



## **PLEASE NOTE**

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the [Queen's Printer](#) for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the [Table of Public Acts](#).

If you find any errors or omissions in this consolidation, please notify the Legislative Counsel Office at (902) 368-4291.

## CHAPTER E-6.2

### EMPLOYMENT STANDARDS ACT

1. In this Act	Definitions
(a) “board” means the Employment Standards Board established under this Act;	board
(b) “employee” means a person who performs any work for or supplies any services to an employer for compensation, and includes a person who was an employee at a time relevant for the purpose of this Act;	employee
(c) “employer” means a person, firm or corporation, agent, manager, representative, contractor or sub-contractor having control or direction of or being responsible, directly or indirectly, for the employment of an employee and includes a person who was an employer at a time relevant for the purposes of this Act;	employer
(d) “employment standard” means a standard term or condition of employment imposed or benefit conferred in favour of an employee by this Act or the regulations;	employment standard
(d.1) “extended family” means the grandparent, grandchild, brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law or daughter-in-law of an employee;	extended family
(d.2) “immediate family” means the spouse, common-law spouse, child, parent, brother or sister of an employee;	immediate family
(e) “inspector” means an inspector of labour standards appointed under this Act;	inspector
(f) “minimum wage” means the amount of wages fixed pursuant to section 5;	minimum wage
(g) “Minister” means the Minister of Community and Cultural Affairs;	Minister
(h) “overtime” means the time worked by an employee in excess of the hours of work established by section 15;	overtime
(i) “pay” means all compensation, due or paid to an employee for work done for an employer and includes vacation pay, pay in lieu of vacation, gratuities and benefits;	pay

pay period	(j) “pay period” means the period of time established by the employer, for the payment of pay to employees in accordance with subsection 30(2);
private home	(k) “private home” means a residence other than a place where board and lodging is provided for more than two persons for remuneration and as a business;
regular rate of wages	(l) “regular rate of wages” means the regular wage rate of an employee for an hour of work;
regulations	(m) “regulations” means the regulations made pursuant to section 41;
wages	(n) “wages” includes salaries, commissions, and compensation in any form for work or service measured by time, piece or otherwise, but does not include vacation pay, pay in lieu of vacation or gratuities;
week	(o) “week” means a period of seven consecutive days:
work week	(p) “work week” means a week of work established by the practice of the employer or determined by an inspector. 1992,c.18,s.1; 1993, c.29,s.4; 1997,c.20,s.3; 2000,c.5,s.3; 2003,c.35,s.1.

#### APPLICATION

Application	<b>2.</b> (1) Except as otherwise expressly provided, this Act applies to all employers and employees.
Exception, farm labourers and salespersons	(2) Notwithstanding subsection (1), only those provisions of this Act relating to the payment and protection of pay apply to the following employees: <ul style="list-style-type: none"> <li>(a) salespersons whose income is derived primarily from commission on sales; and</li> <li>(b) farm labourers.</li> </ul>
<i>Idem</i> , home care workers	(3) Notwithstanding subsection (1), the provisions of sections 5 and 15 do not apply to <ul style="list-style-type: none"> <li>(a) persons employed for the sole purpose of protecting and caring for children, handicapped or aged persons in private homes; and</li> <li>(b) employees of a non-profit organization who are required by the terms of their employment to live-in at a facility operated by the organization.</li> </ul>
<i>Idem</i> , employees with a collective agreement	(4) Notwithstanding subsection (1), only the following provisions of this Act apply to employees whose terms and conditions of work are established by a collective agreement pursuant to the <i>Labour Act</i> R.S.P.E.I. 1988, Cap. L-1:

- (a) those provisions relating to parental, maternity and adoption leave as contained in sections 18 to 22;
- (b) those provisions relating to sexual harassment as contained in sections 24 to 28;
- (c) those provisions relating to payment and protection of pay, payroll records and notice of prosecution as contained in sections 30 to 39;
- (d) those provisions relating to compassionate care leave as contained in section 22.3.

(5) For the purposes of subsection (2), “farm labourers” does not include employees in an undertaking that, in the opinion of the board, is a commercial undertaking. 1992,c.18,s.2; 2003,c.4,s.2. Farm labourers

#### ADMINISTRATION

3. The Minister may appoint and prescribe the duties of officers to be known as inspectors of labour standards who when acting under this Act shall have the powers of a commissioner under the *Public Inquiries Act* R.S.P.E.I. 1988, Cap. P-31. 1992,c.18,s.3. Inspectors

#### EMPLOYMENT STANDARDS BOARD

4. (1) The Lieutenant Governor in Council shall establish, and appoint the members of, a board that shall be known as the Employment Standards Board and that board shall consist of not less than six persons equally representative of employees and employers respectively, and one additional person who shall be chairperson. Employment standards board

(2) Members of the board shall be appointed for a term not to exceed three years and are eligible for re-appointment. Term of office

(3) The Lieutenant Governor in Council may appoint one or more vice-chairpersons and define the powers and duties of such vice-chairpersons. Vice-chairpersons

(4) The chairperson may establish a panel of the board and the panel has the power and authority of the board to deal specifically with complaints under this Act. Panels

(5) A panel of the board shall consist of a chairperson and two members designated by the chairperson. Idem

(6) The chairperson may refer any matter that is before the board to a panel and may refer any matter that is before a panel to the board or another panel. Idem

