

# CONSOLIDATION OF LABOUR STANDARDS ACT

R.S.N.W.T. 1988,c.L-1

(Current to: October 23, 2006)

## AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

R.S.N.W.T. 1988,c.20(Supp.)

R.S.N.W.T. 1988,c.88(Supp.)

In force April 1, 1991

R.S.N.W.T. 1988,c.119(Supp.)

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**Note: See s.6 and s.7 of R.S.N.W.T. 1988,c.119(Supp.) for transitional provisions.**

S.N.W.T. 1997,c.8

S.N.W.T. 1998,c.17

S.N.W.T. 1998,c.24

S.N.W.T. 1998,c.32

In force March 31, 1999

## AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:

S.N.W.T. 1998,c.38

In force April 1, 1999

## AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2001,c.9

In force June 3, 2001

S.Nu. 2002,c.22

In force March 3, 2003

S.Nu. 2003,c.17,s.21

s.21 in force January 1, 2004

S.Nu. 2003,c.18

In force January 4, 2004; see SI/2003-185 (Canada)

S.Nu. 2005,c.3,s.7

s.7 in force March 22, 2005

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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## LABOUR STANDARDS ACT

### INTERPRETATION

#### Definitions

**1.** In this Act,

"Board" means the Labour Standards Board established by subsection 44(1);  
(*Commission*)

"collective agreement" means an agreement in writing between an employer or an employer's organization acting on behalf of an employer, on the one hand, and a trade union acting on behalf of the employees in collective bargaining or as a party to an agreement with the employer or employer's organization, on the other hand, containing terms or conditions of employment of employees including provisions with reference to rates of pay and hours of work; (*convention collective*)

"day" means any period of 24 consecutive hours; (*jour*)

"employee" means a person employed to do skilled or unskilled manual, clerical, technical, operational or administrative work; (*employé*)

"employer" means a person who employs one or more employees; (*employeur*)

"general holiday" means New Year's Day, Good Friday, Canada Day, the first Monday in August, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, and the day fixed by the Governor General for observance of the birthday of the reigning sovereign, and includes any day substituted for any such holiday pursuant to section 23 or 25; (*jours fériés*)

"industrial establishment" means any work, undertaking or business of a local or private nature in Nunavut and includes a branch, section or other division of such work, undertaking or business; (*établissement*)

"inspector" means an inspector appointed under subsection 41(1); (*inspecteur*)

"Labour Standards Officer" means the Labour Standards Officer appointed under subsection 40(1); (*agent des normes du travail*)

"overtime" means hours of work in excess of standard hours of work; (*heures supplémentaires*)

"standard hours of work" means the hours of work described in section 4; (*durée normale du travail*)

"trade union" means any organization of employees formed for purposes that include the regulation of relations between employers and employees; (*syndicat*)

"wages" includes every form of remuneration for work performed but does not include tips and other gratuities; (*salaire*)

"week" means a period of seven consecutive days. (*semaine*)  
S.Nu. 2005,c.3,s.7(2).

## APPLICATION

### Application of Act

- 2.** (1) Subject to this section, this Act applies
- (a) to employment upon or in connection with the operation of an industrial establishment;
  - (b) to and in respect of employees who are employed upon or in connection with the operation of an industrial establishment;
  - (c) to and in respect of the employers of employees referred to in paragraph (b); and
  - (d) to the extent specified by regulation, to and in respect of those domestic workers defined by regulation.

### Managers

(2) Part I does not apply to or in respect of employees who are employed primarily in a managerial capacity.

### Certain employees

- (3) This Act does not apply to employees who are
- (a) trappers and persons engaged in commercial fisheries; or
  - (b) members or students of such professions as may be designated by regulation as professions to which this Act does not apply.

### Disputes respecting application of Act

(4) Where there is a dispute as to whether this Act applies in relation to any person or class of persons, the matter shall be determined by the Labour Standards Officer.

### Saving more favourable benefits

**3.** (1) This Act applies notwithstanding any other law or any custom, contract or arrangement, whether made before, on or after July 1, 1968, but nothing in this Act shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to the employee than his or her rights or benefits under this Act.

### Work on Sunday

(2) Nothing in this Act authorizes the doing of any work on Sunday that is prohibited by law.

## PART I

### HOURS OF WORK

#### Standard hours of work

**4.** Subject to this Part, the standard hours of work for an employee are eight hours in a day and 40 hours in a week.

#### Maximum hours of work

**5.** An employer may require or permit an employee to work more than the standard hours of work provided that the total hours of work for an employee do not exceed 10 hours in a day and 60 hours in a week.

#### Increasing maximum hours

- 6.** (1) Where
- (a) the nature of the work in an industrial establishment is seasonal or intermittent in nature, or
  - (b) there are exceptional circumstances to justify the working of additional hours,

the Labour Standards Officer may, by permit in writing, authorize hours to be worked by any class of employees in that industrial establishment in excess of the maximum hours of work set out in section 5.

#### Content of permit

- (2) A permit issued under subsection (1) may
- (a) specify the total number of additional hours in excess of the maximum hours set out in section 5; or
  - (b) specify the additional hours that may be worked in any day and in any week during the period of the permit.

#### Averaging hours of work

**7.** (1) Where the nature of the work in an industrial establishment necessitates irregular distribution of an employee's hours of work, the Labour Standards Officer may, by permit in writing, authorize the standard and maximum hours of work in a day and in a week to be calculated as an average for a period of one or more weeks.

Permit to exceed maximum hours per day

- (2) The Labour Standards Officer may, by permit in writing, on application by an employer and his or her employees,
- (a) reduce the days of work in a week by permitting hours of work in a day in excess of the standard hours of work, in respect of those employees; and
  - (b) specify the conditions under which the permit applies.

Content of permit

(3) Every permit granted under this section must specify the hours of work that are overtime.

Duty of Labour Standards Officer in issuing permit

- 8.** The Labour Standards Officer shall, before issuing a permit under section 7, consider
- (a) the nature of the industrial establishment;
  - (b) the conditions of employment in the industrial establishment; and
  - (c) the welfare of the employees in the industrial establishment.

Emergency work

- 9.** The maximum hours of work set out in section 5 may be exceeded in the case of
- (a) an accident to machinery, equipment, plant or persons,
  - (b) urgent and essential work to be done to machinery, equipment or plant, or
  - (c) other unforeseen or unpreventable circumstances,
- but only to the extent necessary to prevent serious interference with the ordinary working of the industrial establishment.

Day of rest

**10.** Except as may be otherwise prescribed, hours of work in a week shall be scheduled and actually worked so that each employee has at least one full day of rest in a week and, wherever practicable, Sunday shall be that normal day of rest.

Overtime pay

**11.** (1) When an employee is required or permitted to work in excess of the standard hours of work, the employee shall be paid for the overtime at a rate of wages not less than 1.5 times his or her regular rate.

Condition

(2) Subsections (1) and (3) are subject to the provision for overtime contained in a permit issued under section 7.

#### Exception where general holiday in a week

(3) Where a week contains a general holiday in respect of which an employee is entitled to a holiday with pay under Part IV,

- (a) for the purpose of calculating overtime under subsection (1), the standard hours of work shall be considered to be eight hours in a day and 32 hours in that week; and
- (b) the calculation of overtime under subsection (1) shall not include the hours worked by the employee on the general holiday.

## PART II

### MINIMUM WAGES

#### Minimum rate of wages

**12.** (1) Subject to this Part, an employer shall pay to each employee a wage at a rate not less than the rate set out in subsection (1.1) or not less than the equivalent of that rate for the time worked by the employee.

#### Amount

(1.1) The minimum rate of wages to be paid by an employer in Nunavut is \$8.50 an hour.

