

Employment Standards Review Panel  
P.O. Box 2000  
Charlottetown, PEI C1A 7N8

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Honourable Elmer MacFadyen  
Minister of Community and Cultural Affairs  
P.O. Box 2000  
Charlottetown, PEI C1A 7N8

Dear Mr. MacFadyen:

The Employment Standards Review Panel has completed a full review of the Prince Edward Island *Employment Standards Act* and regulations and the Prince Edward Island *Youth Employment Act* and hereby submit our report and recommendations for your consideration.

As part of the review process, the Panel provided all interested parties the opportunity to present or submit their concerns or suggestions regarding the legislation.

We are pleased to present this report with unanimous agreement by all members on all proposed amendments to the *Employment Standards Act* and regulations.

Thank you for the opportunity to participate in this review process which will contribute to ensuring fair and equitable workplaces on Prince Edward Island.

Sincerely,

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Don MacCormac  
Chair

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Glenda Burt  
Panel Member

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June Glover  
Panel Member

A Report from the Employment Standards Review Panel

# ENHANCING STANDARDS IN THE ISLAND WORKPLACE

Proposed Changes to the Prince Edward Island  
Employment Standards Act and the Prince Edward Island  
Youth Employment Act

September 2006

Enhancing Standards in the Island Workplace constitutes proposed changes to the Prince Edward Island *Employment Standards Act* and Regulations and the Prince Edward Island *Youth Employment Act* as recommended by the Employment Standards Review Panel

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## SUMMARY

More than 55,000 workers on Prince Edward Island have their working conditions regulated by the Employment Standards Act and Regulations. These workers do not enjoy the benefits and protections offered by collective agreements and, therefore, this legislation is critical to their terms and conditions of employment.

In January 2006, the Minister of Community and Cultural Affairs, in response to a request from the Employment Standards Board, appointed a three-member Employment Standards Review Panel. This Panel was asked to conduct a full review of Prince Edward Island's *Employment Standards Act* and Regulations and *Youth Employment Act*, and to present its recommendations for changes to the legislation.

The review was seen as necessary because:

- the legislation has not been comprehensively reviewed in more than 10 years;
- workplaces have changed since that time; and
- other jurisdictions have and are continuing to improve their respective employment standards legislation.

The Review Panel, representing employees, management and an independent chair

- issued a discussion paper outlining areas of proposed change and asked for public comment;
- examined the current legislation in detail;
- reviewed legislation in other jurisdictions; and
- sought stakeholder input and considered all input in final recommendations.

### **Areas of Concern**

All interested parties had an opportunity to express their views. Management representatives stated, generally, that the *status quo* as represented by the *Act* was satisfactory and should prevail. Employee representatives, however, suggested many changes to the existing legislation.

Three main areas of concern were identified by the Review Panel. These concerns are:

- employee entitlements or benefits;

- access to these entitlements or benefits; and
- compliance with the legislation.

## **Recommendations for Legislative Change**

The following represents the Review Panel's unanimous recommendations for amendments to improve the Prince Edward Island *Employment Standards Act* and regulations:

### a) Improvements to Basic Entitlements

This report recommends the following changes to the basic entitlements under the Act:

- a shortened work week (effective one year after proclamation of the Act);
- limiting variances to the standard work week;
- one additional paid holiday;
- three weeks of paid vacation after eight years of employment;
- additional five unpaid weeks of maternity/parental/adoption leave if child is seriously ill;
- three days of paid sick day after ten years of employment;
- one day of paid bereavement leave;
- group termination requiring notice of 8 weeks;
- termination only for just cause after ten years of continuous employment;
- meeting/training pay;
- continuity of employment when business is sold; and
- banking of overtime hours.

### b) Improving Access to Entitlements

The Review Panel recommends improving access to entitlements by the following amendments:

- maternity/parental leave if employee works any 20 weeks of past 52 weeks;
- sick/family leave after three months instead of six months;
- combining sick and family leave and increasing total annual leave to seven days;
- qualification period for holiday reduced from 15 to 10 days of past 30 calendar days;
- more entitlements for salespersons as well as for agriculture and aquaculture employees; and
- more categories of employees eligible for compassionate care leave.

### c) Improved Compliance

Improved compliance with the legislation will result from the following recommendations:

- posting of information about *Employment Standards Act* in all workplaces;
- penalties for repeat offenders;
- compliance inspections;
- using collection agencies to collect unpaid pay;
- equal pay for equal work (a re-instatement of the *Human Rights Act*);
- increased protection for complainants; and
- directors' liability.

### d) Administrative Changes

A number of administrative amendments to the Act will clarify the meaning and intent of the legislation.

Recommended changes to the minimum wage provision concerns criteria, public input, and differential wage rates.

It is recommended that provisions of the *Youth Employment Act* (with modifications) be incorporated into the *Employment Standards Act* and the *Youth Employment Act* be repealed.

### **Future Reviews**

A significant number of changes are recommended in this Report primarily because it has been more than a decade since the legislation was comprehensively reviewed. It would be preferable for employers and employees if legislative changes were made on a more regular basis; thus, it is recommended the *Employment Standards Act* be reviewed every five years.

### **Draft Legislation**

This Report outlines a proposed *Employment Standards Act* and Regulations, including existing and recommended provisions. Rationales are provided for recommended amendments.

<b>THE EMPLOYMENT STANDARDS REVIEW PANEL</b>
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**Members:**

June Glover  
Employee Representative

Glenda Burt  
Employer Representative

Don MacCormac  
Chair

**Technical Staff to Review Panel:**

Barry Curley  
Director, Industrial Relations Division

Roy Doucette  
Officer, Employment Standards Branch

Robert Yeo  
Officer, Employment Standards Branch

## METHODOLOGY

The Employment Standards Review Panel met on a regular basis, beginning in January 2006. The Panel used the following process to conduct a full review of the Prince Edward Island *Employment Standards Act* and Regulations and the Prince Edward Island *Youth Employment Act*:

- issued a discussion paper to the public outlining areas of proposed legislative change and requested comment;
- reviewed the existing legislation;
- noted areas for improvement;
- examined legislation in other jurisdictions;
- advertised for public hearings/submissions;
- held public hearings which included presentations and submissions;
- reviewed and considered feedback;
- consulted with related agencies; and
- finalized recommendations on amendments and submitted a report to the Minister.

Proposed Amendments  
to the  
Prince Edward Island  
Employment Standards Act

September 2006

New wording proposed to be included in the *Act* is printed in the following pages in bold type.

The column on the left includes rationales for proposed changes to the *Act*, and identifies the changes as new to the *Act*, or replacing parts of the *Act* with new wording.

The column on the right is the *Act* with proposed amendments.

**SHORT TITLE**

New... **1. This Act may be cited as the Employment Standards Act.**

**PART 1: DEFINITIONS**

2. In this Act

New... (a) **"bank" means a bank to which the Bank Act (Canada) applies; another financial institution whose deposits are insured by the Canada Deposit Insurance Corporation; and a credit union to which the Credit Unions Act applies;**  
(b) "board" means the Employment Standards Board established under this Act;

New... From *Youth Employment Act* (c) "construction" has the same meaning as in subsection 1(b) of the Occupational Health and Safety Act R.S.P.E.I. 2004, Cap. O-1;

New... (d) **"contract of service" means a contract, whether or not in writing, in which an employer, either expressly or by implication, in return for the payment of pay to an employee, reserves the right of control and direction of the manner and method by which the employee carries out the duties to be performed under the contract;**

Revised wording broadens definition (e) "employee" means a person who performs any work for or supplies any services to an employer for compensation, and includes a person **who is on leave or on training from an employer, and** who was an employee at a time relevant for the purpose of this Act;

(f) "employer" means a person, firm or corporation, agent, manager, representative, contractor or sub-contractor having control or direction of or being responsible, directly or indirectly, for the employment of an employee; and includes a person who was an employer at a time relevant for the purposes of this Act;

(g) "employment standard" means a standard term or condition of employment imposed or benefit conferred in favour of an employee by this Act or the regulations;

New... (h) **"establishment" means a place or places at or in which all or any part of a business, undertaking, enterprise or operation of an employer is or has been carried on;**

Revised wording broadens definition

(i) “extended family” means the grandparent, grandchild, **aunt, uncle**, brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law or daughter-in-law of an employee;

New...

(j) **“family leave” means a period of absence granted by an employer to an employee to meet responsibilities related to the health or care of a person who is a member of the immediate family or extended family of the employee;**

New...

(k) **“farm” means an undertaking that is involved in the primary production of agricultural or aquacultural products but does not include a greenhouse or mushroom undertaking;**

New...

(l) **“farm enterprise” means an enterprise which purchases more than fifty per cent of the product that it produces or packages;**

(m) “immediate family” means the spouse, common-law spouse, child, parent, brother or sister of an employee;

(n) “inspector” means an inspector of employment standards appointed under this Act;

(o) “minimum wage” means the amount of wages fixed pursuant to section 16;

(p) “overtime” means the time worked by an employee in excess of the hours of work established by section 23;

(q) “pay” means all compensation, due or paid to an employee for work done for an employer and includes vacation pay, pay in lieu of vacation, gratuities and benefits;

(r) “pay period” means the period of time established by the employer, for the payment of pay to employees in accordance with section 17(4);

(s) “private home” means a residence other than a place where board and lodging is provided for more than two persons for remuneration and as a business;

(t) “regular rate of wages” means the regular wage rate of an employee for an hour of work;

(u) “regulations” means the regulations made pursuant to section 73;

New...

**(v) “sick leave” means a period of absence granted by an employer to an employee to meet needs related to the sickness or injury of the employee;**

New...

