Employment Standards Act

Assented to June 17, 1982

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PARTIE VII

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Pouvoir du lieutenant-gouverneur d’accorder une exemption.
Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

PART I
DEFINITIONS

Definitions

1 In this Act

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

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

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

“collective agreement” means an agreement in writing between

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

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

containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers’ organization, the trade union, the council of trade unions or the employees; (convention collective)
“construction industry” means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipelines, tunnels, bridges, canals or other works at the site thereof; (industrie de la construction)

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

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

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

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

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

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

“Family Day” means the third Monday in February; (jour de la Famille)

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

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

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

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

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

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

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

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

« jour de la Famille » désigne le troisième lundi du mois de février; (Family Day)

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

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

« liens familiaux étroits » désigne les liens qui existent entre des personnes mariées l’une à l’autre, entre les parents et leurs enfants, entre frères et soeurs, entre les grands-parents et leurs petits-enfants et s’entend également des liens existant entre des personnes qui, sans être mariées l’une à l’autre ou sans être unies par le sang, manifestent l’intention de se prodiguer l’une à l’autre
“layoff” means a temporary interruption of the employment relationship at the direction of the employer because of a lack of work; (mise à pied)

“midwife” means a midwife as defined in the Midwifery Act;

“Minister” means the Minister of Post-Secondary Education, Training and Labour; (Ministre)

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

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

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

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

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

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

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

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

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

“Tribunal” Repealed: 1994, c.52, s.1

“wages” includes salary, commissions and compensation in any form for work or services measured by time, piece or otherwise, but does not include public holiday pay, pay in lieu of public holidays, vacation pay, pay in lieu of vacation, gratuities or honoraria. (salaire)

1983, c.10, s.2; 1983, c.30, s.8; 1984, c.42, s.1; 1986, c.8, s.37; 1988, c.59, s.1; 1992, c.2, s.19; 1994, c.52, s.1; 1998, c.41, s.50; 2000, c.26, s.106; 2002, c.23, s.1; 2003, c.4, s.1; 2004, c.10, s.1; 2006, c.16, s.60; 2007, c.10, s.30; 2011, c.26, s.1; 2017, c.38, s.2; 2017, c.63, s.21; 2019, c.2, s.48

« salarié non syndiqué » désigne un salarié dont les modalités et conditions d’emploi ne font pas l’objet d’une convention collective; (non-bargaining employee)

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

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

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

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

1983, ch. 10, art. 2; 1983, ch. 30, art. 8; 1984, ch. 42, art. 1; 1986, ch. 8, art. 37; 1988, ch. 59, art. 1; 1992, ch. 2, art. 19; 1994, ch. 52, art. 1; 1998, ch. 41, art. 50; 2000, ch. 26, art. 106; 2002, ch. 23, art. 1; 2003, ch. 4, art. 1; 2004, ch. 10, art. 1; 2006, ch. 16, art. 60; 2007, ch. 10, art. 30; 2011, ch. 26, art. 1; 2017, ch. 38, art. 2; 2017, ch. 63, art. 21; 2019, ch. 2, art. 48

PART II
APPLICATION

Application

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

Crown bound by Act

3 This Act binds the Crown.

Act prevails over collective agreement

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

Crown bound by Act

3 This Act binds the Crown.

Act prevails over collective agreement

4(1) Subject to subsection (2), this Act applies notwithstanding any agreement to the contrary between an employer and an employee.
4(2) Where there is a conflict between a provision of this Act and a provision of a collective agreement this Act prevails except where the provision of the collective agreement expressly states that a benefit, privilege, right or obligation was agreed to in lieu of the application of a provision of this Act.

1984, c.42, s.2

Employment contracts for agricultural services exempted

5 Except with respect to sections 39, 40 and 41, dealing with the employment of persons under the age of sixteen years, this Act does not apply to employment contracts for the provision of agricultural services between employees and employers who employ three or fewer employees over a substantial period of the year, exclusive of employees who are in a close family relationship with the employer.

1984, c.42, s.3

Non-application of Act to persons exempted under sections 7 and 8

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

Persons exempted by regulation

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

(a) persons employed in specified occupations;

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

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

Application for exemption by employer

8(1) An employer may apply to the Director

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

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

(c) at any other time;

Exemption relative aux contrats d’emploi pour les services agricoles

5 Sauf aux articles 39, 40 et 41 visant l’emploi de personnes âgées de moins de seize ans, la présente loi ne s’applique pas aux contrats d’emploi pour la prestation de services agricoles conclus entre des salariés et des employeurs qui emploient au cours de la majeure partie de l’année un maximum de trois salariés, ce nombre n’incluant pas ceux qui sont unis à l’employeur par des liens familiaux étroits.

1984, ch. 42, art. 3

Loi non applicable aux personnes visées aux articles 7 et 8

6 La présente loi ne s’applique pas aux personnes qui bénéficient d’une exemption en vertu de l’article 7 ou 8, et ce dans les limites de l’exemption accordée.

Exemption à l’égard de certaines personnes

7 Le lieutenant-gouverneur en conseil peut établir des règlements, pour exempter de l’application de tout ou partie des dispositions de la présente loi

a) les personnes employées dans des professions déterminées;

b) les personnes employées dans une catégorie déterminée de travaux; et

c) les personnes employant des salariés visés aux alinéas a) et b).

Demande d’exemption de l’employeur

8(1) Un employeur peut,

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

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

c) à n’importe quel autre moment,
to be exempted from any provision of this Act, and the Director may grant an exemption if the employer can show to his satisfaction that, in addition to any other requirement that may be established in this Act,

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

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

or that the employment contract in question was entered into voluntarily and without force or coercion between persons having a close family relationship.

8(2) In lieu of deciding an application made under subsection (1), the Director may refer the matter to the Board.

8(3) Any person affected by a decision of the Director with respect to an application made under subsection (1) may request the Director in writing, within 14 days after notice of the decision, to refer the matter to the Board.

8(4) A matter referred to the Board under subsection (2) or (3) shall be disposed of in accordance with section 68.

1984, c.42, s.4; 1994, c.52, s.1; 2013, c.13, s.1

PART III
EMPLOYMENT STANDARDS
MINIMUM WAGE

Minimum wage regulations

9(1) The Lieutenant-Governor in Council may by regulation

(a) fix the amount of the minimum wage or specify the manner in which the minimum wage is to be determined for all employees or for any category of employees in any industry, business, trade or occupation;
(b) fix the minimum wage upon an hourly, daily, weekly, monthly or other basis;

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

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

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

(f) specify when and under what conditions deductions may be made from the minimum wage, and what notification the employee should be given thereof prior to employment;

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

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

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

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

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

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

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

Minimum Wage Board

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

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

(a) consider the social and economic effects of minimum wage rates in the province, including

(i) data respecting the demographics of employees earning minimum wage, including age and gender,

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

(iii) economic conditions within the province; and

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

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

Posting of applicable regulations

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

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

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

Commission du salaire minimum

10(1) À partir du 31 décembre 2014, le ministre procède à un examen biennal portant à la fois sur le montant du salaire minimum, les modalités de détermination du salaire minimum et le calendrier pour y apporter des changements.

10(2) Dans cet examen :

a) il tient compte des retombées socioéconomiques des taux de salaire minimum dans la province, entre autres :

(i) des données démographiques concernant les salariés rémunérés au salaire minimum, y compris leur âge et leur sexe,

(ii) de toute augmentation du coût de la vie depuis le dernier décret ou règlement, à savoir le prix d’achat, pour un salarié, des nécessités de la vie, notamment le prix du logement, de la nourriture, des vêtements, du transport, des soins de santé et des fournitures médicales,

(iii) de la situation économique dans la province;

b) il consulte les représentants des employeurs et des salariés ainsi que toute autre personne jugée nécessaire.

1984, ch. 42, art. 6; 1994, ch. 52, art. 1; 2014, ch. 70, art. 2

Affichage des règlements applicables

11(1) Abrogé : 1983, ch. 8, art. 11

11(2) Un employeur doit afficher et tenir affiché dans un endroit bien en vue de son établissement un exemplaire de tous les règlements de salaire minimum applicables.
11(3) Additional notice of any regulation made under section 9 shall be given by employers to employees in such manner as the Lieutenant-Governor in Council may by regulation direct.

1983, c.8, s.11

Right of underpaid employee to sue employer

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

1984, c.42, s.7

Tips and gratuities

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

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

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

1984, c.42, s.8

HOURS OF WORK

No limitation on numbers of hours of work

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

1984, c.42, s.8

Ch. E-7.2

14(3) Les employeurs doivent en outre donner avis de tout règlement établi en vertu de l’article 9 de la manière que le lieutenant-gouverneur en conseil peut déterminer par règlement.

1983, ch. 8, art. 11

Recours du salarié lésé contre l’employeur

12 Un salarié à qui un employeur a versé un salaire à un taux inférieur au taux de salaire minimum fixé par le lieutenant-gouverneur en conseil dans l’industrie, l’activité commerciale, le métier ou la profession où il est employé, a le droit, en sus de tout autre recours que lui acorde la présente loi, de recouvrer en justice de son employeur, comme une créance ordinaire, la différence entre le salaire qu’il a effectivement reçu et le salaire qu’il aurait dû recevoir s’il avait été rémunéré au taux minimum.

Pourboires et gratifications

13(1) Sous réserve du paragraphe (3), les pourboires et gratifications sont la propriété du salarié auquel ou pour lequel ils ont été donnés; l’employeur ne peut les retenir ni les considérer comme faisant partie du salaire qu’il lui verse.

13(2) Les suppléments ou autres commissions perçus par l’employeur en remplacement des pourboires ou gratifications sont réputés être la propriété des salariés et doivent être répartis entre eux conformément aux conditions d’emploi au plus tard à la date de la plus prochaine paie; l’employeur ne peut en outre ni les retenir ni les considérer comme faisant partie du salaire qu’il leur verse.

13(3) L’employeur peut au choix du salarié adopter l’usage de mettre en commun les pourboires et gratifications au profit de l’ensemble ou de certains des salariés, mais cet usage ne confère à l’employeur aucun droit de propriété sur ces pourboires et gratifications.

1984, ch. 42, art. 7

DURÉE DU TRAVAIL

Nombre d’heures de travail non limité

14 Sous réserve des articles 17, 39 et 41 ainsi que de toute autre loi, le nombre d’heures qu’un salarié peut travailler dans une journée, une semaine ou un mois n’est pas limité.

1984, ch. 42, art. 8
Maximum number of hours of work at minimum wage rate

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

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

Overtime rate of pay

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

MINIMUM REPORTING WAGE

2003, c.4, s.2

Minimum reporting wage

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

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

(b) has a regular wage rate of less than twice the minimum wage rate, and

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

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

Nombre maximum d’heures de travail au taux minimum

15(1) Le lieutenant-gouverneur en conseil peut, par règlement, fixer le nombre maximum d’heures qu’un employeur peut demander à un salarié d’effectuer dans une journée, une semaine ou un mois au taux minimum; il peut également déterminer les salariés ou catégories de salariés dans une industrie, une activité commerciale, un métier ou une profession auxquels ce nombre maximum d’heures s’appliquera.

15(2) Un règlement établi en vertu du présent article est affiché de la même manière que celui qui est établi en vertu de l’article 9.

Taux des heures supplémentaires

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

SALAIRE DE PRÉSENCE MINIMALE

2003, ch. 4, art. 2

Salaire de présence minimale

16.1(1) Un employeur doit payer au salarié non syndiqué pas moins de trois heures de travail au taux de salaire minimum ou les heures qu’il a travaillées à son taux de salaire normal, selon le plus élevé de ces montants, si

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

b) le taux de salaire normal du salarié est inférieur au double du taux de salaire minimum, et

c) le salarié est régulièrement employé plus de trois heures consécutives dans une période de travail.

16.1(2) Si un salarié, à qui le paragraphe (1) s’applique, a déjà travaillé le maximum d’heures prescrit en vertu de l’alinéa 9(1)c), l’employeur doit payer au salarié pas moins de trois heures de travail à une fois et demie le taux de salaire minimum ou les heures qu’il a travaillées à son taux de salaire normal, selon le plus élevé de ces montants.
16.1(3) An employee shall be deemed to have worked any hours for which the employee is paid under subsection (1) or (2).
2003, c.4, s.2

WEEKLY REST PERIOD
1984, c.42, s.9

Requirement of weekly rest period
17(1) Where an employer employs an employee other than

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

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

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

17(2) Nothing in this section authorizes any work to be done on Sunday that is now prohibited by law.
1984, c.42, s.10; 1988, c.59, s.2

Right of refusal to work on a Sunday
17.1(1) In this section

“retail business” means a retail business as defined in the Days of Rest Act. (commerce au détail)

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

(a) solely under

16.1(3) Un salarié est réputé avoir travaillé les heures pour lesquelles il est rémunéré en vertu du paragraphe (1) ou (2).
2003, ch. 4, art. 2

REPOS HEBDOMADAIRE
1984, ch. 42, art. 9

Repos hebdomadaire obligatoire
17(1) Lorsqu’un employeur emploie un salarié, il doit accorder au salarié un repos hebdomadaire d’au moins vingt-quatre heures consécutives qui doit englober autant que possible le dimanche ou qui peut, avec l’approbation du Directeur, être accumulé pour être pris ultérieurement par tranches ou d’une seule fois, cette règle ne s’applique toutefois pas

(a) à un salarié qui, selon le Directeur, est requis pour faire face à une situation d’urgence; ni

(b) à un salarié qui n’est habituellement pas employé plus de trois heures par jour.

17(2) Aucune disposition du présent article n’autorise l’accomplissement le dimanche de travaux qui sont présentement interdits par la loi.
1984, ch. 42, art. 10; 1988, ch. 59, art. 2

Droit de refuser de travailler un dimanche
17.1(1) La définition qui suit s’applique au présent article.

« commerce de détail » S’entend selon la définition que donne de ce terme la Loi sur les jours de repos.

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

(a) uniquement en vertu :
(i) a by-law made under the Local Governance Act, or

(ii) a permit issued under section 174 of the Local Governance Act,

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

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

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

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

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

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

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

(b) the employee seeks to enforce the employee’s rights under this section.

1997, c.29, s.1; 2004, c.24, s.2; 2017, c.20, s.63; 2019, c.12, s.10

PUBLIC HOLIDAYS

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

(i) soit d’un arrêté pris en vertu de la Loi sur la gouvernance locale,

(ii) soit d’un permis délivré en vertu de l’article 174 de la Loi sur la gouvernance locale,

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

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

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

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

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

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

(a) le salarié a refusé ou a tenté de refuser de travailler un dimanche, si le salarié a le droit de le faire en vertu du paragraphe (2), ou

b) le salarié tente de faire valoir ses droits en vertu du présent article.

1997, ch. 29, art. 1; 2004, ch. 24, art. 2; 2017, ch. 20, art. 63; 2019, ch. 12, art. 10

JOURS FÉRIÉS

18(1) Le présent article ne s’applique pas à un salarié
(a) has been in the employ of his present employer for fewer than ninety days during the previous twelve calendar months immediately preceding a public holiday;

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

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

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

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

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

18(3) Where a public holiday falls on a working day for an employee, an employer may with the agreement of the employee or his agent substitute another working day for the public holiday, which day shall not be later than the next vacation of the employee, and the day so substituted shall be deemed to be the public holiday.

18(4) Where a public holiday falls on a non-working day for an employee or in his vacation an employer shall

(a) with the agreement of the employee or his agent pay the employee his regular wages for the public holiday; or

(b) designate a working day that is not later than the next vacation of the employee, and the day so designated shall be deemed to be the public holiday.

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

(a) pay the employee in accordance with subsection 19(1); or

18(5) Nonobstant le paragraphe (3), lorsque le salarié est employé dans un hôtel, un motel, un lieu de villégiature, un restaurant ou une taverne ou est employé à un travail ininterrompu et, en raison de la nature de l’activité exercée, est tenu de travailler et travaille un jour férié, l’employeur doit

(a) le rémunérer conformément au paragraphe 19(1), ou
(b) pay the employee for each hour worked on a public holiday an amount not less than his regular wages and give to the employee a holiday on his first working day immediately following his next vacation or on a working day agreed upon and pay him his regular wages for that day.