#### Minimum on basis other than time

(2) Where the wages of an employee are computed and paid on a basis other than time or on a combined basis of time and some other basis, the Board may, by order,

- (a) fix a standard basis of work to which a minimum wage on a basis other than time may be applied; and
- (b) fix a minimum wage that, in the opinion of the Board, is equivalent to the minimum rate of wages set out in subsection (1.1).

#### Duty of employer

(3) Subject to this Part, an employer shall pay to each employee who is paid on a basis other than time a wage at a rate not less than the minimum rate fixed by order under subsection (2). R.S.N.W.T. 1988,c.88(Supp.),s.2; S.Nu. 2002,c.22,s.2.

#### Review of minimum rate of wages

**12.1.** The Minister shall review the minimum rate of wages annually and shall report the results of the review to the Legislative Assembly. S.Nu. 2002,c.22,s.2.1.

#### Employees under age of 17 years

**13.** An employer may employ a person under the age of 17 years in any occupation except in the occupations and subject to the conditions that may be prescribed.

## Regulations respecting this Part

**14.** On the recommendation of the Minister, the Commissioner may make regulations for carrying out the purposes and provisions of this Part and, without restricting the generality of this power to make regulations, may make regulations

- (a) requiring employers to pay employees who report for work at the call of the employer, wages for the minimum number of hours that may be prescribed whether or not the employee is called on to perform any work after so reporting for work;
- (b) fixing the maximum price to be charged for board, whether full or partial, supplied by or on behalf of an employer to an employee, and the maximum deduction to be made for board from the wages of the employee by the employer;
- (c) fixing the maximum price to be charged for living quarters, either permanent or temporary, supplied by or on behalf of an employer to an employee, whether or not the living quarters are self-contained and whether or not the employer retains general possession and custody of the living quarters, and the maximum deduction to be made for the living quarters from the wages of the employee by the employer;
- (d) governing the charges or deductions for supplying uniforms or other articles of wearing apparel that an employer may require an employee to wear or requiring an employer in any specified circumstances to provide, maintain or launder uniforms or other articles of wearing apparel that the employer requires an employee to wear;
- (e) governing the charges or deductions for supplying any tools or equipment that an employer may require an employee to use and for the maintenance and repair of those tools or that equipment;
- (f) specifying the circumstances and occupations in which persons under the age of 17 years may not be employed in any industrial establishment;
- (f.1) **repealed, S.Nu. 2002,c.22,s.3;**
- (g) exempting, on terms and conditions and for periods that are considered advisable, any employer from the application of section 12 in respect of any class of employees who are being trained on the job, if the training facilities provided and used by the employer are adequate to provide a training program that will increase the skill or proficiency of an employee; and
- (h) prescribing minimum wages for domestic workers or types of domestic workers.

R.S.N.W.T. 1988,c.88(Supp.),s.3; S.Nu. 2002,c.22,s.3.

## PART II.1

## TERMINATION OF EMPLOYMENT

## Definitions

**14.01.** In this Part,

"notice of termination" means a written notice of termination of employment given by an employer to an employee in accordance with subsection 14.03(2); (*préavis de licenciement*)

"temporary layoff" means an interruption of the employment of an employee by an employer for a period

- (a) not exceeding 45 days of layoff in a period of 60 consecutive days, or
- (b) exceeding 45 days of layoff, where the employer recalls the employee to employment within a time fixed by the Labour Standards Officer; (*mise à pied temporaire*)

"termination pay" means a payment made by an employer to an employee in accordance with subsection 14.03(4) or section 14.06. (*indemnité de licenciement*)

R.S.N.W.T. 1988,c.20(Supp.),s.2.

## Separate periods of employment

**14.02.** For the purpose of this Part, where an employee has been employed by the same employer more than once, those periods of employment shall be deemed to be one period of employment if not more than 90 days have elapsed between each period of employment. R.S.N.W.T. 1988,c.20(Supp.),s.2.

## Termination of employment

**14.03.** (1) No employer shall terminate the employment of an employee who has been employed by that employer for a period of 90 days or more, unless the employer

- (a) gives the employee notice of termination; or
- (b) pays the employee termination pay.

## Notice of termination

(2) An employer who wishes to terminate the employment of an employee by notice of termination shall

- (a) give the employee written notice of termination of not less than
  - (i) two weeks, if the employee has been employed by the employer for less than three years, and
  - (ii) an additional week for each additional year of employment, to a maximum of eight weeks; and
- (b) indicate in the notice of termination the date
  - (i) on which the notice is given, and
  - (ii) on which the employment is terminated.

### Annual leave

(3) The period of notice required by subsection (2) shall not coincide with the annual leave of the employee whose employment is being terminated.

### Termination pay

(4) An employer who wishes to terminate the employment of an employee by paying termination pay in place of giving notice of termination shall pay the employee termination pay in an amount equal to the wages and benefits to which the employee would have been entitled if the employee had worked his or her usual hours of work for each week of the period for which notice would otherwise be required by subsection (2). R.S.N.W.T. 1988,c.20(Supp.),s.2.

### Exceptions

**14.04.** Section 14.03 does not apply to an employee

- (a) who is temporarily laid off;
  - (b) who is employed in an activity, business, work, trade, occupation or profession that is exempted by regulation;
  - (c) whose employment is terminated for just cause;
  - (d) whose employment is terminated because the employee has refused an offer by the employer of reasonable alternative work; or
  - (e) on temporary layoff who does not return to work within seven days after being requested to do so in writing by the employer.
- S.N.W.T. 1988,c.20(Supp.),s.2.

### Temporary layoff

**14.05.** (1) Where an employer wishes to temporarily lay off an employee, the employer shall

- (a) give the employee written notice of temporary layoff; and
- (b) indicate in the notice of temporary layoff the expected date on which the employer will request the employee to return to work.

### Deemed termination

(2) Where an employer temporarily lays off an employee without giving the employee notice of temporary layoff in accordance with subsection (1), the employer shall be deemed to have terminated the employment of the employee. R.S.N.W.T. 1988,c.20(Supp.),s.2.

### Permanent layoff

**14.06.** Where an employer temporarily lays off an employee and the layoff exceeds a temporary layoff,

- (a) the employment of the employee shall be deemed to have terminated on the last day of temporary layoff; and
  - (b) the employer shall pay the employee termination pay, calculated in accordance with subsection 14.03(4).
- R.S.N.W.T. 1988,c.20(Supp.),s.2.



## Notice to Labour Standards Officer

**14.07.** (1) Where an employer wishes to terminate the employment of 25 or more employees at one time or within any period not exceeding four weeks, the employer shall, in addition to any notice required by subsection 14.03(2), give the Labour Standards Officer written notice of not less than

- (a) four weeks, where the employment of less than 50 employees is to be terminated;
- (b) eight weeks, where the employment of more than 49 and less than 100 employees is to be terminated;
- (c) 12 weeks where the employment of more than 99 and less than 300 employees is to be terminated; or
- (d) 16 weeks where the employment of 300 or more employees is to be terminated.

## Expiry of notice

(2) Termination for which notice is required under subsection (1) shall not take effect until the required period of notice has expired. R.S.N.W.T. 1988,c.20(Supp.),s.2.

## Alteration of wages

**14.08.** (1) Where notice of termination is given, the employer

- (a) shall not reduce the wages or rate of wages or alter any term or condition of employment of the employee to whom notice is given; and
- (b) shall, between the date that the notice of termination is given and the date of termination of employment, pay wages and benefits to the employee to whom the notice is given in an amount not less than the wages and benefits to which the employee would have been entitled if the employee had worked his or her usual hours of work in that period, whether or not work is required or performed.

## Constructive termination

(2) Where an employer has substantially altered a condition of employment and the Labour Standards Officer is satisfied that the purpose of the alteration is to discourage the employee from continuing in the employment of the employer, the Labour Standards Officer may declare that the employer has terminated the employment of the employee. R.S.N.W.T. 1988,c.20(Supp.),s.2.