**(w) “term employee” means a person who is employed continuously by an employer for less than one calendar year;**

(x) “wages” includes salaries, commissions, and compensation in any form for work or service measured by time, piece or otherwise, but does not include vacation pay, pay in lieu of vacation or gratuities;

(y) “week” means a period of seven consecutive days;

(z) “work week” means a week of work established by the practice of the employer or determined by an inspector. 1992,c18,s.1; 1993,c.29,s.4; 2997,c.20,s.3; 2000,c.5,s.3; 2003,c 35,s.1; and

From *Youth Employment Act*

**(aa) “youth” means a person under the age of sixteen years.**

## PART 2: PURPOSE

New...

- Provides a context for the legislation

**3. The purpose of this Act is as follows:**

**(a) to ensure that employees receive at least basic standards of compensation and conditions of employment;**

**(b) to promote positive relationships and open communications between employers and employees;**

**(c) to foster the development of a productive and efficient labour force that can contribute fully to the prosperity of Prince Edward Island;**

**(d) to contribute in assisting employees to meet work and family responsibilities; and**

**(e) to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act.**

## PART 3: INFORMATION

New...

- Enhances awareness and compliance

**Copy of legislation**

**4(1) An employer shall have a copy of this Act and the regulations on his or her premises.**

New...

- Mandates the preparation and distribution of posters

- Assures that employees are aware of their rights

**Information poster**

**(2) The Minister shall prepare and publish a poster providing such information about this Act and the Regulations as the Minister considers appropriate, including minimum wage rates.**

**Posting**

**(3) Every employer shall post and keep posted in at least one conspicuous place in every workplace a copy of the most recent poster published by the Minister under this section.**

## PART 4: APPLICATION

### New...

- Similar to other jurisdictions
- Improves administrative effectiveness
- Codifies policy

### To whom Act applies

**5.(1) Except as otherwise expressly provided, this Act applies to all employers and employees whose relations are subject to the legislative authority of the Legislature, notwithstanding that the work or services may be performed in part outside Prince Edward Island.**

**(2) The Lieutenant Governor in Council may by Regulation expressly exempt the following persons from application of this Act or any sections of this Act:**

**(a) members of named professions; and**

**(b) those who are engaged in classes of work designated in the Regulations.**

### New...

- Codifies policy

### Act cannot be waived

**6.(1) A term or condition in a contract of service that confers upon an employee conditions less favourable than the rights, benefits or privileges conferred upon the employee under this Act is void and of no effect.**

### New....

### Exception to waiver

**(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.**

### Revised...

### Most favourable terms apply

**(3) Nothing in this Act prevents a contract of service from conferring upon an employee terms or conditions more favourable to the employee than the rights, benefits and privileges conferred upon the employee under this Act.**

### New...

- Codifies policy

### Recourse to Human Rights Act

**7. For greater certainty, nothing in this Act limits any protection that may be provided to an employee by the *Human Rights Act***

New...

- Codifies policy

### Civil proceedings not affected

**8. No civil remedy of an employee against his or her employer is affected by this Act.**

<b>PART 5: ADMINISTRATION</b>
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### General

**9.(1) The Minister designated by the Lieutenant Governor in Council is charged with the general administration of this Act.**

**(2) The Minister shall appoint such officers as the Minister considers necessary to advise and assist in the administration of this Act.**

**Change:**

Section 3, 4 and 30 of existing legislation is combined in this Part

**Rationale:**

- Wording has been reorganized and revised to simplify format

### Inspector of Employment Standards

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

(2) For the purpose of ensuring that the provisions of this Act and Regulations are complied with, an inspector may

(a) enter into or upon lands or premises where a person is employed, may be employed, or has been employed at any reasonable time, for the purpose of inspection, investigation or examination of conditions of employment;

(b) enter into any office or premises where an inspector has reason to believe employment records are kept or stored;

(c) inspect and examine all books, payrolls and other records of an employer that in any way relate to pay, hours of work, vacation pay or conditions of employment affecting any of the employer's employees;

(d) take extracts from, or make copies of, any entry in such books, payrolls and records; and

(e) verify in such manner as the inspector requires the entries contained in such books, payrolls and other records. 1992,c.18,s.33

**New...**

- Provides civil protection to inspectors
- Similar to other jurisdictions

**Inspector not compellable**

**(3) An inspector is not a competent or compellable witness in a civil proceeding respecting any information given or obtained, statements made or received, or records or other things produced or received while exercising his or her powers or performing his or her duties under this Act.**

Employment Standards Board

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

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

(3) Members of the Board shall be appointed for a term not to exceed three years and are eligible for re-appointment.

(4) Each member of the Board shall, before acting as such, take and file with the Minister an oath or affirmation of office as specified in the Regulations.

(5) A majority of the members of the Board or panel constitute a quorum at any meeting.

(6) A decision of the majority of the members of the Board or panel present and constituting a quorum is the decision of the Board or panel and if the votes are equal, the chairperson shall have the casting vote.

(7) The Board and each member thereof shall have the power of a commissioner under the *Public Inquiries Act*.

(8) The Board or panel may receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it may consider fit and proper, whether admissible as evidence in a court of law or not.

**(9) The Board or panel may make rules of practice and procedure that it considers necessary to govern the conduct of business before it under this Act, but shall give each party to a proceeding an opportunity to present evidence and make representation.**

Reworded s.4(13) of existing legislation to clarify provision

(10) The members of the Board shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and such actual and reasonable expenses as may be incurred by them in the discharge of their duties.

(11) The Minister may appoint a secretary who shall carry out the duties prescribed by the Minister and any other duties imposed by the Board or otherwise under this Act.

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

**New...**

- Provides an advisory and review mechanism for the Board to improve legislation

Similar to *PEI Workers Compensation Act*

**Advisory capacity**

**12.(1) The Board may advise the Lieutenant Governor in Council on**

**(a) administration of this Act and Regulations; and**

**(b) any other matter relating to employment standards.**

**(2) The Employment Standards Board shall review the provisions of this Act every five years and report to the Minister regarding its review.**

**Functions of the Board**

13. The function of the Board is to advise the Lieutenant Governor in Council in accordance with section 16 and to exercise the powers conferred upon it under this Act and to determine all questions of fact or law that arise in any matter before it including any question as to whether

(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.

**Board Panel**

14.(1) The chairperson may establish a panel of the Board and the panel has the power and authority of the Board to deal specifically with complaints under this Act.

(2) A panel of the Board shall consist of a chairperson and two members designated by the chairperson.

(3) The chairperson may refer any matter that is before the Board to a panel and may refer any matter that is before a panel to the Board or another panel.

#### Jurisdiction of Board

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

#### New...

- Similar to other jurisdictions
- Provides protection to Board members

#### Not compellable

**(2) A Board member or an employee of the Board shall not be compelled to give evidence in a civil proceeding or in a proceeding before the Board or another Board or tribunal with respect to information obtained while exercising his or her powers or performing his or her duties under this Act.**

<b>PART 6: MINIMUM WAGE</b>
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#### Change:

Section 5 and 37 of existing legislation combined

#### Minimum wage

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

#### Revised:

Provides for the possibility in future of more than one minimum wage rate

#### Power to set minimum wage

(2) The Board, subject to the approval of the Lieutenant Governor in Council, shall by order

**(a) fix a minimum wage to all employees or to any category of employees;**

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

(c) specify when and under what conditions deductions may be made from the wages of an employee, and what notification the employee should be given thereof prior to such deduction;

(d) fix the maximum amount, if any, that may be deducted from the wages of an employee where the employer furnishes to the employee, board, lodging, uniforms, laundry or other services, and prescribe the notification required to be given to the employee prior to such deduction, and may exempt any employee or group of employees from the operation of any order made under clause (c) or (d).

#### Review of the Minimum Wage Order

(3) The Board shall meet at least once a year to review the Minimum Wage Order.

#### Factors in setting Order

(4) In advising the Lieutenant Governor in Council, the Board shall take into account the social and economic effects of the minimum wage rates in the province and shall consider among other matters

(a) any cost of living increase since any previous order affecting the cost to an employee of purchasing the necessities of life, including housing, food, clothing, transportation and health care and supplies;

and

(b) economic conditions within the province.

**(5) In consideration of the minimum wage rate, the Board may seek input through public submissions.**

(6) Additional notice of any order made under this section shall be given by employers to employees in such manner as the Board may direct.

(7) Every order of the Board shall be published in the Gazette and shall name a date, at least 14 days subsequent to the date of publication, on which it comes into force.

(8) Every order of the Board is binding upon the employer and employees effective from the date of its coming into force and no order is subject to variation through individual agreement except with the authorization of the Board.

#### **Deleted...**

“and reasonable return on private investment”

(9) Upon the petition of any employer or employee or upon its own motion, the Board may review, suspend, vary or rescind any order. 1992,c.18,s.5.

## PART 7: PAY AND PROTECTION OF PAY

### New...

- Similar to other jurisdictions;
- Clarifies payment options for employers

### Payment of pay

17.(1) An employer shall pay to an employee the pay to which an employee is entitled

(a) in lawful currency of Canada;

(b) by cheque; **or**

**(c) by direct deposit into an account at a bank of the employee's choice.**

(2) For the purpose of subsection (1)(b), an employer who pays an employee by means of a cheque which, within six months from the date of issue, is determined to be valueless shall be deemed to have failed to pay the employee.

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

(4) An employer shall

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

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

(5) An employer is not required to comply with subsection (4)(a) or (b) if the payments are made under the terms of a collective agreement or in accordance with an order of the Board.

(6) Any pay to which an employee is entitled on termination of employment shall be paid by the employer to the employee not later than the last day of the next pay period after termination of employment.

Pay statement

18.(1) Every employer shall furnish to every employee at the time pay is being paid a statement in writing showing the following:

(a) the name and address of the employer and the name of the employee;

(b) the period of time or the work for which the wages are being paid;

(c) the rate of wages to which the employee is entitled and the number of hours worked;

New...  
- Codifies policy

(d) the gross amount of wages to which an employee is entitled;

**(e) the gross amount of any vacation pay being paid to the employee;**

New...  
- Codifies policy

**(f) the gross amount of any pay in lieu of notice of termination being paid to the employee;**

(g) the amount and purpose of each deduction;

(h) any bonus, gratuity, living allowance, or other payment to which the employee is entitled; and

(i) the net amount of money being paid to the employee.

