainte.

1984, ch. 42, art. 33

64.1(3) L’agent des normes d’emploi peut délivrer un avis de non-conformité à une personne concernant la violation d’une disposition prescrite :

a) soit après une enquête faisant suite à une plainte qui lui est déférée en vertu du paragraphe (2);

b) soit après une enquête ne faisant pas suite à une plainte.

64.1(4) La personne à qui est délivré un avis de non-conformité se conforme à la disposition prescrite y énoncée dans les trente jours de sa réception, à défaut de quoi le Directeur peut lui infliger une amende administrative conformément à l’article 64.2.

64.1(5) L’avis de non-conformité ne peut être délivré en vertu de l’alinéa (3)a) que relativement à des violations survenues dans les douze mois qui précèdent la date de la plainte.

63
64.1(6) A notice of non-compliance issued under para-

64.1(7) A notice of non-compliance shall contain the

64.1(8) A notice of non-compliance is sufficiently

64.1(9) A person who is issued a notice of non-

64.1(10) A person who is prosecuted for an offence

64.1(11) The Director shall not issue an order under

64.2(1) If a person fails to comply with a notice of

(a) the Director may make an order under subsec-

(b) if the Director is not satisfied on reasonable

grounds that there has been a contravention of the
 provision of this Act or the regulations set out in the
 notice, or for any other reason, the Director may de-

(i) not to make an order under section 65, and

(ii) to set aside the notice of non-compliance.

64.1(6) L’avis de non-conformité ne peut être délivré

64.1(7) L’avis de non-conformité renferme les rensei-

64.1(8) L’avis de non-conformité est valablement si-

64.1(9) La personne à qui l’avis de non-conformité est
délivré ne peut faire l’objet d’une poursuite pour infrac-
tion à la présente loi relativement au même incident qui

64.1(10) L’avis de non-conformité ne peut être délivré

tablement signifié à personne, s’il est signifié ou livré conformément

to the issuance of the notice.

to the issuance of the notice.

to the issuance of the notice.

to the issuance of the notice.

to the issuance of the notice.

2013, c.13, s.6

64.2(1) Si une personne fait défaut de se conformer à

(i) d’une part, de ne pas rendre l’ordonnance que

(ii) d’autre part, d’annuler l’avis de non-

conformité.

2013, ch. 13, art. 6
64.2(2) The amount of administrative penalty payable for a failing to comply with a notice of non-compliance shall be prescribed by regulation, which amount shall not be less than $150 and shall not exceed $900.

64.2(3) For the purpose of determining the amount of an administrative penalty, the Director may treat a contravention relating to more than one person

(a) as a separate contravention in relation to each affected person; or

(b) as one contravention in respect of a group of affected persons.

64.2(4) An administrative penalty is payable to the Minister of Finance.

64.2(5) A person who pays an administrative penalty shall be deemed to have contravened the provision of this Act or the regulations in respect of which the notice of non-compliance was issued.

2013, c.13, s.6

65(1) Where the Director is satisfied upon reasonable grounds that a person has not complied with the provisions of this Act or the regulations, or the provisions of an order made under subsection 64(3), he may make an order with respect to any of the following matters, namely:

(a) directing the person to refrain from acts that violate the Act or regulations;

(b) directing the person to comply with the Act and the regulations;

(c) requiring the person to pay a stated amount representing

(i) wages owing to an employee;

(ii) vacation pay or pay in lieu of vacation owing to an employee;

(ii.1) public holiday pay or pay in lieu of public holidays owing to an employee;

(iii) any other benefit owing to an employee;

65(1) Lorsqu’il est convaincu, en se fondant sur des motifs raisonnables, qu’une personne ne s’est pas conformée aux dispositions de la présente loi ou des règlements ou à celles d’une ordonnance rendue en vertu du paragraphe 64(3), le Directeur peut, par ordonnance,

(a) lui enjoindre de s’abstenir de tout acte dérogeant à la présente loi ou aux règlements;

(b) lui enjoindre de se conformer aux dispositions de la présente loi ou des règlements;

(c) l’obliger à payer une somme déterminée correspondant

(i) au salaire dû à un salarié;

(ii) aux congés annuels ou à l’indemnité compensatrice de ces congés dus à un salarié;

(ii.1) à la rémunération des jours fériés ou à l’indemnité compensatrice des jours fériés due à un salarié;

(iii) à toute autre prestation due à un salarié;
(iv) payment in lieu of notice of termination to an employee;

(iv.1) an administrative penalty;

(v) compensation for economic loss caused to a person by virtue of non-compliance with the Act or regulations; or

d) directing the reinstatement of an employee to a former position or his assignment to an equivalent position.

65(2) The Director is not required to serve notice upon or hear any person before making an order under subsection (1) or before advising a complainant that there has been no failure to comply with this Act or the regulations.

65(3) In an order made under subsection (1), the Director shall specify the provision of this Act or the regulations or of any order made under subsection 64(3) that, in his opinion, has not been complied with and shall advise the person against whom the order is made of his right to require the Director to refer the matter to the Board.

1984, c.42, s.34; 1986, c.32, s.8; 1988, c.59, s.20; 1994, c.52, s.1; 2013, c.13, s.7

65.1(1) This section does not apply with respect to corporations that are operated on a not-for-profit basis, including corporations incorporated under section 16 or 18 of the Companies Act and corporations that have been incorporated in another jurisdiction with objects that are similar to the objects of corporations incorporated under section 16 or 18 of the Companies Act.