## Continuation of employment after termination

**14.09.** Notice of termination is void and of no effect if an employee continues to be employed by his or her employer after the date for termination of employment specified in the notice of termination. R.S.N.W.T. 1988,c.20(Supp.),s.2.

## Deeming provision

**14.10.** Termination pay shall for all purposes be deemed to be wages. R.S.N.W.T. 1988,c.20(Supp.),s.2.

PART III  
ANNUAL VACATIONS

## Definitions

**15.** In this Part,

"vacation pay" means 4% of the wages of an employee during a year of employment in respect of which the employee is entitled to a vacation of two weeks duration, and 6% of the wages of an employee during a year of employment in respect of which the employee is entitled to a vacation of three weeks duration; (*indemnité de congé annuel*)

"year of employment" means continuous employment of an employee by one employer for a period of 12 consecutive months beginning on the date the employment began or any subsequent anniversary date after that. (*année de service*)

## Annual vacation with pay

**16.** (1) Subject to this Part, every employee is entitled, after each year of employment with any one employer,

- (a) for the first five years of employment, to an annual vacation with vacation pay of two weeks; and
- (b) for the years of employment following the first five years of employment, whether or not that period of employment is made up of continuous years of employment or of years of employment accumulated within the past 10 years, to an annual vacation with vacation pay of three weeks.

## Retroactivity

(2) For the purposes of this Part, employment before November 28, 1976, shall be included in computing years of employment.

## Granting vacation with pay

**17.** The employer of an employee who, under this Part, has become entitled to a vacation with vacation pay, shall

- (a) grant to the employee the vacation to which the employee is entitled, which shall begin not later than 10 months immediately following the completion of the year of employment for which the employee became entitled to the vacation; and
- (b) at least one day before the beginning of the vacation or at an earlier prescribed time, pay to the employee the vacation pay to which the employee is entitled in respect of that vacation.

## Vacation pay

**18.** Vacation pay shall for all purposes be deemed to be wages.

### Holiday pay on termination of employment

**19.** Where the employment of an employee ceases for any reason before the completion of the employee's year of employment, the employer shall without delay pay to the employee

- (a) any vacation pay then owing to the employee by the employer in respect of any prior completed years of employment; and
- (b) 4% of the wages of the employee during the completed portion of his or her year of employment where the employee is entitled to two weeks vacation, and 6% of the wages of the employee during the completed portion of his or her year of employment where the employee is entitled to three weeks vacation.

### Transfer of industrial establishment

**20.** Where any industrial establishment in which an employee is employed is, by sale, lease, merger or otherwise, transferred from one employer to another employer, the employment of the employee by the two employers before and after the transfer of the industrial establishment shall, for the purposes of this Part, be deemed to be continuous with one employer, notwithstanding the transfer.

### Regulations respecting annual vacation

**21.** On the recommendation of the Minister, the Commissioner may make regulations for carrying out the purposes and provisions of this Part and, without restricting the generality of this power to make regulations, may make regulations

- (a) defining the circumstances and conditions under which the rights of an employee under this Part may be waived or the enjoyment of those rights postponed;
- (b) prescribing the notices to be given to employees of the times when vacations may be taken;
- (c) prescribing the time when vacation pay shall be paid;
- (d) defining the absences from employment that shall be deemed not to have interrupted continuity of employment;
- (e) for the calculation and determination of vacation and vacation pay in the case of seasonal or temporary employees and in other suitable cases;
- (f) providing for the granting of vacation or payment of vacation pay in the event of temporary cessation of employment; and
- (g) providing for the application of this Part where, owing to illness or other unavoidable absence, an employee has been absent from his or her employment.

## PART IV

## GENERAL HOLIDAYS

## General holiday with pay

**22.** Subject to this Part, every employer shall give to each of his or her employees a holiday with pay in respect of each of the general holidays falling on a day within any period of his or her employment.

## Substituted holidays

**23.** Any other holiday may be substituted for a general holiday in any of the following circumstances:

- (a) where
  - (i) a class of employees of an employer is represented by a trade union, and
  - (ii) the parties to a collective agreement entered into with regard to the terms or conditions of employment of the employees notify the Labour Standards Officer in writing that a specified day has been designated in the collective agreement as a holiday with pay in lieu of a general holiday under this Part,

the designated day shall, for those employees mentioned in the collective agreement, be a general holiday for the purposes of this Act;

- (b) where
  - (i) no employees of an employer are represented by a trade union, or
  - (ii) a class of employees is not provided for under a collective agreement with regard to general holidays, and
  - (iii) the employer applies to the Labour Standards Officer to substitute another designated holiday for any general holiday under this Part,

the Labour Standards Officer may, if the Labour Standards Officer is satisfied that a majority of the employees or a majority of the class of employees, as the case may be, who are not provided for under a collective agreement in regard to general holidays, concur with the application, approve the substitution of the designated holiday for the specified general holiday, and the designated day shall, for those employees, be a general holiday for the purposes of this Act.

## Calculation of general holiday pay

**24.** (1) An employee whose wages are calculated on the basis of time shall, for a general holiday on which the employee does not work, be paid at least the equivalent of the wages the employee would have earned at the regular rate of wages for the normal hours of work of the employee.

*Idem*

(2) An employee whose wages are calculated on any basis other than a basis referred to in subsection (1) shall, for a general holiday on which the employee does not work, be paid at least the equivalent of his or her daily wages, based on the average of his or her daily wages for the four weeks that the employee worked immediately preceding the week in which the general holiday occurs.

## Additional pay for holiday work

- 25.** (1) An employee who is required to work on a day in respect of which the employee is entitled under this Part to a holiday with pay
- (a) shall be paid, in addition to any payment made in accordance with section 24, at a rate at least equal to 1.5 times his or her regular rate of wages for the time worked by the employee on that day; or
  - (b) shall be given a holiday and pay in accordance with section 24 at some other time convenient to the employee and the employer that is not later than the next annual vacation of the employee or the termination of his or her employment, whichever occurs first, and the day that is substituted shall be deemed to be the general holiday for the purposes of this Act.

## Holiday that is non-working day

- (2) Where a general holiday falls on a non-working day for an employee, an employer shall
- (a) pay the employee for the general holiday in accordance with section 24; or
  - (b) give the employee a holiday with pay in accordance with section 24 at some time convenient to the employer and the employee that is not later than the next annual vacation of the employee or the termination of his or her employment, whichever occurs first, and the day that is substituted shall be deemed to be the general holiday for the purposes of this Act.

## Double regular rate of wages

**26.** An employee who is not required to work on a general holiday shall not be required to work on another day that would otherwise be a non-working day in the week in which that holiday occurs, unless the employee is paid at a rate at least equal to double his or her regular rate of wages for the time worked by the employee on that day.

## Holiday pay

**27.** Pay granted to an employee in respect of a general holiday on which the employee does not work shall for all purposes be deemed to be wages.

## Where holiday pay not required

**28.** No employee is entitled to be paid in respect of a general holiday on which the employee does not work

- (a) where the employee has not worked for his or her employer a total of 30 days during the preceding 12 months;
- (b) where the employee did not report to work on that day after having been called to work on that day;
- (c) where, without the consent of his or her employer, the employee has not reported for work on either his or her last regular working day preceding or following the general holiday; or
- (d) where the employee is on pregnancy leave or parental leave.

R.S.N.W.T. 1988,c.119(Supp.),s.2.

## Deemed employment

**29.** For the purposes of this Part, a person shall be deemed to be in the employment of another person when he or she is available at the call of the other person whether or not he or she is called on to perform any work for that other person.

## PART V

## PREGNANCY AND PARENTAL LEAVE

## Medical certificate

**30.** For the purposes of this Part, a medical certificate must be signed by a qualified medical practitioner or, in a community in Nunavut in which no qualified medical practitioner is resident, by a registered nurse, a nurse practitioner or a temporary certificate holder under the *Nursing Profession Act* (Northwest Territories).