New...  
- Similar to other jurisdictions;  
  
- an alternative way to provide a pay statement

**Electronic pay statement**

**(2) An employer may provide a pay statement to an employee electronically if the employer provides to the employee, through the workplace,**

**(a) confidential access to the electronic pay statement, and**

**(b) a means of making a paper copy of that pay statement.**

New...  
- Employee to be informed when pay rate is reduced

**Notice required before reducing pay rate**

**19. An employer shall give each employee notice of a reduction in the employee's rate of pay at least one pay period before the start of the pay period in which the reduction is to take place.**

**PART 8: DEDUCTIONS FROM PAY**

**Change:**  
Text has been transferred to this Part from the Regulations and from the Minimum Wage Order

20.(1) No employer shall **withhold or** make any deduction from an employee's pay **or cause the employee to return**

**his or her pay to the employer** except where the deduction:

(a) is required or authorized by statute;

**Rationale:**  
Consolidates the legislation

(b) is mutually agreed upon by the employer and the employee;  
(c) is ordered by a court;

**New...**  
Clarifies legislation

**(d) is related to a group benefit plan that the employee participates in;**  
**(e) is a savings plan deduction requested by the employee;**  
(f) is the result of a previous advance of pay to the employee,  
(g) is as a result of a previous advance of vacation pay to the employee; or  
(h) is authorized by the Minimum Wage Order.

**New...**  
- Reflects current policy

**(2) No employer shall make any deductions from an employee's pay to cover faulty workmanship, damage to the property of the employer, or cash shortages when a customer of that employer leaves without paying.**

Sections 3, 4, 5, 6, 7 and 8 are transferred from Min. Wage Order

Cash shortages  
(3) No employer shall make any deduction from an employee's pay to cover cash shortages where

(a) the employee does not have sole control of the cash; and  
(b) the cash cannot be secured by the employee where the employee is required to leave the cash unattended.

(4) Where a cash shortage occurs  
(a) the employer shall advise the employee, at the end of the employee's shift, of the cash shortage; and  
(b) permit the employee the opportunity to explain or find the shortage.

(5) Where an employer can verify to the satisfaction of an inspector that an employee is responsible for a cash shortage before the end of the employee's pay period during which the cash shortage occurred, the employer may deduct the amount of the cash shortage from the employee's pay.

Special Clothing

(6) No employer shall deduct pay from an employee for any uniform or footwear where the uniform or footwear

(a) is unique to the employer's operation; and  
(b) is identified with the employer's operation, to an extent that would make the uniform or footwear of no practical use to the employee should the employee's employment be terminated.

(7) An employer may require a deposit of up to 25 per cent of the cost of an employee's unique uniform or footwear.

(8) The employer shall reimburse a deposit made by an employee pursuant to subsection (6) where

(a) the employee's employment has ceased; and

(b) the uniform or footwear has been returned to the employer.

## PART 9: PAY RECORDS

**Change:**

Revised wording

**Rationale:**

Clarifies legislation

21.(1) Every employer shall keep **and maintain at its principal place of business** for a period of thirty-six months after work is performed by an employee, complete and accurate records in respect of the employee, **and shall produce the same or a certified true copy to the inspector upon request of the inspector**, showing the

(a) name and address and Social Insurance Number;

(b) date of birth;

(c) wage rate and actual earnings;

(d) number of hours worked in each day and week;

(e) gross earnings per pay period;

(f) deductions from gross earnings and nature of each deduction;

(g) starting date of employment and date of termination;

(h) type of work performed by the employee;

(i) period in which employee received vacation with pay;

(j) amount of vacation pay paid to the employee in lieu of vacation; and

(k) **number of overtime hours accumulated and used by the employee.**

**New...**

Complements banking of overtime provision

(2) Subsection (1)(d) does not apply in respect of salaried employees where the employer establishes a regular working week and makes and keeps a record showing the number of hours worked by such employees in excess of any regular working week.

(3) An employer shall, within seven days after receipt of a notice from the Board or an inspector, or within such other time as may be allowed by the Board or an inspector, file a statement setting forth the information as required under subsection (1), including any agreement with the employees in relation to wages, hours of work and working conditions as may be required by notice.

**PART 10: HOURS OF WORK**

**New...**

- Work week to be reduced to 44 hours.

Standard work week

22.(1) The standard work week shall be 48 hours.

**(2) Notwithstanding subsection (1), the standard work week shall be 44 hours, effective one year from date of proclamation of this Act.**

**Rationale:**

- Brings provision more in line with ten other jurisdictions

Variance

(3) Notwithstanding subsections (1) or (2), the Board may **grant a variance from the standard work week to specific industries to a maximum of 55 hours per week**, and may substitute other prescribed standards for an industry.

**Change:**

“Variance” replaces “exemption” and limit placed on length of variance

(4) In granting any such **variance** the Board shall take into account the following factors:

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

**Rationale:**

- Wording more precise than “exemption”

**(5) Any variance to the standard work week already granted to an industry must conform to the maximum limit set out in subsection (3), effective one year from date of proclamation of this Act.**

Overtime

23.(1) Overtime at the rate of 1 and ½ times the regular rate of pay shall be paid for all work in excess of the standard work week except where the Board has prescribed a standard work week in excess of **that stated in sections 22(1) or**

22(2), in which case overtime at the rate of 1 and ½ times the regular rate of pay shall be paid for all work in excess of the standard work week prescribed by the Board for an industry. 1992,c.18,S.15

New ...

Permits employers and employees to bank overtime hours

- Beneficial to employer and employee
- A common practice among many PEI organizations

### **Banking of Overtime Hours**

**(2) Notwithstanding section 23(1), an employee may be compensated for working in excess of the standard work week by receiving one and a half hours of paid time off work for each hour of overtime worked instead of overtime pay where,**

**(a) the employer and the employee agree to do so in writing; and**

**(b) the paid time off work is to be taken within three months of the work week in which the overtime was earned.**

**(3) The employer shall maintain accurate records showing the number of hours of banked overtime accumulated and used by the employee.**

**(4) Where the employment of an employee ends, the employer shall pay the employee overtime pay for any unused hours of banked overtime.**

### Rest periods

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

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

New...

Codifies policy

**(3) An employee is not required to work or to remain on the premises of the employer during the one-half hour unpaid rest or eating period.**

## PART 11: PAID HOLIDAYS

### New..

Thanksgiving Day to be new paid holiday

#### **Rationale:**

- Addresses work-life balance issues.
- Eight jurisdictions including the feds have Thanksgiving as a statutory holiday

### New...

Reduce qualification period from 15 days to 10 days.

#### **Rationale:**

- Extends entitlement to more part-time employees

### New...

- Clarifies the legislation

25.(1) In this Part, “paid holiday” means New Year's Day, Good Friday, Canada Day, Labour Day, **Thanksgiving Day**, Remembrance Day, and Christmas Day.

(2) Except as provided by section 28, every employer shall grant every employee a holiday with pay on each paid holiday falling within any period of employment. 1992,c.18,s.6; 2003,c.35,s.2.

26.(1) To be entitled to a paid holiday, an employee shall

- (a) be employed for thirty calendar days or more, prior to the paid holiday;
- (b) have earned pay on at least **ten** of the last thirty calendar days prior to the paid holiday; and
- (c) have complied with the contract of service either on the regular work day immediately preceding and the regular work day immediately following the paid holiday.

(2) Notwithstanding subsection (1), an employee is not entitled to a paid holiday if the employee

- (a) has agreed to work on the paid holiday and who without reasonable cause failed to report for and perform work; or
- (b) is employed under an arrangement whereby the employee may elect to work or not when requested to do so.

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

27. When a paid holiday falls on a day that is a non-working day for an employee, the employer, **prior to the paid holiday, shall inform the employee that he or she will be granted the paid holiday** on either

- (a) the working day immediately following the paid holiday;
- (b) the day immediately following the employee's vacation; or
- (c) grant the employee another day agreed upon by the employee and the employer before the date of the next annual vacation of the employee. 1992,c.18,s.8.

28. Where an employee is required to work on a paid holiday, the employer shall

(a) pay that employee at a rate at least equal to one and one-half times the employee's regular rate of wages for the time worked on that day in addition to a day's pay at the employee's regular rate of pay; or

(b) pay that employee at the employee's regular rate of wages for the time worked on that day and grant the employee a holiday with pay on another day agreed by the employer and the employee before the date of the next annual vacation of the employee. 1992,c.18,s.9.

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

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

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

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

<b>PART 12: VACATION AND VACATION PAY</b>
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Annual vacation with pay

30. Where an employee works for a continuous twelve-month period, the employer

**New...**

- Longer serving employees entitled to an additional week of paid vacation

**Rationale:**

- Improves work-life balance;  
- Ten jurisdictions have at least 3 weeks vacation including NS, NB and NL.

(a) not later than four months after the twelve-month period ends, shall give the employee an unbroken vacation of at least two weeks; **or where the employee has been working for employer for at least eight years, a vacation of at least three weeks;**

(b) at least one week in advance, shall notify the employee of the date the employee's vacation begins; and

(c) at least one day before the employee's vacation begins, shall pay the employee an amount at least equal to four per cent **or, where the employee has been employed by the employer for at least eight years, an amount at least equal to six per cent,** of the employee's wages for the twelve-month period during which the employee established the right to a vacation.

31.(1) Where a paid holiday as defined in section 25(1) occurs during the period of a vacation, the period of the vacation shall be lengthened by one working day.