18(6) For the purposes of subsection (5) “continuous operation” means that part of an establishment, industry or service in which in each seven day period operations once commenced normally continue day and night without cessation until the completion of the regularly scheduled operations for that period.

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

Rate of wages for work on public holiday

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

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

19(2) Where an employee works on a public holiday, the hours that the employee works on the public holiday shall not be taken into consideration in calculating any overtime pay to which the employee is entitled for the work week in which the public holiday occurs.

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

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

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

1984, c.42, s.13

Employee’s pay for public holiday where daily wages vary

21(1) Where the wages of an employee vary from day to day, his pay for a public holiday on which he has not

18(6) Pour l’application du paragraphe (5), « un travail ininterrompu » désigne le travail dans la partie d’un établissement, d’une industrie ou d’un service où, au cours de chaque période de sept jours, les travaux, une fois normalement commencés, se poursuivent sans arrêt nuit et jour jusqu’à l’achèvement des travaux normalement prévus pour cette période.

1984, ch. 42, art. 11; 1988, ch. 59, art. 3

Rémunération du travail pendant les jours fériés

19(1) Sous réserve du paragraphe 18(5), lorsqu’un salarié travaille un jour férié l’employeur doit le rémunérer à un taux égal à au moins une fois et demie son salaire normal et, lorsque le salarié a droit à un congé payé ce jour-là, l’employeur doit lui verser son salaire normal en plus.

19(1.1) Au paragraphe (1), « salaire normal » désigne le salaire que l’employé aurait reçu s’il n’avait pas travaillé le jour férié en question.

19(2) Lorsqu’un salarié travaille un jour férié, les heures qu’il effectue ne sont pas prises en compte dans le calcul de la rémunération des heures supplémentaires à laquelle il a droit au cours de la semaine de travail comptant le jour férié.

1984, ch. 42, art. 12; 1988, ch. 59, art. 4

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

20 Lorsque le salarié cesse son emploi avant le jour qui a été choisi pour remplacer le jour férié en application du paragraphe 18(3) ou des alinéas 18(4)b) ou 18(5)b), l’employeur doit lui verser son salaire normal pour ce jour en plus de toute somme à laquelle il a droit à la cessation de son emploi.

1984, ch. 42, art. 13

Rémunération pour les jours fériés lorsque le salaire varie quotidiennement

21(1) La rémunération à laquelle un salarié a droit pour un jour férié où il n’a pas travaillé est égale, lorsque
worked shall be at least equivalent to his average daily earnings exclusive of overtime for the days on which he worked during the thirty calendar days immediately preceding the public holiday.

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

1984, c.42, s.14

Vacation and public holiday benefits

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

22(2) For the purpose of subsection (1) a payment of 4% of wages is equivalent to the public holiday benefits as prescribed by this Act.

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

1988, c.59, s.5; 2017, c.38, s.2

Collective agreement in force after July 16, 1976

23 Where any class of employers or employees is covered by a collective agreement that became effective after July 16, 1976 and provides for a minimum of eight paid holidays, including New Brunswick Day, that class of employers and employees are exempt from the application of sections 18 to 21.

1984, c.42, s.15; 2004, c.10, s.2; 2017, c.38, s.2

VACATIONS

Annual vacation

24(1) An employer, not later than four months after the vacation pay year ends, shall give to an employee who has less than eight years of continuous employment son salaire varie quotidiennement, à au moins la moyenne de ses gains journaliers au cours des trente jours civils qui précèdent immédiatement le jour férié, sans tenir compte des heures supplémentaires.

21(2) Nonobstant le paragraphe (1), la rémunération d’un vendeur itinérant pour un jour férié où il n’a pas travaillé ne doit pas majorer ses gains pour la semaine incluant le jour férié au-delà de son salaire hebdomadaire moyen pour les quatre semaines précédentes.

1984, ch. 42, art. 14

Prestations compensatoires des congés annuels et des jours fériés

22(1) Un salarié n’a pas droit à un congé annuel payé ou à un jour férié payé en vertu de la présente loi si en vertu d’une convention collective ou d’un contrat d’em­ploi le salarié reçoit des prestations compensatoires des congés annuels et des jours fériés qui ensemble égaient ou dépassent l’ensemble des prestations compensatoires des congés annuels et des jours fériés prévues en vertu de la présente loi.

22(2) Pour l’application du paragraphe (1), un verse­ment égal à 4 % du salaire équivaut à la prestation com­pensatoire des jours fériés que prescrit la présente loi.

22(3) Nonobstant le paragraphe (1), un employeur doit verser à un salarié qui travaille un jour férié pour le temps où il a travaillé au moins une fois et demi le sa­laire normal du salarié conformément au para­gra­phe 19(1).

1988, ch. 59, art. 5; 2017, ch. 38, art. 2

Convention collective en vigueur après le 16 juillet 1976

23 Lorsqu’une catégorie d’employeurs ou de salariés est couverte par une convention collective qui a pris effet après le 16 juillet 1976 et qui prévoit un minimum de huit jours fériés rémunérés, dont la fête du Nouveau­Brunswick, elle est dispensée de l’application des arti­cles 18 à 21.

1984, ch. 42, art. 15; 2004, ch. 10, art. 2; 2017, ch. 38, art. 2

CONGÉS ANNUELS

Congés annuels

24(1) Un employeur doit, au plus tard quatre mois après la fin de l’année de référence, donner au salarié qui a moins de huit ans d’emploi continu auprès de l’em­
with the employer a vacation that as a minimum is equal to two regular work weeks or one day for each calendar month during the vacation pay year in which the employee worked, whichever is less.

24(1.1) An employer, not later than four months after the vacation pay year ends, shall give to an employee who has eight or more years of continuous employment with the employer a vacation that as a minimum is equal to three regular work weeks or one and one-quarter days for each calendar month during the vacation pay year in which the employee worked, whichever is less.

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

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

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

Annual vacation

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

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

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

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

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

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

Annual vacation

26(1) If an employee’s employment with an employer ceases before the end of the vacation pay year, the employer, un congré annuel équivalent à deux semaines normales de travail au moins ou à une journée au moins par mois civil au cours de l’année de référence où le salarié a travaillé, le plus court des deux devant être retenu.

24(1.1) Un employeur doit, au plus tard quatre mois après la fin de l’année de référence, donner au salarié qui a au moins huit ans d’emploi continu auprès de l’employeur, un congé annuel équivalent à trois semaines normales de travail au moins ou à une journée et quart au moins par mois civil au cours de l’année de référence où le salarié a travaillé, le plus court des deux devant être retenu.

24(2) L’expression « année de référence » au sens du présent article et des articles 25 et 26, désigne la période courant du premier juillet d’une année au trente juin de l’année suivante.

24(3) Abrogé : 1988, ch. 59, art. 6

24(4) Abrogé : 1988, ch. 59, art. 6
1988, ch. 59, art. 6; 2000, ch. 55, art. 1

Congés annuels

25(1) Si un salarié remplit les conditions requises pour bénéficier d’un congé annuel en vertu de l’article 24, l’employeur doit

(a) l’aviser au moins une semaine à l’avance de la date du début de son congé annuel, et

b) lui verser, au moins un jour avant le début de son congé annuel,

(i) si le paragraphe 24(1) s’applique, un montant équivalent à quatre pour cent du salaire du salarié pour l’année de référence, ou

(ii) si le paragraphe 24(1.1) s’applique, un montant équivalent à six pour cent du salaire du salarié pour l’année de référence.

25(2) Abrogé : 1988, ch. 59, art. 7
1986, ch. 32, art. 2; 1988, ch. 59, art. 7; 2000, ch. 55, art. 2

Congés annuels

26(1) Si un salarié cesse son emploi chez son employeur avant la fin de l’année de référence, ce dernier
ployer shall pay the employee, not later than at the same time as the employee’s final pay is given,

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

(b) an amount equal to six per cent of the employee’s wages for the vacation pay year if the employee has eight or more years of continuous employment with the employer.

Annual vacation

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

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

UNJUST DISMISSAL AND RELATED UNFAIR EMPLOYER ACTION

Licenciements abusifs et autres actions similaires de l’employeur

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

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

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

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

Licenciements abusifs et autres actions similaires de l’employeur

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

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

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

(c) à la communication de renseignements ou d’éléments de preuve par le salarié contre l’employeur relativement à la violation alléguée d’une loi provinciale ou fédérale ou d’un règlement par l’employeur dans l’exercice de ses activités à titre d’employeur;
or if the dismissal, suspension, layoff, penalty, discipline or discrimination constitutes in any way an attempt by the employer to evade any responsibility imposed upon him under this Act or any other Provincial or federal Act or regulation or to prevent or inhibit an employee from taking advantage of any right or benefit granted to him under this Act.

1988, c.59, s.9

NOTICE OF TERMINATION

Notice of termination

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

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

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

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

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

Notice of termination

31(1) Notwithstanding section 30, an employer may lay off an employee without notice ou si le licenciement, la suspension, la mise à pied, la mesure disciplinaire ou la discrimination constitue une tentative de l’employeur de se soustraire à une obligation que la présente loi ou toute autre loi provinciale ou fédérale ou tout règlement lui impose ou d’empêcher ou de dissuader le salarié de bénéficier de tout droit ou avantage que la présente loi lui reconnaît.

1988, ch. 59, art. 9

AVIS DE CESSATION

Avis de cessation

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

Avis de cessation

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

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

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

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

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

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

Avis de cessation

31(1) Par dérogation à l’article 30, un employeur peut mettre à pied un salarié sans avis
(a) where there is a lack of work, due to any reason unforeseen by the employer at the time notice would otherwise have been given, for such period as the lack of work continues due to that reason; or

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

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

31(3) Section 30 does not apply where

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

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

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

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

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

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

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

Notice of termination

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

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

Avis de cessation

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

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

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

32(3) Subsection (1) does not apply where

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

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

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

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

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

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

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

Notice of termination

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

(a) where there is a lack of work, due to any reason unforeseen by the employer at the time the notice

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

32(2) Une copie de l’avis qui doit être donné en vertu du paragraphe (1) ou paragraphe (1.1) doit être affichée de façon à être disponible pour l’information de tous les salariés.

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

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

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

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

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

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

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

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

Avis de cessation

33 Par dérogation à l’article 32 un employeur peut mettre à pied un salarié sans avis

a) en cas de manque de travail dû à un motif imprévu par l’employeur au moment où il aurait autrement
would otherwise have been given, for such period as the lack of work continues due to that reason; or

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

Notice of termination

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

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

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

PROMPT PAYMENT OF WAGES

Payment of wages

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

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

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

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

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

Statement of pay, method of payment

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

Avis de cessation

34(1) Par dérogation aux articles 30 et 32, un employeur peut mettre à pied un salarié ou cesser son emploi sans avis si, à la place de l’avis, il verse au salarié une somme égale à la rémunération qu’il aurait gagnée pendant le délai de l’avis prévu à l’article 30, comme s’il avait droit à un avis en vertu de cet article.

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

1984, ch. 42, art. 19; 1988, ch. 59, art. 12

PROMPT PAIEMENT DU SALAIRE

Paiement du salaire

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

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

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

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

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

Bulletin de paie et mode de paiement

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

(b) the gross pay of the employee for the pay period;

(c) the particulars of each deduction and the amount thereof; and

(d) the net pay after deductions have been taken out.

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

(a) confidential access to the electronic statement, and

(b) a means of making a paper copy of the electronic statement.

36(2) An employer shall pay all pay

(a) by cash,

(b) by cheque or bill of exchange, payable on demand, drawn on a bank, credit union, trust company or other institution insured under the *Canada Deposit Insurance Corporation Act* (Canada), or

(c) by deposit into an account of the employee in a bank, credit union, trust company or other institution of the employee’s choice that is insured under the *Canada Deposit Insurance Corporation Act* (Canada).

1984, c.42, s.21; 1988, c.59, s.14; 2013, c.13, s.2; 2016, c.20, s.1

**Payment of outstanding pay to former employee**

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

**Paiement du reliquat**

37 L’employeur doit verser au salarié qu’il cesse d’employer le reliquat de la rémunération qui lui est due au plus tard à la date à laquelle il aurait été payé s’il avait continué à être employé; l’employeur ne peut en aucun cas retarder le règlement du reliquat de la rémunération ou des autres prestations dues de plus de vingt et un jours après le dernier jour de travail du salarié.
EQUAL PAY FOR EQUAL WORK

Equal pay for equal work

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

(a) is performed in the same establishment,
(b) is substantially the same in nature,
(c) requires substantially the same skill, effort and responsibility, and
(d) is performed under similar working conditions

except where the payment is made pursuant to

(e) a seniority system,
(f) a merit system,
(g) a system that measures earnings by quantity or quality of production, or
(h) any other system or practice that is not otherwise unlawful.

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

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

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

1986, c.32, s.4

WAGE PROTECTION

Wage protection

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

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

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

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

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

38.1(5) The registrar of deeds shall file the certificate describing it as an “Employee Lien” and shall index the certificate in the appropriate registration index.

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

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

38.1(6.2) A notice of a certificate when registered in the Personal Property Registry constitutes a lien in favour of the employee in respect of whom the certificate

Privilège de salarié

38.1(1) S’il sait ou a tout lieu de croire que l’employeur est insolvable ou qu’il est sur le seuil de l’insolvabilité, le Directeur peut, s’il est convaincu que la rémunération que l’employeur doit à son salarié demeure impayée et le demeurera vraisemblablement, délivrer un certificat au moyen de la formule réglementaire indiquant la somme d’argent que doit, selon lui, l’employeur au salarié.

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

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

38.1(4) Le Directeur peut faire déposer un certificat visé au paragraphe (1) auprès du conservateur des titres de propriété du comté ou des comtés dans lesquels l’employeur mentionné au certificat fait des affaires ou est propriétaire de biens réels.

38.1(5) Le conservateur des titres de propriété doit déposer le certificat en le désignant « privilège du salarié » et doit répertorier le certificat dans le répertoire d’enregistrement approprié.

38.1(6) Un certificat visé au paragraphe (1), lorsqu’il est déposé auprès du conservateur des titres de propriété, constitue un privilège en faveur du salarié relativement auquel le certificat a été délivré pour la somme d’argent mentionnée au certificat ou telle que modifiée au moyen d’un certificat modificatif visé au paragraphe 38.5(1) sur tous les biens réels de l’employeur qui se trouvent dans le comté ou les comtés dans lesquels le certificat est déposé.

38.1(6.1) Le Directeur peut enregistrer un avis du certificat visé au paragraphe (1) au Réseau d’enregistrement des biens personnels conformément aux règlements établis en vertu de la Loi sur les sûretés relatives aux biens personnels.

38.1(6.2) Dès son enregistrement au Réseau d’enregistrement des biens personnels, l’avis d’un certificat constitue un privilège en faveur du salarié à qui a été délivré
was issued against all the personal property of the employer for the amount of money stated in the certificate or, where applicable, for the amount as amended by an amending certificate referred to in subsection 38.5(1).

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

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

38.1(9) Pay due and owing under a lien referred to in subsection (6) or in subsection (6.2) shall be paid to the Director on behalf of the employee in respect of whom the lien was constituted.

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

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

Filing of certificate in Court of Queen’s Bench

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

38.2(1) Le Directeur peut obtenir du conservateur des titres de propriété une copie certifiée conforme d’un certificat déposé en vertu du paragraphe 38.1(4) et peut faire déposer la copie certifiée conforme à la Cour du Banc de la Reine du Nouveau-Brunswick, et la copie certifiée conforme doit être inscrite et enregistrée à la Cour, et lorsqu’elle est ainsi inscrite et enregistrée elle

1988, ch. 59, art. 15; 1994, ch. 50, art. 2; 2003, ch. 4, art. 4; 2007, ch. 2, art. 8; 2007, ch. 3, art. 2; 2013, ch. 13, art. 3
rector as a judgment obtained in the Court against the employer named in the certified copy for a debt of the amount of money stated in the certified copy.