R.S.N.W.T. 1988,c.119(Supp.),s.3; S.N.W.T. 1998,c.38,Sch.D,PartII,s.4;

S.Nu. 2003,c.17,s.21.

## Entitlement to pregnancy leave

**31.** (1) An employee is entitled to pregnancy leave, without pay, in accordance with subsection (2), where the employee

- (a) has been employed by an employer for the prescribed length of time;
- (b) submits to the employer a written request for pregnancy leave at least four weeks before the day on which the employee intends to commence the leave; and
- (c) if so requested by the employer, provides the employer with a medical certificate stating that the employee is pregnant and stating the estimated date of delivery.

## Length of leave

(2) Subject to this Part, an employee referred to in subsection (1) is entitled to pregnancy leave of 17 consecutive weeks commencing at any time during the 17 week period immediately preceding the estimated date of delivery.

#### Extension of leave

(3) If the actual date of delivery is after the estimated date of delivery, an employee is entitled, at the request of the employee, to extend the pregnancy leave for a further period, without pay, not exceeding the period between the estimated date of delivery and the actual date of delivery and, in any event, not exceeding six consecutive weeks.

#### Shortening leave

(4) An employee who has requested pregnancy leave may, with the consent of her employer, resume employment before the expiration of that period.  
R.S.N.W.T. 1988,c.119(Supp.),s.3.

#### Leave without notice

**32.** (1) An employee who does not request pregnancy leave in accordance with paragraph 31(1)(b) but who has been employed by an employer for the prescribed length of time is entitled to pregnancy leave under section 31 where

- (a) due to a medical condition arising from the employee's pregnancy, the employee is unable to give the required notice; and
- (b) within two weeks after the employee ceases to work, the employee provides her employer with a medical certificate stating that the employee was not able to perform the duties of her employment because of a medical condition arising from the employee's pregnancy and stating the estimated date on which, in the opinion of a qualified medical practitioner or nurse, delivery will occur or the actual date of delivery.

#### Leave after delivery

(2) An employee who does not request pregnancy leave in accordance with paragraph 31(1)(b) and to whom subsection (1) does not apply but who has been employed by an employer for the prescribed length of time is entitled to pregnancy leave of six consecutive weeks, without pay, where the employee provides the employer with a medical certificate stating that the employee has given birth on a specified day.

#### Application of subsection 31(4)

(3) Subsection 31(4) applies to an employee referred to in subsection (2).  
R.S.N.W.T. 1988,c.119(Supp.),s.3.

#### Requirement to take leave

**33.** (1) The Labour Standards Officer may, at the request of an employer, require an employee to commence pregnancy leave where, in the opinion of the Labour Standards Officer, the duties of the employee cannot reasonably be performed because of the pregnancy.

### Considerations

(2) The Labour Standards Officer shall, before requiring an employee to commence pregnancy leave under subsection (1), consider

- (a) the nature of the industrial establishment;
- (b) the conditions of employment of the industrial establishment;
- (c) the welfare of the employees in the industrial establishment; and
- (d) any medical information respecting the employee provided to the Labour Standards Officer by a qualified medical practitioner with the consent of the employee.

### Continuation of leave

(3) The employee shall continue the pregnancy leave until

- (a) the Labour Standards Officer is satisfied that the employee is able to perform her duties; or
- (b) the pregnancy is terminated.

R.S.N.W.T. 1988,c.119(Supp.),s.3.

### Entitlement to parental leave

**34.** (1) An employee is entitled to parental leave of 37 consecutive weeks, without pay where the employee

- (a) has been employed by an employer for the prescribed length of time;
- (b) submits to the employer a written request for parental leave at least four weeks before the day on which the employee intends to commence the leave; and
- (c) will remain at home to care for a newborn child of the employee or a child who the employee has recently adopted or with respect to whom the employee has commenced adoption proceedings.

### More than one child

(2) Where an employee has recently adopted more than one child or has commenced adoption proceedings with respect to more than one child and the children arrived at the employee's home at the same time or substantially the same time, the children are deemed to be a single child for the purposes of this section.

(3) **Repealed, S.Nu. 2001,c.9,s.2(2).**

### Period during which leave must be taken

(4) Parental leave must be taken within the period commencing on the day of birth of the newborn child or the day on which the child arrives at the employee's home, as the case may be, and ending one year after that day.



#### Period where more than one child

(5) Where an employee plans to adopt more than one child and the children arrive at the employee's home at substantially the same time, the employee is entitled to parental leave for the period commencing on the day the first child so arrives and ending one year after the day on which the last child so arrives.

#### Parental leave following pregnancy leave

(6) Where an employee takes parental leave in addition to pregnancy leave, the employee must commence the parental leave immediately on the expiration of the pregnancy leave or on the day the child arrives at the employee's home, unless the employee and employer otherwise agree.

#### Leave may be shortened

(7) An employee who is on parental leave may, with the consent of his or her employer, resume employment before the expiration of the leave.

R.S.N.W.T. 1988,c.119(Supp.),s.3; S.Nu. 2001,c.9,s.2.

#### Leave without notice when required suddenly

**35.** (1) An employee who does not request parental leave in accordance with paragraph 34(1)(b) but who is otherwise entitled to parental leave is entitled to parental leave under section 34 where

- (a) the child who the employee has adopted or with respect to whom the employee has commenced adoption proceedings arrives at the employee's home sooner than expected; and
- (b) the employee requests parental leave.

#### Leave without notice

(2) An employee who does not request parental leave in accordance with paragraph 34(1)(b) and to whom subsection (1) does not apply but who is otherwise entitled to parental leave is entitled to parental leave of six consecutive weeks, without pay, where the employee requests parental leave.

#### Subsections 34(4) to (7) apply

(3) Subsections 34(4) to (7) apply to an employee referred to in subsection (2).

R.S.N.W.T. 1988,c.119(Supp.),s.3.

#### Maximum combined leave

**35.1.** Notwithstanding any other provision in this Part, the maximum period of combined pregnancy and parental leave to which an employee is entitled is 52 weeks.  
S.Nu. 2001,c.9,s.3.

#### Application of section

**35.2.** (1) This section applies to an employee

- (a) who, on the day on which this section comes into force, is on pregnancy or parental leave or whose parental leave has expired in respect of a child who

- (i) is to be, is being or was cared for by the employee, and
- (ii) is or will be a newborn child of the employee born, or has been placed with the employee for the purposes of adoption, after December 31, 2000; or
- (b) who, before the day on which this section comes into force, has given his or her employer a written request for leave in accordance with paragraph 31(1)(b) or paragraph 34(1)(b) in respect of a child who
  - (i) is to be cared for by the employee, and
  - (ii) is or will be a newborn child of the employee born, or has been or will be placed with the employee for the purposes of adoption, after December 31, 2000.

#### Entitlement to extension of parental leave

(2) An employee is entitled to extend parental leave up to 37 consecutive weeks if the employee submits to the employer a written request for extended parental leave at least four weeks before the day on which the employee's parental leave would otherwise expire.

#### Entitlement to further parental leave

(3) If an employee's parental leave has expired on the day on which this section comes into force or will expire less than eight weeks after the day on which this section comes into force, the employee is entitled to further parental leave up to 25 consecutive weeks if the employee submits to the employer a written request for further parental leave no later than four weeks after this section comes into force and at least four weeks before the day on which the employee intends to re-commence the leave, unless the employee and employer otherwise agree.

#### Subsections 34(2) and (4) to (7) apply

(4) Subsections 34(2) and (4) to (7) apply to an employee referred to in this section.