**Paid Holiday - Sick Leave**

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

**New...**

- Permits part time employees the option to receive pay instead of vacation time

**Rationale:**

- Similar to other jurisdictions  
- Provides option for part-time employees

- Six per cent vacation pay found in nine jurisdictions

**Pay in lieu of vacation**

**32.(1) An employee who works for an employer for less than 90 per cent of the normal working hours during a continuous twelve-month period may waive the entitlement to vacation leave as set out in section 30.**

**(2) Where the employee notifies the employer in writing that the employee is exercising subsection (1), section 30 does not apply and the employer shall pay to the employee, not later than one month after the twelve-month period ends;**

**(a) an amount at least equal to four per cent; or,  
(b) where the employee has been employed continuously by the employer for at least eight years, an amount at least equal to six per cent of the wages of the employee for the twelve-month period.**

**Vacation pay on termination**

33. Where an employee's employment ends, the employer shall, not later than the **last day** of the next regular pay period after the employee's employment ceases, pay to the employee

**New...**

Provides six per cent vacation pay of gross income for employees who leave employment.

**New...**

Permits employer to pay vacation pay on each pay cheque for seasonal or short-term employees.

**Rationale:**

- Codifies policy
- Short-term employees are not entitled to vacation time

(a) an amount equal to four per cent; or

**(b) where the employee has been employed continuously by the employer for at least eight years, an amount at least equal to six per cent**

of the wages of the employee during the time the employee was employed.

**Term employee**

**34.(1) Notwithstanding section 30, an employer may pay vacation pay as an amount on each pay cheque for a term employee provided:**

**(a) the employer can provide proof that the employee knows vacation pay will be paid on every pay cheque;**

**(b) the employee's pay statement indicates vacation pay is included as a separate item; and**

**(c) that the employer's payroll records show vacation pay was paid on each pay cheque.**

**(2) If all the criteria in subsection (1) are not followed by the employer, the inspector or the Board may deem vacation pay unpaid and order payment.**

35. Notwithstanding the provisions of any other Act, every employer shall be deemed to hold vacation pay accruing due to an employee in trust for the employee and for payment in the manner and at the time provided under sections 30, 32 and 33 and the amount shall be a charge upon the assets of the employer or the employer's estate in the employer's hands or the hands of a trustee and shall have priority over all other claims including those of the Crown. 1992,c.18,s.12.

36.(1) For the purpose of calculating vacation pay or pay in lieu of vacation as provided in sections 30, 32 and 33, wages shall include the cash value of board and lodging, or either of them, furnished by the employer.

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

(a) the amount that is actually deducted from the pay of the employee by the employer for board or lodging under any contract or agreement;

- (b) the amount agreed upon between the employer and the employee as being the cash value thereof; or
- (c) the amount specified in the order issued by the board under section 16(2)(d). 1992,c .18,s .13.

**PART 13: REPORTING OR TRAINING PAY**

**Revised...**  
Clarifies legislation

37.(1) Each time an employee is required to report to work or for work-related activities, the employee shall be paid wages **at the employee's regular rate of pay** for not less than three hours. 1992,c.18,s.17.

**New...**  
- Compensates employees for required training activities

**(2) For the purposes of subsection (1), work or work-related activities includes the attending of meetings, orientation or training events conducted or arranged by the employer.**

**(3) The employer shall pay costs associated with an employee's orientation or training unless the employer and employee agree to an alternative arrangement.**

**(4) Activities performed by the employee to meet a condition of employment, such as the re-certification of a permit or licence, is not considered work.**

**PART 14: TIPS AND GRATUITIES**

Existing Regulation

**38. As specified in the Regulations pursuant to this Act, tips and gratuities are the property of the employee to whom or for whom they are intended.**

**PART 15: MATERNITY / PATERNAL / ADOPTIVE LEAVE**

**Change:**  
- Combined maternity and paternity/adoption leave provisions

Maternity Leave

39. No employer shall dismiss, lay off or suspend an employee by reason only of the fact that the employee  
(a) is pregnant;

- (b) is temporarily disabled because of pregnancy;
- (c) has applied for maternity leave in accordance with section 40; or
- (d) has applied for parental or adoption leave in accordance with section 42. 1992,c .18,s.18.

**New...**

- Provides maternity leave benefit to more part time and seasonal employees where they work in any 20 weeks out of 52.
- Currently, employees are required to work the last 20 weeks prior to the leave

40. Every employee who

**(a) is currently employed and has been in the employment of the employer for a total of at least 20 weeks in the 52 weeks immediately preceding the day on which the requested leave is to commence;**

(b) at least four weeks before the expected date of commencement of the leave, submits to the employer, an application for maternity leave specifying the date of commencement and the date of termination of the leave; and

(c) provides the employer with a certificate of a qualified medical practitioner certifying that the employee is pregnant and specifying the estimated date of birth, shall be granted by the employer maternity leave without pay from employment with the employer in accordance with section 43. 1992,c.18, s.19; 2000,c.7,s.2.

41.(1) The maternity leave to which an employee is entitled pursuant to section 40 shall consist of a period not exceeding seventeen weeks commencing at any time during the period of eleven weeks immediately preceding the estimated date of birth.

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

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

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

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

**New...**

- Expands parental or adoptive leave benefit to more part time and seasonal employees.

**Parental and Adoption Leave**

42.(1) Every employee

**a) who is currently employed and has been in the employment of the employer for a total of at least 20 weeks in the 52 weeks immediately preceding the day on which the requested leave is to commence;**

(b) who,

(i) becomes the natural mother or father of a child,

(ii) assumes actual care and custody of a child, for the purposes of adoption, or

(iii) adopts or obtains legal guardianship of a child under the law of a province, and

(c) who, at least four weeks before the expected date of commencement of the leave, submits to the employer, an application for parental leave, specifying the date of commencement and the date of termination of the leave, is entitled to and shall be granted, parental leave without pay for a continuous period of up to thirty five weeks.

**New...**

- Protects employees who require more time to care for seriously ill children

**Extension to leave**

**(2) If the child has a physical, psychological or emotional condition requiring an additional period of parental care, the employee is entitled to up to an additional five consecutive weeks of unpaid leave, beginning immediately after the end of the leave taken under subsection (1) or section 41.**

**(3) A request for an extended leave under subsection (2) shall**

**(a) be given in writing to the employer at least one week before the employee proposes to begin the leave; and**

**(b) if required by the employer, to be accompanied by a certificate of a certified medical practitioner.**

(4) Notwithstanding subsection (1), in the case of leave pursuant to subsection (1)(b)(ii) or (iii), an application for parental leave shall not be required earlier than the date on which the employee is notified of the placement of the child and the leave shall be granted without pay consisting of a continuous period of up to fifty two weeks.

Revised wording

(5) **Subject to subsection (2)**, the aggregate amount of leave that may be taken by one or two employees under this section and section 41(1) in respect of the same event, shall not exceed fifty two weeks.

(6) Subject to subsections (2) and (8), parental leave shall be taken only during the fifty two week period commencing on the date of the child's birth or the date on which the child comes into the custody of the employee, whichever is later.

(7) Notwithstanding subsection (1), an employer may accept an employee's return to work before the expiry of the parental leave granted provided that the employee gives the employer two weeks written notice of proposed return date.

(8) Where an employee intends to take parental leave in addition to maternity leave, the employee must commence the parental leave immediately on expiry of the maternity leave without a return to work after expiry of the maternity leave and before commencement of the parental leave, unless the employee and the employer otherwise agree.

(9) This section does not apply to a person acting as a foster parent to a child. 1992,c.18,s.22; 2000,c.7,s.4.

New...

- Employee to notify employer if not returning to work after leave

**(10) An employee who is on maternity, parental or adoption leave shall not resign before providing the employer with at least four weeks written notice of the resignation prior to the expiration of the leave.**

Revised wording

Resumption of work

43.(1) An employer who has granted maternity, **parental or adoption leave** shall permit the employee to resume work

(a) in the position held by the employee immediately before the leave began or, if that position no longer exists, in a comparable position with not less than the same wages and benefits the employee would have received if the employee had not been granted maternity leave; and

(b) with no loss of seniority or pension benefits accrued to the commencement of the leave.

**New...**

- Establishes employer obligations to affected employee if operations are suspended or discontinued

**Rationale:**

- Provides protection to a vulnerable class of employees

**(2) Where the employer's operations are or will be suspended or discontinued in whole or in part when the employee returns to work upon the expiry of a leave of absence**

**(a) subsection (1) of this section does not apply and the employer shall comply with section 57, and**

**(b) if the operation is subsequently resumed within 52 weeks following the end of the leave, subsection (1) of this section applies.**

<b>PART 16: COMPASSIONATE CARE LEAVE</b>
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**Revised...**

Mirrors recent federal changes to this provision that expands employee access to EI- funded compassionate care leave

44.(1) In this section

(a) “family member” means the spouse, common-law spouse, child, parent, brother, sister, **grandparent, grandchild, in-law, aunt, uncle, niece, nephew, foster parent, ward, guardian, or a gravely ill person who considers the claimant to be like a family member of an employee** and any other person who is a member of a class of persons prescribed by the Regulations for the purpose of this section;

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

(2) Every employer shall grant an unpaid leave of absence of up to eight weeks to an employee for the purpose of providing care and support to a family member of the employee if the employee provides the employer, before or after taking the unpaid leave of absence, with a copy of a certificate issued by a qualified medical practitioner stating that a family member of the employee has a serious medical condition carrying with it a significant risk of death within 26 weeks.

(3) An employee may only take an unpaid leave of absence under this section between the times specified in subsections (4) and (5).

(4) An unpaid leave of absence taken under this section commences

(a) the first day of the work week for which the certificate was issued; or

(b) where the unpaid leave of absence was commenced before the certificate was issued, the first day of the work week in which the leave was commenced.

(5) An unpaid leave of absence taken under this section ends  
(a) on the last day of the work week in which the employee's family member dies; or

(b) immediately after the expiration of 26 work weeks following the first day of the work week as determined under subsection (4).

(6) An unpaid leave of absence taken under this section may only be taken in periods of not less than one work week's duration.

