

SUNDAY CLOSING AND WEEKLY REST PERIODS: HISTORICAL EVOLUTION AND CURRENT SITUATION

All across Canada, employees—with some exceptions—are entitled to a weekly period of rest. This is governed by various types of legislation, including statutes regarding employment standards and mandatory Sunday closure for retail businesses. However, as will be shown below, the relative importance of these types of laws has shifted in the past decades; employment standards legislation now plays a preponderant role in affording rest periods to employees while statutory restrictions on Sunday commercial activity have been gradually disappearing. Except in a few provinces, the question of Sunday shopping, once a contentious political issue, has essentially become a matter of historical interest.

This document examines the evolution of Sunday closing and statutory weekly rest day provisions in Canada, from their inception to the present day. For a more detailed description of current statutory provisions regarding Sunday closing, readers are referred to the document “*Sunday Closing or Opening of Retail Establishments*”. A similar document, “*Weekly Days of Rest and Sunday Work in Employment Standards Legislation*” deals with current weekly rest provisions in the different Canadian jurisdictions.

SUNDAY CLOSING LEGISLATION¹

The first Sunday observance legislation in Canada was based on English statutes, which were themselves influenced by early Roman and canon law.² Indeed, a number of English laws restricting work and commercial activities on Sundays—such as the *Sunday Fairs Act, 1448* and *An Act for the Better Observation of the Lord’s Day, Commonly Called Sunday*, enacted in 1677³—were extended to what is now Quebec and Ontario, after New France was ceded to England in 1763. The purpose of this legislation was primarily religious in nature: to compel observance of Sunday as a Christian holy day and to prevent activities on that day deemed to be profanatory.

¹ For a more detailed history of early Sunday closing laws in Canada and in Ontario, also see: Law Reform Commission of Canada, *Sunday Observance*, (Ottawa: Ministry of Supply and Services Canada, 1976); Susan Swift, *Sunday Shopping: A Legislative and Judicial History*, Legislative Research Service, Current Issue Paper no. 119 (Toronto: Ministry of Government Services, 1991).

² The first Sunday observance laws, which placed prohibitions on business, legal proceedings and various forms of public entertainment on the Lord’s Day—while exempting agricultural and certain public and humanitarian acts—are attributed to the Roman Emperor Constantine, in 321 A.D.

³ Other Sunday observance statutes had been adopted in 1625 and 1627.

Similar legislation was eventually enacted in Lower Canada in 1805 (*An Act to Prohibit the Sale of Goods, Wares and Merchandise, Wine, Spirits and other Strong Liquors on Sundays*) and, after the Union Act, by the new legislature in 1845 (*An Act to Prevent the Profanation of the Lord's Day, Commonly Called Sunday, in Upper Canada*). The latter statute, which made it unlawful "to do or exercise any worldly labour, business or work of one's ordinary calling", with the exception of certain works of necessity or charity, was continued in Ontario after Confederation (1867). It was subsequently amended by the province, in 1885, 1896 and 1897, to add further prohibitions pertaining to transportation, agriculture and bakeshops. In 1903, however, the 1897 *Act to Prevent the Profanation of the Lord's Day* was struck down as unconstitutional by the Judicial Committee of the Privy Council.⁴ In its decision, the Privy Council declared that, treated as a whole, the Act was "criminal law" and, therefore, a matter of exclusive federal jurisdiction. Consequently, any provincial law prohibiting work on Sundays to ensure observance of the Sabbath, if enacted after Confederation, was regarded as constitutionally invalid.

Lord's Day Legislation

This decision gave impetus to proponents of a federal Sunday observance law. The Lord's Day Alliance, a Protestant-based organization founded in 1888 to oppose increased Sabbath secularization, played a central role in lobbying the federal government to pass such legislation. Although it initially faced the opposition of many French Canadians, the Lord's Day Alliance succeeded in gaining the support of Catholic bishops. The Trades and Labour Council also joined the campaign, although its main objectives were primarily secular in nature: to provide workers a common day of rest and, through the ensuing work time reduction, to increase (or at least protect) employment levels.⁵