#### Period during which leave must be taken

(5) For greater certainty, this section does not entitle an employee to continue parental leave after the expiry of one year after the day of birth of the newborn child or the day on which the child is placed with the employee for the purposes of adoption, as the case may be. S.Nu. 2001,c.9,s.3.

#### Resumption of benefits

**36.** Where an employee resumes employment on the expiration of the pregnancy leave or parental leave granted under this Part, the employer shall reinstate the employee in the position the employee occupied on the day the leave commenced or in a comparable position, at not less than the wages, benefits and seniority that had accrued to the employee on the day the leave commenced, and with all increments to wages and benefits to which the employee would have been entitled had the leave not been taken. R.S.N.W.T. 1988,c.119(Supp.),s.3.

## Suspension of operations

**37.** An employer who has suspended operations during the pregnancy leave or parental leave granted under this Part and has not resumed operations on the expiration of the leave shall not, on resumption of operations, refuse to reinstate the employee or otherwise refuse to comply with section 36 because the employee has taken the leave. R.S.N.W.T. 1988,c.119(Supp.),s.3.

## Prohibition respecting pregnancy leave

**38.** (1) No employer shall change a condition of employment of an employee without the written consent of the employee or terminate the employment of an employee because of the employee's pregnancy or because the employee has requested, is on or has taken the pregnancy leave to which the employee is entitled under this Part.

## Prohibition respecting parental leave

(2) No employer shall change a condition of employment of the employee without the written consent of the employee or terminate the employment of the employee because the employee has requested, is on or has taken parental leave to which the employee is entitled under this Part. R.S.N.W.T. 1988,c.119(Supp.),s.3.

## Onus on employer

**39.** The onus is on the employer to establish that a contravention of section 36, 37 or 38 is not because of the employee's pregnancy, where the employee is pregnant, or because the employee has requested, is on or has, within the 12 month period prior to the contravention, taken pregnancy leave or parental leave. R.S.N.W.T. 1988,c.119(Supp.),s.3.

## PART V.1

## COMPASSIONATE CARE LEAVE

## Definitions

**39.1.** (1) The following definitions from the *Canada Labour Code* apply for the purposes of this Part only:

"common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having cohabited for a period of at least one year; (*conjoint de fait*)

"family member", in relation to an employee, means

- (a) a spouse or common-law partner of the employee;
- (b) a child of the employee or a child of the employee's spouse or common-law partner;
- (c) a parent of the employee or a spouse or common-law partner of the parent;
- (d) any other person who is a member of a class of persons prescribed for the purposes of this definition under this Act or the *Canada*

*Labour Code* or the definition "family member" in subsection 23.1(1) of the *Employment Insurance Act* (Canada); (*membre de la famille*)

"qualified medical practitioner" means a person who is entitled to practise medicine under the laws of a jurisdiction in which care or treatment of the family member is provided, and includes a member of a class of medical practitioner prescribed for the purposes of subsection 23.1(3) of the *Employment Insurance Act* (Canada); (*médecin qualifié*)

"week" means the period between midnight on Saturday and midnight on the immediately following Saturday; (*semaine*)

#### Entitlement to leave

(2) Subject to sections 39.2 to 39.7, every employee is entitled to and shall be granted a leave of absence from employment of up to eight weeks to provide care or support to a family member of the employee if a qualified medical practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 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.

S.Nu. 2003,c.18,s.2.

#### Period when leave may be taken

**39.2.** (1) The leave of absence referred to in subsection 39.1(2) 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 occurs:
  - (i) the family member dies, or
  - (ii) the expiration of 26 weeks following the first day of the week referred to in paragraph (a).

#### Shorter period

(2) If a shorter period than that referred to in subsection 39.1(2) is prescribed for the purposes of subsection 23.1(5) of the *Employment Insurance Act* (Canada),

- (a) the certificate referred to in subsection 39.1(2) must state that the family member has a serious medical condition with a significant risk of death within that period; and
- (b) that shorter period applies for the purposes of subparagraph (1)(b)(ii).  
S.Nu. 2003,c.18,s.2.

#### Expiration of shorter period

**39.3.** When a shorter period referred to in subsection 39.2(2) has expired in respect of a family member, no further leave may be taken under this Part in respect of that family member until the minimum number of weeks prescribed for the purposes of subsection 12(4.3) of the *Employment Insurance Act* (Canada) has elapsed.

S.Nu. 2003,c.18,s.2.

#### Minimum period of leave

**39.4.** A leave of absence under this section may only be taken in periods of not less than one week's duration. S.Nu. 2003,c.18,s.2.

#### Aggregate leave

**39.5.** The aggregate amount of leave that may be taken by two or more employees under this section in respect of the care or support of the same family member shall not exceed eight weeks in the period referred to in section 39.2. S.Nu. 2003,c.18,s.2.

#### Copy of certificate

**39.6.** If requested in writing by the employer within 15 days after an employee's return to work, the employee must provide the employer with a copy of the certificate referred to in subsection 39.1(2). S.Nu. 2003,c.18,s.2.

#### Prohibition

**39.7.** No employer shall dismiss, suspend, lay off, demote or discipline an employee because an employee has applied for leave of absence in accordance with this Part, or take into account the intention of an employee to take leave of absence under this Part in any decision to promote or train the employee. S.Nu. 2003,c.18,s.2.

#### Commencement

**39.8.** This Part comes into force on the date that section 27 of the *Budget Implementation Act, 2003* (Canada) is brought into force. S.Nu. 2003,c.18,s.2.

## PART VI

### ADMINISTRATION AND GENERAL

#### LABOUR STANDARDS OFFICER

##### Labour Standards Officer

**40.** (1) The Commissioner shall appoint a Labour Standards Officer to administer this Act.

##### Appeal to Board

(2) Any decision of the Labour Standards Officer may be appealed to the Board.

#### INSPECTIONS

##### Inspectors

**41.** (1) The Commissioner may appoint any person as an inspector under this Act.

##### Powers of inspector

(2) An inspector may, for the purposes of enforcing this Act or the regulations,

- (a) inspect and examine all books, payrolls and other records of an employer that in any way relate to the wages, hours of work or conditions of employment affecting any employee;
- (b) take extracts from or make copies of any entry in the books, payrolls and other records mentioned in paragraph (a);
- (c) require an employer to make or supply full and correct statements, either orally or in writing in the form that may be required, respecting the wages paid to all or any of his or her employees, and the hours of work and conditions of their employment; and
- (d) require an employee to make full disclosure, production and delivery to the inspector of all records, documents, statements, writings, books, papers, extracts from them or copies of them or of other information either orally or in writing that the employee has in his or her possession or under his or her control and that in any way relate to the wages, hours of work or conditions of his or her employment.

##### Right to enter premises

(3) An inspector may at any reasonable time enter on any place used in connection with an industrial establishment for the purpose of making an inspection authorized under subsection (2) and may, for that purpose, question any employee apart from his or her employer.

#### Certificate of authorization

(4) An inspector shall be provided by the Commissioner with a certificate of his or her authority and on entering any place used in connection with an industrial establishment shall, if so required, produce the certificate to the person in charge of the industrial establishment.

#### Duty to assist inspector

(5) The person in charge of an industrial establishment and every person employed in it or in connection with it shall give an inspector all reasonable assistance in his or her power to enable the inspector to carry out his or her duties under this Act or the regulations.

#### Administering oaths

**42.** An inspector may administer all oaths and take and receive all affidavits and statutory declarations required under subsection 41(2) and certify to the administration or taking of them.

#### Where underpayments found on inspection

**43.** (1) Where an inspector finds that an employer has failed to pay an employee

- (a) the minimum wage established by or under this Act,
- (b) any overtime pay to which the employee is entitled under this Act, or
- (c) any vacation pay or holiday pay to which the employee is entitled under this Act,

the inspector may determine the difference between the wages actually paid to the employee and the wages to which the employee is entitled and, if the amount of the difference is agreed to in writing by the employer and the employee, the employer shall, within five days after the date of the agreement, pay that amount to the Labour Standards Officer who shall pay it over to the employee without delay on receipt of that amount by the Labour Standards Officer.