## PART 17: SICK AND FAMILY LEAVE

### New...

Combines s. 22.1 and s. 22.2 of the Act

- Qualification period reduced to three months from six
- Sick and family leave combined
- Total number of sick and family days increased

### New...

Provide paid sick leave to employees

45.(1)Where an employee has been employed by an employer for a continuous period of at least **three months**, the employer shall, at the request of the employee, grant the employee leaves of absence **of up to seven days of unpaid sick or family leave in one calendar year.**

(2) Notwithstanding subsection (1), an employee having been employed with the same employer for a continuous period of at least ten years, shall be granted leaves of absence consisting of **three days of paid sick leave and up to four days of unpaid sick or family leave** in one calendar year.

**Rationale:**

- Improves access
- Increased flexibility for employees
- Similar to other jurisdictions
- Already established practice among some employers

**(3) For the purpose of subsection (2), sick leave is to be paid at the employee's regular rate of pay.**

**(4) Where an employee requests**

**a) paid sick leave; or**

**b) three or more consecutive days of unpaid sick leave, the employer may require the employee to provide the employer with a certificate signed by a medical practitioner certifying that the employee is or was unable to work due to illness or injury.**

**(5) Where an employee requests family leave under subsection (1) that is three or more consecutive days in length, the employer may require the employee to provide the employer with a statement in writing of the nature of the family responsibility.**

**(6) Any unused portion of the period of leave provided for in this Part expires at the end of the year in which it was earned.**

<b>PART 18: BEREAVEMENT LEAVE</b>
-----------------------------------

46.(1) On the death of a family member of an employee, the employer shall grant to the employee a leave of absence

**New...**

Provides for one day of paid bereavement for member of immediate family. Bereavement leave is currently unpaid.

**(a) of one day of paid leave and up to two consecutive days of unpaid leave, if the deceased person was a member of the immediate family of the employee; or**

**Rationale:**

- Acknowledges current practice in many organizations

**(b) up to three consecutive days of unpaid leave, if the deceased person was a member of the extended family of the employee.**

**(2) For the purpose of subsection (1)(a), bereavement leave is to be paid at the employee's regular rate of pay.**

**(3) Where the paid day of bereavement leave occurs during the period of a vacation, the period of the vacation shall be lengthened by one working day.**

New...  
Reworded to clarify legislation

(4) An employee may only take a leave of absence granted under this section during the period of bereavement and, if the employee intends to take such a leave of absence, the employee must commence the leave of absence not later than the day of the funeral **or the memorial service.**

#### **PART 19: COURT LEAVE**

New...  
Provides for court leave for affected employees

**47. 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**

**Rationale:**  
- Recognizes a person's civic obligation and provides employee protection in such circumstances

**(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.**

#### **PART 20: GENERAL PROVISIONS CONCERNING LEAVES**

New...  
Clarifies legislation and codifies policy

**Prohibitions regarding leaves**  
**48.(1) An employer shall not dismiss, suspend or lay off an employee who has been granted a leave of absence under this Act for reasons arising from the leave alone.**

**Rights during leaves**  
**(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; and**  
**(b) shall be deemed to have been continuously employed with the same employer during the leave of absence.**

New...  
-Permits employees to continue to participate in certain benefit plans during the period of a leave where the employee pays the employer's share

**Maintenance of employee benefits**  
**(3) For the periods of leave specified in sections 41, 42 and 44, the employer**  
**(a) shall grant to the employee the option of maintaining a benefit plan in which the employee participated prior to the start of the leave; and**

**(b) shall notify the employee in writing of the option and the date beyond which the option may no longer be exercised at least ten days prior to the last day on which the option could be exercised to avoid an interruption in benefits.**

**(4) Subsection (3) applies with respect to life insurance, accidental death, extended health, dental and any prescribed type of benefit plan.**

**(5) Where the employee chooses in writing to maintain the benefit plan referred to in subsection (3), the employee shall arrange with the employer to pay the cost required to maintain the benefit plan, including the employer's share thereof, and the employer shall process the documentation and payments as arranged.**

<b>PART 21: SEXUAL HARASSMENT</b>
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49. In sections 50 to 52, “sexual harassment” means any conduct, comment, gesture or contact of a sexual nature (a) that is likely to cause offence or humiliation to any employee; or

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

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

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

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

(2) The policy statement required by subsection (1) may contain any term consistent with the intent of sections 49 to 53 the employer considers appropriate, but must contain the following:

(a) a definition of sexual harassment that is substantially the same as the definition in section 49;

(b) a statement to the effect that every employee is entitled to employment free of sexual harassment;

(c) a statement to the effect that the employer will make every reasonable effort to ensure that no employee is subjected to sexual harassment;

(d) a statement to the effect that the employer will take such disciplinary measures as the employer considers appropriate against any person under the employer's direction who subjects any employee to sexual harassment;

(e) a statement explaining how complaints of sexual harassment may be brought to the attention of the employer;

(f) a statement to the effect that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation thereto; and

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

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

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

## **PART 22: EQUAL PAY FOR EQUAL WORK**

New...

- Recognizes existing provisions in the PEI *Human Rights Act* requiring employers to pay men and women equally for doing the same work

**54.(1) Where employees of either sex perform the same or substantially similar work for an employer in an establishment the employer shall, in accordance with the *Human Rights Act* 1992,c.18,s.28, pay the employees at the same rate of pay.**

**(2) Where an employer establishes that a different rate of pay is justified based on payment in accordance with**

- Provision found in NS and NB

- (a) a seniority system;
- (b) a merit system; or

(c) a system that measures earnings by quantity or quality of production or performance; a difference in the rate of pay between a male and a female employee based on any of the factors referred to in clauses (a) to (c) does not constitute a failure to comply with this Part.

(3) Where an employee believes that an employer is in contravention of this Part, the employee shall have a right of redress through the *Human Rights Act 1992, c.18, s.28*.

<b>PART 23: YOUTH EMPLOYMENT</b>
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**Change:**

-Certain *Youth Employment Act* provisions have been transferred to this Act; -*Youth Employment Act* is recommended to be repealed.

**Rationale:**

- Most jurisdictions include youth employment provisions in its employment standards legislation

- Certain provisions have been reworded or re-ordered for improved clarity

**55.(1) No employer shall**

(a) employ a youth to do work that is or is likely to endanger or harm the health, safety, or normal development of the youth;

(b) employ a youth to work

(i) between the hours of 11:00 p.m. and 7:00 a.m.;

(ii) during normal school hours except pursuant to a recognized vocational training or apprenticeship program;

(iii) for more than

(iv) three hours on any school day;

(v) eight hours on any day other than a school day; or

(vi) forty hours in any week.

c) employ any youth in construction or in any occupation or undertaking prescribed as hazardous by regulation.

(2) Subsection (1)(b) does not apply to the employment of a youth

(a) pursuant to any course of study at a trade school registered under the *Private Training Schools Act R.S.P.E.I. 1995, c.32, s.16*.

(b) in an enterprise in which he or she is a member of the employer's immediate family.

(3) The inspector may, upon application, exempt the employment of any youth from subsection 1(b) if satisfied that the employment

**(a) will not prejudice the attendance of the youth at school or the capacity of the youth to benefit from instruction at school;**

**(b) will not endanger the health or safety of the youth; and  
(c) has been consented to in writing by the parent or guardian of the youth.**

**(4) The inspector may at any time enter any premises in which a youth is employed and conduct an inspection to ensure compliance with the requirements of this Part.**

**(5) Where an employer employs a youth, the employer shall  
(a) act reasonably in assigning duties taking into account the age, knowledge, education and work experience of the youth;**

**Reworded...**

Remove “appropriate instruction” and replace with “and give such information, instruction and training as are necessary to ensure the health and safety of”

**(b) identify any potential danger to health and safety known to the employer and give such information, instructions and training as necessary to ensure the health and safety of the youth; and**

**(c) ensure that the work of the youth is supervised at all times by an adult who has experience of the work; or provide adequate training and courses of instruction before authorizing the youth to perform unsupervised work.**

<b>PART 24: NOTICE OF TERMINATION OR LAY OFF</b>
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**Long-term employee**

**(56) Where the period of employment of an employee with an employer is ten years or more, the employer shall not discharge or suspend that employee without just cause.**

**Change:**

- Provides protection to longer term and potentially older employees;

- Similar provision is enforced in Nova Scotia

Employer notice period

57.(1) **Subject to subsection (3) and section 56**, where an employee has been employed continuously for **at least** six months

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

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

- (ii) four weeks notice, where the employee has been employed by the employer for a continuous period of five years or more but less than ten years;
- (iii) six weeks notice, where the employee has been employed by the employer for a continuous period of 10 years or more but less than 15 years; or
- (iv) eight weeks notice, where the employee has been employed by the employer for a continuous period of 15 years or more.

**New...**

- Requires employers to provide more notice if terminating ten or more employees which will help lessen the negative impact
- Similar provision is enforced in other jurisdictions

**Group termination or lay off**

**(2) Subject to subsection (3)(d) and notwithstanding subsection (1), where an employer discharges or lays off ten or more persons in an establishment within any period of four weeks or less, the employer shall give notice of not less than eight weeks.**

**New...**

- Just cause is defined

**(3) The notice provisions in subsections (1) and (2) do not apply to**

**(a) terminations for just cause including but not limited to circumstances where the employee**

- (i) has committed theft, fraud, a conflict of interest or other serious misconduct against the employer;**
- (ii) has wilfully refused to obey a lawful instruction of the employer;**
- (iii) has been so neglectful of duty that the interest of the employer is adversely affected; or**

**(iv) has breached a material condition of the contract of service that in the opinion of the inspector or of the Board considering and deciding a complaint made under this Act warrants summary dismissal;**

**(b) employees who have failed to respond appropriately to corrective discipline;**

**(c) employees who have reached the age of retirement according to the established practice of the undertaking in which the employee is employed or has retired under a bona fide retirement plan;**

**New...**

- Permits a temporary layoff due to lack of work if not more than six consecutive days

**(d) employees who are discharged or laid off for the following reasons beyond the control of the employer:**

- (i) complete or partial destruction of the plant,
- (ii) destruction or breakdown of machinery or equipment,
- (iii) inability to obtain supplies and materials, or
- (iv) cancellation, suspension or inability to obtain orders for the products of the employer if the employer has exercised due diligence to foresee and avoid the cause of discharge or layoff;
- (v) where a person is discharged or laid off because of labour disputes, weather conditions or actions of any governmental authority that affect directly the operations of the employer.