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

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

38.2(3) Where a certificate has been filed in accordance with subsection (1.1), any person may challenge the certificate in interpleader proceedings or on application to set aside any execution under it as provided for by the rules of The Court of Queen’s Bench of New Brunswick and The Court of Appeal of New Brunswick.

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

(b) may add the amount to the original obligation secured, and b) peut ajouter ce montant à l’obligation garantie initiale, et

Payment by mortgagee or judgment creditor

38.3 Any mortgagee, judgment creditor, secured party or other person having any claim, lien, privilege or encumbrance upon or against any real or personal property to which is attached a lien under subsection 38.1(6) or (6.2) may pay to the Director the amount secured by the lien or liens, a) peut verser au Directeur le montant garanti par le ou les privilèges,

(b) may add the amount to the original obligation secured, and b) peut ajouter ce montant à l’obligation garantie initiale, et

1988, c.59, s.15; 2003, c.4, s.5

1988, ch. 59, art. 15; 2003, ch. 4, art. 5

Payment by mortgagee or judgment creditor

38.3 Any mortgagee, judgment creditor, secured party or other person having any claim, lien, privilege or encumbrance upon or against any real or personal property to which is attached a lien under subsection 38.1(6) or (6.2) may pay to the Director the amount secured by the lien or liens, a) peut verser au Directeur le montant garanti par le ou les privilèges,

(b) may add the amount to the original obligation secured, and b) peut ajouter ce montant à l’obligation garantie initiale, et

1988, c.59, s.15; 2003, c.4, s.5

1988, ch. 59, art. 15; 2003, ch. 4, art. 5
(c) has the same enforcement rights and remedies with respect to the amount added to the obligation secured as are available with respect to the original obligation secured.

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

Renewal statement

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

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

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

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

38.4(5) A registration that is effected for a period of less than ten years may be renewed, at any time before the registration expires, for the period of years specified in the registration by which the renewal is effected, but the registration shall not have an aggregate registration life of more than ten years.

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

Amending certificate

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

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

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

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

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

Certificate of discharge or partial discharge

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

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

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

38.6(2) Where an amount of money less than the amount of money stated in a certificate referred to in subsection 38.1(1) or, where applicable, as amended by an amending certificate referred to in subsection 38.5(1) has been paid to the Director, the Director shall

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

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

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

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

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

Application of sections 38.1 to 38.6

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

1988, c.59, s.15

Filing of documents

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

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

FOREIGN WORKERS

2014, c.3, s.1

Registry of employers of foreign workers

38.9(1) The following definitions apply in this section and in section 38.91.

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

“immigration consultant” means a person who, for a fee or compensation, provides immigration services. (consultant en immigration)
“immigration services” means services to assist a foreign worker to immigrate to the Province, including,

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

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

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

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

(e) providing or procuring settlement services. 

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

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

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

(a) with respect to the employer,

(i) the legal name,

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

(iii) the place in which the employer is registered, whether in the Province or outside the Province,

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

(v) the name of a primary contact person,
(vi) the name of an alternate contact person, and
(vii) the preferred official language of correspondence;

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

(i) the type of occupation, according to the National Occupational Classification (NOC) published by Statistics Canada as revised from time to time,

(ii) the location, identified by local government or local service district,

(iii) whether an employee in the position is subject to a collective agreement,

(iv) the educational requirements,

(v) the language requirements,

(vi) the wage rate,

(vii) the vacation leave and sick leave provided,

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

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

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

(c) with respect to the employment of foreign workers,

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

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

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

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

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(vi) le nom de la deuxième personne de contact,
(vii) la langue officielle de son choix pour la correspondance;

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

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

(ii) son emplacement, décrit selon le gouvernement local ou le district de services locaux,

(iii) si l’employé en poste est assujetti à une convention collective,

(iv) les exigences éducatives,

(v) les exigences linguistiques,

(vi) le taux de salaire,

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

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

(ix) les heures de travail quotidiennes et hebdomadaires,

(x) la durée du contrat ou la période d’emploi;

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

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

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

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

(iv) le nombre de travailleurs étrangers employés ou qui le seront,
(v) if known, the country of origin of the foreign workers employed or to be employed,

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

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

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

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

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

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

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

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

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

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

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

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

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

38.9(5) A registration is valid for one calendar year from the date the employer provides the information in subsection (4) and the employer shall provide an update

38.9(5) L’inscription est valide pour une année civile à partir de la date de la communication des renseignements énumérés au paragraphe (4) par l’employeur, le-
of the information provided each year on or before the anniversary date of the registration.

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

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

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

(a) for providing employment development programs;
(b) for making labour market supply and demand projections; and
(c) for identifying employers who have foreign worker employees who could be candidates for permanent residency in the Province.

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

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

2014, c.3, s.1; 2017, c.20, s.63
Prohibitions on employers of foreign workers

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

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

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

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

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

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

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

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

2014, c.3, s.1

Interdictions – employeurs de travailleurs étrangers

38.91(1) Il est interdit à l’employeur d’exiger d’un travailleur étranger qu’il retienne les services d’un consultant en immigration comme condition d’emploi.

38.91(2) Il est interdit à l’employeur, même indirectement, de recouvrer auprès d’un travailleur étranger les frais qu’il a engagés en le recruntant qui sont inadmissibles sous le régime du programme au titre duquel il l’a recruté.

38.91(3) Il est interdit à l’employeur de réduire le taux de salaire, de réduire ou d’éliminer tout autre avantage ou de modifier les modalités ou les conditions de travail qu’il s’est engagé à respecter à l’égard du travailleur étranger au moment de son recrutement.

38.91(4) Il est interdit à l’employeur et à la personne qui, pour le compte de celui-ci, recrute des travailleurs étrangers en vue d’un emploi de formuler des assertions inexactes concernant des possibilités d’emploi, notamment le poste qu’occupera le travailleur étranger, les fonctions du poste, la durée de l’emploi, le taux de salaire, les avantages ou toutes autres modalités ou conditions de travail.

38.91(5) Il est interdit à l’employeur et à la personne qui, pour le compte de celui-ci, recrute des travailleurs étrangers en vue d’un emploi de fournir ou de faire fournir des renseignements faux ou trompeurs au travailleur étranger à l’égard des droits et des responsabilités des employeurs et des employés.

38.91(6) Il est interdit à l’employeur et à la personne qui, pour le compte de celui-ci, recrute des travailleurs étrangers en vue d’un emploi de prendre possession des biens à la possession desquels le travailleur étranger a droit, notamment son passeport ou son permis de travail.

38.91(7) Il est interdit à l’employeur qui fournit un logement au travailleur étranger de lui interdire de le quitter pour un autre logement.

38.91(8) Il est interdit à l’employeur et à la personne qui, pour le compte de celui-ci, recrute des travailleurs étrangers en vue d’un emploi de menacer le travailleur étranger de déportation ou de quelque autre mesure sans aucun motif légitime.

2014, ch. 3, art. 1
CHILDREN

Restrictions on employment of children

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

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

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

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

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

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

1984, c.42, s.22

Restrictions on employment of children

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

(a) in any industrial undertaking;

(b) in the forest industry;

(c) in the construction industry;

(d) in a garage or automotive service station;

(e) in a hotel or restaurant;

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

(g) as an elevator operator;

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

Restrictions on employment of children

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

TRAVAIL DES ENFANTS

Restrictions à l’emploi des enfants

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

a) dans un emploi qui est ou risque d’être malsain ou nuisible pour sa santé, son bien-être, sa moralité ou son développement physique;

b) pendant plus de six heures par jour;

c) pendant plus de trois heures les jours de classe;

d) pendant une période qui, ajoutée à la durée de fréquentation obligatoire à l’école, l’obligerait à consacrer plus de huit heures au total au cours d’une journée au travail et à la présence en classe;

e) entre vingt-deux heures et six heures.

1984, ch. 42, art. 22

Restrictions à l’emploi des enfants

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

a) dans une entreprise industrielle;

b) dans l’industrie forestière;

c) dans l’industrie de la construction;

d) dans un garage ou une station-service;

e) dans un hôtel ou restaurant;

f) dans un lieu de spectacles, une salle de danse ou une salle de tir;

g) en qualité de garçon d’ascenseur;

h) dans tout endroit ou profession déterminé par règlement.
satisfied on reasonable grounds that the employment of the person

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

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

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

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

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

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

43(1) Subject to subsection (2), an employer shall at any time from a day thirteen weeks before the specified date of delivery to the day of actual delivery, upon the request of a pregnant employee and upon receipt of a certificate by a medical practitioner, nurse practitioner or midwife stating that the employee is pregnant and specifying the date upon which delivery will, in his or her opinion, occur, grant the employee leave of absence without pay of seventeen weeks or such shorter period as the employee requests.

43(2) An employee intending to take leave of absence under this section shall...
(a) advise her employer four months before the pro-
jected date of delivery or as soon as her pregnancy is 
confirmed, whichever is the later, of her intent to take 
leave and the anticipated commencement date in the 
absence of an emergency; and

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

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

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

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

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

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

1984, c.42, s.24; 1988, c.59, s.16; 1991, c.52, s.1; 2002, 
c.23, s.1; 2011, c.26, s.1; 2018, c.14, s.1

Return to work

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

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

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

1984, ch. 42, art. 24; 1988, ch. 59, art. 16; 1991, ch. 52, 
art. 1; 2002, ch. 23, art. 1; 2011, ch. 26, art. 1; 2018, 
ch. 14, art. 1

Retour au travail

44(1) Lorsqu’un salarié se présente au travail à l’expir-
ation du congé accordé en vertu de l’article 43, l’em-
ployeur doit lui permettre de reprendre son travail dans 
le poste qu’il occupait juste avant de prendre son congé 
or dans un poste équivalent, sans diminution de rémuné-
ration ni perte d’avantages accumulés jusqu’au début de 
son congé.

44(2) Pour l’application du paragraphe (1), un emploi 
de substitution visé au paragraphe 43(4) n’est pas consi-
déré comme le poste que la salariée occupait juste avant de prendre son congé.

1984, ch. 42, art. 24; 1988, ch. 59, art. 17
ADOPTION
Repealed: 1991, c.52, s.2
1991, c.52, s.2

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

CHILD CARE
1991, c.52, s.4

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

44.02(2) Subject to subsections (3), (4) and (8), an employer shall, upon the request of an employee,
(a) who is the natural parent of a newborn or unborn child, or
(b) who is adopting or has adopted a child,
grant the employee a leave of absence without pay of sixty-two consecutive weeks or such shorter period as the employee requests so as to enable the employee to care for the child.

44.02(3) An employee intending to take a leave of absence under paragraph (2)(a) shall
(a) provide the employer with a certificate of a medical practitioner, nurse practitioner or midwife specifying the date upon which delivery will, in the medical practitioner’s, nurse practitioner’s or midwife’s opinion, occur or the date upon which the birth has occurred, and
(b) in the absence of an emergency, give four weeks written notice to the employer of the commencement date and duration of the leave.

44.02(4) An employee intending to take a leave of absence under paragraph (2)(b) shall
(a) on being approved in accordance with the Family Services Act as a prospective adopting parent or, in the case of a private adoption, four months before, or in the event of an emergency as soon as possible be-
fore, the anticipated day on which the child will be placed with the employee for adoption, give written notice to the employer of the employee’s intention to take leave,

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

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

44.02(5) Repealed: 2000, c.55, s.4
44.02(6) Repealed: 2000, c.55, s.4
44.02(7) Repealed: 2000, c.55, s.4
44.02(8) A leave of absence granted under subsection (2) shall commence not earlier than the date on which the newborn or adopted child came into the employee’s care and custody and end not later than seventy-eight weeks after that date.

44.02(9) Repealed: 2000, c.55, s.4
44.02(10) Where an employee intends to take a leave of absence under paragraph (2)(a) in addition to a leave of absence under section 43, the employee must commence the leave of absence under paragraph (2)(a) immediately on the expiry of the leave of absence taken under section 43 unless the employer and employee agree otherwise.

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

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

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

(b) be shared by the employees.

44.02(12.1) The aggregate amount of leave that may be taken by two employees under this section with respect to the same birth or adoption shall not exceed sixty-two weeks.
44.02(12.2) The aggregate amount of leave that may be taken by one or two employees under this section and section 43 with respect to the same birth shall not exceed seventy-eight weeks.

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

1988, c.59, s.18; 1991, c.52, s.5; 2000, c.26, s.106; 2000, c.55, s.4; 2002, c.23, s.1; 2011, c.26, s.1; 2018, c.14, s.2

SICK LEAVE
2000, c.55, s.5

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

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

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

44.021(4) The duties of an employer under this section are in addition to and do not derogate from the duties of an employer under section 42.3 or 42.4 of the Employment Standards Act.

2000, c.55, s.5; 2002, c.23, s.1; 2011, c.26, s.1; 2019, c.39, s.24

FAMILY RESPONSIBILITY LEAVE
2000, c.55, s.5

Family Responsibility Leave
44.022(1) An employer shall, upon the request of an employee, grant the employee leaves of absence without pay of up to three days during a twelve calendar month period to meet responsibilities related to the health, care

44.02(12.2) La durée maximale de l’ensemble des congés que peuvent prendre un ou deux salariés en vertu du présent article et de l’article 43 à l’occasion de la naissance d’un enfant est de soixante-dix-huit semaines.

44.02(13) Le paragraphe 44(1) s’applique avec les adaptations nécessaires au congé accordé en vertu du présent article.

1988, ch. 59, art. 18; 1991, ch. 52, art. 5; 2000, ch. 26, art. 106; 2000, ch. 55, art. 4; 2002, ch. 23, art. 1; 2011, ch. 26, art. 1; 2018, ch. 14, art. 2

CONGÉ DE MALADIE
2000, ch. 55, art. 5

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

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

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

44.021(4) Les obligations d’un employeur en vertu du présent article sont en sus des obligations en vertu de l’article 42.3 ou 42.4 de la Loi sur les accidents du travail et n’y dérogent point.

2000, ch. 55, art. 5; 2002, ch. 23, art. 1; 2011, ch. 26, art. 1; 2019, ch. 39, art. 24

CONGÉ POUR OBLIGATIONS FAMILIALES
2000, ch. 55, art. 5

Congé pour obligations familiales
44.022(1) Un employeur doit, à la demande d’un salarié, lui accorder un congé sans solde d’une durée maximale de trois jours par période de douze mois civils pour lui permettre de remplir ses obligations quant à la santé,
or education of a person in a close family relationship with the employee.

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

2000, c.55, s.5

COURT LEAVE

2000, c.55, s.5

Court Leave

44.023(1) An employer shall grant an employee a leave of absence without pay for any period that the employee is absent from work as a result of being

(a) summoned to serve on a jury,

(b) selected to serve on a jury, or

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

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

2000, c.55, s.5

COMPASSIONATE CARE LEAVE

2003, c.30, s.1

Compassionate Care Leave

44.024(1) In this section

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

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

44.024(2) An employer who is a qualified medical practitioner may require the employee to reimburse the employer for any amount that the employee receives as compensation for travel, meal or accommodation expenses.

2003, c.30, s.1
44.024(2) Subject to subsections (3) to (6), an employer shall, upon the request of an employee, grant the employee a leave of absence without pay from employment of up to twenty-eight weeks to provide care or support to a person with whom the employee has a close family relationship, if a qualified medical practitioner issues a certificate stating that the person with whom the employee has a close family relationship has a serious medical condition with a significant risk of death within twenty-eight weeks from

(a) the day the certificate is issued, or

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

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

(a) that starts with

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

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

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

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

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

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

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

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

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

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

CRITICALLY ILL CHILD LEAVE

2014, c.3, s.2; 2018, c.14, s.3

Critically ill child leave

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

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

“family member” means a family member as defined in the Employment Insurance Regulations under the Employment Insurance Act (Canada). (membre de la famille)

“parent” Repealed: 2018, c.14, s.4

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

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

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

les quinze jours qui suivent le retour au travail, une copie du certificat prévu au paragraphe (2).