Functions	<p>(7) The function of the board is to advise the Lieutenant Governor in Council in accordance with section 5 and to exercise the powers conferred upon it under this Act and to determine all questions of fact or law that arise in any matter before it including any question as to whether</p> <ul style="list-style-type: none"><li>(a) a person is an employer or an employee; or</li><li>(b) an employer or other person is doing or has done anything contrary to this Act or the regulations or has failed to do something required by this Act or the regulations.</li></ul>
Oath of office	<p>(8) Each member of the board shall, before acting as such, take and subscribe before a judge of the Supreme Court and shall file with the Minister an oath or affirmation of office in the following form: “I do solemnly swear (affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of member of the Employment Standards Board and will not, except in the discharge of my duties disclose to any person any of the evidence or other matter brought before the said board. So help me God.”</p>
Quorum	<p>(9) A majority of the members of the board or panel constitute a quorum at any meeting.</p>
Decisions of board	<p>(10) A decision of the majority of the members of the board or panel present and constituting a quorum is the decision of the board or panel and if the votes are equal, the chairperson shall have the casting vote.</p>
Powers	<p>(11) The board and each member thereof shall have the power of a commissioner under the <i>Public Inquiries Act</i>.</p>
Evidence	<p>(12) The board may receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it may consider fit and proper, whether admissible as evidence in a court of law or not.</p>
Procedure	<p>(13) The board shall determine its own practice and procedure but shall give full opportunity to all interested persons to present evidence and to make representations and the board may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable.</p>
Secretary	<p>(14) The Minister may appoint a secretary who shall carry out the duties prescribed by the Minister and any other duties imposed by the board or otherwise under this Act.</p>
Remuneration	<p>(15) The members of the board shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and such actual and reasonable expenses as may be incurred by them in the discharge of their duties.</p>

(16) The board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the board thereon is final and conclusive for all purposes, but nevertheless the board may at any time, if it considers it advisable to do so, reconsider any decision, interim order, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, interim order, direction, declaration or ruling.

Jurisdiction

(17) No decision, interim order, order, direction, declaration or ruling of the board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of application for judicial review or otherwise, to question, review, prohibit or restrain the board or any of its proceedings.

Decisions, etc. not reviewable by court

(18) The board may of its own motion state a case in writing for the opinion of the Supreme Court, Appeal Division upon any question that, in the opinion of the board is a question of law and the court shall hear and determine the question of law arising thereon and remit the matter to the board, with the opinion of the court thereon; no costs shall be awarded in a case stated under this section.

Stated case

(19) The Minister shall provide the board with such clerical and other staff as the Minister considers necessary for the performance of its duties, and shall fix their remuneration.

Staff

(20) The production in a court of a document purporting to be or to contain a copy of a decision, determination, report, interim order, order, direction, declaration or ruling of the board and purporting to be signed by a member of the board or its secretary as the case may be, is *prima facie* proof of such document without proof of the appointment, authority or signature of the person who signed the document.

Copy of document as evidence

(21) A certificate purporting to be signed by the Minister or the Deputy Minister or by an official in the Department of Community and Cultural Affairs stating that a report, request, or notice was or was not received or given by the Minister pursuant to this Act, and if so received or given, the date upon which it was so received or given is *prima facie* evidence of the facts stated therein without proof of the signature or of the official character of the person appearing to have signed the same. 1992,c.18,s.4; 1993,c.29,s.4; 1997,c.20,s.3; 2000,c.5,s.3.

Certificate of Minister or Deputy

## WAGES

5. (1) The board, subject to the approval of the Lieutenant Governor in Council, shall by order

Powers of board to make orders

- (a) fix one minimum wage for all employees;
- (b) fix the minimum wage upon an hourly, daily, weekly, monthly or other basis;
- (c) specify when and under what conditions deductions may be made from the wages of an employee, and what notification the employee should be given thereof prior to such deduction;
- (d) fix the maximum amount, if any, that may be deducted from the wages of an employee where the employer furnishes to the employee, board, lodging, uniforms, laundry or other services, and prescribe the notification required to be given to the employee prior to such deduction,

and may exempt any employee or group of employees from the operation of any order made under clause (c) or (d).

Review	(2) The board shall meet at least once a year to review the Minimum Wage Order.
Criteria	<p>(3) In advising the Lieutenant Governor in Council, the board shall take into account the social and economic effects of the minimum wage rates in the province and shall consider among other matters</p> <ul style="list-style-type: none"> <li>(a) any cost of living increase since any previous order affecting the cost to an employee of purchasing the necessities of life, including housing, food, clothing, transportation and health care and supplies; and</li> <li>(b) economic conditions within the province and the concept of reasonable return on private investment.</li> </ul>
Posting orders	(4) An employer shall post and keep posted in a conspicuous place in the work establishment, a copy of all applicable minimum wage orders.
Other notices	(5) Additional notice of any order made under this section shall be given by employers to employees in such manner as the board may direct.
Publication	(6) Every order of the board shall be published in the Gazette and shall name a date, at least fourteen days subsequent to the date of publication, on which it comes into force.
Binding effect of orders	(7) Every order of the board is binding upon the employer and employees effective from the date of its coming into force and no order is subject to variation through individual agreement except with the authorization of the board.
Amendment, etc	(8) Upon the petition of any employer or employee or upon its own motion, the board may review, suspend, vary or rescind any order. 1992,c.18,s.5.