#### Consent to prosecution

(2) No prosecution for failure to pay an employee the full wages to which the employee was entitled under this Act shall, without the written consent of the Commissioner, be commenced against an employer where the employer has made payment of any amount of difference in wages in accordance with subsection (1).

### LABOUR STANDARDS BOARD

#### Labour Standards Board

**44.** (1) A board called the Labour Standards Board is established.

#### Composition

(2) The Board shall consist of five members, including a chairperson, appointed by the Commissioner to hold office for a term not exceeding five years.

#### Reappointment

(3) The members of the Board may be reappointed.

#### Remuneration

(4) The members of the Board shall be paid a daily allowance and shall be reimbursed for expenses in accordance with the regulations.

#### Quorum

(5) Three members of the Board constitute a quorum.

#### Sittings

(6) The Board shall sit at the times and conduct its proceedings in the manner that it considers most satisfactory for the proper discharge of its business.  
S.N.W.T. 1998,c.24,s.15(2).

#### Appeal

**45.** (1) An employer or employee aggrieved by a decision or order of the Labour Standards Officer may appeal to the Board, and the decision of the Board on the matter is final.

#### Duties of Board

(2) The Board shall hear appeals from any decision or order of the Labour Standards Officer, and shall perform any other functions that are assigned to it by this Act or the regulations.

#### Annual report

(3) The Board shall prepare an annual report and submit it to the Commissioner in accordance with Part IX of the *Financial Administration Act*.

#### Audit

(4) The accounts of the Board must be audited annually in accordance with Part IX of the *Financial Administration Act* by an auditor appointed by the Minister.

## PAYROLL RECORDS

#### Payroll records

**46.** (1) An employer shall maintain in each place of business operated by the employer in Nunavut, a true and correct record of the following particulars in respect of each of his or her employees at or in connection with that place of business:

- (a) the hours worked or on duty each day;
- (b) the gross wages and wage payments made;
- (c) the name, age and residential address;
- (d) the date of commencement of the present term of employment and the anniversary date of it;
- (e) the rate of wage and the date and particulars of each change in the rate of wage;



- (f) each annual vacation granted, showing
  - (i) the dates of commencement and completion,
  - (ii) the period of employment covered by the annual vacation, and
  - (iii) the amount of vacation pay given;
- (g) the amount of money paid in lieu of vacation with pay on the termination of employment;
- (h) the amount of money paid for general holidays under this Act;
- (i) the amount of each deduction from the earnings of the employee and the purpose for which the deduction was made;
- (j) a copy of any notice of termination of employment;
- (k) the amount of money paid in lieu of notice of termination of employment.

#### Exemption

(2) Notwithstanding subsection (1), an employer may, with the consent of the Labour Standards Officer, maintain the records referred to in subsection (1) in whole or in part at his or her principal place of business in Nunavut or at any other place that the Labour Standards Officer may designate.

#### Daily records

(3) The record of hours referred to in paragraph (1)(a) must be made daily.

#### Retention of records

(4) Every employer shall preserve and maintain the records required to be maintained under subsection (1) for a period of not less than two years after the time each record was made.

#### Production of records

(5) The Labour Standards Officer may, by notice in writing, require an employer or any other person

- (a) to provide the Labour Standards Officer with the names, addresses and ages of all employees and the information respecting wages, hours, days and terms and conditions of employment that the notice requires; and
- (b) to produce any books, records, documents, papers, payrolls, contracts of employment and any other record that the notice requires for the inspection by an inspector named in the notice on the date and at the place designated in the notice.

#### Record of hours of work

(6) The Labour Standards Officer may, by notice in writing, require an employer to record the hours of work of each of his or her employees with respect to starting time and stopping time in the manner that may be directed.

### Service of notice

- (7) A notice issued under this section may be served
- (a) personally;
  - (b) by double registered mail, in which case the 7th day after the day of mailing shall be deemed the date of delivery on the person to be served or to any person receiving it on his or her behalf; or
  - (c) by leaving it with a person who actually or apparently has attained the age of 19 years at the place to which the notice is addressed.
- S.Nu. 2005,c.3,s.7(2).

### Duty of employer

**47.** (1) An employer served with a notice under section 46 shall supply the information within a reasonable time that is specified in the notice.

### Certificate as evidence

(2) A certificate of the Labour Standards Officer certifying that a notice was sent by registered mail to the employer to whom it was addressed, accompanied by an identifying post office certificate of the registration and a true copy of the notice, is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements contained in it.

### *Idem*

(3) Where a notice has been served or sent under section 46, a certificate of the Labour Standards Officer certifying that the information has not been supplied is admissible in evidence and, in the absence of evidence to the contrary, is proof of the statements contained in it.

### *Idem*

(4) A certificate of the Labour Standards Officer certifying that a document annexed to it is a document or a true copy of the document made by or on behalf of the Labour Standards Officer shall be admitted in evidence and have the same force and effect as if it had been proven in the ordinary way.

### Proof of appointment

(5) A certificate under this section signed or purporting to be signed by the Labour Standards Officer is admissible in evidence without proof of the appointment or signature of the Labour Standards Officer.

### Pay statement

- 48.** (1) An employer shall, at the time of making any payment of wages to an employee, supply the employee with a statement in writing setting out
- (a) the period for which the payment of wages is made;
  - (b) the number of hours for which payment is made;
  - (c) the rate of wages;
  - (d) details of the deductions made from the wages; and
  - (e) the actual sum being received by the employee.

Detailed statement

(2) An employer shall, on request, give to an employee a detailed statement as to the computation of the amount of wages and any bonus or living allowance set out in the statement referred to in subsection (1).

Exemption

(3) The Labour Standards Officer may, by order, exempt any employer from any or all of the requirements of subsection (1).

PAYMENT OF WAGES

Power to exempt

**49.** The Labour Standards Officer may exempt any employee or class of employee or any employer or class of employer from the operation of any provision of sections 50 to 65.

Pay period

**50.** (1) A period of employment for computation of wages earned shall not exceed one calendar month unless a longer period is approved by the Board.

Payment of wages

(2) Every employer shall, within 10 days after the expiration of the period of employment for computation of wages of an employee, pay to the employee all wages earned by the employee in that period.

Where employment terminated

(3) Where the employment of an employee is terminated, the employer shall, within 10 days after the termination of the employment, pay to the employee all wages earned by the employee.

Entitlement to pay

(4) An employee who is absent at the time fixed for payment of wages, or who, for any other reason, is not paid at that time, is entitled to the payment at any time after that during normal working hours.

Salaried employees

(5) Where an employee is employed on a salaried basis and his or her employment is terminated, the employee shall be paid the corresponding hourly equivalent of his or her salary for every hour of work that he or she was employed.

Method of payment

(6) Every employer shall pay all wages in the lawful currency of Canada or by cheque or bill of exchange drawn on a bank or a credit union or by deposit to a bank account designated by the employee.

## Assignment of wages

**51.** (1) Notwithstanding anything to the contrary contained in this Act, an employer may honour a written assignment of wages of an employee for any number of the following assignees or purposes, namely,

- (a) to a charitable or other organization or a pension or superannuation plan if the payments are deductible for income tax purposes under the *Income Tax Act* (Canada),
- (b) for the purposes of insurance coverage by an insurer licensed under the *Insurance Act*,
- (c) to meet credit obligations, or
- (d) for the purposes of any plan that is not within paragraphs (a) to (c), but that, in the opinion of the Labour Standards Officer, is for the benefit of the employee and is authorized by the Labour Standards Officer,

and an employer may honour the direction of an employee to deposit wages in a bank or credit union or to pay wages to the spouse or other member of the immediate family of the employee.