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

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

CONGÉ DE GRAVE MALADIE CHEZ UN ENFANT

2014, ch. 3, art. 2; 2018, ch. 14, art. 3

Congé de grave maladie chez un enfant

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

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

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

« membre de la famille » S’entend selon la définition que donne de ce terme le Règlement sur l’assurance-emploi pris en vertu de la Loi sur l’assurance-emploi (Canada). (family member)

« parent » Abrogé : 2018, ch. 14, art. 4

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

44.025(2) Sous réserve des paragraphes (3) à (7), à la demande d’un salarié qui est le parent ou un autre membre de la famille d’un enfant gravement malade, l’employeur est tenu de lui accorder un congé non rémunéré d’une durée maximale de trente-sept semaines pour qu’il lui fournisse des soins ou du soutien, si un médecin qualifié délivre un certificat qui :
(a) states that the child is a critically ill child and requires the care or support of one or more of his or her parents or other family members, and

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

44.025(3) The leave of absence may only be taken during the period

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

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

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

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

(i) the child dies; or

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

44.025(4) If both parents or other family members of a critically ill child are employees of the same employer, the aggregate amount of leave that may be taken under subsection (2) for the care or support of the same critically ill child shall not exceed 37 weeks and may

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

(b) be shared by the employees.

44.025(5) An employee intending to take a leave of absence under subsection (2) shall advise the employer in writing as soon as possible of the employee’s intention to take the leave, the anticipated commencement date of the leave, the anticipated duration of the leave and shall provide the employer with the certificate referred to in subsection (2).

44.025(3) Le congé ne peut être pris qu’au cours de la période qui :

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

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

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

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

(i) l’enfant décède,

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

44.025(4) Si les deux parents ou d’autres membres de la famille d’un enfant gravement malade sont les salariés du même employeur, la durée maximale totale du congé pouvant être pris en vertu du paragraphe (2) pour le soin ou le soutien de cet enfant est de trente-sept semaines et peut :

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

(b) être partagé entre les salariés.

44.025(5) Le salarié qui entend prendre un congé en vertu du paragraphe (2) est tenu d’avisser par écrit l’employeur dès que possible de son intention, de la date prévue du début du congé ainsi que de la durée prévue du congé et de lui fournir le certificat mentionné au paragraphe (2).
44.025(6) If circumstances beyond the control of the employee require a change in the duration of the leave of absence, the employee shall advise the employer in writing of the change as soon as possible.

44.025(7) An employer is not required to extend an employee’s leave of absence beyond the date that would result in the employee’s total period of leave of absence exceeding 37 weeks from the commencement date of that leave.

44.025(8) When an employee reports for work on the expiration of the period of leave granted under subsection (2), the employer shall permit the employee to resume work in the position the employee held immediately before the commencement of the leave or an equivalent position with no decrease in pay and with no loss of benefits accrued up to the commencement of the leave.

2014, c.3, s.2; 2018, c.14, s.4

CRITICALLY ILL ADULT LEAVE

2018, c.14, s.5

Critically ill adult leave

44.0251(1) The following definitions apply in this section.

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

“family member” means a family member as defined in the Employment Insurance Regulations under the Employment Insurance Act (Canada). (membre de la famille)

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

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

44.0251(2) Subject to subsections (3) to (8), on the request of an employee who is the parent or other family member of a critically ill adult, an employer shall grant

44.0251(3) (1) Les définitions qui suivent s’appliquent au présent article.

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

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

« membre de la famille » S’entend selon la définition que donne de ce terme le Règlement sur l’assurance-emploi pris en vertu de la Loi sur l’assurance-emploi (Canada). (family member)

« semaine » S’entend de la période comprise entre minuit le samedi et minuit le samedi suivant. (week)
the employee a leave of absence without pay of up to 16 weeks to provide care or support to that critically ill adult if a qualified medical practitioner has issued a certificate that

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

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

44.0251(3) The leave of absence may be taken only during the period

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

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

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

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

(i) the adult dies; or

(ii) the expiration of 16 weeks following the first day of the week referred to in paragraph (a).

44.0251(4) If both parents or other family members of a critically ill adult are employees of the same employer, the aggregate amount of leave that may be taken under subsection (2) for the care or support of the same critically ill adult shall not exceed 16 weeks and may

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

(b) be shared by the employees.

44.0251(5) An employee intending to take a leave of absence under subsection (2) shall advise the employer in writing as soon as possible of the employee’s intention to take the leave, the anticipated commencement employment est tenu de lui accorder un congé non rémunéré d’une durée maximale de seize semaines pour qu’il lui fournisse des soins ou du soutien, si un médecin qualifié délivre un certificat qui :

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

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

44.0251(3) Le congé ne peut être pris qu’au cours de la période qui :

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

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

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

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

(i) l’adulte décède,

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

44.0251(4) Si les deux parents ou d’autres membres de la famille d’un adulte gravement malade sont les salariés du même employeur, la durée maximale totale du congé pouvant être pris en vertu du paragraphe (2) pour fournir des soins ou du soutien à cet adulte est de seize semaines, et ce congé peut :

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

b) être partagé entre les salariés.

44.0251(5) Le salarié qui entend prendre un congé en vertu du paragraphe (2) est tenu d’avisser par écrit l’employeur dès que possible de son intention, de la date prévue du début du congé ainsi que de la durée prévue du
date of the leave, the anticipated duration of the leave and shall provide the employer with the certificate referred to in subsection (2).

44.0251(6) If circumstances beyond the control of the employee require a change in the duration of the leave of absence, the employee shall advise the employer in writing of the change as soon as possible.

44.0251(7) An employer is not required to extend an employee’s leave of absence beyond the date that would result in the employee’s total period of leave of absence exceeding 16 weeks from the commencement date of that leave.

44.0251(8) When an employee reports for work on the expiration of the period of leave granted under subsection (2), the employer shall permit the employee to resume work in the position the employee held immediately before the commencement of the leave or an equivalent position with no decrease in pay and with no loss of benefits accrued up to the commencement of the leave.

2018, c.14, s.5

DEATH OR DISAPPEARANCE LEAVE

2014, c.3, s.2

Death or disappearance leave

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

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

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

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

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

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

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

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

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

44.026(6) Subject to subsections (7) to (9), a leave of absence under this section may only be taken during the period

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

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

44.026(7) If a child who has disappeared is found alive during the 37-week period, the leave of absence ends 14 days after the day on which the child is found.

44.026(8) If a child who has disappeared is found dead during the 37-week period, and it is probable, considering the circumstances, that the child died as a result of a crime, the leave of absence ends 37 weeks after the day on which the child is found.

44.026(9) A leave of absence under this section ends 14 days after the day that, considering the circumstances, it is no longer probable that the child disappeared or died, as the case may be, as a result of a crime, unless the employer and employee agree to an earlier date to return to work.

44.026(10) An employee intending to take a leave of absence under this section shall advise the employer in writing as soon as possible of the employee’s intention to take the leave, the anticipated commencement date of the leave and the anticipated duration of the leave.

44.026(10) Le salarié qui entend prendre un congé en vertu du présent article est tenu d’avisier par écrit l’employeur dès que possible de son intention, de la date prévue du début du congé ainsi que de la durée prévue du congé.
44.026(11) An employer may require an employee to provide documentation that is reasonable in the circumstances in support of the employee’s entitlement to a leave of absence under this section.

44.026(12) If circumstances beyond the control of the employee require a change in the duration of the leave of absence, the employee shall advise the employer in writing of the change as soon as possible.

44.026(13) Subject to subsection (8), an employer is not required to extend an employee’s leave of absence beyond the date that would result in the employee’s total period of leave of absence exceeding 37 weeks from the commencement date of that leave.

44.026(14) When an employee reports for work on the expiration of the period of leave of absence granted under this section, the employer shall permit the employee to resume work in the position the employee held immediately before the commencement of the leave or an equivalent position with no decrease in pay and with no loss of benefits accrued up to the commencement of the leave.

2014, c.3, s.2

DOMESTIC VIOLENCE LEAVE, INTIMATE PARTNER VIOLENCE LEAVE OR SEXUAL VIOLENCE LEAVE

2018, c.14, s.6

Domestic violence leave, intimate partner violence leave or sexual violence leave

44.027(1) Subject to this section, on the request of an employee, an employer shall grant the employee a domestic violence leave, an intimate partner violence leave or a sexual violence leave in accordance with the regulations.

44.027(2) An employee intending to take a leave of absence under this section shall advise the employer in writing as soon as possible of the employee’s intention to take the leave, the anticipated commencement date of the leave and the anticipated duration of the leave.

44.027(3) If circumstances beyond the control of the employee require a change in the duration of the leave of absence, the employee shall advise the employer in writing of the change as soon as possible.

2018, c.14, s.6

CONGÉ EN CAS DE VIOLENCE FAMILIALE, DE VIOLENCE ENTRE PARTENAIRES INTIMES OU DE VIOLENCE SEXUELLE

2018, ch. 14, art. 6

Congé en cas de violence familiale, de violence entre partenaires intimes ou de violence sexuelle

44.027(1) Sous réserve du présent article, à la demande d’un salarié, l’employeur est tenu de lui accorder un congé en cas de violence familiale, de violence entre partenaires intimes ou de violence sexuelle conformément aux règlements.

44.027(2) Le salarié qui entend prendre un congé en vertu du présent article est tenu d’aviser par écrit l’employeur dès que possible de son intention, de la date prévue du début du congé ainsi que de la durée prévue de celui-ci.

44.027(3) Si des circonstances indépendantes de sa volonté l’obligent à modifier la durée de son congé, le salarié est tenu d’en aviser l’employeur par écrit dès que possible.

2018, ch. 14, art. 6
BEREAVEMENT

Bereavement

44.03(1) In this section

“funeral” includes a memorial service. (funérailles)

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

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

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

LEAVE FOR RESERVISTS

Leave for reservists

44.03(1) The following definitions apply in this section.

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

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

“service” means

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

(b) a period of time for treatment, recovery or rehabilitation in respect of a physical or mental health problem that results from an activity referred to in paragraph (a). (service)
44.031(2) An employer shall not dismiss, suspend or lay off an employee who is a reservist, or refuse to employ a person who is a reservist, for the sole reason that the employee or the person is a reservist.

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

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

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

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

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

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

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

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

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

(a) that the employee is a reservist and
(i) is selected for service, or

(ii) is required to attend annual training, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44.031(12) Sous réserve du paragraphe (13), si le salarié donne un avis de modification de la date prévue de son retour au travail qui n’est pas conforme au paragraphe (11), l’employeur peut reporter la date de retour au travail jusqu’à deux semaines après la date à laquelle le salarié lui donne cet avis.

44.031(13) L’employeur ne peut reporter la date de retour au travail du salarié en vertu du paragraphe (12), si le report devait faire en sorte que la date de retour au tra-
that is earlier than the amended expected return to work date of the employee.

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

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

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

(b) would cause the employer undue hardship.

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

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

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

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

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

2007, c.74, s.1; 2011, c.48, s.1; 2013, c.13, s.4

LEAVES GENERALLY

Leaves generally

44.04(1) An employer shall not dismiss, suspend or lay off an employee who has been granted a leave of absence under this Act

44.04(1) Un employeur ne peut licencier, suspendre ou mettre à pied un salarié à qui a été accordé un congé en vertu de la présente loi
(a) during the leave of absence, or
(b) for reasons arising from the leave alone.

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

(a) retains seniority accrued up to the commencement of the leave,
(b) continues to accrue seniority during the leave at the same rate of accrual that would have occurred had the employee worked during the leave, and
(c) shall be deemed to have been continuously employed with the same employer during the leave of absence.

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

(a) ceases to accrue as of the date the dismissal would have occurred had the employee not been granted the leave of absence, and
(b) does not accrue during the period of the suspension or lay off that would have occurred had the employee not been granted the leave of absence.

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

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

1988, c.59, s.18; 2000, c.55, s.7

Leaves generally

44.05 An employee shall be deemed to have worked on a day of vacation and a public holiday for which the employee was paid.

1988, c.59, s.18

1988, ch. 59, art. 18; 2000, ch. 55, art. 7

Congés en général

44.05 Un salarié est réputé avoir travaillé lors d’un congé annuel et d’un jour férié pour lesquels le salarié a été rémunéré.

1988, ch. 59, art. 18
LIE DETECTOR TESTS

44.1(1) In this section

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

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

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

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

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

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

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

1984, c.42, s.25

TESTS DE DÉTECTEUR DE MENSONGE

Tests de détecteur de mensonge

44.1(1) Dans le présent article

« employeur » désigne un employeur au sens de l’article 1 et s’entend également d’un employeur éventuel; (employeur)

« salarié » désigne un salarié au sens de l’article 1 et s’entend également d’un candidat à un emploi; (employee)

« test de détecteur de mensonge » désigne une analyse, un examen, un interrogatoire ou un test réalisé uniquement ou conjointement avec un appareil, un instrument ou une machine mécanique, électrique, électromagnétique, électronique ou autre dans le but d’évaluer ou d’évaluer présumément la crédibilité d’une personne. (lie detector test)

44.1(2) Un salarié a le droit de refuser un test de détecteur de mensonge et de ne pas se voir demander ou imposer une obligation de se soumettre à un tel test.

44.1(3) Nul ne peut, directement ou indirectement, exiger d’un salarié qu’il se soumette à un test de détecteur de mensonge, lui demander ou lui permettre de se soumettre à un tel test ou l’inciter à se soumettre à un tel test.

44.1(4) Nul ne doit communiquer ni révéler à un employeur qu’un salarié a subi un test de détecteur de mensonge ni lui communiquer ou révéler les résultats d’un test subi dans une autre juridiction.

44.1(5) Lorsqu’un employeur viole une disposition du présent article, le Directeur peut lui ordonner de faire ou de s’abstenir de faire quelque chose pour se conformer au présent article et lui ordonner de réintégrer ou d’engager le salarié concerné, avec ou sans indemnisation, ou de payer au salarié au lieu de la réintégration ou de l’emploi, l’indemnité que le Directeur fixe, sans que celle-ci puisse dépasser quatre mille dollars, pour la perte de salaire ou d’autres avantages.

1984, ch. 42, art. 25
PART IV
ADMINISTRATION
DIRECTOR

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

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

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

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

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

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

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

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

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

PARTIE IV
APPLICATION DE LA LOI
LE DIRECTEUR

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

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

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

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

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

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

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

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

Abrogé
49 Abrogé : 2014, ch. 70, art. 7
1994, ch. 52, art. 1; 2014, ch. 70, art. 7
Powers of the Board

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

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

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

Jurisdiction of the Board

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

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

54(2) Repealed: 1994, c.52, s.1
1991, c.27, s.15; 1994, c.52, s.1
(c) this Act applies to an employment contract, having regard to section 5; or

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

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

54(3) Where a decision of the Board is reviewed and set aside because of an excess of jurisdiction or a denial of natural justice, no costs shall be awarded against any party to the matter before the Board.

1984, c.42, s.29; 1986, c.32, s.6; 1994, c.52, s.1

Stated case

55(1) Notwithstanding section 54, the Board may of its own motion state a case in writing for the opinion of The Court of Appeal of New Brunswick on any question that, in the opinion of the Board, is a question of law.

55(2) The Court of Appeal of New Brunswick shall hear and determine the question or questions of law arising in the stated case and remit the matter to the Board, with the opinion of the Court thereon; and the opinion of the Court on a question of law is binding on the Board and the parties.

55(3) No costs shall be awarded in any case stated under this section.

1994, c.52, s.1

Repealed

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

1994, c.52, s.1

(c) si la présente loi s’applique à un contrat d’emploi au regard de l’article 5; ou

d) si une situation donnée donne lieu à une exemption aux termes de la présente loi et des réglements.

54(2) Les décisions, ordonnances, directives ou déclarations de la Commission sont définitives et sans appel; elles ne peuvent être contestées devant les tribunaux judiciaires ni être révisées par eux sauf pour excès de juridiction ou déni de justice naturelle et ces tribunaux ne peuvent rendre d’ordonnance ni être saisis d’une procédure tendant, par voie d’injonction, de jugement déclaratoire, d’ordonnance en révision judiciaire ou par tout autre moyen, à contester, réviser, empêcher ou limiter l’action de la Commission.