In response, Parliament passed the *Lord's Day Act* in 1906.⁶ This law prohibited a number of activities on Sundays: selling or purchasing goods or real estate; carrying out any work, business or labour for gain or employing a person to do so; engaging in any public game or contest for gain; providing or attending "any performance or public meeting, other than in a church, at which any fee is charged, directly or indirectly"; conveying passengers for hire if such travel was related to amusement or pleasure; advertising any performance or other prohibited activity; using a firearm for gain "or in such a manner or in such places as to disturb other persons in attendance at public worship or in the observance of that day";

⁴ *Attorney-General for Ontario v. Hamilton Street Railway Company* [1903] A.C. 524

⁵ At its 1897 convention, the Trades and Labour Congress adopted the following resolution concerning Sunday work: "That in the opinion of this Congress, there is no necessity for Sunday work. The labour people demand not as a privilege but as a right that they should have the Sabbath for their own use; it was made for man: therefore be it resolved that we urge upon our members to continue their warfare against Sunday work, remembering that if six men work seven days they do the work of seven men in six days; any time six men work Sunday they are taking the bread out of the mouth of one fellow workman". Quoted in Edith Lorentsen and Evelyn Woolner, *Fifty Years of Labour Legislation in Canada*, (Department of Labour, Canada, 1950), p. 8.

⁶ The Act came into force on March 1, 1907.

and selling or distributing foreign newspapers. Nevertheless, the Act included a number of exemptions for “works of necessity and mercy”, such as selling drugs and medicine, conveying travellers, carrying mail and delivering milk. It also included “opt-out” provisions, allowing any province to legislate further exemptions. Moreover, the provinces were effectively given a veto power over the Act’s enforcement, since a prosecution could not be commenced without permission from the Attorney General of the province in which an infraction occurred.

Quebec was the first province to pass legislation to curb the operation of the *Lord’s Day Act*. It enacted the *Act respecting the observance of Sunday* in 1907, which provided for a limited sabbatarian exemption (later abandoned in 1936) and which stated that every person in the province was entitled to do on Sunday anything that was not forbidden by any laws of Quebec in force on February 28, 1907. This Act also included restrictions on industrial work, business, theatrical performances and excursions where intoxicating liquors are sold, but these were declared *ultra vires* by the Supreme Court of Canada in 1911. Exemptions in the provincial law, still operative after the Supreme Court decision, rendered the federal *Lord’s Day Act* virtually toothless in Quebec.

Only much later did other provinces and territories avail themselves of the *Lord’s Day Act*’s “opting-out” provisions. In 1950, Ontario passed the *Lord’s Day (Ontario) Act* to authorize municipalities to permit public games and sports—except horse racing—between 1:30 p.m. and 6:00 p.m. on Sundays, provided this was approved by municipal electors in a referendum.⁷ Amendments were brought to the Act in the 1960s to allow cultural and recreational activities, agricultural and trade shows, scientific exhibitions, and horse racing, while removing the referendum requirement for municipal sports exemptions. In the period from 1953 to 1971, similar laws were enacted in most provinces and territories.⁸

Regulation of Commercial Establishments

A second wave of provincial legislation, aimed at regulating the operating hours of retail establishments, emerged in the late 1960s and during the 1970s. Laws such as Quebec’s *Commercial Establishments Business Hours Act* (1969),⁹ Ontario’s *Retail Business Hours Act* (1975),¹⁰ Manitoba’s *Retail Businesses Holiday Closing Act* (1977) and Newfoundland’s *Shops Closing Act* (1977),¹¹ besides setting store closing hours, prohibited the conduct of retail business

⁷ The cities of Toronto and Windsor were deemed to have met this requirement under section 3(4) of the Act. They had each conducted a referendum on the issue before requesting that the provincial government allow all types of sports on Sundays.

⁸ Newfoundland was the exception.

⁹ The Act came into force on January 1, 1970.

¹⁰ The Act came into force on January 1, 1976.

¹¹ It should be noted, however, that Newfoundland had enacted, many years earlier, legislation to regulate the opening hours of retail establishments as well as certain minimum working conditions for retail sector employees: *The Shops Act* (R.S.N. 1952, c. 267) and *The Hours of Work Act* (S.N. 1963, c. 69).

on a number of holidays, including Sundays,¹² with some exceptions (e.g., corner stores, drugstores, businesses in designated tourist areas).¹³

Although their effect may have been similar, these laws nevertheless represented an important change of approach compared to previous “Lord’s Day” legislation. Rather than promoting religious observance and preventing the profanation of the Sabbath, their objective, of a secular nature, was to preserve a common pause day and protect workers in the retail sector from the requirement to work on Sundays. The nature of these statutes was also different in another respect: instead of being rooted in criminal law, an area of exclusive federal jurisdiction, they were enacted under the provinces’ power to legislate in matters of “property and civil rights”.