Pay during the notice period

(4) Where an employer discharges or lays off an employee in accordance with subsection (1)(a), the employer shall

(a) pay to the employee, in respect of the period of the notice given under that subsection, the wages earned by the employee during that period or a sum equivalent to the employee's normal wages for the number of weeks prescribed by subsection (1)(a), exclusive of overtime, whichever is the greater; **and**

**(b) continue to make contributions toward the employee's benefit plan as defined in section 48(4), if any, during the period of notice.**

**New...**

Ensures benefits continue to accrue during the notice period

Pay instead of notice

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

Employee notice period

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

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

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

## PART 25: CONTINUITY OF EMPLOYMENT

### **New...**

Employees will not lose their years of service if new owner retains them following purchase of business

### **Rationale:**

-Provides protection to employees  
-Similar provision is enforced in other jurisdictions.

### **Sale of business**

**58.(1) If an employer sells a business or a part of a business and the purchaser employs an employee of the seller, the employment of the employee shall be deemed not to have been terminated for the purposes of this Act, and his or her employment with the seller shall be deemed to have been employment with the purchaser for the purpose of any subsequent calculation of the employee's length or period of employment.**

### **Non-Application**

**(2) Subsection (1) does not apply if the day on which the purchaser hires the employee is more than 13 weeks after the earlier of his or her last day of employment with the seller and the day of the sale.**

### **Definition of Sale**

**(3) In this section, "sells" includes leases, transfers or disposes of in any other manner, and "sale" has a corresponding meaning.**

## PART 26: DIRECTORS' LIABILITY

### **New...**

-Similar to legislation in most jurisdictions.  
- Can assist in the collection of unpaid pay

### **Interpretation**

**59.(1) In this section:**

- (a) "director" means a director of a corporation; and**
- (b) "corporation" includes a cooperative association.**

### **Non-application**

**(2) This section does not apply to directors of corporations that are carried on without the purpose of gain.**

### **Directors' liability for pay**

**(3) Directors of a corporation are jointly and severally liable to an employee for pay owing from the corporation to the employee to a maximum amount equivalent to six month's pay, if:**

**(a) the entitlement arose during the particular director's incumbency; and**

**(b) either:**

**(i) the corporation is insolvent, the employee has filed a claim for unpaid pay with a receiver duly appointed in respect of the employer or with the employer's trustee in bankruptcy, and the claim has not been paid; or**

**(ii) an inspector of the Board has made an order pursuant to this *Act* requiring a corporation to pay an amount to an employee of the corporation on account of unpaid pay, and the corporation has failed to comply with the order within 30 days of the date the order was made.**

### **No relief by contract, etc.**

**(4) A provision in a contract, or in the letters patent, articles, by-laws or in a resolution of a corporation which purports to relieve a director from liability under this section is void and of no force and effect.**

### **Recovery**

**(5) The provisions of this *Act* respecting the recovery of pay from an employer apply with necessary modifications to the recovery of pay from a director of a corporation.**

## **PART 27: COMPLAINTS AND ENFORCEMENT**

### **Reworded:**

Clarifies the legislation

**60.(1) Where an employee believes an employer has contravened a provision of this Act or the Regulations, the employee may within twelve months of the date of the alleged violation make a complaint to an inspector.**

**(2) Where an inspector receives a written complaint under subsection (1) or has reasonable grounds to believe there has been a failure to comply with this Act or the Regulations, the inspector shall inquire into the matter and shall determine, where appropriate, the amount to which the employee is entitled.**

**New...**

- Provides grounds for denying a claim

**(3) The inspector may refuse to accept, investigate or mediate a complaint if the inspector considers that**

**(i) this Act or Regulations do not apply to the complaint;**  
**(ii) the complaint is not made within the time limit specified in section 62(1);**

**(iii) there is insufficient evidence to substantiate the complaint;**

**(iv) there are other means available to the employee to deal with the subject-matter of the complaint; or**

**(v) the employee is proceeding with another action in respect of the subject-matter of the complaint or has sought and obtained recourse in respect of the subject-matter of the complaint before a court or by some other form of adjudication.**

**New:**

Provides for a mediated settlement of a claim

**Rationale:**

-Clarifies the legislation  
-Codifies policy

- Promotes administrative transparency

**Mediation by inspector**

**61.(1) The inspector may mediate between an employer and an employee for the purpose of settling or compromising differences between them and in doing so may**

**(a) receive from an employer, on behalf of an employee, the money agreed on by the parties in settlement of their differences;**

**(b) pay to an employee money received on the employee's behalf;**

**(c) do any other things necessary to assist an employer and employee to settle their differences.**

**(2) If the inspector assists or attempts to assist an employer or an employee, or both, to reach a settlement agreement or compromise, the inspector is under no liability to either of them in respect of the settlement agreement or compromise.**

**(3) When the inspector pays to an employee money received as a result of a settlement agreement or compromise, the employer is discharged from further liability to the employee with respect to the amount received by the employee.**

**Reworded**

- Clarifies the limitation period

Order issued to employer

62.(1) Where an inspector determines that an employer has contravened a provision of this Act **or the Regulations** within **the twelve months preceding the date of the written complaint and where the inspector is unable to mediate, settle or compromise the difference between the employer and employee, where appropriate**, the inspector shall notify the employer of any determination made under section 60(2) and may order the employer to

(a) do any act that in the opinion of the inspector constitutes full compliance with this Act **or the Regulations**; and

(b) pay over to the inspector in trust not later than a date designated in such notice, **unpaid pay, benefits or other monies**, not exceeding **\$10,000** owing to an employee as determined under section 60(2).

**New...**

Increasing threshold for unpaid pay to \$10,000 from \$5,000

**Rationale:**

- Better protection for employees

(2) If the inspector is unable to determine the amount of earnings that are due to an employee because the employer has not made or kept complete and accurate employment records, or has failed to make those records available to the inspector for inspection, the inspector may determine the amount in any manner that the inspector considers appropriate.

(3) Where an inspector has received from an employer unpaid pay, benefits or any other monies under subsection (1)(b), the inspector shall in any order made under subsection (1) specify the provision of this Act that has been contravened and advise the employer against whom the order is made of the right to appeal to the Board within ten working days of receipt of the order made under subsection (1).

(4) Where no appeal is made to the Board within the time specified in subsection (3), the inspector shall pay to the employee or employees all monies collected on their behalf.

**New...**

Audit may be conducted where employer contravenes the legislation

**Compliance inspections**

**(5) If the inspector or the Board has determined that the employer has contravened this Act or the Regulations, the inspector may arrange with the employer to review its payroll records or other relevant documents within one year of the date of the determination to ensure the employer is complying with this Act and the Regulations.**

(6) An inspector shall have standing to bring action in any court of competent jurisdiction or otherwise to pursue any claim to recover **unpaid pay, benefits**, or any other monies owing under this Act on behalf of the Board, any employee or any group of employees.

## PART 28: APPEALS TO THE BOARD

**Reworded:**

“result” replaced with “decision of an inspector”

**Rationale:**

Clarifies the legislation

63.(1) An employee who, having made a complaint to an inspector, is not satisfied with the **decision of an inspector** may make a complaint in writing to the Board.

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

(3) An employer in respect of whom an inspector has made an order under this Act **or the Regulations** shall comply with the order unless an appeal has been filed with the Board.

**(4) Any appeal of an order or decision of an inspector shall cause the Board to set a date for a hearing and shall serve notice of the hearing on the parties at least ten days before the day set.**

**(5) The notice of hearing shall contain**

**(a) a statement of the time and place of the hearing;**

**(b) a statement of the statutory power under which the hearing is being held;**

**(c) a statement as to where and how further information about the proceedings may be obtained; and**

**(d) a statement that, if a party who has been duly notified does not attend at the hearing, the Board or panel may proceed in his or her absence and he or she is not entitled to notice of any further proceedings.**

**(6) If a person who has been duly notified of a hearing does not attend, the Board may proceed in the person’s absence.**

**New...**

-Clarifies the legislation

-Provision found in other jurisdictions

(7) In any proceeding before the Board, the parties shall be

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

(8) In any proceeding before the Board any of the parties may be heard through a representative.

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

(10) In any proceeding before the Board pursuant to subsection (7), the Board shall

- (a) review the matter at a hearing;
- (b) give the employer, employee, group of employees or the representative of any of them, full opportunity to present evidence and make submissions;

- (c) decide whether or not a party has contravened this Act;

- (d) determine the amount, if any, owing to the employee or group of employees; and

- (e) make an order in writing to the contravening party to

- (i) do any act that, in the opinion of the Board constitutes full compliance with the provision contravened, and

- (ii) rectify an injury caused to the person injured or make compensation therefor.

(11) A person to whom an order of the Board has been directed shall forthwith comply with the order.

**New...**

-Clarifies the legislation  
-Provision is found in other jurisdictions

**Record of hearing**

**(12) All oral evidence received by the Board shall be recorded as a written summary and together with**

**(a) the notice of hearing;**

**(b) the complaint;**

**(c) any rulings or orders made in the course of the proceedings of the Board or panel;**

**(d) any written submissions received by the Board or panel; and**

**(e) the decision and the reasons therefor, form the record.**

#### Judicial review

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

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

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

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

### PART 29: ENFORCEMENT OF ORDERS

#### Orders of inspector or Board

65.(1) **If a decision or order of the inspector or the Board is not complied with and the time for an appeal has expired**, the inspector or any employee or group of employees on whose behalf an order has been made under this Act may enter with the Register of the Supreme Court

#### Revised wording...

- Clarifies the legislation

(a) an order of an inspector by which an employer is ordered to do any act or to pay unpaid pay in respect of which the time for appeal to the Board has elapsed and no appeal has been filed; or

(b) an order of the Board by which an employer is ordered to do any act or to pay unpaid pay, as if it were an order of the Supreme Court and every such order is thereafter enforceable as an order of the Supreme Court.