54(3) Lorsqu’une décision de la Commission est révisée et annulée pour excès de juridiction ou déni de justice naturelle, il ne sera prononcé aucune condamnation aux dépens à l’encontre d’une des parties devant la Commission.

1984, ch. 42, art. 29; 1986, ch. 32, art. 6; 1994, ch. 52, art. 1

Exposé de cause

55(1) Nonobstant l’article 54, la Commission peut, de sa propre initiative, formuler par écrit un exposé de cause en vue d’obtenir l’avis de la Cour d’appel du Nouveau-Brunswick sur toute question qu’elle estime être une question de droit.

55(2) La Cour d’appel du Nouveau-Brunswick entend et juge la ou les questions de droit soulevées dans l’exposé de cause et renvoie l’affaire à la Commission avec l’avis de la Cour qui lie la Commission et les parties.

55(3) Il n’est pas accordé de dépens à l’occasion d’un exposé de cause formulé en vertu du présent article.

1994, ch. 52, art. 1

Abrogé

56 Abrogé : 1994, ch. 52, art. 1

1994, ch. 52, art. 1
EMPLOYMENT STANDARDS OFFICERS

Appointment

57(1) The Minister may appoint persons who are employees under the Civil Service Act as Employment Standards Officers.

57(2) The Minister shall cause to be published in The Royal Gazette the names of persons appointed as Employment Standards Officers.

57(3) Any action in the performance of his duty or exercise of his authority by a person appointed under subsection (1) before the publication required by subsection (2) is not invalid by reason only of the absence of publication.

1984, c.42, s.30

AGENTS DES NORMES D’EMPLOI

Nomination

57(1) Le Ministre peut nommer agents des normes d’emploi des personnes employées en vertu de la Loi sur la Fonction publique.

57(2) Le Ministre doit faire publier dans la Gazette royale les noms des personnes nommées agents des normes d’emploi.

57(3) Tout acte accompli par une personne nommée en vertu du paragraphe (1) dans l’exercice de ses fonctions ou de ses pouvoirs avant la publication requise par le paragraphe (2) n’est pas invalide du seul fait du défaut de publication.

1984, ch. 42, art. 30

Powers

58(1) For the purpose of ensuring that the provisions of this Act and the regulations are complied with the Director, or an Employment Standards Officer, may

(a) at any reasonable time enter into or upon any place of employment for the purpose of inspection, investigation or examination of conditions of employment;

(b) between the hours of nine o’clock in the forenoon and four o’clock in the afternoon enter into any office or premises where he has reason to believe employment records are kept or stored, and

(i) require the production for inspection, audit or examination of all books of account, vouchers, payroll records, incorporation certificates, by-laws, minutes of directors’ meetings or other documents that are or may be relevant to the inspection, audit or examination;

(ii) upon giving a receipt therefor, remove anything referred to in sub-paragraph (i) or any other books, papers, records or documents for the purpose of making copies of extracts; but such copies or extracts shall be made with reasonable dispatch and the books, papers, records or documents properly returned thereafter to the person who produced or furnished them not later than five working days after the date on which they were removed; and

(i) pénétrer, à toute heure raisonnable, dans tout lieu d’emploi en vue d’y procéder à des contrôles, enquêtes ou vérifications relativement aux conditions d’emploi;

(b) pénétrer, entre neuf heures et seize heures, dans tout bureau ou locaux où il a des raisons de croire que des dossiers d’emploi sont tenus et conservés, et

(i) demander la production, aux fins d’une inspection, d’une vérification ou d’un examen, de tous les livres comptables, pièces justificatives, bordereaux de paie, certificats de constitution en corporation, règlements administratifs, procès-verbaux des réunions du conseil d’administration et autres documents qui sont ou peuvent être utiles pour l’inspection, la vérification ou l’examen;

(ii) emporter, contre remise d’un reçu, tout ce qui est visé au sous-alinéa (i) ainsi que tous autres livres, pièces, dossiers ou documents afin d’en faire des copies ou d’en prendre des extraits, étant entendu que l’exécution de ces opérations doit se faire avec une diligence raisonnable et que la restitution des livres, pièces, dossiers ou documents emportés à la personne qui les a produits ou fournis doit intervenir au plus tard dans les cinq jours ouvrables qui suivent la date à laquelle ils ont été emportés; et
(iii) make copies or take abstracts from all such books, papers, records or documents; and

(c) require an employer to provide information upon request, in which case the employer shall, within ten days after receipt of a written request from the Director or from an Employment Standards Officer, or within such longer time as may be allowed by the Director or Employment Standards Officer, file a statement setting forth the information which is required.

58(2) Neither the Director nor an Employment Standards Officer nor a mediator referred to under section 64 is in any civil proceeding a compellable witness respecting any information, statements, books, papers, records or documents acquired, furnished, obtained, made or received under the powers conferred under this Act.

58(3) Neither the Director nor an Employment Standards Officer nor a mediator referred to under section 64 shall be compelled or required to produce in any civil proceeding, any statements, books, papers, records or documents acquired, furnished, obtained, made or received under the powers conferred under this Act.

1984, c.42, s.31; 1996, c.86, s.1

Immunity from action

58.1 No action for damages lies against the Province, the Director, an Employment Standards Officer or a mediator referred to under section 64 with respect to anything done or purported to be done in good faith, or with respect to anything omitted in good faith, under this Act or the regulations by the Director, the Employment Standards Officer or the mediator.

1988, c.59, s.18.1

Information that may be required from an employer

59 Information that may be requested and that shall be provided by an employer under section 58(1) includes, but is not limited to,

(a) the names and addresses of the employer’s employees;

(b) the ages of the employer’s employees, supported by a certificate of birth of any person who, in the opinion of the Director or an Employment Standards

a) les noms et adresses des salariés qu’il emploie;

b) l’âge des salariés qu’il emploie, constaté par un certificat de naissance pour toute personne qui, selon le Directeur ou un agent des normes d’emploi, est ap-
Officer, is apparently under the age of sixteen years and is employed in a place of employment of the employer or, in lieu thereof where production of such certificate is impossible or impracticable, the affidavit of some person having personal knowledge of the facts;

(c) the duties performed by each employee;

(d) the hours of work per day and per week performed by each employee;

(e) the rate of wages per hour, day, week or other period of each employee;

(f) any agreement between the employer and his employees in relation to wages, hours of work or working conditions; and

(g) such other information as to wages paid or, in the case of prospective employment, to be paid, hours of work, working conditions as may be required by notice.

1986, c.32, s.7

EMPLOYER’S RECORDS

Records required to be kept by an employer

60(1) Every employer shall make and keep in the Province for at least thirty-six months after work is performed or service is rendered by an employee, complete and accurate records in respect of the employee sufficient to meet the requirements of a request under section 58(1), including

(a) the employee’s name and address;

(b) the employee’s date of birth;

(c) the employee’s social insurance number;

(d) the date of commencement of employment for the employee;

(e) the number of hours worked by the employee each day and each week;

(f) the employee’s wage rate and gross earnings for each pay period;

1986, ch. 32, art. 7
(g) the amount of each deduction from the gross earnings of the employee and the purpose for which each deduction is made;

(h) Repealed: 2016, c.20, s.3

(i) any period during which the employee was on vacation;

(j) any vacation pay due or paid to the employee;

(j.1) any public holiday pay due or paid to the employee;

(k) the net amount of money paid to the employee;

(k.1) any period during which the employee was on a leave of absence and the reason for the leave of absence;

(l) any document or certificates relating to a leave of absence of the employee;

(m) the dates of all dismissals or layoffs of the employee and the dates of any notices of dismissals or layoffs; and

(n) the date of cessation of employment.

60(2) Where the original records referred to in subsection (1) are maintained by a person, firm, company or partnership other than the employer, the employer shall have and produce on request made under subsection (3) a true and accurate copy of the employment records in respect of each employee required under subsection (1).

60(3) The Labour and Employment Board, the Director and an Employment Standards Officer may at any time request from any employer, or from any person, firm, company or partnership maintaining an employee’s records, information required to be kept under subsection (1) with respect to any employee, and such request shall forthwith be complied with.

60(4) Where the employer fails to maintain accurate records in accordance with this Act, the Labour and Employment Board or the Director may accept the evidence

60(2) Lorsque les dossiers originaux visés au paragraphe (1) sont tenus par une personne, firme, compagnie ou société en nom collectif autre que l’employeur, celui-ci doit posséder et produire, si la demande lui en est faite en vertu du paragraphe (3), une copie sincère et fidèle du dossier que le paragraphe (1) lui fait obligation de tenir relativement à chaque salarié.

60(3) La Commission du travail et de l’emploi, le Directeur et un agent des normes d’emploi peuvent demander à un employeur ou à une personne, firme, compagnie ou société en nom collectif tenant les dossiers de salariés de leur fournir les renseignements que le paragraphe (1) leur impose de conserver; il doit être obtenu immédiatement à la demande.

60(4) Faute par l’employeur de tenir des dossiers en règle conformément à la présente loi, la Commission du travail et de l’emploi ou le Directeur peuvent accepter
of an employee with respect to his employment, and the
onus of proving the contrary shall be on the employer.
1988, c.59, s.19; 1994, c.52, s.1; 2003, c.4, s.10; 2014,
c.70, s.8; 2016, c.20, s.3

PART V
ENFORCEMENT

COMPLAINTS AND ADMINISTRATIVE ORDERS

Complaint to Director

61(1) Any person who believes that
(a) there has been a violation of Part III by an em-
ployer, an employee or any other person; or
(b) he has been denied a right or benefit arising un-
der Part III;
may, within twelve months after the alleged violation or
denial, make a complaint to the Director in any form.

61(2) The Director may agree to keep confidential the
identity of a complainant where he is satisfied that there
exists a possibility of intimidation or retaliation by any
person towards the complainant.

Procedure to be followed by Director

62(1) Subject to subsections (2) and (3), where the Di-
rector is satisfied that the allegations contained in a com-
plaint disclose a violation of Part III, or a denial of a
right or benefit arising under Part III, he shall act upon
the complaint and, where mediation is not attempted un-
der section 64 or is unsuccessful, shall cause an investi-
gation to be undertaken with respect thereto.

62(1.1) The Director may cause an investigation to be
undertaken in subsection (1) by referring the complaint
to an Employment Standards Officer under section 64.1.

62(2) The Director shall not act upon a complaint un-
less he is satisfied that the person making the complaint,
or the person identified in the complaint as the person
who has been denied a right or benefit under Part III or
in respect of whom it is alleged that Part III was vio-
lated, is unable to grieve the subject matter of the com-
plaint under the provisions of a collective agreement.
62(3) The Director shall not act upon a complaint if it is or has been the subject matter of a proceeding before a court of competent jurisdiction within New Brunswick.

62(4) Where the Director has agreed to keep confidential the identity of the complainant he may refuse to act upon the complaint or to proceed with an investigation where he is satisfied that to keep confidential the identity of the complainant would unduly impede the investigation of the complaint or would be unfair to a person against whom an allegation has been made in the complaint.

1984, c.42, s.32; 2013, c.13, s.5

Orders that may be made by Director

63(1) When the Director investigates pursuant to a complaint made under subsection 61(1) he may make an order respecting any violation of Part III or any denial of a right or benefit arising under Part III disclosed in his investigation and occurring within twelve months preceding the complaint.

63(2) Where the Director’s investigation is not pursuant to a complaint under subsection 61(1), any order made by the Director shall only relate to a violation or denial occurring within twelve months prior to the date of the order.

Appointment, role of mediator

64(1) The Director may, at any point after a complaint has been made, appoint, on such terms and conditions as may be established in the appointment, a mediator to attempt to settle the subject matter of the complaint.

64(2) In the event that the parties reach an agreement with respect to the disposition of the complaint the mediator shall report to the Director the terms and conditions of such agreement.

64(3) The Director may make an order to implement the terms and conditions of such an agreement and an order so made shall have the same force and effect as an order made under section 65.

64(4) In the event that mediation is unsuccessful in assisting the parties to reach an agreement within such period as may be established by the Director, the mediator shall report that fact to the Director, but he shall not report to the Director, nor reveal to anyone, any communi-
cations that were made during the mediation process, or any information derived from such communications.

64(5)  A mediator who deals with a complaint made to the Director shall not, upon the completion of his mediation role, participate in any way in any subsequent investigation into the alleged complaint.

1984, c.42, s.33

Notice of non-compliance

64.1(1)  In this section, “prescribed provision” means a provision of this Act or the regulations prescribed by regulation for the purposes of this section. (disposition prescrite)

64.1(2)  At any point after a complaint is made involving the contravention of a prescribed provision, the Director may refer the complaint to an Employment Standards Officer.

64.1(3)  An Employment Standards Officer may issue a notice of non-compliance to a person with respect to the contravention of a prescribed provision

(a) after an investigation of a complaint referred under subsection (2); or

(b) after an investigation that is not the result of a complaint.

64.1(4)  A person who is issued a notice of non-compliance shall comply with the prescribed provision set out in the notice within 30 days after receiving the notice and if the person fails to comply before the expiry of that time, the Director may impose an administrative penalty on the person in accordance with section 64.2.

64.1(5)  A notice of non-compliance issued under paragraph (3)(a) may only be in respect of contraventions occurring within 12 months preceding the date of the complaint.

64.1(6)  A notice of non-compliance issued under paragraph (3)(b) may only be in respect of contraventions occurring within 11 months preceding the issuance of the notice.

64.1(7)  A notice of non-compliance shall contain the information prescribed by regulation.
64.1(8) A notice of non-compliance is sufficiently served on a person if it is served or delivered in accordance with section 86.

64.1(9) A person who is issued a notice of non-compliance shall not be prosecuted for an offence under this Act in respect of the same incident that gave rise to the issuance of the notice.

64.1(10) A person who is prosecuted for an offence under this Act shall not be issued a notice of non-compliance in respect of the same incident that gave rise to the prosecution.

64.1(11) The Director shall not issue an order under subsection 65(1) in respect of the same incident that gave rise to the issuance of a notice of non-compliance until the 30-day period for complying with the notice has elapsed and the person against whom the notice has been issued has not complied.

2013, c.13, s.6

**Administrative penalties**

64.2(1) If a person fails to comply with a notice of non-compliance within the 30-day period referred to in subsection 64.1(4),

(a) the Director may make an order under subsection 65(1) imposing an administrative penalty and including the amount of penalty in the stated amount payable under the order, or

(b) if the Director is not satisfied on reasonable grounds that there has been a contravention of the provision of this Act or the regulations set out in the notice, or for any other reason, the Director may decide

(i) not to make an order under section 65, and

(ii) to set aside the notice of non-compliance.

64.2(2) The amount of administrative penalty payable for a failing to comply with a notice of non-compliance shall be prescribed by regulation, which amount shall not be less than $150 and shall not exceed $900.

64.2(3) For the purpose of determining the amount of an administrative penalty, the Director may treat a contravention relating to more than one person

64.1(8) L’avis de non-conformité est valablement signifié à personne, s’il est signifié ou livré conformément à l’article 86.

64.1(9) La personne à qui l’avis de non-conformité est délivré ne peut faire l’objet d’une poursuite pour infraction à la présente loi relativement au même incident qui a donné naissance à la délivrance de l’avis.

64.1(10) L’avis de non-conformité ne peut être délivré à la personne qui a fait l’objet d’une poursuite pour infraction à la présente loi relativement au même incident qui a donné naissance à la poursuite.

64.1(11) Le Directeur ne peut rendre une ordonnance en vertu du paragraphe 65(1) relativement au même incident qui a donné naissance à la délivrance de l’avis de non-conformité que si s’est écoulé le délai de trente jours sans que la personne à qui l’avis a été délivré s’y soit conformée.