Both the federal *Lord’s Day Act* and provincial legislation regulating the hours of retail businesses coexisted until the mid-1980s.

Opposition to Sunday Closing Legislation

Pressure to liberalize Sunday closing laws, always present to some degree since the enactment of the *Lord’s Day Act*, intensified from the 1970s onwards. This can be ascribed to the secularization of society and, perhaps most importantly, the desire of certain segments of the retail business community to increase economic activity, and improve their competitiveness, by extending weekly shopping hours.

Sunday closing laws were also challenged in court, although such challenges were initially unsuccessful. However, the adoption of the *Canadian Charter of Rights and Freedoms* in 1982 proved to be a turning point for opponents of Sunday closing legislation. In 1985, the Supreme Court of Canada struck down the federal *Lord’s Day Act*. It came to the conclusion that, by compelling all Canadians to observe the Christian Sabbath, the Act infringed the Charter guarantee of freedom of religion. It also deemed such an infringement not to be reasonable or demonstrably justified in a democratic society.¹⁴ Nevertheless, the Court found that legislating a day of rest for secular purposes was acceptable.

The following year, the Supreme Court of Canada upheld the validity of Ontario’s *Retail Business Hours Act*.¹⁵ But that Act, frequently amended by the legislature, remained a contentious issue and was subsequently challenged on many

¹² Such a prohibition was implicit in Quebec, since the term “Sunday” did not appear in the *Commercial Establishments Business Hours*.

However, admittance to commercial establishments was limited to specified hours, from Monday to Saturday, thereby barring Sunday shopping.

¹³ In a similar vein, other provinces, including Prince Edward Island, British Columbia, Alberta and Saskatchewan, enacted statutes to delegate responsibility for setting store hours, albeit with some restrictions, to municipalities.

¹⁴ *R. v. Big M Drug Mart Ltd.*, [1985] 1. S.C.R. 295

¹⁵ *Edwards Books and Art Ltd. v. The Queen*, [1986] 2 S.C.R. 713

occasions. In June 1990, the Ontario High Court ruled that the amended Act was unconstitutional and found it to be of no force and effect.¹⁶ Even though this decision was overturned on appeal in March 1991,¹⁷ the intervening legislative vacuum had allowed retail businesses, and the public, to experiment with wide-open Sunday shopping. Similar court challenges occurred in other provinces.

The combination of public pressure and court challenges led most provincial governments to amend their legislation to make it more permissive. For example, a number of new exemptions (e.g., to authorize the opening of stores on the Sundays preceding Christmas) were added in the Sunday closing statutes of a number of jurisdictions. Eventually, many provinces simply opted for deregulation.

Deregulation – Present Day Situation

Beginning in 1980, some provinces decided to delegate to municipalities the power to allow, or prohibit, the opening of retail establishments on Sundays, starting with British Columbia¹⁸, followed by Alberta (1984), Saskatchewan (1984)¹⁹, Ontario (1989)²⁰, Manitoba (1993)²¹ and New Brunswick (2004). Currently, however, only municipalities in Alberta, Manitoba²² and New Brunswick²³ have the power to adopt by-laws regulating opening hours of retail establishments.

¹⁶ *Regional Municipality of Peel v. The Great Atlantic and Pacific Company of Canada Ltd.* (1990), 73 O.R. (2d) 289

¹⁷ *Regional Municipality of Peel v. The Great Atlantic and Pacific Company of Canada Ltd.* (1991), 2 O.R. (3d) 65

¹⁸ In 1989, all remaining statutory restrictions on Sunday shopping in British Columbia were eliminated when the B.C. Court of Appeal struck down sections of the *Holiday Shopping Regulation Act*. (*Canada Safeway Ltd. v. City of Quesnel*, 1989, 58 D.L.R. (4th) 487). The Act was finally repealed in 2003.

¹⁹ The *Urban Municipality Act* was repealed in 2005.