## PAID HOLIDAYS

**6.** (1) In this section and sections 7 to 10, “paid holiday” means New Year's Day, Good Friday, Canada Day, Labour Day, Remembrance Day and Christmas Day. Paid holidays

(2) Except as provided by section 9, every employer shall grant every employee a holiday with pay on each paid holiday falling within any period of employment. 1992,c.18,s.6; 2003,c.35,s.2. *Idem*

**7.** (1) Sections 6 to 9 do not apply to an employee Employees not entitled to paid holidays

- (a) who has been employed for less than thirty days;
- (b) who fails, without just cause, to comply with the contract of service either on the regular work day immediately preceding or the regular work day succeeding the paid holiday;
- (c) who has agreed to work on the paid holiday and who without reasonable cause failed to report for and perform work;
- (d) who is employed under an arrangement whereby the employee may elect to work or not when requested to do so; or
- (e) who has not earned pay for at least fifteen of the last thirty calendar days preceding the holiday.

(2) Clause (1)(b) shall not apply if the employer has directed or permitted the employee not to report for work on the working day either immediately prior to or following the holiday. 1992,c.18,s.7. Employees not directed to work

**8.** When a paid holiday falls on a day that is a non-working day for an employee, the employer shall grant the employee a holiday with pay on either Paid holiday on non-working day

- (a) the working day immediately following the paid holiday; or
- (b) the day immediately following the employee's vacation,

or grant the employee another day agreed upon by the employee and the employer before the date of the next annual vacation of the employee. 1992,c.18,s.8.

**9.** Where an employee is required to work on a paid holiday, the employer shall Pay for working paid holiday

- (a) pay that employee at a rate at least equal to one and one-half times the employee's regular rate of wages for the time worked on that day in addition to a day's pay at the employee's regular rate of pay; or
- (b) pay that employee at the employee's regular rate of wages for the time worked on that day and grant the employee a holiday with pay on another day agreed by the employer and the employee before the date of the next annual vacation of the employee. 1992,c.18,s.9.



No reduction of wages

**10.** (1) An employer of an employee whose wages are calculated on a weekly or monthly basis shall not reduce the employee's weekly or monthly wages for a week or month in which a paid holiday occurs by reason only that the employee does not work on the paid holiday.

Certain employees to receive regular rate of pay

(2) An employer of an employee whose wages are calculated on a daily or hourly basis shall pay the employee for a paid holiday on which the employee does not work at least the equivalent of the wages the employer would have paid at the employee's regular rate of wages for the employee's normal hours of work.

Equivalent to regular rate

(3) An employer of an employee whose wages are calculated on any basis other than a basis mentioned in subsections (1) or (2) shall pay the employee for a paid holiday on which the employee does not work at least the equivalent of the wages the employer would have paid at the employee's regular rate of wages for the employee's normal working day.

Calculation

(4) For the purpose of this Act, an inspector may calculate the rate of wages due to an employee for the purposes of determining the pay owed to an employee for the paid holiday. 1992,c.18,s.10.

#### VACATION PAY

Vacation and vacation pay

**11.** (1) Where an employee works for an employer for a continuous twelve-month period and the employee's employment with such employer does not cease before the end of that twelve-month period, the employer shall

- (a) not later than four months after that twelve-month period ends, give the employee an unbroken vacation of at least two weeks;
- (b) at least one week in advance, notify the employee of the date the employee's vacation is to begin; and
- (c) at least one day before the employee's vacation begins, pay the employee an amount equal to four per cent of the employee's wages for the twelve-month period during which the employee establishes the right to a vacation.

Vacation pay on termination of employment

(2) Where an employee works for an employer for less than a continuous twelve-month period, and the employment with that employer ceases, the employer shall, not later than the end of the next regular pay period after the employee's employment ceases, pay to the employee an amount equal to four per cent of the employee's wages during the time that the employee was employed.

Holiday occurring during vacation

(3) Where a paid holiday as defined in subsection 6(1) occurs during the period of a vacation, the period of the vacation shall be lengthened by one working day.

(4) Sick leave with pay shall not be considered as vacation with pay or pay in lieu of vacation. 1992,c.18,s.11. Sick leave

**12.** Notwithstanding the provisions of any other Act, every employer shall be deemed to hold vacation pay accruing due to an employee in trust for the employee and for payment of the vacation pay over in the manner and at the time provided under section 11, and the amount shall be a charge upon the assets of the employer or the employer's estate in the employer's hands or the hands of a trustee and shall have priority over all other claims including those of the Crown. 1992,c.18,s.12. Vacation pay deemed to be held in trust

**13.** (1) For the purpose of calculating vacation pay or pay in lieu of vacation as provided in section 11 wages shall include the cash value of board and lodging, or either of them, furnished by the employer. Value of board and lodging

(2) The cash value of board or lodging referred to in subsection (1) shall be deemed to be the greatest of the following: Determination of cash value

- (a) the amount that is actually deducted from the pay of the employee by the employer for board or lodging under any contract or agreement;
- (b) the amount agreed upon between the employer and the employee as being the cash value thereof; or
- (c) the amount specified in the order issued by the board under clause 5(1)(d). 1992,c.18,s.13.

**14.** Where the provisions for an annual vacation established by any other Act, agreement, contract of service, or any custom, are more favourable to an employee in respect of vacation or vacation pay than this Act requires, the provisions so established prevail over this Act. 1992,c.18,s.14. Most favourable provisions apply

### HOURS OF WORK

**15.** (1) The standard work week shall be forty-eight hours. Standard work week

(2) The board may exempt specific employers or industries from the standard work week provisions and may substitute other prescribed standards for an employer or industry. Exemptions

(3) In granting any such exemption the board shall take into account the following factors: Factors considered

- (a) the seasonal nature of the work;
- (b) the effect of the extended hours on the health and safety of workers and the public;
- (c) work requirements that include the need to have employees in the work premises while not always engaged in work-related activities; and

(d) the duration of the work schedule proposed by the employer or customary in the industry.