(2) Subject to subsection (3), where any sheriff has possession or control of any property of the person against whom an order has been entered in accordance with section 64(11), or the proceeds thereof, the sheriff shall disburse the proceeds in accordance with the priorities established by this Act.

(3) Where an order has been entered as an order of the Supreme Court in accordance with subsection (1), any person other than the employer may challenge the order in interpleader proceedings or on application to set aside any execution thereunder as provided for by the Rules of the Supreme Court but the order of an inspector or the Board is *prima facie* proof that the amount of money ordered to be paid was due and owing when the order was made.

(4) Where an order has been entered as an order of the Supreme Court in accordance with subsection (1), the inspector shall notify the sheriff and apply for an attachment order against the employer as provided for in the Rules of the Supreme Court.

(5) Notwithstanding the requirements of the Rules of the Supreme Court, an inspector is not required to have sureties or give any security.

#### Reciprocal Enforcement of Orders

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

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

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

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

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

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

(b) if there is no provision in the reciprocating province for registration of the order, certificate or judgment in a court, certified to be a true copy by the designated authority and on being satisfied that the wages, overtime pay, entitlements or an amount payable under Part 7 are still owing, an inspector shall file the copy of the order, certificate or judgment with the Registrar of the Supreme Court and the order is then enforceable as an order of an inspector or the Board. 1992,c.18,s.42.

**New...**

Provides for the retaining of an agency to collect unpaid pay from employers

**Rationale:**

- Provision will help improve the Branch's collection rate
- Provision is available in other jurisdictions

**Collection Agency**

**67.(1) The Minister may authorize a collection agency to collect amounts owing under this Act or under an order made by a reciprocating province to which section 66 applies.**

**Costs of collection**

**(2) The Minister may also authorize the collection agency to collect a reasonable fee or reasonable disbursements or both from each person from whom the collector seeks to collect amounts owing under this Act.**

### **PART 30: PRIORITY OF PAY CLAIMS**

#### **New...**

To ensure wages are treated similarly to vacation pay with reference to a deemed trust

**68.(1) Notwithstanding the provisions of any other Act, every employer shall be deemed to hold all pay that is due or accruing due to an employee in trust whether or not the amount that is due or accruing due has, in fact, been kept separate and apart by the employer.**

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

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

(a) an assignment, including an assignment of book debts, whether absolute or otherwise and whether crystallized or not;

(b) a mortgage of real or personal property;

(c) a debenture charging personal property, whether crystallized or not; and

(d) a contract, account receivable, insurance claim or proceeds of a sale of goods

whether made or created before or after the date the wages were earned or the date a payment for the benefit of an employee became due. 1992,c.18,s.31.

### **PART 31: DEMAND TO THIRD PARTIES**

Incorporates s. 32(1), 32(2) and 32(3) of the legislation

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

New...

Outlines recourse when third party does not comply

**Rationale:**

-Promotes compliance

**Failure to comply with demand**

**(2) If a person on whom a demand is made under subsection (1) does not comply with the demand,**

**(a) the inspector may enforce recovery of the amount stated in the demand as if it were unpaid pay, and**

**(b) this Act applies to the recovery of that amount.**

**(3) If a person on whom a demand is made under subsection (1) denies indebtedness to anyone required to pay under a determination, a settlement agreement, or an order, the inspector may require that person to produce information the inspector considers necessary to establish that there is no indebtedness.**

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

(5) Every person who has discharged any liability to an employer who is liable to make a payment under this Act without complying with a demand under this section is liable

to pay an amount equal to the liability discharged or the amount that is required to be paid under this section, whichever is the lesser. 1992,c.18,s.32.

**PART 32: COMPLAINANT PROTECTION**

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

**Revised wording:**

-Promotes compliance

-Protects employees

-Clarifies the legislation

**(2) Where it is established that an employer has discriminated against an employee,**

**(a) the inspector or the Board may make an order in writing to the employer to do any act that rectifies the injury caused to the person discriminated against; and**

**(b) the contravention may be subject to a fine not exceeding \$10,000 upon summary conviction.**

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

### **PART 33: OFFENCES AND PENALTIES**

71.(1) Any person who

(a) wilfully delays or obstructs the Board or an inspector or any other official in the exercise of any of their duties under this Act;

(b) furnishes false or misleading information in any statement or record required to be furnished under this Act;

(c) fails to comply with any order, schedule, notice or requirement under this Act; or

(d) contravenes any provision of this Act or the Regulations made under this Act, is guilty of an offence and is liable on summary conviction to a fine **not exceeding \$10,000**.

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

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

**Revised:**

- Increased to \$10,000 from \$2,000

**Rationale:**

-Threshold increased to help ensure deterrence.

## PART 34: REPEAT CONTRAVENTIONS

### New...

A person guilty of a second or subsequent offence can be fined

### Rationale:

Helps ensure compliance

### Penalties

**72. The inspector or the Board in addition to any other remedy available under this Act or the Regulations shall require the employer to pay an amount equal to**

**(a) the greater of \$200 or 20 per cent of the pay owing to the employee if the employer has contravened the same section of this Act or the Regulations for a second time within a three-year period; or**

**(b) the greater of \$400 or 40 per cent of the pay owing to the employee if the employer has contravened the same section of this Act or the Regulations for a third time or more within a three-year period.**

## PART 35: REGULATIONS

### New...

- Provides for specific regulation-making authority

**73. The Lieutenant Governor in Council may make regulations concerning any matter or thing which appears necessary or advisable for the effectual working of this Act and, without limiting the generality of the foregoing, may**

**(a) designate professions or classes of work as professions or classes of work to which this Act, or any section of this Act, does not apply;**

**(b) exempt employees or classes of employees from application of this Act or any section or sections of this Act;**

**(c) establish additional paid holidays;**

**(d) define any word or expression used by not defined in this Act; and**

**(e) designate types of employment that is or is likely to be harmful to the health, safety or normal development of a youth.**

## PART 36: GENERAL PROVISIONS

### Change...

This Part contains s. 34, s. 39, 40(1) and 40(2)

### Notice of Prosecution

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

### Notices

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

### New...

“Her Majesty’s mails” replaced by “Canada Post”

### Rationale:

Updates terminology

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

## PART 37: REPEALS AND TRANSITIONAL PROVISIONS

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

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

### New...

**78. The *Youth Employment Act* is repealed.**

Proposed Amendments  
to the  
Regulations

September 2006

New wording proposed to be included in the Regulations is printed in the following pages in bold type.

The column on the left includes rationale for proposed changes to the Regulations, and identifies the change as new to the Regulations, or replacing parts of the Regulations with new wording.

The column on the right is the Regulations with proposed amendments.

## REGULATION 1: CITATION

New...

1. This Regulation may be cited as the *General Regulation - Employment Standards Act*.

## REGULATION 2: APPLICATION

New...

Self-employed persons are outside scope of legislation

Domestic employees are not entitled to min. wage and hours of work benefits under the Act

**2. Self employed persons are exempt from the application of the Act.**

Domestic employment

3.(a) Persons employed for the sole purpose of protecting and caring for children, handicapped or aged persons in private homes; and

(b) employees of a non-profit organization who are required by the terms of their employment to live-in at a facility operated by the organization are exempt from the application of

(i) section 16; and

(ii) sections 22 and 23 of the Act.

New...

- Certain farm employees to receive more entitlements but will not be entitled to vacation/vacation pay, hours of work and overtime protection, weekly rest periods; and paid holiday benefits.

**Farm employees**

**4.(1) Persons employed on an agriculture or aquaculture undertaking are exempt from the application of**

**(i) section 12**

**(ii) sections 22, 23;**

**(iii) section 24(1);**

**(iv) sections 25, 26, 27, 28 and 29 of the Act.**

**Change:**

- Minimum wage does not apply to harvesters paid on a piecework basis

**(2) Subject to Regulation 4(1), persons who are employed to harvest farm produce and who are paid on a piece work basis are exempt from section 16 of the Act.**

**Rationale:**

Codifies policy

**5. For greater certainty, “agriculture or aquaculture employees” who work as primary processors in an undertaking that, in the opinion of the Board, is a farm enterprise, are entitled to all the rights and benefits under this Act and the Regulations. 1998, c.18 s 2; 2003 c.4 s 2.**

Fishers are entitled to pay and protection of pay provisions only

**New...**

Salespeople who are on 100% commission receive all benefits except for paid holidays

**New...**

- Real Estate salespersons, will be exempted from min. wage, hours of work/ overtime, weekly day of rest, paid holiday, vacation pay and notice of termination or layoff

**Fishers**

**6. Persons, except for aquaculture employees, who work on fishing vessels of all types or in the operation of fishing vessels on water are subject only to sections 17, 18 and 19 of the Act.**

**Salespersons**

**7(1) Salespersons whose income is derived exclusively from commission on sales are exempt from section 25, 26, 27, 28, and 29 of the Act.**

**(2) Persons engaged in work as real estate salespersons are exempt from the application of**

**(i) section 16;**

**(ii) sections 22, 23, 24(1);**

**(iii) sections 25, 26, 27, 28, 29;**

**(iv) sections 30, 31, 32, 33, 34, 35, 36; and**

**(v) section 57 of the Act.**

**REGULATION 3: OATH OF OFFICE**

From s. 4(8) of the present *Act*

**Oath of Office - Board Members**

8. "I do solemnly swear (affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of member of the Employment Standards Board and will not, except in the discharge of my duties disclose to any person any of the evidence or other matter brought before the said Board. So help me God."