²⁰ Ontario added a “local option” exemption, replacing the previous “tourist exemption”, in the *Retail Business Holidays Act*. This gave municipalities broad powers to regulate retail businesses in their areas, including exempting them from Sunday closing requirements. However, these powers were later curtailed in 1991 and finally abolished in 1992.

²¹ After experimenting with wide-open Sunday shopping in the period from November 29, 1992, to September 30, 1993, Manitoba gave municipalities the authority to regulate Sunday shopping.

²² The Lieutenant Governor in Council may, by regulation, designate a municipality as a vacation resort area. A municipality with such a designation may adopt a by-law exempting any class of retail business establishments, subject to any conditions it sets, from the obligation to close on a holiday (including Sundays). In addition, the Minister responsible for the administration of the *Retail Business Holiday Closing Act* may issue a permit exempting a retail business establishment from the obligation to close on a holiday (including a Sunday) in an emergency or for special events.

²³ Subject to certain conditions, the Minister of the Environment and Local Government may issue a permit authorizing the operation of retail businesses on Sunday in a local district. See s. 27.7 of the *Municipalities Act*.

The deregulation process continued and the opening of retail businesses on Sundays has become widespread in most Canadian jurisdictions²⁴. Presently, there is no specific legislation restricting work or retail business on Sundays in Alberta, British Columbia, Newfoundland and Labrador, Ontario, Quebec²⁵, Saskatchewan or the three territories.

However, Manitoba, New Brunswick, Nova Scotia and Prince Edward Island still have statutory Sunday closing provisions. After the federal *Lord's Day Act* was declared void, the three Maritime Provinces in 1985 and Manitoba in 1987 passed new laws to ensure the closure of retail businesses and to maintain a common rest day on Sundays²⁶. Prince Edward Island, Manitoba and New Brunswick have, however, relaxed these restrictions over time. First, many businesses are exempt from the requirement to close on Sundays. Second, in Prince Edward Island and New Brunswick, a person may, on a Sunday, engage in a commercial activity if he/she could not engage in that activity on one other days of the week due to the dictates of his/her conscience or religion. Moreover, retail businesses can open on Sundays during predetermined periods.²⁷ Third, legislation in Manitoba provides that where all of owner's or operator's retail business establishments are always closed on Saturdays, they may open on Sundays.

Nova Scotia is now the province with the strictest Sunday closing legislation. Following a temporary experiment with deregulation from November 16 to December 21, 2003²⁸ to allow all retail businesses to open on Sundays and the holding of a plebiscite in October 2004 on the question, the majority of Nova Scotians voted against allowing Sunday shopping. Consequently, Sunday remains a "uniform closing day", with some exceptions.²⁹

New Protective Measures: Right to Refuse Work on Sundays

In the context of the deregulation of Sunday commercial activity, three provinces—Ontario, Manitoba and New Brunswick—enacted new provisions to provide retail sector employees the right to refuse Sunday work in certain

²⁴ Starting with Ontario in 1992, Quebec in 1993 and Newfoundland and Labrador in 1998.

²⁵ Specified commercial establishments may open on holiday or operate for longer hours (e.g. pharmacies, grocery stores, convenience stores, antique dealers and hospitals). Moreover, a ministerial authorization to open on holidays or to extend opening hours may be granted to local municipalities near the province's territorial limits, to tourist areas, or on the occasion of a special event.

²⁶ i.e., New Brunswick's *Days of Rest Act*, Nova Scotia's *Retail Business Uniform Closing Act*, and Prince Edward Island's *Days of Rest Act*.

²⁷ i.e., from the last Sunday in November to the last Sunday preceding Christmas in Prince Edward Island and from the first Sunday preceding New Brunswick Day (first Monday in August) to the second Sunday after Christmas in New Brunswick. It should be noted that New Brunswick first allowed shopping in most retail establishments for the period extending from November to December 1991. In 1992, the province extended this period to include all Sundays between Labour Day and Christmas. Moreover, a number of municipalities, including Moncton in 2002, were able to avail themselves of the *Days of Rest Act's* tourist area exemption. However, this exemption was abolished in 2004 by the *Act respecting Sunday Shopping*.

²⁸ Also, there was a temporary experiment in 1993, from October 1 to December 31.