Overtime

(4) Overtime at the rate of 1 and 1/2 times the regular rate of pay shall be paid for all work in excess of the standard work week except where the board has prescribed a standard work week in excess of forty-eight hours, in which case overtime at the rate of 1 and 1/2 times the regular rate of pay shall be paid for all work in excess of the standard work week prescribed by the board for an employer or industry. 1992,c.18,s.15.

#### REST PERIODS

Rest day

**16.** (1) An employer shall provide each employee, except those employees excluded by the regulations, with a rest period of at least twenty-four consecutive hours in every period of seven days and, whenever possible, that rest period shall include Sunday.

Rest period

(2) An employer shall provide for each employee a rest or eating period of at least one-half hour at intervals such that as a result no employee works longer than five consecutive hours without a rest or eating period. 1992,c.18,s.16.

#### REPORTING PAY

Reporting pay

**17.** Each time an employee is required to report to work or for work related activities, the employee shall be paid wages for not less than three hours. 1992,c.18,s.17.

#### MATERNITY LEAVE

Unlawful dismissal  
etc.

**18.** No employer shall dismiss, lay off or suspend an employee by reason only of the fact that the employee

- (a) is pregnant;
- (b) is temporarily disabled because of pregnancy;
- (c) has applied for maternity leave in accordance with section 19; or
- (d) has applied for parental or adoption leave in accordance with section 22. 1992,c.18,s.18.

Maternity leave

**19.** Every employee who

- (a) has been in the employment of the employer for a continuous period of twenty weeks or more;
- (b) at least four weeks before the expected date of commencement of the leave, submits to the employer, an application for maternity leave specifying the date of commencement and the date of termination of the leave; and

(c) provides the employer with a certificate of a qualified medical practitioner certifying that the employee is pregnant and specifying the estimated date of birth,  
shall be granted by the employer maternity leave without pay from employment with the employer in accordance with section 20. 1992,c.18, s.19; 2000,c.7,s.2.

**20.** (1) The maternity leave to which an employee is entitled pursuant to section 19 shall consist of a period not exceeding seventeen weeks commencing at any time during the period of eleven weeks immediately preceding the estimated date of birth. Entitlement

(2) Notwithstanding subsection (1), where the actual date of birth is later than the estimated date of birth, the employee is entitled to not less than six weeks leave after the actual date. *Idem*

(3) Where the pregnancy of an employee would unreasonably interfere with the performance of the employee's duties, the employer may require the employee to commence maternity leave not more than three months prior to the estimated date of birth. Commencement of maternity leave

(4) In any prosecution alleging a violation of subsection (3) the onus shall be upon the employer to prove that pregnancy of the employee would unreasonably interfere with the employee's duties. Onus of proof

(5) The employee may return to work and the employer may permit the employee to return to work at a date earlier than six weeks after the date of actual delivery. 1992,c.18,s.20. Return to work

**21.** (1) An employer who has granted maternity leave to an employee pursuant to sections 19 and 20 shall permit the employee to resume work in the position occupied by the employee at the time such leave commenced or, if that position no longer exists, in a comparable position with not less than the same wages and benefits the employee would have received if the employee had not been granted maternity leave and, in either case, with no loss of seniority or pension benefits. Reinstatement on expiration of leave

(2) For the avoidance of doubt, it is declared that an employer is not obliged to pay pension benefits in respect of any period of maternity leave granted to an employee. 1992,c.18,s.21. Pension benefits

**PARENTAL AND ADOPTION LEAVE**

**22.** (1) Every employee Parental leave, persons entitled  
 (a) who has been in the employment of the employer for a continuous period of twenty weeks or more;  
 (b) who,

	<p>(i) becomes the natural mother or father of a child,  (ii) assumes actual care and custody of a child, for the purposes of adoption, or  (iii) adopts or obtains legal guardianship of a child under the law of a province, and  (c) who, at least four weeks before the expected date of commencement of the leave, submits to the employer, an application for parental leave, specifying the date of commencement and the date of termination of the leave,  is entitled to and shall be granted, parental leave without pay for a continuous period of up to thirty five weeks.</p>
Adoption, application date	(2) Notwithstanding subsection (1), in the case of leave pursuant to subclauses (1)(b)(ii) or (iii), an application for parental leave shall not be required earlier than the date on which the employee is notified of the placement of the child and the leave shall be granted without pay consisting of a continuous period of up to fifty two weeks.
Maximum aggregate leave	(2.1) Notwithstanding any other provision of this section, the aggregate amount of leave that may be taken by one or two employees under this section and section 20 in respect of the same event, shall not exceed fifty two weeks.
Leave only in specified period	(3) Subject to subsection (6), parental leave shall be taken only during the fifty two week period commencing on the date of the child's birth or the date on which the child comes into the custody of the employee, whichever is later.
Application of section 21	(4) Section 21 applies, with such modifications as the circumstances require, to parental, adoption or guardianship leave under this section.
Early return	(5) Notwithstanding subsection (1), an employer may accept an employee's return to work before the expiry of the parental leave granted provided that the employee gives the employer 2 weeks written notice of proposed return date.
Parental leave with maternity leave	(6) Where an employee intends to take parental leave in addition to maternity leave, the employee must commence the parental leave immediately on expiry of the maternity leave without a return to work after expiry of the maternity leave and before commencement of the parental leave, unless the employee and the employer otherwise agree.
Not applicable to foster parents	(7) This section does not apply to a person acting as a foster parent to a child. 1992,c.18,s.22; 2000,c.7,s.4.