65.1(2) Despite any other Act and subject to subsections (3), (5) and (6), a person who is or was a director of a corporation is jointly and severally liable with the corporation to an employee or former employee of the corporation for

(a) up to six months of wages owing to an employee or former employee that were earned or became due and payable while the person was a director, and

(b) up to 12 months of vacation pay or pay in lieu of vacation owing to an employee or former employee

65.1(2) Par dérogation à toute autre loi et sous réserve des paragraphes (3), (5) et (6), la personne qui est ou qui était administrateur d’une personne morale est conjointement et individuellement responsable avec elle envers le salarié ou l’ancien salarié au titre des périodes maximales suivantes :

a) six mois de salaire dû au salarié ou à l’ancien salarié qui a été gagné ou qui est devenu payable pendant que la personne était administrateur;

b) douze mois de congés payés annuels ou d’indemnité compensatrice des congés payés qui sont dus au
65.1(3) A director or former director shall not be liable under subsection (2) unless

(a) the Director has made an order requiring an employer that is a corporation to pay a stated amount under subparagraph 65(1)(c)(i) or (ii),

(b) the stated amount referred to in paragraph (a) has not been paid and it has been at least 30 days since the date the order was made, and

(c) a notice of the joint and several liability has been sent to the director or former director and it has been at least 30 days since the notice was received.

65.1(4) A notice referred to in paragraph (3)(c) may be sent at the same time that an order is made requiring an employer that is a corporation to pay a stated amount under subparagraph 65(1)(c)(i) or (ii) or after the order has been made.

65.1(5) A director or former director shall not be liable under subsection (2) if he or she exercised reasonable diligence to provide for the payment of the amounts referred to in that subsection.

65.1(6) Despite paragraph 64.2(1)(a), a director or former director shall not be liable under subsection (2) for an administrative penalty imposed under that paragraph on an employer that is a corporation.

65.1(7) If the conditions of subsection (3) are satisfied, the Director may make an order requiring a director or former director of the corporation who is liable under subsection (2) to pay all or some of a stated amount under subparagraph 65(1)(c)(i) or (ii).

65.1(8) No order may be made under subparagraph 65(1)(c)(i) or (ii) against a former director of a corporation who is liable under subsection (2) more than two years after the date the former director ceases to be a director of the corporation.

that accrued or became due and payable while the person was a director.

saliéré ou à l’ancien salariéré et qui se sont accumulés ou qui sont devenus payables pendant que la personne était administrateur.

65.1(3) L’administrateur ou l’ancien administrateur ne peut être tenu pour responsable en vertu du paragraphe (2) que si, tout à la fois :

a) le Directeur a rendu une ordonnance enjoignant à l’employeur qui est une personne morale de payer une somme déterminée en application du sous-alinéa 65(1)c)(i) ou (ii);

b) la somme visée à l’alinéa a) est en souffrance et au moins trente jours se sont écoulés depuis la date de l’ordonnance;

c) avis de la responsabilité conjointe et individuelle lui a été envoyé et trente jours se sont écoulés depuis sa réception.

65.1(4) L’avis mentionné à l’alinéa (3)c) peut être envoyé soit en même temps qu’est rendue l’ordonnance enjoignant à l’employeur qui est une personne morale de payer une somme déterminée en application du sous-alinéa 65(1)c)(i) ou (ii), soit ultérieurement.

65.1(5) L’administrateur ou l’ancien administrateur ne peut être tenu pour responsable en vertu du paragraphe (2) s’il a exercé une diligence raisonnable pour assurer le versement des sommes visées à ce paragraphe.

65.1(6) Par dérogation à l’alinéa 64.2(1)a), l’administrateur ou l’ancien administrateur ne peut être tenu pour responsable en vertu du paragraphe (2) d’une amende administrative infligée en vertu du cet alinéa à l’employeur qui est une personne morale.

65.1(7) Si sont remplies les conditions énoncées au paragraphe (3), le Directeur peut, par ordonnance, enjoindre à l’administrateur ou à l’ancien administrateur qui est tenu pour responsable en vertu du paragraphe (2) de payer tout ou partie de la somme déterminée en application du sous-alinéa 65(1)c)(i) ou (ii).

65.1(8) Aucune ordonnance ne peut être rendue en vertu du sous-alinéa 65(1)c)(i) ou (ii) contre tout ancien administrateur de la personne morale tenu pour responsable en vertu du paragraphe (2), si plus de deux ans se sont écoulés depuis la date qu’il a cessé d’en être administrateur.
65.1(9) If a director or former director of a corporation complies with an order to pay under subparagraph 65(1)(c)(i) or (ii), nothing in this Act affects any right the director or former director has to bring an action against the corporation or against one or more directors or former directors of the corporation for contribution or indemnification for the amount paid.

2013, c.13, s.8; 2014, c.2, s.1

66 Where, after receiving a complaint under this Act, the Director determines

(a) that the complaint is not one he is required to act upon; or

(b) that, having acted upon the complaint, there has been no failure to comply with this Act or the regulations or with an order made under subsection 64(3);

he shall so inform the complainant and advise him of his right to require the Director to refer the matter to the Board.

1984, c.42, s.35; 1994, c.52, s.1

67(1) A person against whom an order is made by the Director may make a written request to the Director to refer the matter to the Board, within 14 days after the order is served on him or her, and the request shall be accompanied by a deposit in accordance with section 67.1, if applicable.