²⁹ s. 3(1) of the *Retail Business Uniform Closing Day Act*.

circumstances, while prohibiting retaliation from employers. The purpose of such legislation was to confer a measure of protection to employees unwilling, for religious, family or other reasons, to work on Sundays and, perhaps as importantly, to address some of the concerns raised by opponents of Sunday shopping.

The actual extent of this protection in Ontario has evolved over more than a decade. In fact, since their inception in February 1989, statutory provisions dealing with the right to refuse Sunday work were amended on three occasions.³⁰ Following the enactment of the *Employment Standards Amendment Act, 1989*, employees in retail business establishments were entitled to refuse any assignment of Sunday work that they considered “unreasonable”. This was nevertheless coupled with relatively complicated mediation and arbitration procedures in case of disagreement between an employee and an employer as to what constituted an unreasonable assignment of Sunday work. These provisions were simplified in 1991 to give employees of most retail business establishments—with some notable exceptions³¹—an unqualified right to refuse to work on Sundays and even to rescind, with at least 48 hours’ notice, a prior agreement to work on a Sunday or other holiday.³² Minor amendments in 1996 simply confirmed this right. In 2001, however, statutory and regulatory changes curtailed, to some extent, the right of newly hired retail sector employees to refuse to work on Sundays. Except for religious reasons, employees in retail business establishments hired on or after September 4, 2001, no longer have the right to refuse to work on Sundays if they had agreed to work on that day at the moment of hiring³³.

Provisions pertaining to Sunday work were adopted more recently in Manitoba (1993) and in New Brunswick (1997). In both provinces, employees of specified retail business establishments³⁴ can refuse to work on a Sunday by giving their employer at least 14 days’ notice.

³⁰ It should be noted that in 1988 the *Employment Standards Act* was amended to afford retail sector employees the right to “refuse any work that is a contravention of subsection 2(2) [obligation for retail business establishments to close during holidays] of the *Retail Business Holidays Act*”, while providing a recourse in case of a dismissal related to the exercise of this right.

³¹ Provisions regarding the right to refuse Sunday work did not apply with respect to retail business establishments where the primary retail business was selling prepared meals, renting living accommodations, opening to the public for educational, recreational or amusement purposes, or selling, in the same premises, goods or services incidental to one of the above businesses.

³² Retail sector employees were also provided the right to 36 consecutive hours free from work each week. This minimum period of rest was subsequently reduced to 24 consecutive hours—the general standard that applies to other employees—in 2001.

³³ Nevertheless, an employer may not make an employee’s agreement to work on Sundays a condition of employment if this would be contrary to the constructive discrimination provision of the *Human Right Code* (s. 10 of the *Exemptions, Special Rules and Establishment of Minimum Wages Regulation*).

³⁴ In Manitoba, this applies to retail business establishments where more than four persons, including the owner, are ordinarily employed, at any one time, in the sale of goods and services, and which are exempted by by-law or regulation from the requirement to close on Sundays (under clause 4.1(2)(b) of the *Retail Business Holiday Closing Act*). In New Brunswick, retail businesses covered are those authorized to open on Sundays pursuant to municipal by-law or a ministerial permit. Moreover, the legislation in New Brunswick expressly provides that no employer may dismiss, suspend, lay off, penalize, discipline or discriminate against an employee who exercises his/her right to refuse to work on a Sunday.

WEEKLY PERIODS OF REST: EMPLOYMENT STANDARDS LEGISLATION

Today, legislation in every Canadian jurisdiction requires, subject to some exceptions, that employers provide a minimum period of rest to their employees, normally in each work week. However, much like other employment standards, these statutory requirements evolved over a period spanning many decades, during which the various jurisdictions implemented, one after the other, their own distinct statutory weekly rest provisions.

In the early-20th Century, such provisions were linked to the *Lord's Day* legislation, often supplementing the latter. Indeed, the first rest-day laws to be passed in Canada—Quebec's *Act to provide for one day of rest each week for employees in certain industries* (1918)³⁵ and Ontario's *One Day's Rest in Seven Act* (1922)—only covered persons employed in hotels and restaurants. These employees were deemed to be more vulnerable since they worked in establishments that could legally operate seven days a week. Moreover, the designation of Sunday as the day on which should fall the day of rest “wherever possible” (as provided for in Ontario's legislation and later in the statutes of many other jurisdictions), served as one of the legislative underpinnings to the entrenchment of a common pause day. Nevertheless, whereas Sunday closing legislation was originally aimed, to some degree, at eliciting religious observance, weekly rest-day laws primarily emphasized secular principles, namely improving the labour conditions of the working class.