**FAMILY LEAVE**

**22.1** (1) Where an employee has been employed by an employer for a continuous period of six months or more, the employer shall, at the request of the employee, grant the employee leaves of absence without pay of up to three days, in total, during a twelve calendar-month period to meet responsibilities related to the health or care of a person who is a member of the immediate family or extended family of the employee. Family leave

(2) An employee who intends to take a leave of absence under subsection (1) shall advise the employer of the employee’s intention to take the leave, the commencement date of the leave and, subject to subsection (1), the anticipated duration of the leave. 2003,c.35,s.3. Details of leave to employer

**SICK LEAVE**

**22.2** (1) Where an employee has been employed by an employer for a continuous period of six months or more, the employer shall, at the request of the employee, grant the employee leaves of absence without pay of up to three days, in total, during a twelve calendar-month period for sick leave. Sick leave

(2) Where an employee requests a leave of absence under subsection (1) that is three consecutive calendar days in length, the employer may require the employee to provide the employer with a certificate signed by a medical practitioner certifying that the employee is or was unable to work due to illness or injury. Medical certificate

(3) An employee requesting leave under subsection (1) shall advise the employer, subject to subsections (1) and (2), of the anticipated duration of the leave. 2003,c.35,s.3. Details of leave to employer

**COMPASSIONATE CARE LEAVE**

**22.3** (1) In this section Definitions

(a) “immediate family” means the spouse, common-law spouse, child, parent, brother or sister of an employee and any other person who is a member of a class of persons prescribed by the regulations for the purpose of this section; immediate family

(b) “qualified medical practitioner” means a person who is entitled to practice medicine under the laws of the jurisdiction or jurisdictions where the care or treatment of an immediate family member is provided. qualified medical practitioner

(2) Every employer shall grant an unpaid leave of absence of up to eight weeks to an employee for the purpose of providing care and Entitlement to unpaid leave

support to a family member of the employee if the employee provides the employer, before or after taking the unpaid leave of absence, with a copy of a certificate issued by a qualified medical practitioner stating that a family member of the employee has a serious medical condition carrying with it a significant risk of death within 26 weeks.

Computation of time of leave	(3) An employee may only take an unpaid leave of absence under this section between the times specified in subsections (4) and (5).
Commencement of unpaid leave of absence	(4) An unpaid leave of absence taken under this section commences (a) the first day of the work week for which the certificate was issued; or (b) where the unpaid leave of absence was commenced before the certificate was issued, the first day of the work week in which the leave was commenced.
End of unpaid leave of absence	(5) An unpaid leave of absence taken under this section ends (a) on the last day of the work week in which the employee's family member dies; or (b) immediately after the expiration of 26 work weeks following the first day of the work week as determined under subsection (4).
Minimum period of absence	(6) An unpaid leave of absence taken under this section may only be taken in periods of not less than one work week's duration.
Total amount of leave	(7) The total amount of unpaid leave of absence 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 8 weeks.
Copy of certificate	(8) Where requested in writing by the employer within 15 days after an employee's return to work, the employee shall provide the employer with a copy of the certificate referred to in subsection (2). 2003,c.4,s.1.

#### BEREAVEMENT LEAVE

Leave without pay	<b>23.</b> (1) On the death of a member of the immediate family or extended family of an employee, the employer of the employee shall grant to the employee a leave of absence without pay of (a) up to three consecutive calendar days, if the deceased person was a member of the immediate family of the employee; or (b) one day, if the deceased person was a member of the extended family of the employee.
Timing of leave	(2) An employee may only take a leave of absence granted under this section during the period of bereavement and, if the employee intends to take such a leave of absence, the employee must commence the leave of absence not later than the day of the funeral.

(3) An employee intending to take a leave of absence under this section shall advise the employer of the employee's intention to take the leave, the anticipated commencement date of the leave and the anticipated duration of the leave. 1992,c.18,s.23; 2003,c.35,s.4. Notice to employer

### SEXUAL HARASSMENT

**24.** In sections 25 to 28, “sexual harassment” means any conduct, comment, gesture or contact of a sexual nature Sexual harassment defined

- (a) that is likely to cause offence or humiliation to any employee; or
- (b) that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion. 1992,c.18,s.24.

**25.** Every employee is entitled to employment free of sexual harassment. 1992,c.18,s.25. Employee right

**26.** Every employer shall make every reasonable effort to ensure that no employee is subjected to sexual harassment. 1992,c.18,s.26. Employer obligation

**27.** (1) Every employer shall, after consultation with employees or their representatives, if any, issue a policy statement concerning sexual harassment. Policy statement

(2) The policy statement required by subsection (1) may contain any term consistent with the intent of sections 24 to 28 the employer considers appropriate, but must contain the following: Content of policy statement

- (a) a definition of sexual harassment that is substantially the same as the definition in section 24;
- (b) a statement to the effect that every employee is entitled to employment free of sexual harassment;
- (c) a statement to the effect that the employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment;
- (d) a statement to the effect that the employer will take such disciplinary measures as the employer considers appropriate against any person under the employer's direction who subjects any employee to sexual harassment;
- (e) a statement explaining how complaints of sexual harassment may be brought to the attention of the employer;
- (f) a statement to the effect that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation thereto; and



(g) a statement informing employees of the discriminatory practices provisions of the *Human Rights Act* R.S.P.E.I. 1988, Cap. H-12, that pertain to rights of persons to seek redress under that Act.

Awareness

(3) Every employer shall make each person under the employer's direction aware of the policy statement required by subsection (1). 1992,c.18,s.27.

Redress

**28.** Where an employee alleges to an inspector that sexual harassment or discrimination is taking place, the inspector shall advise the employee of the right of redress through the *Human Rights Act*. 1992,c.18,s.28.