67(1.1) A complainant whose complaint has been acted on and dismissed by the Director may make a written request to the Director to refer the matter to the Board, within 14 days after being advised in writing of the dismissal.

67(1.2) Within ten days after receiving a request under subsection (1) or (1.1), the Director shall

(a) file with the Board a copy of the order and the complaint, if any,

(b) forward to the Board the deposit, if any, and

(c) request that the Board arrange a hearing of the matter.

67(1.2) Dans les dix jours de la réception de la demande présentée en vertu du paragraphe (1) ou (1.1), le Directeur :

(a) dépose auprès de la Commission copie de l’ordonnance et de la plainte, le cas échéant;

(b) transmet le dépôt à la Commission, le cas échéant;

(c) demande à la Commission de tenir une audience sur l’affaire.
67(2) The Director shall forward to the Board any requests to refer a matter to it, and the Board may hear any matter so referred to it, notwithstanding that a time period set out in subsection (1) or (1.1) was not complied with.

67(2.1) If a person makes a request to refer a matter to the Board after the time limit set out in subsection (1) or (1.1), the person shall provide reasons for the delay on the prescribed form, and the Director shall forward the form to the Board.

67(2.2) The Board shall examine any reasons forwarded under subsection (2.1) before determining whether to hold a hearing on the matter that has been referred to it.

67(3) Where a matter is referred to the Board, any order of the Director with respect thereto, unless otherwise directed by the Board, is stayed pending the disposition of the matter by the Board.

1984, c.42, s.36; 1994, c.52, s.1; 2013, c.13, s.9

67.1(1) A person requesting a referral to the Board with respect to an order made under paragraph 65(1)(c) shall provide a deposit at the time of making the request, in an amount equal to the amount payable by the person under the order, up to a maximum of $2,000.

67.1(2) Before the Board hears the matter, a person who has provided a deposit may acknowledge being indebted to an employee in the amount stated in the order and authorize the Board to apply the deposit to the amount owing to the employee to whom the person is indebted, and if there remains a surplus of funds after the deposit is applied, the Board shall apply the surplus to the amount of administrative penalty owing to the Minister of Finance stated in the order, if applicable.

67.1(3) An acknowledgement and authorization referred to in subsection (2) shall be made in a form provided by the Director.

67.1(4) If after hearing and considering the matter the Board finds that a person who has provided a deposit is indebted to an employee for unpaid wages, pay or other payments, the Board shall apply the deposit to the amount owing to the employee, and if funds remain after the deposit is applied to that amount, the Board shall apply the remaining funds to the amount of administrative penalty owing to the Minister of Finance stated in the order, if applicable.

67.1(4) Si, après avoir entendu et examiné l’affaire, elle constate que la personne qui a versé le dépôt a une dette de salaire, de rémunération ou d’autres paiements envers le salarié, la Commission affecte d’abord le dépôt au montant qui est dû au salarié, puis, le cas échéant, elle affecte en priorité le reliquat au montant de l’amende administrative qui est dû au ministre des Finances et, enfin,
penalty owing to the Minister of Finance, if applicable, and after this the Board shall return any surplus funds to the person who has provided the deposit.

67.1(5) If after hearing and considering the matter the Board finds that a person who has provided a deposit is not indebted to an employee for unpaid wages, pay or other payments, the Board shall return the deposited funds to the person.

67.1(6) A deposit under subsection (1) is payable to the Board and shall be held by the Board until disposed of by the Board under subsection (2), (4) or (5).

67.1(7) A deposit applied to the amount owing under an order discharges the person who has provided the deposit only to the extent of the amount applied.

2013, c.13, s.10

68(1) Subject to subsection 67(2.2) and section 67.1, if a matter is referred to the Board under section 8 or 44.031 or subsection 67(1) or (1.1), the Board shall hear the matter as soon as it can conveniently be arranged.

68(2) The Board shall set a date for a hearing, which, unless the parties consent to a later date, shall be not later than twenty days after the matter was referred to the Board, and shall serve notice of the hearing on the parties at least ten days before the date set.

68(3) The notice of hearing shall contain

(a) a statement of the time and place of the hearing;

(b) a reference to the provision of this Act under which the hearing is being held;

(c) a statement as to where and how further information on the proceedings may be obtained;

(d) a concise statement of the issue; and

(e) a statement that, if a party who has been duly notified does not attend at the hearing, the Board may proceed in his absence and he is not entitled to notice of any further proceedings.

67.1(5) Si, après avoir entendu et examiné l’affaire, elle constate que la personne qui a versé le dépôt n’a pas de dette de salaire, de rémunération ou d’autres paiements envers le salarié, la Commission remet le dépôt à cette personne.

67.1(6) Le dépôt affecté au montant dû en vertu d’une ordonnance ne libère la personne qui a versé le dépôt qu’à l’égard du montant affecté.

2013, ch. 13, art. 10

68(1) Sous réserve du paragraphe 67(2.2) et de l’article 67.1, lorsqu’une affaire lui est déférée en vertu de l’article 8 ou 44.031 ou du paragraphe 67(1) ou (1.1), la Commission l’instruit dès que les dispositions à cet effet peuvent être prises.

68(2) La Commission fixe la date de l’audition qui, sauf du consentement des parties, doit avoir lieu dans les vingt jours qui suivent le renvoi et leur en donne signification au moins dix jours avant la date fixée.