2013, ch. 13, art. 6

**Amendes administratives**

64.2(1) Si une personne fait défaut de se conformer à l’avis de non-conformité dans le délai de trente jours qu’impartit le paragraphe 64.1(4), le Directeur peut :

(a) ou bien rendre une ordonnance en vertu du paragraphe 65(1) infligeant une amende administrative et incluant le montant de l’amende dans le montant déterminé qui est payable au titre de l’ordonnance;

(b) ou bien, s’il n’est pas convaincu en se fondant sur des motifs raisonnables qu’il y a eu violation de la disposition de la présente loi ou des règlements énoncée dans l’avis ou pour tout autre motif, décider :

(i) d’une part, de ne pas rendre l’ordonnance que prévoit l’article 65,

(ii) d’autre part, d’annuler l’avis de non-conformité.

64.2(2) Le montant de l’amende administrative exigible pour défaut de conformité à l’avis de non-conformité est fixé par règlement, mais ne peut être inférieur à 150 $ ou supérieur à 900 $.

64.2(3) Aux fins de détermination du montant de l’amende administrative, le Directeur peut traiter une
violation à l’encontre de plus d’une personne comme constituant :

(a) soit une violation distincte pour chaque personne touchée;

(b) soit une seule violation relative à un groupe de personnes touchées.

64.2(4) An administrative penalty is payable to the Minister of Finance and Treasury Board.

64.2(5) A person who pays an administrative penalty shall be deemed to have contravened the provision of this Act or the regulations in respect of which the notice of non-compliance was issued.

Orders that may be made by Director

65(1) Where the Director is satisfied upon reasonable grounds that a person has not complied with the provisions of this Act or the regulations, or the provisions of an order made under subsection 64(3), he may make an order with respect to any of the following matters, namely:

(a) directing the person to refrain from acts that violate the Act or regulations;

(b) directing the person to comply with the Act and the regulations;

(c) requiring the person to pay a stated amount representing

(i) wages owing to an employee;

(ii) vacation pay or pay in lieu of vacation owing to an employee;

(ii.1) public holiday pay or pay in lieu of public holidays owing to an employee;

(iii) any other benefit owing to an employee;

(iv) payment in lieu of notice of termination to an employee;

(iv.1) an administrative penalty;

2013, c.13, s.6; 2019, c.29, s.49

Ordonnance du Directeur

65(1) Lorsqu’il est convaincu, en se fondant sur des motifs raisonnables, qu’une personne ne s’est pas conformée aux dispositions de la présente loi ou des règlements ou à celles d’une ordonnance rendue en vertu du paragraphe 64(3), le Directeur peut, par ordonnance,

(a) lui enjoindre de s’abstenir de tout acte dérogeant à la présente loi ou aux règlements;

(b) lui enjoindre de se conformer aux dispositions de la présente loi ou des règlements;

(i) au salaire dû à un salarié;

(ii) aux congés annuels ou à l’indemnité compensatrice de ces congés dus à un salarié;

(ii.1) à la rémunération des jours fériés ou à l’indemnité compensatrice des jours fériés due à un salarié;

(iii) à toute autre prestation due à un salarié;

(iv) à l’indemnité tenant lieu de préavis de cessation, payable à un salarié;

(iv.1) à une amende administrative;
(v) compensation for economic loss caused to a person by virtue of non-compliance with the Act or regulations; or

d) directing the reinstatement of an employee to a former position or his assignment to an equivalent position.

65(2) The Director is not required to serve notice upon or hear any person before making an order under subsection (1) or before advising a complainant that there has been no failure to comply with this Act or the regulations.

65(3) In an order made under subsection (1), the Director shall specify the provision of this Act or the regulations or of any order made under subsection 64(3) that, in his opinion, has not been complied with and shall advise the person against whom the order is made of his right to require the Director to refer the matter to the Board.

1984, c.42, s.34; 1986, c.32, s.8; 1988, c.59, s.20; 1994, c.52, s.1; 2013, c.13, s.7

Corporate directors’ liability

65.1(1) This section does not apply with respect to corporations that are operated on a not-for-profit basis, including corporations incorporated under section 16 or 18 of the Companies Act and corporations that have been incorporated in another jurisdiction with objects that are similar to the objects of corporations incorporated under section 16 or 18 of the Companies Act.

65.1(2) Despite any other Act and subject to subsections (3), (5) and (6), a person who is or was a director of a corporation is jointly and severally liable with the corporation to an employee or former employee of the corporation for

(a) up to six months of wages owing to an employee or former employee that were earned or became due and payable while the person was a director, and

(b) up to 12 months of vacation pay or pay in lieu of vacation owing to an employee or former employee that accrued or became due and payable while the person was a director.

65.1(2) Par dérogation à toute autre loi et sous réserve des paragraphes (3), (5) et (6), la personne qui est ou qui était administrateur d’une personne morale est conjointement et individuellement responsable avec elle envers le salarié ou l’ancien salarié au titre des périodes maximales suivantes :

a) six mois de salaire dû au salarié ou à l’ancien salarié qui a été gagné ou qui est devenu payable pendant que la personne était administrateur;

b) douze mois de congés payés annuels ou d’indemnité compensatrice des congés payés qui sont dus au salarié ou à l’ancien salarié et qui se sont accumulés ou qui sont devenus payables pendant que la personne était administrateur.

1984, ch. 42, art. 34; 1986, ch. 32, art. 8; 1988, ch. 59, art. 20; 1994, ch. 52, art. 1; 2013, ch. 13, art. 7

Responsabilité personnelle des administrateurs
65.1(3) A director or former director shall not be liable under subsection (2) unless

(a) the Director has made an order requiring an employer that is a corporation to pay a stated amount under subparagraph 65(1)(c)(i) or (ii),

(b) the stated amount referred to in paragraph (a) has not been paid and it has been at least 30 days since the date the order was made, and

(c) a notice of the joint and several liability has been sent to the director or former director and it has been at least 30 days since the notice was received.

65.1(4) A notice referred to in paragraph (3)(c) may be sent at the same time that an order is made requiring an employer that is a corporation to pay a stated amount under subparagraph 65(1)(c)(i) or (ii) or after the order has been made.

65.1(5) A director or former director shall not be liable under subsection (2) if he or she exercised reasonable diligence to provide for the payment of the amounts referred to in that subsection.

65.1(6) Despite paragraph 64.2(1)(a), a director or former director shall not be liable under subsection (2) for an administrative penalty imposed under that paragraph on an employer that is a corporation.

65.1(7) If the conditions of subsection (3) are satisfied, the Director may make an order requiring a director or former director of the corporation who is liable under subsection (2) to pay all or some of a stated amount under subparagraph 65(1)(c)(i) or (ii).

65.1(8) No order may be made under subparagraph 65(1)(c)(i) or (ii) against a former director of a corporation who is liable under subsection (2) more than two years after the date the former director ceases to be a director of the corporation.

65.1(9) If a director or former director of a corporation complies with an order to pay under subparagraph 65(1)(c)(i) or (ii), nothing in this Act affects any right the director or former director has to bring an action against the corporation or against one or more directors.
or former directors of the corporation for contribution or indemnification for the amount paid.
2013, c.13, s.8; 2014, c.2, s.1

Notification to complainant

66 Where, after receiving a complaint under this Act, the Director determines

(a) that the complaint is not one he is required to act upon; or

(b) that, having acted upon the complaint, there has been no failure to comply with this Act or the regulations or with an order made under subsection 64(3);

he shall so inform the complainant and advise him of his right to require the Director to refer the matter to the Board.
1984, c.42, s.35; 1994, c.52, s.1

Referral of matter to the Board

67(1) A person against whom an order is made by the Director may make a written request to the Director to refer the matter to the Board, within 14 days after the order is served on him or her, and the request shall be accompanied by a deposit in accordance with section 67.1, if applicable.

67(1.1) A complainant whose complaint has been acted on and dismissed by the Director may make a written request to the Director to refer the matter to the Board, within 14 days after being advised in writing of the dismissal.

67(1.2) Within ten days after receiving a request under subsection (1) or (1.1), the Director shall

(a) file with the Board a copy of the order and the complaint, if any,

(b) forward to the Board the deposit, if any, and

(c) request that the Board arrange a hearing of the matter.

Avis au plaignant

66 Lorsqu’il conclut, après réception d’une plainte déposée sous le régime de la présente loi,

a) qu’il n’y a pas lieu d’y donner suite; ou

b) qu’après avoir donné suite à la plainte, il n’y a pas eu inobservation de la présente loi ou des règlements ou d’une ordonnance rendue en vertu du paragraphe 64(3),

le Directeur en avise le plaignant et l’informe de son droit de lui demander de renvoyer l’affaire devant la Commission.
1984, ch. 42, art. 35; 1994, ch. 52, art. 1

Renvoi à la Commission

67(1) La personne contre laquelle le Directeur rend une ordonnance peut, dans les quatorze jours après qu’elle lui a été signifiée, demander par écrit au directeur de déférer l’affaire à la Commission, la demande étant, le cas échéant, accompagnée du dépôt fixé à l’article 67.1.

67(1.1) Le plaignant dont la plainte a été examinée, puis rejetée par le Directeur peut, dans les quatorze jours qui suivent sa réception de l’avis écrit de rejet, lui demander par écrit de déférer l’affaire à la Commission.

67(1.2) Dans les dix jours de la réception de la demande présentée en vertu du paragraphe (1) ou (1.1), le Directeur :
67(2) The Director shall forward to the Board any requests to refer a matter to it, and the Board may hear any matter so referred to it, notwithstanding that a time period set out in subsection (1) or (1.1) was not complied with.

67(2.1) If a person makes a request to refer a matter to the Board after the time limit set out in subsection (1) or (1.1), the person shall provide reasons for the delay on the prescribed form, and the Director shall forward the form to the Board.

67(2.2) The Board shall examine any reasons forwarded under subsection (2.1) before determining whether to hold a hearing on the matter that has been referred to it.

67(3) Where a matter is referred to the Board, any order of the Director with respect thereto, unless otherwise directed by the Board, is stayed pending the disposition of the matter by the Board.

1984, c.42, s.36; 1994, c.52, s.1; 2013, c.13, s.9

Deposit required for referral

67.1(1) A person requesting a referral to the Board with respect to an order made under paragraph 65(1)(c) shall provide a deposit at the time of making the request, in an amount equal to the amount payable by the person under the order, up to a maximum of $2,000.

67.1(2) Before the Board hears the matter, a person who has provided a deposit may acknowledge being indebted to an employee in the amount stated in the order and authorize the Board to apply the deposit to the amount owing to the employee to whom the person is indebted, and if there remains a surplus of funds after the deposit is applied, the Board shall apply the surplus to the amount of administrative penalty owing to the Minister of Finance and Treasury Board stated in the order, if applicable.

67.1(3) An acknowledgement and authorization referred to in subsection (2) shall be made in a form provided by the Director.

67.1(4) If after hearing and considering the matter the Board finds that a person who has provided a deposit is indebted to an employee for unpaid wages, pay or other payments, the Board shall apply the deposit to the amount owing to the employee, and if funds remain after

Dépôt exigé dans le cas d’un renvoi

67.1(1) La personne qui présente une demande que l’ordonnance rendue en vertu de l’alinéa 65(1)c) soit déferée à la Commission accompagne sa demande d’un dépôt d’un montant égal au montant qu’elle doit payer au titre de l’ordonnance, jusqu’à concurrence de 2 000 $.

67.1(2) Avant que la Commission n’instruise l’affaire, la personne qui a versé un dépôt peut reconnaître sa dette envers le salarié pour le montant déterminé dans l’ordonnance et autoriser la Commission à affecter le dépôt au montant dû à ce salarié et, le cas échéant, à affecter le reliquat au montant de l’amende administrative qui est déterminé dans l’ordonnance et qui est dû au ministre des Finances et du Conseil du Trésor.

67.1(3) La reconnaissance et l’autorisation que prévoit le paragraphe (2) sont établies au moyen de la formule que fournit le Directeur.

67.1(4) Si, après avoir entendu et examiné l’affaire, elle constate que la personne qui a versé le dépôt a une dette de salaire, de rémunération ou d’autres paiements envers le salarié, la Commission affecte d’abord le dépôt au montant qui est dû au salarié, puis, le cas échéant, elle
the deposit is applied to that amount, the Board shall apply the remaining funds to the amount of administrative penalty owing to the Minister of Finance and Treasury Board, if applicable, and after this the Board shall return any surplus funds to the person who has provided the deposit.

67.1(5) If after hearing and considering the matter the Board finds that a person who has provided a deposit is not indebted to an employee for unpaid wages, pay or other payments, the Board shall return the deposited funds to the person.

67.1(6) A deposit under subsection (1) is payable to the Board and shall be held by the Board until disposed of by the Board under subsection (2), (4) or (5).

67.1(7) A deposit applied to the amount owing under an order discharges the person who has provided the deposit only to the extent of the amount applied.

2013, c.13, s.10; 2019, c.29, s.49

Procedure before Board

68(1) Subject to subsection 67(2.2) and section 67.1, if a matter is referred to the Board under section 8 or 44.031 or subsection 67(1) or (1.1), the Board shall hear the matter as soon as it can conveniently be arranged.

68(2) The Board shall set a date for a hearing, which, unless the parties consent to a later date, shall be not later than twenty days after the matter was referred to the Board, and shall serve notice of the hearing on the parties at least ten days before the date set.

68(3) The notice of hearing shall contain

(a) a statement of the time and place of the hearing;

(b) a reference to the provision of this Act under which the hearing is being held;

(c) a statement as to where and how further information on the proceedings may be obtained;

(d) a concise statement of the issue; and

(e) a statement that, if a party who has been duly notified does not attend at the hearing, the Board may

67.1(5) Si, après avoir entendu et examiné l’affaire, elle constate que la personne qui a versé le dépôt n’a pas de dette de salaire, de rémunération ou d’autres paiements envers le salarié, la Commission remet le dépôt à cette personne.

67.1(6) Le dépôt que prévoit le paragraphe (1) est payable à la Commission, laquelle le conserve jusqu’à ce qu’elle en dispose conformément au paragraphe (2), (4) ou (5).

67.1(7) Le dépôt affecté au montant dû en vertu d’une ordonnance ne libère la personne qui a versé le dépôt qu’à l’égard du montant affecté.

2013, ch. 13, art. 10; 2019, ch. 29, art. 49

Procédure devant la Commission

68(1) Sous réserve du paragraphe 67(2.2) et de l’article 67.1, lorsqu’une affaire lui est déférée en vertu de l’article 8 ou 44.031 ou du paragraphe 67(1) ou (1.1), la Commission l’instruit dès que les dispositions à cet effet peuvent être prises.

68(2) La Commission fixe la date de l’audition qui, sauf du consentement des parties, doit avoir lieu dans les vingt jours qui suivent le renvoi et leur en donner signification au moins dix jours avant la date fixée.

68(3) L’avis d’audition doit

a) indiquer la date, l’heure et le lieu où elle aura lieu;

b) mentionner la disposition de la présente loi en vertu de laquelle l’audition se tient;

c) indiquer le lieu où s’adresser et la marche à suivre pour obtenir des renseignements complémentaires sur la procédure;

d) contenir un bref exposé du litige, et

e) préciser que la Commission peut procéder par défaut en cas d’absence à l’audition d’une partie régulièr-
proceed in his absence and he is not entitled to notice of any further proceedings.

68(4) If a person who has been notified of a hearing does not attend, the Board may proceed in his absence and he is not entitled to notice of any further proceedings.

1984, c.42, s.37; 1994, c.52, s.1; 2011, c.48, s.2; 2013, c.13, s.11

Parties before Board

69(1) The Director shall be a party to any matter referred to the Board and is responsible to present a case in support of any decision or order he has made.

69(2) In any matter referred to the Board under section 8 or 44.031 or under subsection 67(1), the complainant, the person against whom the order is made or an allegation in a complaint is made, the Director and any other person who, in the opinion of the Board, is interested in or affected by the proceedings has the right to be heard.

69(3) Where a group of persons having the same or substantially the same interest has a complaint pursuant to this Act, one complaint may be made in a representative capacity.

1984, c.42, s.38; 1994, c.52, s.1; 2011, c.48, s.3

Hearings of Board, in public or in camera

70 All hearings of the Board are open to the public except where the Board finds that intimate financial, personal or other matters may be disclosed at the hearing of a nature that, having regard to the circumstances, the desirability of avoiding their disclosure in the interests of any person affected, or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public in which case the Board may hold the hearing concerning the matters in camera.