#### NOTICE OF TERMINATION

Period of notice if employed for more than six months

**29.** (1) Where an employee has been employed continuously for longer than six months

(a) the employer shall not discharge or lay off the employee unless for just cause, without giving the employee in writing at least

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

(ii) four weeks notice, where the employee has been employed by the employer for a continuous period of five years or more but less than ten years;

(iii) six weeks notice, where the employee has been employed by the employer for a continuous period of 10 years or more but less than 15 years, or

(iv) eight weeks notice, where the employee has been employed by the employer for a continuous period of 15 years or more;

(b) the employee shall not terminate the employment without giving the employer in writing at least

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

(ii) two weeks notice where the employee has been employed by the employer for a continuous period of five years or more.

Exceptions, termination without notice

(2) Clause (1)(a) does not apply where

(a) a person is discharged or laid off for the following reasons beyond the control of the employer:

(i) complete or partial destruction of the plant,

(ii) destruction or breakdown of machinery or equipment,

(iii) inability to obtain supplies and materials, or

(iv) cancellation, suspension or inability to obtain orders for the products of the employer

if the employer has exercised due diligence to foresee and avoid the cause of discharge or layoff; or

(b) a person is discharged or laid off because of labour disputes, weather conditions or actions of any governmental authority that affect directly the operations of the employer.

(3) Where an employer discharges or lays off an employee in accordance with subsection (1), the employer shall pay to the employee, in respect of the period of the notice given under that subsection, the wages earned by the employee during that period or a sum equivalent to the employee's normal wages for the number of weeks prescribed by subsection (1) exclusive of overtime, whichever is the greater.

Amount of pay to which employee entitled

(4) Where an employer, contrary to subsection (1) discharges or lays off an employee without having given notice required by that subsection, the employer shall pay to the employee a sum equivalent to the employee's normal wages for the number of weeks prescribed by subsection (1) exclusive of overtime.

*Idem*

(5) Nothing in this section affects any provision in a contract of service, or any recognized custom, by virtue of which an employee or employer is entitled to more notice of termination of employment or of lay off or to more favourable compensation in respect of the period of any such notice than is provided by this section. 1992,c.18,s.29; 2003,c.35,s.5.

Most favourable terms apply

#### PAYMENT AND PROTECTION OF PAY

**30.** (1) Every employer shall furnish to every employee at the time wages are being paid a statement in writing showing the following:

Pay statement

- (a) the name and address of the employer and the name of the employee;
- (b) the period of time or the work for which the wages are being paid;
- (c) the rate of wages to which the employee is entitled and the number of hours worked;
- (d) the gross amount of wages to which an employee is entitled;
- (e) the amount and purpose of each deduction;
- (f) any bonus, gratuity, living allowance, or other payment to which the employee is entitled; and
- (g) the net amount of money being paid to the employee.

Payment

(2) An employer shall

- (a) pay the employee at such times that the interval between pays is not more than sixteen days; and

(b) when paying an employee, include all wages earned up to and including a day that is not more than five working days prior to the time fixed for payment.

Exceptions	(3) An employer is not required to comply with clause (2)(a) or (b) if the payments are made under the terms of a collective agreement or in accordance with an order of the board with respect thereto.
Payment to absent employee	(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 be paid on demand thereafter, during regular hours of work.
Payment on termination of employment	(5) Any pay to which an employee is entitled on termination of employment shall be paid by the employer to the employee not later than the last day of the next pay period after termination of employment.
Determination of amount payable	(6) Where an employer has failed to pay an employee <ul style="list-style-type: none"> <li>(a) the amount of wages due such employee; and</li> <li>(b) any vacation pay or gratuities to which the employee is entitled,</li> </ul> the inspector shall determine the difference between the amount paid to the employee and the amount to which the employee is entitled.
Complaint respecting benefits	(7) Where an employer has failed or refused to provide any benefit to which an employee is entitled, but which is not required to be paid directly to the employee, the employee may, within twelve months of the alleged violation, make a complaint to an inspector and the inspector shall determine the amount to which the employee is entitled.
Inquiry	(8) Where an inspector receives a complaint under subsection (7) or has reasonable grounds to believe there has been a failure to comply with this Act, the inspector shall inquire into the matter.
Order of inspector	(9) Where an inspector determines that an employer has contravened a provision of this Act within the preceding twelve months, the inspector shall notify the employer of any determination made under subsection (6) or (7) and may order the employer to <ul style="list-style-type: none"> <li>(a) do any act that in the opinion of the inspector constitutes full compliance with this Act; and</li> <li>(b) pay over to the inspector in trust not later than a date designated in such notice, any unpaid wages, overtime pay, or vacation pay not exceeding \$5,000 owing to an employee as determined under subsection (6) or any benefits owing to the employee as determined under subsection (7), or both.</li> </ul>
Content of order	(10) Where an inspector has received from an employer unpaid wages, overtime pay, vacation pay or benefits under clause (9)(b), the inspector shall in any order made under subsection (9) specify the provision of this

Act that has been contravened and advise the employer against whom the order is made of the right to appeal to the board within ten days of receipt of the order made under subsection (9).