## "spouse" defined

(2) In subsection (1), "spouse" has the meaning assigned to it by section 1 of the *Family Law Act*. S.N.W.T. 1998,c.17,s.18.

## Dishonoured cheques

**52.** An employer who, in payment of wages, issues a cheque or bill of exchange that is not honoured by the payment of the lawful currency of Canada is guilty of an offence.

## Wages recovery

**53.** (1) Where the Labour Standards Officer

- (a) receives information that indicates that an employer has failed to pay to an employee all wages earned, and
- (b) is satisfied that the employee is not proceeding with any other action for the recovery of the unpaid wages,

the Labour Standards Officer may, at any time,

- (c) make a certificate in which shall be set out the wages owing, and
- (d) send a copy of the certificate to the employer by registered mail, giving the employer 30 days after the date of the mailing of the certificate within which to present evidence and make representation.

## Investigation by Board

(2) The Board, after the investigation that it considers adequate, including the holding of hearings that it considers advisable, and consideration of representation, if any, from the persons concerned, may

- (a) confirm the wages owing as set out in the certificate; or
- (b) cancel the certificate and

- (i) make another certificate, in which shall be set out the wages owing, or
- (ii) take no further action.

#### Filing of certificate

(3) The Board may, at any time, cause the certificate confirmed or made under subsection (2) to be filed with the Clerk of the Nunavut Court of Justice and upon that the certificate shall be enforceable as a judgment or order of the Nunavut Court of Justice in favour of the Board for the recovery of a debt in the amount of wages owing as set out in the certificate.

#### Appeal

(4) An appeal lies to a judge of the Nunavut Court of Justice from the Board on any point of law raised before the Board under this section and the appeal must be lodged within 30 days after the date of the decision appealed from.

#### Decision

(5) The decision of a judge of the Nunavut Court of Justice on appeal is final. S.Nu. 2005,c.3,s.7(3).

#### Lien and charge on property

**54.** (1) Subject to the *Maintenance Orders Enforcement Act* and notwithstanding any other Act,

- (a) unpaid wages constitute a lien, charge and secured debt in favour of the Board, dating from the time that the wages were earned, against all the real and personal property of the employer, including money due or accruing due to the employer from a contract, account receivable, insurance claim, proceeds of a sale of goods or any other source; and
- (b) the amount of the lien, charge and secured debt referred to in paragraph (a) is payable and enforceable in priority over all liens, judgments, charges or any other claims or rights including those of the Government of Nunavut, except as provided in this section, and, without limiting the generality of the above, the amount has priority over
  - (i) an assignment, including an assignment of book debts, whether absolute or otherwise and whether crystallized or not,
  - (ii) a mortgage of personal property, and
  - (iii) a debenture charging personal property, whether crystallized or not,whether made or created before or after the date the wages were earned or the date a payment for the benefit of an employee became due.

*Idem*

(2) Notwithstanding subsection (1), the lien, charge and secured debt referred to in subsection (1) does not have priority over a mortgage of or debenture charging land that was registered in a land titles office before registration against that property of a certificate obtained under section 53, except with respect to money advanced under the mortgage or debenture after the certificate was filed. S.Nu. 2005,c.3,s.7(4).

## Reciprocal enforcement of certificates

**55.** (1) Where the Minister is satisfied that reciprocal provisions have been or will be made by a province or territory for the enforcement of certificates issued under this Act, the Minister may, by order,

- (a) declare the province or territory to be a reciprocating province or territory; and
- (b) designate an authority in that province or territory for the purpose of this section.

## Application to enforce order, judgment, certificate

(2) Where an order, judgment or certificate for the payment of wages has been issued, obtained or received by a designated authority of a reciprocating province or territory, the authority may apply to the Board to enforce the order, judgment or certificate.

## Issue of certificate by Board

(3) On receipt of a copy of the order, judgment or certificate for the payment of wages

- (a) certified by the court in which the order, judgment or certificate is registered, or
- (b) where there is no provision in the reciprocating province or territory for registration in a court of the order, judgment or certificate, certified to be a true copy by the designated authority,

and on being satisfied that the wages are still owing, the Board shall issue a certificate showing the amount owing and file it in the office of the Clerk of the Nunavut Court of Justice.

## Enforcement of certificate

(4) A certificate filed under subsection 55(3) is enforceable as a judgment or order of the Nunavut Court of Justice in favour of the Board, and is enforceable by the Board for the amount shown in the certificate in the same manner and with the same priorities as are provided in this Act for wages owing. S.N.W.T. 1998,c.32,Sch.B,s.1; S.Nu. 2005,c.3,s.7(3).

#### Payment to Board

**56.** (1) Where the Board has knowledge that any person, including the Government of Nunavut and its agencies, is or is about to become indebted to the employer named in the certificate made under section 53, the Board may demand of that person that the money otherwise payable by that person to the employer named in the certificate be in whole or in part paid to the Board on account of the liability of that employer for wages owing.

#### Discharge of debt

(2) The receipt of the Board for money paid under subsection (1) constitutes a good and sufficient discharge of the liability of the person to the employer named in the certificate to the extent of the amount referred to in the receipt.

#### Payment only to Board

(3) Where a demand is made under subsection (1), the person to whom the demand is made shall not, except with the written consent of the Board, pay the money demanded to any person other than the Board. S.Nu. 2005,c.3,s.7(4).

#### Determination of disposal of money

**57.** The Board shall hold all money received pursuant to a demand made under subsection 56(1) until

- (a) the time for the taking of an appeal has elapsed, if no appeal is taken, or
- (b) a final decision is made with respect to the money,

and shall after that dispose of the money in accordance with that decision and section 60.

#### Security

**58.** (1) The Board may order an employer to provide the Board with a bond or other security conditioned for the payment of all wages in an amount and form, and for a period of time not exceeding two years, as may be satisfactory to the Board, and an employer shall comply with the order.

#### Application of security

(2) Where the employer provides a bond or other security under subsection (1), the Board may, by giving written notice to that employer either by registered mail or by service of the notice on that employer, apply the proceeds of the bond or security in whole or in part to any wages that the Board ascertains the employer subsequently owes to any employee.

#### Where security not provided

(3) Where the employer fails to provide the bond or other security under subsection (1), a judge of the Nunavut Court of Justice, on an application of the Labour Standards Officer, may restrain the employer from carrying on any industry or business until the bond or security is provided and the costs of the application are paid. S.Nu. 2005,c.3,s.7(3).

## Payment where employee's whereabouts unknown

**59.** (1) An employer who is unable to locate an employee in order to pay the employee wages shall pay the wages to the Board.

## Disposal of wages

(2) The wages paid under subsection (1) shall be disposed of in accordance with section 60.

## Discharge

(3) Payment by an employer under subsection (1) constitutes, to the extent of the payment, a discharge of the employer in respect of the wages owing.

## Disposal of wage money

**60.** (1) Where the Board receives money in respect of wages owing to an employee, it shall pay the money

- (a) to the employee to whom the wages are owing; or
- (b) to the estate of the employee.

## Payment to Public Trustee

(2) Where the Board is unable to pay the money pursuant to subsection (1), it shall pay the money to the Public Trustee appointed under the *Public Trustee Act* who shall hold it in trust for the person who is entitled to it.

## Payment to employee of named employer

(3) Where the Board receives money under this Act for an employee who is named as an employer in a certificate issued under section 53, the Board may pay the money to the employee named in the certificate.

## Prosecution of corporation officers

**61.** Where a corporation commits an offence under sections 50 to 65, every director or other officer and every agent of the corporation who knowingly directed, authorized, assented to, acquiesced or participated in the commission of the offence is, whether or not the corporation is prosecuted for the offence, a party to and guilty of the offence. S.N.W.T. 1997,c.8,s.17(2).