1994, c.52, s.1

Employer may be required to provide bond

71(1) Before proceeding to deal with any matter referred to the Board at the request of an employer, the Board may require the employer to furnish to the Board security in the form of a bond with one or more sureties acceptable to the Board in such amount and subject to such conditions as may be prescribed by regulation.

1984, c.52, s.1

Cautionnement fourni par l’employeur

71(1) Avant d’être saisie d’une affaire qui lui est renvoyée à la demande d’un employeur, la Commission peut demander à l’employeur de lui fournir une sûreté sous forme de cautionnement constituée par une ou plusieurs cautions agréées par la Commission pour le montant et dans les conditions que les règlements peuvent prescrire.
71(2) Where an employer has furnished a bond under subsection (1), and the Board, after completion of its consideration of and the investigation into the complaint of the employee, finds that the employer is indebted to the employee for unpaid pay it may, on ten days’ notice to the employer and the sureties and in the event the debt is not paid, realize upon the bond and apply the proceeds thereof towards the payment of the debt.

71(3) Where, under subsection (2), the Board has realized upon the bond and applied the proceeds thereof towards the payment of unpaid pay, it shall in writing, as soon as is reasonably possible, notify the employer to that effect and where after the application of the proceeds there remains a surplus of funds, the surplus shall be turned over by the Board to the sureties.

1994, c.52, s.1

Attaching order issued by Director

72(1) Where a complaint is received by the Director and the Director has knowledge or has reason to believe that a person is or is about to become indebted to the employer for any sum of money or that a person is about to pay to the employer a sum of money, the Director may, notwithstanding that he has not determined whether or not the employer is indebted to the employee for unpaid pay as alleged, serve an attaching order on that person in a form prescribed by regulation requiring him to pay to the Board part or all of the sum of money owing, likely to be owed or about to be paid by him to the employer.

72(2) For the purpose of this section, money on deposit in a general banking account or in a credit union account in the name of an employer is money for which the holder of the account is indebted to the employer.

72(3) Serving the attaching order referred to in subsection (1) binds the debt in the hands of the person upon whom it is served and has priority over any other attaching order subsequently served.

72(4) A person to whom an attaching order of the Director under subsection (1) is directed shall upon service of the order forthwith comply with the order.

72(5) Immediately upon receipt of any money in accordance with this section, the Board shall in writing notify the employer concerned and issue a receipt thereof to the person from whom the money was received; and

72(6) A person to whom an attaching order of the Director under subsection (1) is directed shall upon service of the order forthwith comply with the order.

72(7) Immediately upon receipt of any money in accordance with this section, the Board shall in writing notify the employer concerned and issue a receipt thereof to the person from whom the money was received; and

72(8) A person to whom an attaching order of the Director under subsection (1) is directed shall upon service of the order forthwith comply with the order.
the receipt of the Board is a good and sufficient discharge of the liability of the person to whom the order was directed to the employer to the extent of the amount shown on the receipt.

72(6) Any money received by the Board under this section shall be held by the Board in trust for the employer concerned and where

(a) the Director finds that the employer is indebted to the employee for unpaid pay and the period for appeal to the Board has expired; or

(b) the Board has determined that the employer is indebted to the employee for unpaid pay;

the Board shall pay over the amount of unpaid pay as determined by it and if, after making such payment, there remains a surplus the surplus shall be paid to the employer.

72(7) An attaching order referred to in subsection (1) ceases to be valid after the expiration of the prescribed period unless, before the expiration of that period, the Director causes a renewal of the attaching order in the prescribed form to be served on the person on whom the original attaching order was served.

1984, c.42, s.39; 1994, c.52, s.1; 2003, c.4, s.11

Orders that may be issued by Board

73(1) Where a matter has been referred to the Board under section 8 or under subsection 67(1), the Board may, after hearing and considering the matter, issue an order

(a) affirming the decision or order of the Director;

(b) vacating the decision or order of the Director and substituting the decision or order that, in its opinion, the Director should have made; or

(c) remitting the matter to the Director for further investigation, with such directions as the Board considers appropriate;

and in every case the Board shall in writing so advise all parties to the proceeding of its disposition and the reasons therefor.

1984, c.42, s.39; 1994, c.52, s.1; 2003, c.4, s.11

Ordonnances de la Commission

73(1) Après avoir entendu et examiné une affaire qui lui a été renvoyée en vertu de l’article 8 ou du paragraphe 67(1), la Commission peut, par ordonnance,

(a) confirmer la décision ou l’ordonnance du Directeur;

(b) l’infirmer et la remplacer par celle qu’elle estime que le Directeur aurait dû rendre; ou

(c) renvoyer l’affaire au Directeur pour complément d’enquête et l’assortir des directives qu’elle estime utiles;

et dans tous les cas, la Commission doit aviser par écrit les parties aux procédures de sa décision et des raisons qui l’ont motivée.
Record of Board

73(2) With respect to any matter heard by the Board the record of the Board shall comprise

(a) the notice of hearing;
(b) the complaint;
(c) any ruling or orders made in the course of the proceeding by the Board;
(d) any written submissions received by the Board;
(e) the evidence recorded; and
(f) the decision and reasons therefor.

1986, c.32, s.9; 1994, c.52, s.1

Filing of certificate in Court of Queen’s Bench

74(1) Where there is an order of the Director or the Board in effect for the payment of money in respect of pay, compensation or any benefit, the Director or the Board, as the case may be, may issue a certificate in a form prescribed by regulation stating the amount owing under the order from time to time, and such certificate may be filed in The Court of Queen’s Bench of New Brunswick and enforced as if it were a judgment of The Court of Queen’s Bench of New Brunswick in that amount.

74(2) Where a certificate of the Director or the Board has been filed in accordance with subsection (1), any person other than the person against whom it is made may challenge the certificate in interpleader proceedings or on application to set aside any execution thereunder as provided for by the rules of The Court of Queen’s Bench of New Brunswick and The Court of Appeal of New Brunswick, but the certificate of the Director or the Board is, in the absence of evidence to the contrary, proof that the amount of money ordered to be paid was due and owing when the certificate was made.

74(3) For purposes of subsection (1) and (2) the Chairperson of the Board may issue a certificate on behalf of the Board.

74(4) The responsibility for filing and enforcing a certificate issued under subsection (1) shall be upon the Di-

Dossier de la Commission

73(2) Le dossier de la Commission concernant toute affaire qu’elle a entendue comprend

a) l’avis d’audition;
b) la plainte;
c) les décisions ou ordonnances qu’elle a rendues au cours des procédures;
d) les conclusions écrites qui lui ont été remises;
e) la preuve versée au dossier; et
f) sa décision motivée.

74(1) Dès qu’il y a une ordonnance du Directeur ou de la Commission ordonnant le paiement d’une rémunération, d’une indemnité ou de tout avantage, le Directeur ou la Commission, selon le cas, peut délivrer un certificat sous la forme prescrite par règlement indiquant la somme due aux termes de l’ordonnance de temps à autre, et ce certificat peut être déposé auprès de la Cour du Banc de la Reine du Nouveau-Brunswick et exécuté comme s’il s’agissait d’un jugement de cette Cour relativement à cette somme.

74(2) Lorsque le certificat du Directeur ou de la Commission a été déposé conformément au paragraphe (1), toute personne, à l’exception de celle qui en fait l’objet, peut le contester par voie d’entreplaiderie ou par voie de demande en annulation de toute exécution en vertu de ce certificat suivant les modalités prévues par les règles de la Cour du Banc de la Reine du Nouveau-Brunswick et de la Cour d’appel du Nouveau-Brunswick; mais ce certificat fait foi, jusqu’à preuve du contraire, de l’exigibilité, à la date de son établissement, de la somme dont le paiement est ordonné.

74(3) Pour l’application des paragraphes (1) et (2), le président de la Commission peut délivrer un certificat au nom de la Commission.

74(4) Le Directeur est chargé du dépôt et de l’exécution des certificats délivrés en vertu du paragraphe (1),
rector, but nothing herein shall be construed to limit the right of any interested person to file and enforce it.
1984, c.42, s.40; 1994, c.52, s.1

Failure to comply with order
75(1) Notwithstanding section 74, where an order of the Director has not been complied with the Director or any other interested person may apply to the Board for a summons requiring a person named therein to appear before the Board to show cause why the order has not been complied with and why a further order should not be made.

Failure to comply with order
75(2) Where

(a) an application has been made under subsection (1); or

(b) an order of the Board has not been complied with;

the Board may issue a summons requiring a person named therein to appear before the Board to show cause why the order has not been complied with and why a further order should not be made.

Further orders that may be issued by Board
75(3) Where the Board determines that a person has, without reasonable cause, failed or refused to comply with an order of the Director or the Board it may, by a further order,

(a) require that person to pay to a named person an amount to compensate him for loss suffered because of the failure or refusal to comply with the previous order;

(b) stipulate that the continuing failure or refusal of that person without reasonable cause to comply with the previous order will result in a penalty of a stated amount for each day the failure or refusal continues, not to exceed one thousand dollars for each such day, to be imposed by an order issued after a further show cause hearing; and

Inobservation de l’ordonnance
75(1) Nonobstant l’article 74, en cas d’inobservation d’une ordonnance du Directeur, celui-ci ou toute autre personne intéressée peut demander à la Commission de délivrer une assignation ordonnant à la personne qui y est nommée de comparaître devant la Commission afin de faire valoir les raisons pour lesquelles l’ordonnance du Directeur n’a pas été observée et les raisons pour lesquelles il n’y aurait pas lieu de rendre une nouvelle ordonnance.

Inobservation de l’ordonnance
75(2) Dans les cas où

(a) une demande a été faite en application du paragraphe (1); ou

(b) une ordonnance de la Commission n’a pas été observée;

la Commission peut délivrer une assignation ordonnant à la personne qui y est nommée de comparaître devant la Commission afin de faire valoir les raisons pour lesquelles l’ordonnance n’a pas été observée et les raisons pour lesquelles il n’y aurait pas lieu de rendre une nouvelle ordonnance.

Nouvelles ordonnances de la Commission
75(3) Lorsque la Commission conclut qu’une personne a, sans motif raisonnable, omis ou refusé de se conformer à une ordonnance que le Directeur ou elle-même a rendue, la Commission peut rendre une nouvelle ordonnance

a) prescrivant à la personne d’indemniser une personne nommément désignée du préjudice que l’omission ou le refus d’obtempérer à la première ordonnance lui a causé;

b) précisant que le fait de continuer d’omettre ou de refuser sans motif raisonnable d’obtempérer à la première ordonnance entraînera condamnation à paiement d’une pénalité déterminée d’au plus mille dollars par jour de continuation de l’omission ou du refus, qui sera imposée par une ordonnance rendue après une nouvelle audition de faire valoir; et
(c) where the person is a corporation, stipulate that the continuing failure or refusal of the corporation to comply with the order without reasonable cause will result in a further order imposing personal liability on each director and officer of the corporation to a penalty not exceeding that established in paragraph (b) and to be determined after a show cause hearing, unless at such hearing the officer or director establishes that he has exercised reasonable diligence to see that the order was complied with by the corporation.

75(4) Any summons issued under this part by the Board may be served outside New Brunswick, and a failure to appear by any person summoned shall not affect the authority of the Board to act.

1984, c.42, s.41; 1994, c.52, s.1

Remedies available to interested persons

76(1) Notwithstanding the responsibility placed upon the Director by this Part to refer matters to the Board for disposition, any interested person may, if the Director fails or refuses to act in compliance with this Part, request in any form that the Board consider any matter that the Director might have referred to the Board.

76(2) Nothing in this Act shall be construed to abridge or interfere with the right of any person to seek a judicial remedy in lieu of a remedy provided under this Act.

1994, c.52, s.1

Repealed

77 Repealed: 2012, c.13, s.3

1984, c.42, s.42; 1988, c.59, s.21; 1994, c.52, s.1; 2012, c.13, s.3

OFFENCES

Offences and penalties

78(1) Any person who, without reasonable cause, fails or refuses to comply with an order of the Board commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category F offence.

78(2) As well as imposing a fine the court may stipulate that an additional amount be paid into court for the purpose of satisfying in whole or in part an amount pay-
able by the convicted person under the order in respect of which the violation occurred, and the court shall, in such case, upon receipt of the amount, pay the amount to the person named in the order.

78(3) Except with respect to a payment made under subsection (2), a conviction for an offence under subsection (1) does not relieve the convicted person of the obligation to comply with the order of the Board or to pay any amount established by the Board by way of debt, compensation or penalty under any provision of this Act.

78(4) No prosecution for an offence under subsection (1) shall be instituted without the consent in writing of the Minister.

78(5) A writing by the Minister indicating that he has consented to the prosecution of the person named therein for an offence under this Act alleged to have been committed, or, in the case of a continuing offence, alleged to have commenced on a date therein set out, is a sufficient consent for the purposes of this section to the prosecution of the person for an offence under this section committed or commencing on that date.

78(6) Where an offence under subsection (1) continues for more than one day,

(a) the minimum fine that may be imposed is the minimum fine set by the Provincial Offences Procedure Act multiplied by the number of days during which the offence continues, and

(b) the maximum fine that may be imposed is the maximum fine set by the Provincial Offences Procedure Act multiplied by the number of days during which the offence continues.

1984, c.42, s.43; 1990, c.61, s.43; 1994, c.52, s.1

Offences and penalties

79 Any employer who, without reasonable cause, fails or refuses to comply with section 32 commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category E offence.

1990, c.61, s.43

84
Offences and penalties

80 Any person who, without reasonable cause,

(a) fails or refuses to permit an Employment Standards Officer to enter any premises he is authorized to enter under section 58;

(b) fails or refuses to provide, for any purpose set out in section 58, any material or information required by that section to be provided;

(c) fails or refuses to provide information requested under subsection 60(3); or

(d) interferes with or obstructs in any way an Employment Standards Officer in the performance of his duties under this Act;

commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category E offence.

1990, c.61, s.43

Infractions et peines

80 Commet une infraction punissable en vertu de la Partie II de la Loi sur la procédure applicable aux infractions provinciales à titre d’infraction de la classe E, toute personne qui, sans motif raisonnable,

a) fait défaut ou refuse de permettre à un agent des normes d’emploi d’avoir accès à tout local où il a le droit de pénétrer en vertu de l’article 58;

b) fait défaut ou refuse de fournir, à toute fin mentionnée à l’article 58, tous documents ou renseignements que cet article lui fait obligation de fournir;

c) fait défaut ou refuse de fournir des renseignements demandés en vertu du paragraphe 60(3); ou

d) s’oppose ou met obstacle à l’accomplissement par un agent des normes d’emploi des fonctions que lui confie la présente loi.

1990, ch. 61, art. 43

Offences and penalties

81 Any person who violates or fails to comply with subsection 60(1) commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category C offence.

1984, c.42, s.44; 1990, c.61, s.43

Infractions et peines

81 Quiconque contrevient ou omet de se conformer au paragraphe 60(1) commet une infraction punissable en vertu de la Partie II de la Loi sur la procédure applicable aux infractions provinciales à titre d’infraction de la classe C.

1984, ch. 42, art. 44; 1990, ch. 61, art. 43

Offences and penalties

82 Any person who

(a) wilfully makes or causes to be made false or misleading entries in any records that he is required to keep by this Act or by the regulations; or

(b) wilfully supplies or causes to be supplied false or misleading information to the Director, the Board or an Employment Standards Officer;

Infractions et peines

82 Commet une infraction punissable en vertu de la Partie II de la Loi sur la procédure applicable aux infractions provinciales à titre d’infraction de la classe F, la personne

a) qui, délibérément, porte ou fait porter des inscriptions fausses ou trompeuses dans des dossiers que la présente loi ou les règlements lui font obligation de tenir; ou

b) qui, délibérément, fournit ou fait fournir des renseignements faux ou trompeurs au Directeur, à la Commission ou à un agent des normes d’emploi.