The International Labour Organization's (ILO) *Weekly Rest (Industry) Convention, 1921* (Convention C14) also had a significant impact on Canadian legislation.³⁶ This Convention, which is still in force, stipulates that staff employed in any industrial establishment should be provided a period of rest of at least 24 consecutive hours in every seven-day period, to be granted, wherever possible, “simultaneously to the whole of the staff of each undertaking” and on a traditional or customary day of rest. The Convention permits ratifying countries to authorize “total or partial exemptions”, after consulting responsible employer and worker organizations and taking into account “all proper humanitarian and economic considerations”. But it also calls for compensatory periods of rest where a weekly rest period is suspended or diminished. In the same year, the ILO adopted the non-binding *Weekly Rest (Commerce) Recommendation, 1921* (Recommendation R18), designed to promote the extension of most provisions of Convention C14 to employees of commercial establishments. Decades later, the ILO adopted an additional Convention as well as two Recommendations concerning minimum weekly rest periods: the *Weekly Rest (Commerce and Offices) Convention, 1957* (C106),³⁷ the *Weekly Rest*

³⁵ This Act was amended in 1925 to specify that the rest day should consist of 24 consecutive hours.

³⁶ The text of this Convention (Convention C14) is available on the International Labour Organization's website: www.ilo.org. It was ratified by Canada on March 21, 1935.

³⁷ This Convention was not ratified by Canada.

(*Commerce and Offices*) Recommendation, 1957 (R103); and the *Hours of Work and Rest Periods (Road Transport) Recommendation*, 1979 (R161).

Provisions contained in the *Weekly Rest (Industry)* Convention served as the basis for rest-day legislation adopted by various provinces—Manitoba, Saskatchewan, British Columbia, Alberta, Quebec and Nova Scotia—in the period spanning from 1928 to 1937. It also strongly influenced federal legislation. Indeed, in 1935, the year Canada ratified the Convention, the Parliament of Canada enacted the *Weekly Rest in Industrial Undertakings Act*.³⁸ Although the Supreme Court of Canada had previously ruled that regulation of hours of work and minimum wages was within the competence of provincial legislatures, the Prime Minister held that such legislation, if made pursuant to a treaty, fell under federal jurisdiction. He was proven wrong, two years later, when the Judicial Committee of the Privy Council declared the Act *ultra vires* of the Parliament of Canada.³⁹

In time, all jurisdictions in Canada enacted legislation to provide for a minimum weekly period of rest.⁴⁰ Early legislative provisions also evolved in a number of ways. First, coverage was progressively extended to previously excluded employees. For example, legislation in Manitoba and Saskatchewan, which initially only applied to industries in urban centres, was amended in the early 1960s⁴¹ to provide for province-wide coverage—albeit with some exceptions. Second, jurisdictions such as British Columbia, Saskatchewan and Yukon increased minimum weekly rest entitlements. Third, the provisions of weekly rest laws (such as New Brunswick's *Weekly Rest Period Act* of 1954) eventually became incorporated in broader and more encompassing statutes. Today, such provisions appear in the employment standards legislation of every jurisdiction in Canada.⁴²

³⁸ The purpose of this legislation was in part to implement the recommendations of the Price Spreads Commission. In its inquiry about working conditions in various industries and occupations, this Commission had exposed the widespread exploitation of workers and criticized the inadequate enforcement of provincial labour standards.

³⁹ Two other statutes enacted in 1935, the *Minimum Wages Act* and the *Limitations of Hours of Work Act* were also struck down by this decision. Edith Lorentsen and Evelyn Woolner, *op. cit.*, p. 33

⁴⁰ The last jurisdiction to legislate minimum weekly-rest requirements was Prince Edward Island, in 1991. In Ontario, the coverage of statutory weekly rest provisions was extended to non-retail and non-domestic employees in 2001.

⁴¹ Saskatchewan amended its legislation in 1960; Manitoba did so in 1962. However, in Saskatchewan, coverage had been extended in 1957 to all parts of the province by Order in Council.

⁴² Of course, other types of legislation, such as minimum wage, annual vacation and hours of work laws, became incorporated in employment standards legislation in a similar manner.