68(3) L’avis d’audition doit

a) indiquer la date, l’heure et le lieu où elle aura lieu;

b) mentionner la disposition de la présente loi en vertu de laquelle l’audition se tient;

c) indiquer le lieu où s’adresser et la marche à suivre pour obtenir des renseignements complémentaires sur la procédure;

d) contenir un bref exposé du litige, et

e) préciser que la Commission peut procéder par défaut en cas d’absence à l’audition d’une partie régulièrement avisée et qu’il n’y aura pas lieu de l’informer de la suite des procédures.
68(4) If a person who has been notified of a hearing does not attend, the Board may proceed in his absence and he is not entitled to notice of any further proceedings.
1984, c.42, s.37; 1994, c.52, s.1; 2011, c.48, s.2; 2013, c.13, s.11

69(1) The Director shall be a party to any matter referred to the Board and is responsible to present a case in support of any decision or order he has made.

69(2) In any matter referred to the Board under section 8 or 44.031 or under subsection 67(1), the complainant, the person against whom the order is made or an allegation in a complaint is made, the Director and any other person who, in the opinion of the Board, is interested in or affected by the proceedings has the right to be heard.

69(3) Where a group of persons having the same or substantially the same interest has a complaint pursuant to this Act, one complaint may be made in a representative capacity.
1984, c.42, s.38; 1994, c.52, s.1; 2011, c.48, s.3

70 All hearings of the Board are open to the public except where the Board finds that intimate financial, personal or other matters may be disclosed at the hearing of a nature that, having regard to the circumstances, the desirability of avoiding their disclosure in the interests of any person affected, or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public in which case the Board may hold the hearing concerning the matters in camera.
1994, c.52, s.1

71(1) Before proceeding to deal with any matter referred to the Board at the request of an employer, the Board may require the employer to furnish to the Board security in the form of a bond with one or more sureties acceptable to the Board in such amount and subject to such conditions as may be prescribed by regulation.

71(2) Where an employer has furnished a bond under subsection (1), and the Board, after completion of its consideration of and the investigation into the complaint of the employee, finds that the employer is indebted to the employee for unpaid pay it may, on ten days' notice to the employer and the sureties and in the event the debt...
is not paid, realize upon the bond and apply the proceeds thereof towards the payment of the debt.

71(3) Where, under subsection (2), the Board has realized upon the bond and applied the proceeds thereof towards the payment of unpaid pay, it shall in writing, as soon as is reasonably possible, notify the employer to that effect and where after the application of the proceeds there remains a surplus of funds, the surplus shall be turned over by the Board to the sureties.

1994, c.52, s.1

72(1) Where a complaint is received by the Director and the Director has knowledge or has reason to believe that a person is or is about to become indebted to the employer for any sum of money or that a person is about to pay to the employer a sum of money, the Director may, notwithstanding that he has not determined whether or not the employer is indebted to the employee for unpaid pay as alleged, serve an attaching order on that person in a form prescribed by regulation requiring him to pay to the Board part or all of the sum of money owing, likely to be owed or about to be paid by him to the employer.

72(2) For the purpose of this section, money on deposit in a general banking account or in a credit union account in the name of an employer is money for which the holder of the account is indebted to the employer.

72(3) Serving the attaching order referred to in subsection (1) binds the debt in the hands of the person upon whom it is served and has priority over any other attaching order subsequently served.

72(4) A person to whom an attaching order of the Director under subsection (1) is directed shall upon service of the order forthwith comply with the order.

72(5) Immediately upon receipt of any money in accordance with this section, the Board shall in writing notify the employer concerned and issue a receipt thereof to the person from whom the money was received; and the receipt of the Board is a good and sufficient discharge of the liability of the person to whom the order was directed to the employer to the extent of the amount shown on the receipt.

72(6) Any money received by the Board under this section shall be held by the Board in trust for the employee concerned and where

72 du cautionnement et affecter les sommes en provenant au paiement de la créance.

71(3) Lorsque la Commission a réalisé le cautionnement et affecté les sommes qui en proviennent au paiement de la créance de salaire en vertu du paragraphe (2), elle doit, aussitôt qu’il est raisonnablement possible, en donner notification écrite à l’employeur et remettre tout excédent éventuel aux cautions.

1994, ch. 52, art. 1

72(1) Saisi d’une plainte, le Directeur peut, s’il sait ou a des raisons de croire qu’une personne doit ou est sur le point de devoir ou de payer une somme d’argent à l’employeur, même avant d’avoir statué sur la réalité de la créance de rémunération, signifier à cette personne, au moyen de la formule prescrite par règlement, une ordonnance de saisie-arrêt lui enjoignant de verser à la Commission la totalité ou une fraction de la somme qu’elle doit ou est sur le point de devoir ou de payer à l’employeur.

72(2) Pour l’application du présent article, les sommes déposées à un compte ouvert dans une institution bancaire ou une caisse populaire au nom d’un employeur constituent une dette de l’institution ou de la caisse envers l’employeur.

72(3) La signification de l’ordonnance de saisie-arrêt visée au paragraphe (1) lie la dette entre les mains de la personne ayant reçu la signification et prime toute autre ordonnance de saisie-arrêt qui lui serait ultérieurement signifiée.

72(4) Le destinataire de l’ordonnance de saisie-arrêt que le Directeur a signifiée en vertu du paragraphe (1) doit s’y conformer sans délai.

72(5) Dès réception des sommes en vertu du présent article, la Commission en donne notification écrite à l’employeur intéressé et délivre à la personne qui lui a remis l’argent un reçu qui la libère valablement envers l’employeur jusqu’à concurrence du montant qui y est indiqué.