1990, ch. 61, art. 43; 1994, ch. 52, art. 1; 2014, ch. 70, art. 9
commits an offence punishable under Part II of the Provincial Offences Procedure Act as a category F offence.
1990, c.61, s.43; 1994, c.52, s.1; 2014, c.70, s.9

Offences and penalties
83 Where an employer is prosecuted under this Act the act or omission of any employee shall be deemed to be the act or omission of the employer unless the employer establishes that the act or omission occurred despite the fact the employer, and each employee exercising supervisory responsibilities on behalf of the employer, took all reasonable care to avoid it.

1984, c.42, s.45

PART VI
MISCELLANEOUS

Regulations
85 The Lieutenant-Governor in Council may make regulations concerning any matter for the effectual working of this Act and, without limiting the generality of the foregoing, may make regulations

(a) prohibiting the employment of persons under a specified age in any specified occupation or class of work;

(b) exempting any employer or class of employers from any notice requirements of this Act;

(b.1) respecting a domestic violence leave, an intimate partner violence leave or a sexual violence leave under section 44.027, including

(i) whether the leave or any part of the leave of absence may be taken as paid or unpaid leave, or any combination of them, and, if the leave or any part of the leave of absence is paid leave, the rate

Infractions et peines
83 En cas de poursuites intentées contre un employeur en vertu de la présente loi, les actes ou omissions d’un salarié sont réputés être ceux de l’employeur à moins que celui-ci ne démontre que l’acte ou l’omission en cause s’est produit malgré que lui-même et chacun des salariés exerçant des attributions de surveillance en son nom ont pris toutes les mesures raisonnables pour l’éviter.

84 Les dirigeants et administrateurs d’une corporation qui a commis une infraction à la présente loi commettent l’infraction à moins qu’ils ne démontrent que l’infraction a été commise à leur insu ou sans leur consentement, n’a pas reçu leur acquiescement et est survenue en dépit de la diligence raisonnable qu’ils ont exercée dans l’exécution de leurs attributions vis-à-vis de la corporation.

1984, ch. 42, art. 45

PARTIE VI
DIVERS

Règlements
85 Le lieutenant-gouverneur en conseil peut établir des règlements en vue de faciliter la mise en application de la présente loi et il peut notamment, par règlement,

a) interdire l’emploi de personnes n’ayant pas un âge donné dans une profession ou catégorie particulière de travaux;

b) exempter tout employeur ou toute catégorie d’employeurs de l’obligation de se conformer aux prescriptions de la présente loi en matière d’avis;

b.1) régir les congés en cas de violence familiale, de violence entre partenaires intimes ou de violence sexuelle prévus à l’article 44.027, y compris :

(i) si tout ou partie du congé est rémunéré ou non rémunéré ou une combinaison des deux et, s’agissant d’un congé rémunéré, le taux de rémunération devant être payé durant ce congé ou cette partie de congé,
of pay the employee is to be paid by the employer
during the leave;

(ii) the purposes for which the domestic violence
leave, the intimate partner violence leave or the
sexual violence leave may be taken;

(iii) the duration of the domestic violence leave,
the intimate partner violence leave or the sexual vio-
lence leave;

(iv) the verification that an employee is required
to provide to an employer, if any, including the
types of documentation that are acceptable, what
information the documentation must contain and
when the documentation must be provided;

(v) the confidentiality, the disclosure or the shar-
ing of the documentation or other material that an
employee is required to provide an employer with
respect to the domestic violence leave, the intimate
partner violence leave or the sexual violence leave
and the procedure to be followed in consideration
of the documentation or other material; and

(vi) determining any other domestic violence
leave, intimate partner violence leave or sexual vio-
lence leave entitlements not referred to in subpara-
graph (i) to (v);

(b.2) defining any word or phrase used but not de-
efined in this Act;

(c) establishing the amounts, terms and conditions
of any bond which may be required to be provided
under this Act;

(c.1) prescribing provisions of this Act or the regu-
lations for which a notice of non-compliance may be
issued in respect of a contravention;

(c.2) respecting the establishment of administrative
penalties;

(c.3) prescribing the amount payable for an admin-
istrative penalty in respect of a contravention, which
may vary according to whether it is a first, second,
third, fourth, fifth or sixth contravention;

(c.4) prescribing the period of time without a con-
travention of the same provision of this Act or the

(ii) les motifs pour lesquels le congé peut être
pris,

(iii) la durée du congé,

(iv) la preuve que le salarié est tenu de fournir à
l’employeur, le cas échéant, y compris les genres
de documents admissibles, les renseignements
qu’ils doivent comporter et les délais de leur four-
niture,

(v) l’assurance de la confidentialité, la communi-
cation et le partage des documents ou autres choses
que l’employé est tenu de fournir à l’employeur
concernant le congé ainsi que la procédure à suivre
lors du traitement de ces documents ou autres
 choses,

(vi) l’établissement de tout autre droit relatif au
congé non établi au sous-alinéa (i) à (iv);

b.2) définir tout terme ou toute expression employé
mais non défini dans la présente loi;

c) arrêter le montant et les conditions de tout cau-
nement que la présente loi exige de fournir;

c.1) préciser les dispositions de la présente loi ou
des règlements relativement auxquelles l’avis de non-
conformité peut être délivré à l’égard d’une violation;

c.2) prévoir la création d’amendes administratives;

c.3) fixer le montant à payer au titre d’une amende
administrative sanctionnant une violation, lequel peut
varier selon qu’il s’agit d’une première, d’une
deuxième, d’une troisième, d’une quatrième, d’une
cinquième ou d’une sixième violation;

c.4) fixer la période sans violation de la même dis-
position de la présente loi ou des règlements après la-
regulations after which a subsequent contravention is deemed to be a first contravention;

c.5) prescribing the information to be contained in a notice of non-compliance;

(c.6) respecting the payment of an administrative penalty;

d) requiring the use by employers in industrial undertakings of mechanical or other devices for ascertaining or assisting in ascertaining or for recording the time worked by employees and other information required for the administration of this Act;

(e) prescribing additional notice requirements for minimum wage regulations;

(e.1) prescribing the period after which an attaching order ceases to be valid;

(f) prescribing the procedure to be followed and the forms to be used in any proceeding under this Act;

(g) prescribing the form and manner in which any notice shall be given; and

(h) providing generally for the better administration of this Act.

2003, c.4, s.12; 2013, c.13, s.12; 2014, c.2, s.2; 2018, c.14, s.7

Service of documents

86(1) A document, notice or other communication required to be served under this Act is sufficiently given or served if served personally on a person or on an adult residing at the residence of the person who is at that residence at the time of service, or if delivered by mail to such residence or by any other means prescribed by regulation.

86(2) For the purposes of this Act and any proceedings thereunder, any document, notice or communication sent by mail shall be presumed, unless the contrary is proven, to have been delivered to the residence to which it was addressed on the fourth day after the day of mailing.

1984, c.42, s.46

Signification des documents

86(1) La signification des documents, avis ou autres communications qui doivent être signifiés en vertu de la présente loi est réputée valablement faite si ceux-ci sont signifiés personnellement à une personne ou à un adulte demeurant à la résidence de la personne et s’y trouvant au moment de la signification ou s’ils sont livrés à cette résidence par la poste ou par tout autre moyen prévu par règlement.

86(2) Pour l’application de la présente loi et aux fins des procédures auxquelles elle donne lieu, tout document, avis ou communication envoyé par la poste est supposé, sauf preuve du contraire, avoir été livré à la résidence de son destinataire le quatrième jour qui suit sa date de mise à la poste.

1984, ch. 42, art. 46
Presumption concerning the contents of a certificate

87 A certificate purporting to be signed by seal, stamp or in any other way by the Minister or the Deputy Minister or other official of the Department of Post-Secondary Education, Training and Labour stating that a report, request or notice was or was not received, served or given by the Minister, Deputy Minister or by an official of the Department pursuant to this Act, and if so received, served or given, the date upon which it was received, served or given, is, in the absence of evidence to the contrary, proof of the facts stated therein without proof of the signature or office of the person purporting to have signed the certificate.

1983, c.30, s.8; 1984, c.42, s.47; 1986, c.8, s.37; 1992, c.2, s.19; 1998, c.41, s.50; 2000, c.26, s.106; 2006, c.16, s.60; 2007, c.10, s.30

Procedings not invalid because of formal, technical defect

88 No proceedings under this Act are invalid by reason of any defect in form or technical irregularity.

Continuity of employment

89 Where an activity, business, trade or undertaking is disposed of, transferred or sold in any manner or amalgamated, whether by agreement, will, instrument, transfer, including transfer of shares, or by operation of law, the period of employment of an employee of the activity, business, trade or undertaking at the time of such disposition, transfer, sale or amalgamation, shall be deemed to have been a period of employment with the disposee, transferee, purchaser or amalgamation and the continuity of employment shall be deemed to be unbroken.

Admissibility of documents

90 A document purporting to contain or to be a copy of any ruling, decision or order of the Director and purporting to be signed by the Director shall be accepted by any court as evidence of the ruling, decision, or order.

1984, c.42, s.48; 1994, c.52, s.1

Reciprocal enforcement of orders, certificates and judgments

90.1(1) If the Lieutenant-Governor in Council is satisfied that reciprocal provision has been or will be made

Présomption relative au contenu d’un certificat

87 Un certificat censé avoir été scellé, cacheté ou signé de toute autre façon par le Ministre, le sous-ministre ou tout autre fonctionnaire du ministère de l’Éducation postsecondaire, de la Formation et du Travail et constatant la réception, signification ou communication ou le défaut de réception, de signification ou de communication par leurs soins, d’un rapport, d’une demande ou d’un avis conformément à la présente loi et, s’ils ont été reçus, signifiés ou communiqués, la date de leur réception, signification ou communication, fait foi, jusqu’à preuve du contraire, des énoncations qui figurent dans le certificat sans qu’il soit nécessaire de prouver l’authenticité de la signature ni la qualité officielle de la personne censée l’avoir signé.

1983, ch. 30, art. 8; 1984, ch. 42, art. 47; 1986, ch. 8, art. 37; 1992, ch. 2, art. 19; 1998, ch. 41, art. 50; 2000, ch. 26, art. 106; 2006, ch. 16, art. 60; 2007, ch. 10, art. 30

Pas de nullité pour vice de forme ou de procédure

88 Aucune procédure intentée en vertu de la présente loi n’est frappée de nullité pour vice de forme ou irrégularité de procédure.

Continuité de l’emploi

89 Lorsqu’une activité, un commerce ou une entreprise est cédé ou vendu ou est l’objet d’une disposition ou encore d’une fusion soit par la voie d’une entente, d’un testament, d’un instrument, d’un transfert, y compris le transfert d’actions, soit par l’effet de la loi, la période d’emploi d’un salarié employé dans l’activité, le commerce ou l’entreprise au moment de la disposition, du transfert, de la vente ou de la fusion est réputée être une période d’emploi effectuée auprès du bénéficiaire de l’opération en cause, sans qu’il y ait rupture dans la continuité d’emploi.

Admissibilité des documents

90 Tout document censé comporter une décision ou une ordonnance du Directeur ou en être une copie et censé être signé par le Directeur doit être accepté par toute cour comme preuve de la décision ou de l’ordonnance.

1984, ch. 42, art. 48; 1994, ch. 52, art. 1

Exécution réciproque des ordonnances, certificats et jugements

90.1(1) Lorsque le lieutenant-gouverneur en conseil est convaincu que des mesures de réciprocité ont été
by any other province or territory of Canada for the enforcement of orders, certificates or judgments under this Act for the payment of wages, public holiday pay or pay in lieu of public holidays, vacation pay or pay in lieu of vacation, pay in lieu of notice of termination or any other benefit owing to an employee, the Lieutenant-Governor in Council may, by Order in Council,

(a) declare that province or territory to be a reciprocating province or territory for the purpose of enforcing orders, certificates or judgments for the payment of wages, public holiday pay or pay in lieu of public holidays, vacation pay or pay in lieu of vacation, pay in lieu of notice of termination or any other benefit owing to an employee under an enactment of that province or territory, and

(b) designate an authority of that province or territory for the purpose of this section.

90.1(2) If an order, certificate or judgment for the payment of wages, public holiday pay or pay in lieu of public holidays, vacation pay or pay in lieu of vacation, pay in lieu of notice of termination or any other benefit owing to an employee has been made, issued or obtained under an enactment of a reciprocating province or territory, the authority of that province or territory designated under paragraph (1)(b) may apply to the Director to enforce the order, certificate or judgment.

90.1(3) An application under subsection (2) shall be accompanied by a copy of the order, certificate or judgment made, issued or obtained under an enactment of the reciprocating province or territory

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

(b) if there is no provision in the reciprocating province or territory for registration of the order, certificate or judgment in a court, certified to be a true copy by the authority of the reciprocating province or territory designated under paragraph (1)(b).

90.1(4) If, on receipt of an application under subsection (2), the Director is satisfied that wages, public holiday pay or pay in lieu of public holidays, vacation pay or
pay in lieu of vacation, pay in lieu of notice of termination or any other benefit owing to an employee is still owing, the Director shall file the copy of the order, certificate or judgment in The Court of Queen’s Bench of New Brunswick and the order, certificate or judgment is then enforceable in favour of the Director or the authority of the reciprocating province or territory designated under paragraph (1)(b) as if the order, certificate or judgment were a judgment of The Court of Queen’s Bench of New Brunswick.

90.1(5) The Regulations Act does not apply to an Order in Council made under subsection (1).

1996, c.86, s.2

Conflict with the Right to Information and Protection of Privacy Act

90.2 If subsection 58(2), (3) or 61(2) is inconsistent with or in conflict with a provision of the Right to Information and Protection of Privacy Act, subsection 58(2), (3) or 61(2) prevails.

2013, c.34, s.12

PART VII
REPEALS AND TRANSITIONAL PROVISIONS

Power of Lieutenant-Governor to grant exemptions

91 The Lieutenant-Governor in Council may by regulation exempt in whole or in part from a regulation made under this Act the parties to, and persons covered by, a collective agreement existing at the time the regulation is made but such exemption shall apply only until the expiration or termination of the collective agreement.

Repeal of certain Acts

92(1) The Acts set out in Schedule A are repealed.

92(2) Notwithstanding subsection (1), any order or schedule made under any Act named in Schedule A and in force immediately prior to the coming into force of this section remains in effect until the sooner of

(a) one year after the coming into force of this section; or

(b) one year after the coming into force of this section.

Abrogation de certaines lois

92(1) Sont abrogées les lois énumérées à l’Annexe A.

92(2) Nonobstant le paragraphe (1), les arrêtés ou barèmes établis en vertu d’une des lois énumérées à l’Annexe A et en vigueur immédiatement avant la date d’entrée en vigueur du présent article continuent à produire leurs effets

a) jusqu’à l’expiration d’un délai d’un an après l’entrée en vigueur du présent article; ou,
(b) the taking effect of a regulation made under this Act repealing the order or schedule made under an Act named in Schedule A, and for this purpose the Lieutenant-Governor in Council may in any regulation made under this Act repeal any order or schedule made under any Act named in Schedule A that remains in effect pursuant to this subsection.

1984, c.42, s.49

Repealed

93 Repealed: 1984, c.42, s.50

1984, c.42, s.50

Commencement

94 This Act or any provision thereof comes into force on a day to be fixed by proclamation.

Abrogé

93 Abrogé : 1984, ch. 42, art. 50

1984, ch. 42, art. 50

Entrée en vigueur

94 La présente loi ou l’une quelconque de ses dispositions entrera en vigueur à la date qui sera fixée par proclamation.
SCHEDULE A

Employment Standards Advisory Board Act

Fair Wages and Hours of Labour Act

Industrial Standards Act

Minimum Employment Standards Act

Minimum Wage Act

Vacation Pay Act

N.B. Sections 45-60 and 85 of this Act were proclaimed and came into force May 16, 1985.

N.B. Sections 1-24, 25(1), 26-44.1, 61-76, 78-84, 86-94 of this Act were proclaimed and came into force December 1, 1985.

N.B. Section 77 of this Act was repealed by the Statute Repeal Act, 2012, c.13, in force December 31, 2015.

N.B. This Act is consolidated to January 1, 2020.