(11) Where no appeal is made to the board within the time specified in subsection (10), the inspector shall pay to the employee or employees all monies collected on their behalf. Payment to employees

(12) For the purpose of subsection (6), an employer who pays an employee by means of a cheque which, within six months from the date of issue, is determined to be valueless shall be deemed to have failed to pay the employee. Valueless cheque

(13) An inspector shall have standing to bring action in any court of competent jurisdiction or otherwise to pursue any claim to recover unpaid wages, unpaid vacation pay or any other monies owing under this Act on behalf of the board, any employee or any group of employees. Action by inspector for recovery of wages etc

(14) An employee who, having made a complaint to an inspector, is not satisfied with the result may make a complaint in writing to the board. Complaint to board

(15) Any employer affected by an order made under this Act by an inspector may, within ten days after the order is served, file an appeal with the board, and where no such appeal is filed the order of the inspector is deemed to be an order of the board. Appeal

(16) An employer in respect of whom an inspector has made an order under this Act shall comply with the order unless an appeal has been filed with the board. Compliance with orders

(17) In any proceeding before the board with respect to a complaint pursuant to subsection (6) or (7) or an appeal pursuant to subsection (15) the parties shall be Parties

- (a) the employer;
- (b) the employee or group of employees;
- (c) the inspector; and
- (d) any other person specified by the board upon such notice as the board may determine.

(18) In any proceeding before the board any of the parties may be heard through a representative. Representative

(19) Where a group of employees having the same or substantially the same interests has a complaint pursuant to this Act, one complaint may be made in a representative capacity. *Idem*

- Procedure (20) In any proceeding before the board pursuant to subsection (17), the board shall
- (a) review the matter at a hearing;
  - (b) give the employer, employee, group of employees or the representative of any of them, full opportunity to present evidence and make submissions;
  - (c) decide whether or not a party has contravened this Act;
  - (d) determine the amount, if any, owing to the employee or group of employees; and
  - (e) make an order in writing to the contravening party to
    - (i) do any act that, in the opinion of the board constitutes full compliance with the provision contravened, and
    - (ii) rectify an injury caused to the person injured or make compensation therefor.
- Compliance with board order (21) A person to whom an order of the board has been directed shall forthwith comply with the order.
- Registration of order in Supreme Court (22) An inspector or any employee or group of employees on whose behalf an order has been made under this Act may enter with the Registrar of the Supreme Court
- (a) an order of an inspector by which an employer is ordered to do any act or to pay unpaid pay in respect of which the time for appeal to the board has elapsed and no appeal has been filed; or
  - (b) an order of the board by which an employer is ordered to do any act or to pay unpaid pay,
- as if it were an order of the Supreme Court and every such order is thereafter enforceable as an order of the Supreme Court.
- Disbursement of property or proceeds by sheriff (23) Subject to subsection (24), where any sheriff has possession or control of any property of the person against whom an order has been entered in accordance with subsection (21), or the proceeds thereof, the sheriff shall disburse the proceeds in accordance with the priorities established by this Act.
- Challenge of order (24) Where an order has been entered as an order of the Supreme Court in accordance with subsection (22), any person other than the employer may challenge the order in interpleader proceedings or on application to set aside any execution thereunder as provided for by the Rules of the Supreme Court but the order of an inspector or the board is *prima facie* proof that the amount of money ordered to be paid was due and owing when the order was made.
- Attachment order (25) Where an order has been entered as an order of the Supreme Court in accordance with subsection (22), the inspector shall notify the

sheriff and apply for an attachment order against the employer as provided for in the Rules of the Supreme Court.

(26) Notwithstanding the requirements of the Rules of the Supreme Court, an inspector is not required to have sureties or give any security. 1992,c.18,s.30. Sureties

**31.** (1) Unpaid pay set out in a determination constitutes a lien, charge and secured debt in favour of the inspector against all the real and personal property of the obligor, including money due or accruing due to the obligor from any source. Lien for unpaid pay

(2) Notwithstanding any other Act, the amount of a lien and charge and secured debt referred to in subsection (1) is payable and enforceable in priority over all liens, judgments, charges, or any other claims or rights including those of the Crown in right of the province and, without limiting the generality of the foregoing, the amount has priority over Priority

- (a) an assignment, including an assignment of book debts, whether absolute or otherwise and whether crystallized or not;
- (b) a mortgage of real or personal property;
- (c) a debenture charging personal property, whether crystallized or not; and
- (d) a contract, account receivable, insurance claim or proceeds of a sale of goods

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. 1992,c.18,s.31.

**32.** (1) Where an inspector has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to an employer who is liable to make any payment under this Act, the inspector may, by registered letter or by a letter served personally, demand that the person pay the monies otherwise payable to the employer in whole or in part to the inspector in trust on account of the liability under this Act. Payment to inspector by third party

(2) The receipt of an inspector for monies paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment. Receipt constituted discharge

(3) Every person who has discharged any liability to an employer who is liable to make a payment under this Act without complying with a demand under this section is liable to pay an amount equal to the liability discharged or the amount that is required to be paid under this section, whichever is the lesser. 1992,c.18,s.32. Liability