## Liability of corporation directors

**62.** Every director and other officer of a corporation is liable for the unpaid wages of the employees of the corporation, but not exceeding the equivalent of two months wages for each employee who has not been paid, and the provisions of this Act respecting the recovery of wages apply, with the necessary changes and so far as they are applicable, to the recovery of such wages from a director and other officer of a corporation that does not pay its employee's wages. S.N.W.T. 1997,c.8,s.17(3).



#### Associated corporations

**63.** (1) Where the Labour Standards Officer considers that there is common control or direction between two or more corporations, individuals, firms, syndicates or associations, the Labour Standards Officer may declare the corporations, individuals, firms, syndicates or associations, or any combination of them, to be one employer for the purposes of this Act.

#### Appeal

(2) An employer, employee or other person affected by a declaration made under subsection (1) may appeal to the Board.

#### Effect of declaration

**64.** Where the Labour Standards Officer has made a declaration under subsection 63(1), the corporations, individuals, firms, syndicates or associations treated as one employer shall be jointly and severally liable for any contravention of this Act or the regulations.

#### Regulations

**65.** For the purposes of carrying out the provisions of this Part according to their intent, the Commissioner, on the recommendation of the Minister, may make regulations and orders that are ancillary to and not inconsistent with this Part and that are considered necessary or advisable.

### IDENTITY OF COMPLAINANT

#### Identity of complainant

**66.** Where a person who makes a complaint to the Board or the Labour Standards Officer requests that his or her name and identity be withheld, the Board, the Labour Standards Officer and their officials shall not disclose the name and identity of that person except where disclosure is necessary for the purpose of a prosecution or is considered by the Board or the Labour Standards Officer to be in the public interest.

### ORDERS

#### Orders

**67.** Any order made under this Act or the regulations may be made to apply generally or in particular cases, or to classes of employees or industrial establishments.

### REINSTATEMENT OR COMPENSATION

#### Prohibition

**67.1.** (1) No employer or any other person shall

- (a) terminate or restrict the employment of a person,
- (b) threaten to terminate or restrict the employment of a person, or
- (c) discriminate in any way against a person,

because the person, either on his or her own behalf or on the behalf of another employee,

- (d) has made a complaint under this Act,
- (e) has given evidence or may give evidence at any inquiry or any proceedings or prosecution under this Act,
- (f) requests anything to which the person or another employee is entitled under this Act, or
- (g) has made or is about to make any statement or disclosure that may be required of the employee under this Act.

#### Powers of Labour Standards Officer

(2) Where the Labour Standards Officer is satisfied that an employer has contravened subsection (1) or section 36, 37, 38 or 39.7, the Labour Standards Officer may order the employer

- (a) to cease doing any act;
- (a.1) to comply with Part V where there is a contravention of section 36, 37, 38 or 39.7;
- (b) to hire or reinstate a person and pay the person any wages and benefits lost by reason of the contravention; or
- (c) instead of hiring or reinstating a person, to pay the person compensation in an amount equal to the wages and benefits to which the person would have been entitled had the person been hired or reinstated, calculated for a period to be determined by the Labour Standards Officer.

R.S.N.W.T. 1988,c.20(Supp.),s.3;

R.S.N.W.T. 1988,c.119(Supp.),s.4; S.Nu. 2005,c.3,s.7(5).

#### Filing of order

**67.2.** (1) An order made by the Labour Standards Officer under this Act may be filed with the Nunavut Court of Justice.

#### Enforcement

(2) An order filed under subsection (1) may be enforced in any manner that an order of the Nunavut Court of Justice may be enforced.

R.S.N.W.T. 1988,c.20(Supp.),s.4; S.Nu. 2005,c.3,s.7(3).

### OFFENCES AND PUNISHMENT

#### Offences

**68.** Every person who

- (a) contravenes this Act or the regulations, or any order made under this Act or the regulations, or
- (b) discharges or threatens to discharge or otherwise discriminates against a person because that person
  - (i) has testified or is about to testify in any proceeding under this Act, or

(ii) has given information to the Board, the Labour Standards Officer or an inspector regarding the wages, hours of work, annual vacation or conditions of work of the employee or any of the other employees in an industrial establishment, is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

#### Order to pay arrears of wages

**69.** (1) Where an employer has been convicted of an offence under this Act in respect of any employee, the convicting court may, in addition to any other punishment, order the employer to pay to the employee any overtime pay, vacation pay, holiday pay or other wages to which the employee is entitled under this Act, the non-payment or insufficient payment of which constituted the offence for which the employer was convicted.

#### Reinstatement of pay and positions

(2) Where an employer has been convicted of an offence under this Act in respect of the discharge of an employee, the convicting court may, in addition to any other punishment, order the employer

- (a) to pay compensation for loss of employment to the employee not exceeding the sum that in the opinion of the court is equivalent to the wages that would have accrued to the employee up to the date of conviction but for the discharge; and
- (b) to reinstate the employee in his or her employ on the date that in the opinion of the court is just and proper in the circumstances and in the position that the employee would have held but for the discharge.

#### Refusal to comply with order

(3) Every employer who refuses or neglects to comply with an order of a convicting court made under this section is guilty of an offence and liable on summary conviction to a fine not exceeding \$50 for each day on which the refusal or failure continues.

#### Where inaccurate records kept

(4) In determining the amount of wages or overtime for the purposes of subsection (1), if the convicting court finds that the employer has not kept accurate records as required by this Act or the regulations, the employee affected shall be conclusively presumed to have been employed for the maximum number of hours a week allowed under this Act and to be entitled to full wages for those hours.

#### Limitation period

**70.** A prosecution for an offence under this Act may not be commenced after two years from the time when the subject-matter of the prosecution arose.

## Civil remedy

**71.** No civil remedy of an employee against his or her employer for arrears of wages is suspended or affected by this Act.

## REGULATIONS

## Regulations

**72.** On the recommendation of the Minister, the Commissioner may make the regulations that the Commissioner considers necessary for carrying out the provisions of this Act and, without restricting the generality of this power to make regulations, may make regulations

- (a) governing the production and inspection of records required to be kept by employers;
- (b) governing appeals from decisions of the Labour Standards Officer;
- (c) for calculating and determining wages received by an employee in respect of his or her employment, including the monetary value of remuneration other than money and the regular rate of wages of employees who are not paid solely on a basis of time;
- (d) prescribing the maximum number of hours that may elapse between the commencement and termination of the working day of any employee;
- (e) fixing the minimum period that an employer may allow an employee for meals, and the maximum period for which an employer may require or permit an employee to work or be at the disposal of the employer without a meal period intervening;
- (e.1) exempting an activity, business, work, trade, occupation or profession for the purposes of paragraph 14.04(b);
- (f) providing for the payment of any wages of an employee to the Commissioner or to some other person in the event that the employee cannot be found or in any other case;
- (f.1) respecting the payment of a daily allowance to and the reimbursement of the expenses of the members of the Board;
- (g) designating professions to which this Act does not apply;
- (h) defining domestic workers or types of domestic workers for the purposes of this Act;
- (i) specifying the types of domestic workers to which this Act applies in whole or in part;
- (j) exempting types of domestic workers from the application of all or part of this Act;
- (k) prescribing the hours of work for domestic workers or types of domestic workers;
- (l) prescribing the compensation for overtime for domestic workers or types of domestic workers;
- (m) respecting the conditions of employment of domestic workers or types of domestic workers;

- (n) prescribing the length of time that an employee must be employed by an employer to be entitled to pregnancy leave or parental leave; and
- (o) for any other matter or purpose that by this Act may or is to be prescribed.  
R.S.N.W.T. 1988,c.20(Supp.),s.4;  
R.S.N.W.T. 1988,c.119(Supp.),s.5; S.N.W.T. 1998,c.24,s.15(3).