72(6) La Commission conserve les sommes qu’elle a reçues en vertu du présent article en fiducie pour l’employeur intéressé et elle doit,
(a) the Director finds that the employer is indebted to the employee for unpaid pay and the period for appeal to the Board has expired; or

(b) the Board has determined that the employer is indebted to the employee for unpaid pay;

the Board shall pay over the amount of unpaid pay as determined by it and if, after making such payment, there remains a surplus the surplus shall be paid to the employer.

72(7) An attaching order referred to in subsection (1) ceases to be valid after the expiration of the prescribed period unless, before the expiration of that period, the Director causes a renewal of the attaching order in the prescribed form to be served on the person on whom the original attaching order was served.

1984, c.42, s.39; 1994, c.52, s.1; 2003, c.4, s.11

73(1) Where a matter has been referred to the Board under section 8 or under subsection 67(1), the Board may, after hearing and considering the matter, issue an order

(a) affirming the decision or order of the Director;

(b) vacating the decision or order of the Director and substituting the decision or order that, in its opinion, the Director should have made; or

(c) remitting the matter to the Director for further investigation, with such directions as the Board considers appropriate;

and in every case the Board shall in writing so advise all parties to the proceeding of its disposition and the reasons therefor.

73(2) With respect to any matter heard by the Board the record of the Board shall comprise

(a) the notice of hearing;

(b) the complaint;

(c) any ruling or orders made in the course of the proceeding by the Board;
(d) any written submissions received by the Board;  
(e) the evidence recorded; and  
(f) the decision and reasons therefor.

1986, c.32, s.9; 1994, c.52, s.1

74(1) Where there is an order of the Director or the Board in effect for the payment of money in respect of pay, compensation or any benefit, the Director or the Board, as the case may be, may issue a certificate in a form prescribed by regulation stating the amount owing under the order from time to time, and such certificate may be filed in The Court of Queen’s Bench of New Brunswick and enforced as if it were a judgment of The Court of Queen’s Bench of New Brunswick in that amount.

74(2) Where a certificate of the Director or the Board has been filed in accordance with subsection (1), any person other than the person against whom it is made may challenge the certificate in interpleader proceedings or on application to set aside any execution thereunder as provided for by the rules of The Court of Queen’s Bench of New Brunswick and The Court of Appeal of New Brunswick, but the certificate of the Director or the Board is, in the absence of evidence to the contrary, proof that the amount of money ordered to be paid was due and owing when the certificate was made.

74(3) For purposes of subsection (1) and (2) the Chairperson of the Board may issue a certificate on behalf of the Board.

74(4) The responsibility for filing and enforcing a certificate issued under subsection (1) shall be upon the Director, but nothing herein shall be construed to limit the right of any interested person to file and enforce it.

1984, c.42, s.40; 1994, c.52, s.1

75(1) Notwithstanding section 74, where an order of the Director has not been complied with the Director or any other interested person may apply to the Board for a summons requiring a person named therein to appear before the Board to show cause why the order has not been complied with and why a further order should not be made.

75(2) Where
(a) an application has been made under subsection (1); or

(b) an order of the Board has not been complied with;

the Board may issue a summons requiring a person named therein to appear before the Board to show cause why the order has not been complied with and why a further order should not be made.

75(3) Where the Board determines that a person has, without reasonable cause, failed or refused to comply with an order of the Director or the Board it may, by a further order,

(a) require that person to pay to a named person an amount to compensate him for loss suffered because of the failure or refusal to comply with the previous order;

(b) stipulate that the continuing failure or refusal of that person without reasonable cause to comply with the previous order will result in a penalty of a stated amount for each day the failure or refusal continues, not to exceed one thousand dollars for each such day, to be imposed by an order issued after a further show cause hearing; and

(c) where the person is a corporation, stipulate that the continuing failure or refusal of the corporation to comply with the order without reasonable cause will result in a further order imposing personal liability on each director and officer of the corporation to a penalty not exceeding that established in paragraph (b) and to be determined after a show cause hearing, unless at such hearing the officer or director establishes that he has exercised reasonable diligence to see that the order was complied with by the corporation.

75(4) Any summons issued under this part by the Board may be served outside New Brunswick, and a failure to appear by any person summoned shall not affect the authority of the Board to act.

1984, c.42, s.41; 1994, c.52, s.1
76(1) Notwithstanding the responsibility placed upon the Director by this Part to refer matters to the Board for disposition, any interested person may, if the Director fails or refuses to act in compliance with this Part, request in any form that the Board consider any matter that the Director might have referred to the Board.

76(2) Nothing in this Act shall be construed to abridge or interfere with the right of any person to seek a judicial remedy in lieu of a remedy provided under this Act.

1994, c.52, s.1

77 Repealed: 2012, c.13, s.3
1984, c.42, s.42; 1988, c.59, s.21; 1994, c.52, s.1; 2012, c.13, s.3

OFFENCES

78(1) Any person who, without reasonable cause, fails or refuses to comply with an order of the Board commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category F offence.

78(2) As well as imposing a fine the court may stipulate that an additional amount be paid into court for the purpose of satisfying in whole or in part an amount payable by the convicted person under the order in respect of which the violation occurred, and the court shall, in such case, upon receipt of the amount, pay the amount to the person named in the order.