## GENERAL

- Payroll records      **33.** (1) Every employer shall make and keep in Prince Edward Island for a period of thirty-six months after work is performed by an employee, complete and accurate records in respect of the employee, showing the
- (a) name and address and Social Insurance Number;
  - (b) date of birth;
  - (c) wage rate and actual earnings;
  - (d) number of hours worked in each day and week;
  - (e) gross earnings per pay period;
  - (f) deductions from gross earnings and nature of each deduction;
  - (g) starting date of employment and date of termination;
  - (h) type of work performed by the employee;
  - (i) period in which employee received vacation with pay; and
  - (j) amount of vacation pay paid to the employee in lieu of vacation.
- Exception *re* hours of work      (2) Clause (1)(d) does not apply in respect of the salaried employees of an employer who perform work of a clerical or administrative nature where the employer establishes a regular working week and makes and keeps a record showing the number of hours worked by such employees in excess of any regular working week.
- Employer to file information on request      (3) An employer shall, within seven days after receipt of a notice from the board or an inspector, or within such other time as may be allowed by the board or an inspector, file a statement setting forth the information as required under subsection (1), including any agreement with the employees in relation to wages, hours of work and working conditions as may be required by notice.
- Powers of investigation and entry      (4) For the purpose of ensuring that the provisions of this Act and regulations are complied with, an inspector may
- (a) enter into or upon lands or premises where a person is employed, may be employed, or has been employed at any reasonable time, for the purpose of inspection, investigation or examination of conditions of employment;
  - (b) enter into any office or premises where an inspector has reason to believe employment records are kept or stored;
  - (c) inspect and examine all books, payrolls and other records of an employer that in any way relate to pay, hours of work, vacation pay or conditions of employment affecting any of the employer's employees;
  - (d) take extracts from, or make copies of, any entry in such books, payrolls and records; and
  - (e) verify in such manner as the inspector requires the entries contained in such books, payrolls and other records. 1992,c.18,s.33.

**34.** Every employer shall keep posted in a conspicuous place where the employees are engaged in their duties on the employer's premises copies of all orders and schedules under this Act relating to wages or working conditions in the employer's plant or establishment. 1992,c.18,s.34. Posting orders, etc

**35.** No employer shall discriminate against an employee because the employee has made a complaint under this Act or has testified or is about to testify, or because the employer believes that the employee may testify at an inquiry or in any proceedings relative to enforcement of this Act or because the employee has made or is about to make any such disclosure as may be required of the employee by virtue of this Act. 1992,c.18,s.35. Discrimination against employee making complaint

**36.** Where a person who makes a complaint to the board or an inspector requests that the person's name and identity be withheld, the person's name and identity shall not be disclosed to any person by the board or inspector except where disclosure is necessary for the purposes of a prosecution or is considered by the board to be in the public interest. 1992,c18,s.36. Protection of complainant

**37.** No employee, by collusion with the employer or otherwise, shall work for less than the minimum wage to which the employee is entitled under this Act, or directly or indirectly return to the employer any part of the employee's wage by reason of which action the wages actually received and retained by the employer are reduced to an amount less than the minimum wage to which the employee is entitled. 1992,c.18,s.37. Collusion

**38.** (1) Any person who  
 (a) wilfully delays or obstructs the board or an inspector or any other official in the exercise of any of their duties under this Act;  
 (b) furnishes false or misleading information in any statement or record required to be furnished under this Act;  
 (c) fails to comply with any order, schedule, notice or requirement under this Act; or  
 (d) contravenes any provision of this Act or the regulations made under this Act,  
 is guilty of an offence and is liable on summary conviction to a fine of not less than \$200, and not more than \$2,000. Offences and penalties

(2) No proceedings under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity. Technical irregularity

(3) No prosecution under this Act shall be instituted more than two years after the occurrence of the last act or default upon which the prosecution is based. 1992,c.18,s.38. Limitation



## NOTICE OF PROSECUTION

Notice **39.** No prosecution for an offence shall be instituted without the board having notice of the intent to prosecute. 1992,c.18,s.39.

## NOTICES

Service **40.** (1) A document may be served or delivered for the purposes of this Act or any proceedings thereunder by personal service or by sending the said document by registered mail.

Receipt of notice (2) For the purposes of this Act or any proceedings thereunder, any notice or communication sent through Her Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee three days after the date of mailing. 1992,c.18,s.40.

## REGULATIONS

Regulations **41.** The Lieutenant Governor in Council may make regulations. 1992,c.18,s.41.

## RECIPROCAL ENFORCEMENT OF ORDERS

Reciprocity **42.** If the Lieutenant Governor in Council is satisfied that reciprocal provisions will be made by another province for the enforcement of orders of an inspector or the Board issued under this Act, the Lieutenant Governor in Council may, by order

(a) declare the province to be a reciprocating province for the purpose of enforcing orders, certificates or judgments for the payment of wages, overtime pay or entitlement made under an enactment of that province; and

(b) designate an authority within that province as the authority who may make applications or certificates under this section.

Application to enforce (2) If an order, certificate or judgment for the payment of wages, overtime pay or entitlements has been obtained under an enactment of a reciprocating province, the designated authority may apply to an inspector to enforce the order, certificate or judgment.

Enforcement (3) On receiving a copy of the order, certificate or judgment for the payment of wages, overtime pay or entitlements

(a) certified to be a true copy by the court in which the order, certificate or judgment is registered; or

(b) if there is no provision in the reciprocating province for registration of the order, certificate or judgment in a court, certified to be a true copy by the designated authority and on being satisfied

that the wages, overtime pay, entitlements or an amount payable under section 30 is still owing,  
 an inspector shall file the copy of the order, certificate or judgment with the Registrar of the Supreme Court and the order is then enforceable as an order of an inspector or the board. 1992,c.18,s.42.

#### REPEALS AND TRANSITIONAL PROVISIONS

**43.** Repeals. 1992,c.18,s.43.

Repeals

**44.** This Act applies in respect of a complaint received or an inquiry made by an inspector after this Act comes into force, even though the matters or things that give rise to the complaint or inquiry occurred before this Act came into force. 1992,c.18,s.44.

Transitional provisions

**45.** This Act came into force on November 1, 1992 by proclamation of the Lieutenant Governor in Council. 1992,c.18,s.45.

Commencement

**46.** Amendments to sections 19 and 22 came into force on December 31, 2000., and do not apply to any event, that occurred prior to December 31, 2000, for which a person would be entitled to take maternity or parental leave. 2000,c.7,s.5.

Effective date and proviso