Current Legislation

Minimum Weekly Period of Rest

All provinces and territories, as well as the federal jurisdiction, provide for at least 24 consecutive hours of rest per week⁴³ in their employment standards legislation. Minimum rest periods are longer in some jurisdictions: 32 consecutive hours per week in British Columbia; two full days per week, “wherever practicable”, in Yukon; and, in Saskatchewan, two days per week for employees who are usually employed for 20 hours or more per week in an establishment where there are more than 10 employees. Sometimes, certain categories of employees are covered by special minimum weekly-rest provisions. For instance, residential care workers in Ontario and in Manitoba are entitled to at least 36 hours of free time in each work week. The same applies in Manitoba to domestic and home care workers.

Scheduling of Rest Periods

In terms of determining when a period of rest should fall, the laws of nine jurisdictions⁴⁴ specify that a weekly day of rest should be on a Sunday, wherever possible. Also, a number of jurisdictions allow rest periods to be postponed, within certain limits. In Alberta, the *Employment Standards Code* stipulates that employees must be given one day of rest in each week of work, two consecutive days in each two-week period, three consecutive days in each three-week period, four consecutive days in each four-week period or at least four consecutive days of rest after 24 consecutive work days. Similarly, in Ontario, employees are entitled to 24 consecutive hours in every work week or 48 consecutive hours in every period of two consecutive work weeks. In the case of farm workers in Quebec, a day of rest may be postponed to the following week with the consent of the employee. In certain circumstances, days of rest can be accrued and scheduled at a later date in British Columbia (with respect to silviculture workers while in a remote camp), New Brunswick (with the approval of the Director of Employment Standards), in Ontario (for residential care workers) and Yukon (if an employee regularly works in excess of the daily standard hours of work).

⁴³ In the case of Alberta and Ontario, the requirement is for a day of rest per week, on *average*.

⁴⁴ These are the federal jurisdiction, the three territories as well as New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Saskatchewan. However, in the case of Nova Scotia, the requirement only applies to an industrial undertaking and in the case of Saskatchewan, this requirement only applies with respect to employees who are entitled to two days of rest in a week.

Exceptions

The scope of weekly rest provisions is often narrowed by specific exceptions contained in employment standards statutes and regulations. For instance, most jurisdictions exclude a number of occupations and industries. Although lists of exclusions are far from uniform across Canada, they frequently encompass groups such as students and practising members of designated professions, managers, sitters, domestics, agricultural workers, fishermen, hunting guides, various salespersons and brokers, information technology professionals, newspaper carriers, live-in residential caretakers and participants in work-experience programs. In addition, statutory weekly day of rest provisions do not apply to employees covered by a collective agreement in some provinces, namely British Columbia⁴⁵, New Brunswick⁴⁶, Newfoundland and Labrador and Prince Edward Island.

Additionally, in order to be covered by weekly rest provisions, employees may sometimes be required to work a minimum number of hours in a specified period. For such provisions to apply, a person must be usually employed for more than three hours in a day in New Brunswick, and 20 hours or more in a week in Saskatchewan.

The employment standards legislation of five provinces⁴⁷ also specifically provides that weekly rest provisions may be disregarded in exceptional circumstances, such as emergency situations. Moreover, in many jurisdictions, employers can apply for a permit or order from designated officials to be exempted from minimum weekly rest requirements. The conditions that must be met vary in each jurisdiction. Usually, an employer must demonstrate that providing a weekly period of rest would cause undue hardship to the business or would be of little value to employees (e.g., where employees work in a remote location⁴⁸). A permit may also be conditional on the employer providing alternate periods of rest to the affected employees and/or securing their consent or the approval of their bargaining agent. It should be noted that permits are not required in British Columbia; employers in that province may, instead of giving a weekly period of rest, pay an employee at the overtime rate to work during that period.

⁴⁵ Unless the collective agreement contains no provision regarding hours of work or overtime.

⁴⁶ Parties to a collective agreement can agree to a benefit, privilege, right or obligation in lieu of a weekly rest period.

⁴⁷ These are Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia and Ontario.

⁴⁸ In Newfoundland and Labrador, legislation explicitly stipulates that an employee who works in a remote area of the province can notify his/her employer in writing that he/she wishes to forego weekly days of rest.

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