78(3) Except with respect to a payment made under subsection (2), a conviction for an offence under subsection (1) does not relieve the convicted person of the obligation to comply with the order of the Board or to pay any amount established by the Board by way of debt, compensation or penalty under any provision of this Act.

78(4) No prosecution for an offence under subsection (1) shall be instituted without the consent in writing of the Minister.

78(5) A writing by the Minister indicating that he has consented to the prosecution of the person named therein for an offence under this Act alleged to have been committed, or, in the case of a continuing offence, alleged to have commenced on a date therein set out, is a sufficient consent for the purposes of this section to the prosecution of the person for an offence under this section committed or commencing on that date.

INFRACTIONS

78(1) Commet une infraction punissable en vertu de la Partie II de la Loi sur la procédure aux infractions provinciales à titre d’infraction de la classe F, la personne qui fait défaut ou refuse, sans motif raisonnable, de se conformer à une ordonnance de la Commission.

78(2) Outre l’amende, la cour saisie peut également prescrire le dépôt au greffe d’une somme dans le but de régler intégralement ou partiellement celle qui a été mise à la charge de la personne déclarée coupable en vertu de l’ordonnance faisant l’objet de la violation et elle verse la somme déposée à la personne désignée dans l’ordonnance.

78(3) Sauf en cas de dépôt effectué en vertu du paragraphe (2), une déclaration de culpabilité à la suite d’une infraction prévue au paragraphe (1) ne libère pas la personne condamnée de l’obligation de se conformer à l’ordonnance de la Commission ou de payer toute somme qu’elle fixe à titre de dette, d’indemnité ou de pénalité en vertu d’une disposition de la présente loi.

78(4) Aucune poursuite ne peut être intentée à raison d’une infraction au paragraphe (1) sans le consentement écrit du Ministre.

78(5) Tout écrit émanant du Ministre et constatant son consentement à la poursuite d’une personne qui y est désignée à raison d’une infraction à la présente loi qui lui est reprochée ou, dans le cas d’une infraction qui se continue, qui aurait commencé à la date y indiquée, vaut, au regard du présent article, consentement suffisant à la poursuite de cette personne à raison de cette infraction.
78(6) Where an offence under subsection (1) continues for more than one day,

(a) the minimum fine that may be imposed is the minimum fine set by the Provincial Offences Procedure Act multiplied by the number of days during which the offence continues, and

(b) the maximum fine that may be imposed is the maximum fine set by the Provincial Offences Procedure Act multiplied by the number of days during which the offence continues.

1984, c.42, s.43; 1990, c.61, s.43; 1994, c.52, s.1

79 Any employer who, without reasonable cause, fails or refuses to comply with section 32 commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category E offence.

1990, c.61, s.43

80 Any person who, without reasonable cause,

(a) fails or refuses to permit an Employment Standards Officer to enter any premises he is authorized to enter under section 58;

(b) fails or refuses to provide, for any purpose set out in section 58, any material or information required by that section to be provided;

(c) fails or refuses to provide information requested under subsection 60(3); or

(d) interferes with or obstructs in any way an Employment Standards Officer in the performance of his duties under this Act;

commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category E offence.

1990, c.61, s.43

81 Any person who violates or fails to comply with subsection 60(1) commits an offence punishable under

Employment Standards Act

Chap. E-7.2

77
Any person who

(a) willfully makes or causes to be made false or misleading entries in any records that he is required to keep by this Act or by the regulations; or

(b) willfully supplies or causes to be supplied false or misleading information to the Director, the Board or an Employment Standards Officer;

commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category F offence.

Where an employer is prosecuted under this Act the act or omission of any employee shall be deemed to be the act or omission of the employer unless the employer establishes that the act or omission occurred despite the fact the employer, and each employee exercising supervisory responsibilities on behalf of the employer, took all reasonable care to avoid it.

Where an offence under this Act is committed by a corporation each officer and director of the corporation commits the offence unless he can establish that the offence was committed without his knowledge or consent, was not acquiesced in by him, and that the offence occurred despite the exercise of reasonable diligence by him in the performance of his responsibilities to the corporation.

The Lieutenant-Governor in Council may make regulations concerning any matter for the effectual working of this Act and, without limiting the generality of the foregoing, may by regulation

(a) prohibit the employment of persons under a specified age in any specified occupation or class of work;

The Lieutenant-Gouverneur en conseil peut établir des règlements en vue de faciliter la mise en application de la présente loi et il peut notamment, par règlement,

(a) interdire l’emploi de personnes n’ayant pas un âge donné dans une profession ou catégorie particulière de travaux;
(b) exempt any employer or class of employers from any notice requirements of this Act;

(c) establish the amounts, terms and conditions of any bond which may be required to be provided under this Act;

(c.1) prescribing provisions of this Act or the regulations for which a notice of non-compliance may be issued in respect of a contravention;

(c.2) respecting the establishment of administrative penalties;

(c.3) prescribing the amount payable for an administrative penalty in respect of a contravention, which may vary according to whether it is a first, second, third, fourth, fifth or sixth contravention;

(c.4) prescribing the period of time without a contravention of the same provision of this Act or the regulations after which a subsequent contravention is deemed to be a first contravention;

(c.5) prescribing the information to be contained in a notice of non-compliance;

(c.6) respecting the payment of an administrative penalty;

(d) require the use by employers in industrial undertakings of mechanical or other devices for ascertaining or assisting in ascertaining or for recording the time worked by employees and other information required for the administration of this Act;

(e) prescribe additional notice requirements for minimum wage regulations;

(e.1) prescribe the period after which an attaching order ceases to be valid;

(f) prescribe the procedure to be followed and the forms to be used in any proceeding under this Act;

(g) prescribe the form and manner in which any notice shall be given; and
(h) provide generally for the better administration of this Act.

2003, c.4, s.12; 2013, c.13, s.12; 2014, c.2, s.2

86(1) A document, notice or other communication required to be served under this Act is sufficiently given or served if served personally on a person or on an adult residing at the residence of the person who is at that residence at the time of service, or if delivered by mail to such residence or by any other means prescribed by regulation.

86(2) For the purposes of this Act and any proceedings thereunder, any document, notice or communication sent by mail shall be presumed, unless the contrary is proven, to have been delivered to the residence to which it was addressed on the fourth day after the day of mailing.

1984, c.42, s.46

87 A certificate purporting to be signed by seal, stamp or in any other way by the Minister or the Deputy Minister or other official of the Department of Post-Secondary Education, Training and Labour stating that a report, request or notice was or was not received, served or given by the Minister, Deputy Minister or by an official of the Department pursuant to this Act, and if so received, served or given, the date upon which it was received, served or given, is, in the absence of evidence to the contrary, proof of the facts stated therein without proof of the signature or office of the person purporting to have signed the certificate.

1983, c.30, s.8; 1984, c.42, s.47; 1986, c.8, s.37; 1992, c.2, s.19; 1998, c.41, s.50; 2000, c.26, s.106; 2006, c.16, s.60; 2007, c.10, s.30

88 No proceedings under this Act are invalid by reason of any defect in form or technical irregularity.

89 Where an activity, business, trade or undertaking is disposed of, transferred or sold in any manner or amalgamated, whether by agreement, will, instrument, transfer, including transfer of shares, or by operation of law, the period of employment of an employee of the activity, business, trade or undertaking at the time of such disposition, transfer, sale or amalgamation, shall be deemed to

h) généralement, prendre toutes dispositions visant à une meilleure application de la présente loi.

2003, ch. 4, art. 12; 2013, ch. 13, art. 12; 2014, ch. 2, art. 2

86(1) La signification des documents, avis ou autres communications qui doivent être signifiés en vertu de la présente loi est réputée valablement faite si ceux-ci sont signifiés personnellement à une personne ou à un adulte demeurant à la résidence de la personne et s’y trouvant au moment de la signification ou s’ils sont livrés à cette résidence par la poste ou par tout autre moyen prévu par règlement.

86(2) Pour l’application de la présente loi et aux fins des procédures auxquelles elle donne lieu, tout document, avis ou communication envoyé par la poste est présumé, sauf preuve du contraire, avoir été livré à la résidence de son destinataire le quatrième jour qui suit sa date de mise à la poste.

1984, ch. 42, art. 46

87 Un certificat censé avoir été scellé, cacheté ou signé de toute autre façon par le Ministre, le sous-ministre ou tout autre fonctionnaire du ministère de l’Éducation postsecondaire, de la Formation et du Travail et constatant la réception, signification ou communication ou le défaut de réception, de signification ou de communication par leurs soins, d’un rapport, d’une demande ou d’un avis conformément à la présente loi et, s’ils ont été reçus, signifiés ou communiqués, la date de leur réception, signification ou communication, fait foi, jusqu’à preuve du contraire, des énonciations qui figurent dans le certificat sans qu’il soit nécessaire de prouver l’authenticité de la signature ni la qualité officielle de la personne censée l’avoir signé.

1983, ch. 30, art. 8; 1984, ch. 42, art. 47; 1986, ch. 8, art. 37; 1992, ch. 2, art. 19; 1998, ch. 41, art. 50; 2000, ch. 26, art. 106; 2006, ch. 16, art. 60; 2007, ch. 10, art. 30

88 Aucune procédure intentée en vertu de la présente loi n’est frappée de nullité pour vice de forme ou irrégularité de procédure.

89 Lorsqu’une activité, un commerce ou une entreprise est cédé ou vendu ou est l’objet d’une disposition ou encore d’une fusion soit par la voie d’une entente, d’un testament, d’un instrument, d’un transfert, y compris le transfert d’actions, soit par l’effet de la loi, la période d’emploi d’un salarié employé dans l’activité, le commerce ou l’entreprise au moment de la disposition,
have been a period of employment with the disposee, transferee, purchaser or amalgamation and the continuity of employment shall be deemed to be unbroken.

90 A document purporting to contain or to be a copy of any ruling, decision or order of the Director and purporting to be signed by the Director shall be accepted by any court as evidence of the ruling, decision, or order.

1984, c.42, s.48; 1994, c.52, s.1

90.1(1) If the Lieutenant-Governor in Council is satisfied that reciprocal provision has been or will be made by any other province or territory of Canada for the enforcement of orders, certificates or judgments under this Act for the payment of wages, public holiday pay or pay in lieu of public holidays, vacation pay or pay in lieu of vacation, pay in lieu of notice of termination or any other benefit owing to an employee, the Lieutenant-Governor in Council may, by Order in Council,

(a) declare that province or territory to be a reciprocating province or territory for the purpose of enforcing orders, certificates or judgments for the payment of wages, public holiday pay or pay in lieu of public holidays, vacation pay or pay in lieu of vacation, pay in lieu of notice of termination or any other benefit owing to an employee under an enactment of that province or territory, and

(b) designate an authority of that province or territory for the purpose of this section.

90.1(2) If an order, certificate or judgment for the payment of wages, public holiday pay or pay in lieu of public holidays, vacation pay or pay in lieu of vacation, pay in lieu of notice of termination or any other benefit owing to an employee has been made, issued or obtained under an enactment of a reciprocating province or territory, the authority of that province or territory designated under paragraph (1)(b) may apply to the Director to enforce the order, certificate or judgment.

90.1(3) An application under subsection (2) shall be accompanied by a copy of the order, certificate or judgment made, issued or obtained under an enactment of the reciprocating province or territory.
(a) certified to be a true copy by the court in which the order, certificate or judgment is registered, or

(b) if there is no provision in the reciprocating province or territory for registration of the order, certificate or judgment in a court, certified to be a true copy by the authority of the reciprocating province or territory designated under paragraph (1)(b).

90.1(4) If, on receipt of an application under subsection (2), the Director is satisfied that wages, public holiday pay or pay in lieu of public holidays, vacation pay or pay in lieu of vacation, pay in lieu of notice of termination or any other benefit owing to an employee is still owing, the Director shall file the copy of the order, certificate or judgment in The Court of Queen’s Bench of New Brunswick and the order, certificate or judgment is then enforceable in favour of the Director or the authority of the reciprocating province or territory designated under paragraph (1)(b) as if the order, certificate or judgment were a judgment of The Court of Queen’s Bench of New Brunswick.

90.1(5) The Regulations Act does not apply to an Order in Council made under subsection (1).

1996, c.86, s.2

90.2 If subsection 58(2), (3) or 61(2) is inconsistent with or in conflict with a provision of the Right to Information and Protection of Privacy Act, subsection 58(2), (3) or 61(2) prevails.

2013, c.34, s.12

PART VII
REPEALS AND TRANSITIONAL PROVISIONS

91 The Lieutenant-Governor in Council may by regulation exempt in whole or in part from a regulation made under this Act the parties to, and persons covered by, a collective agreement existing at the time the regulation is made but such exemption shall apply only until the expiration or termination of the collective agreement.

PARTIE VII
ABROGATIONS ET DISPOSITIONS TRANSITOIRES

91 Le lieutenant-gouverneur en conseil peut par règlement accorder une exemption totale ou partielle de l’application de tout règlement établi en vertu de la présente loi aux parties à une convention collective en vigueur à la date d’établissement du règlement ou aux personnes qui en relèvent; toutefois, cette exemption ne vaut que jusqu’à l’expiration ou la fin de la convention collective.

92(1) The Acts set out in Schedule A are repealed.

92(1) Sont abrogées les lois énumérées à l’Annexe A.
92(2) Notwithstanding subsection (1), any order or schedule made under any Act named in Schedule A and in force immediately prior to the coming into force of this section remains in effect until the sooner of

(a) one year after the coming into force of this section; or

(b) the taking effect of a regulation made under this Act repealing the order or schedule made under an Act named in Schedule A, and for this purpose the Lieutenant-Governor in Council may in any regulation made under this Act repeal any order or schedule made under any Act named in Schedule A that remains in effect pursuant to this subsection.

1984, c.42, s.49

93 Repealed: 1984, c.42, s.50
1984, c.42, s.50

94 This Act or any provision thereof comes into force on a day to be fixed by proclamation.

1984, c.42, s.49

92(2) Nonobstant le paragraphe (1), les arrêtés ou barèmes établis en vertu d’une des lois énumérées à l’Annexe A et en vigueur immédiatement avant la date d’entrée en vigueur du présent article continuent à produire leurs effets

(a) jusqu’à l’expiration d’un délai d’un an après l’entrée en vigueur du présent article; ou,

(b) si cette éventualité se réalise la première, jusqu’à la prise d’effet d’un règlement en vertu de la présente loi abrogeant l’arrêté ou le barème établi en vertu d’une des lois énumérées à l’Annexe A, le lieutenant-gouverneur en conseil ayant la faculté d’abroger dans tout règlement qu’il prend en vertu de la présente loi tout arrêté ou barème établi en vertu d’une des lois énumérées à l’Annexe A et maintenu en vigueur conformément au présent paragraphe.

1984, ch. 42, art. 49

93 Abrogé : 1984, ch. 42, art. 50
1984, ch. 42, art. 50

94 La présente loi ou l’une quelconque de ses dispositions entrera en vigueur à la date qui sera fixée par proclamation.
SCHEDULE A

Employment Standards Advisory Board Act
Fair Wages and Hours of Labour Act
Industrial Standards Act
Minimum Employment Standards Act
Minimum Wage Act
Vacation Pay Act

N.B. Sections 45-60 and 85 of this Act were proclaimed and came into force May 16, 1985.

N.B. Sections 1-24, 25(1), 26-44.1, 61-76, 78-84, 86-94 of this Act were proclaimed and came into force December 1, 1985.

N.B. Section 77 of this Act was repealed by the Statute Repeal Act, 2012, c.13, in force December 31, 2015.

N.B. This Act is consolidated to January 1, 2017.

ANNEXE A

Loi sur le Comité consultatif des normes d’emploi
Loi sur les justes salaires et les heures de travail
Loi sur les normes industrielles
Loi sur les normes minimales d’emploi
Loi sur le salaire minimum
Loi sur les congés payés

N.B. Les articles 45-60 et 85 de la présente loi ont été proclamés et sont entrés en vigueur le 16 mai 1985.


N.B. La présente loi est refondue au 1er janvier 2017.