**REGULATION 4 - TIPS AND GRATUITIES**

9. (1) Tips or gratuities are the property of the employee to whom or for whom they are intended.

(2) No employer shall

(a) withhold tips or gratuities intended for an employee; or

(b) treat tips or gratuities intended for an employee as the wages or partial wages of the employee, unless the employer and the employee agree that the tips or gratuities of the employee are to be calculated as additional wages of the employee.

(3) Where the tips and gratuities of an employee are based on the billings of his or her employer in respect of banquets, bus tours, and other similar events, the employer shall pay the tips and gratuities to the employee within 60 days of the date of the event.

(4) No owner of a work establishment or employer of an employee shall require an employee to share a tip or a gratuity with the owner or employer of the employee.

(5) Where an employer imposes a surcharge or other charge on a customer in lieu of the payment of tips or gratuities to an employee, all of the amounts collected in respect of the surcharge or other charge

(a) are deemed to be the property of the employee;

(b) shall be distributed by the employer to the employee not later than the time of the next pay period; and

(c) subject to clause 2(2)(b), shall not be withheld by the employer or treated by the employer as the wages or partial wages of an employee.

(6) An employer shall not pass on any administrative charges of the employer, including credit card or debit card charges, to an employee.

(7) An employer may adopt the practice of pooling tips and gratuities 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.

(8) An employer shall advise an employee, in writing, of any pooling policy in effect at the time of hiring.

## NON-LEGISLATIVE RECOMMENDATIONS

### 1. Compliance

One of the few issues about which many presenters to this Review Panel agreed was the need to increase compliance with the legislation. Employee representatives noted failure by some employers to comply with the legislation deprived workers of their entitlements. Employer representatives stated that better compliance serves to provide a “level playing field” (i.e. employers who do not follow the legislation attain a competitive advantage over those who do comply).

It is generally believed the majority of employers obey the law, perhaps for the simple reason that it is the law.

While there is little data available to ascertain the extent of non-compliance in Prince Edward Island, reports from other jurisdictions suggest violations are widespread. It is reported that independent evaluations of work sites under federal jurisdiction found only 25% of employers were in full compliance, 25% were in widespread non-compliance, while the remaining 50% were somewhere in between.

As noted in Table 1, the Prince Edward Island Employment Standards Branch handles many enquiries and complaints about the Act. Annually the Branch receives more than 7,000 enquiries and about 200 formal complaints. Almost all formal complaints are received only after the employee has resigned or has been terminated. Thus, it is believed many employees are afraid to complain due to their fear of reprisal.

A number of presenters stated that many employees are unaware of their rights under the legislation and, therefore, do not seek redress. Moreover, it is a commonly held view that many employers do not have a good understanding of their obligations under the Act.

A number of initiatives are required to increase the level of compliance. These include:

- education [for both employees and employers];
- increased presence of employment standards inspectors in workplaces;
- improved enforcement;
- penalties and deterrents; and
- prosecution of repeat offenders.

The Review Panel, in this report, has recommended legislative initiatives to improve compliance. These recommendations include:

- posters outlining basic entitlements be placed in all workplaces [Part 3];
- increased protection for complainants [Part 32]; and
- penalties for repeat violators [Part 34];

In addition, the Review Panel recommends that some non-legislated initiatives are necessary to improve compliance. Specifically, the Employment Standards Branch should:

- offer more educational awareness programs to explain the legislation to both employees and employers;
- distribute copies of the Act, Regulations and guide [in both official languages] to all existing and newly-formed businesses;
- conduct spot audits of sectors and individual employers deemed to be at high risk of non-compliance;
- conduct more work site visits; and
- establish a protocol with the Department of Justice to prosecute serious and repeating offenders.

Consultations with other regulatory agencies revealed a willingness to explore ways and means by which education resources might be pooled or shared. Thus, agencies concerned with employee rights might be able to co-operate to provide a cost-effective mechanism to mutually assist in education and enforcement.

In view of the above, the Review Panel recommends that:

**A) Government commit sufficient resources to enable the Branch to:**

- **develop and present educational awareness programs to both employees and employers;**
- **ensure all existing and newly-created businesses receive copies [in both official languages] of the Act, Regulations, guide, and posters; and**
- **employ one additional officer to audit sectors and employers deemed to be at high risk of non-compliance.**

**B) The Branch should discuss ways and means to share scarce resources with other agencies such as the Human Rights Commission and the Occupational Health and Safety Division; and**

**C) The Branch should consult with the Department of Justice to develop a protocol whereby prosecution will take place when serious or repeat violations of the legislation has occurred.**

**Table 1****Selected statistics on Employment Standards Act – PEI**

Year	Enquiries	Formal complaints received	Successful Complaints	Complaints monies collected	Judgements	Judgements Monies Collects
1997-98	5,525	109	34	\$ 21,642	24	\$ 31,421
1998-99	6,275	151	50	\$ 27,624	7	\$ 4,865
1999-00	6,588	172	65	\$ 19,620	11	\$ 4,756
2000-01	6,920	185	74	\$ 31,854	16	\$ 10,343
2001-02	7,150	210	112	\$ 32,210	48	\$ 6,250
2002-03	6,800	164	85	\$ 40,093	26	\$ 3,768
2003-04	7,200	187	77	\$ 38,829	20	\$ 4,020
2004-05	7,350	201	86	\$ 56,785	39	\$ 3,028
2005-06	7,180	177	74	\$ 44,556	69	\$ 3,308

Source: Annual Reports of Labour Relations Division, Department of Community and Cultural Affairs

## 2. Minimum Wage

As expected, the Review Panel heard many and diverse opinions on the issue of the minimum wage rate. A number of employee groups advocated for replacement of the minimum wage concept with something called a livable wage. Some employer representatives expressed concern about labor market impacts of steadily increasing wages, and some wanted a two-tier system where a lower minimum wage would be paid to inexperienced workers or servers in licensed establishments.

While the Review Panel's mandate does not include the setting of a minimum wage [that is the role of the Employment Standards Board by way of recommendations to Lieutenant Governor in Council], the matter was considered.

Establishing an appropriate minimum wage rate will always be contentious. On the one hand, workers must be able to earn enough to survive; on the other hand, businesses need to control costs to survive.

Some pertinent observations were noted in the recent report of the Task Force on Modernizing Income Security in Ontario:

“One way to frame the issue is to ask the question: ‘should someone working full-time for a full year be living in poverty?’ Most would quickly answer ‘No’ to this, but it is estimated that nearly a third of low wage earners do not earn sufficient income to meet their costs of living.

“While there are varying opinions on what constitutes poverty, a floor of \$15,000 seems to be accepted in many quarters. Since the average low wage earner works an average of 32 hours per week, it would take a wage of \$ 9.02 per hour to earn \$15,000.”

The current minimum wage rate on Prince Edward Island [\$ 7.15 ] equates to just under \$12,000 per year based on an average of 32 hours per week..

While the Government of Prince Edward Island has been leading the Atlantic Provinces with its minimum wage rate, even this rate has not kept up with the cost of living. [ See Table 2 ]

It is clear that some want to see the minimum wage raised faster and higher. Others argue that a large one-time increase could have repercussions in the labor market with some employers cutting jobs or hours. There is considerable research to support both points of view.

It is the opinion of the Review Panel that finding the appropriate solution will require a mix of initiatives to increase people's incomes and lower their costs to live and work. **Thus, it is recommended that government continue to increase the minimum wage while considering income-tested tax benefits (some version of a working income tax benefit) to increase take home pay for low wage earners.**

The criteria used to establish the minimum wage was reviewed and compared to that used elsewhere. It is the view of the Review Panel that the criteria in the current Act should be amended as follows: deleting reference to reasonable return on private investment and permitting public input by submission to assist the Board in reviewing the minimum wage rate.

While the Review Panel is not convinced differential wage rates are appropriate at this time, the Panel proposes that the legislation be amended to provide for the possibility of more than one minimum wage rate in the future.

**Table 2**

**Minimum Wage-CPI Statistics - PEI**

Year	Min. Wage if Adjusted to CPI	CPI PEI	Real Min. Wage PEI	Year	Min. Wage if Adjusted to CPI	CPI PEI	Real Min. Wage PEI
<b>1976</b>	\$ 2.50	7.50 %	\$ 2.50	<b>1977</b>	\$ 2.69	7.80 %	
<b>1978</b>	\$ 2.90	9.00 %		<b>1979</b>	\$ 3.16	5.70 %	
<b>1980</b>	\$ 3.34	10.40 %		<b>1981</b>	\$ 3.69	13.60 %	
<b>1982</b>	\$ 4.19	9.50 %		<b>1983</b>	\$ 4.58	5.00 %	
<b>1984</b>	\$ 4.81	4.30 %	\$ 3.75	<b>1985</b>	\$ 5.02	3.70 %	
<b>1986</b>	\$ 5.21	2.00 %		<b>1987</b>	\$ 5.32	3.50 %	
<b>1988</b>	\$ 5.50	3.70 %	\$ 4.25	<b>1989</b>	\$ 5.71	3.80 %	
<b>1990</b>	\$ 5.92	5.00 %		<b>1991</b>	\$ 6.22	7.50 %	
<b>1992</b>	\$ 6.69	8.00 %	\$4.75	<b>1993</b>	\$ 7.22	1.90 %	
<b>1994</b>	\$ 7.36	- 0.20 %		<b>1995</b>	\$ 7.34	1.60 %	
<b>1996</b>	\$ 7.46	1.80 %	\$ 5.15	<b>1997</b>	\$ 7.60	1.30 %	
<b>1998</b>	\$ 7.69	- 0.50 %		<b>1999</b>	\$ 7.66	1.20 %	
<b>2000</b>	\$ 7.75	4.10 %	\$ 5.60	<b>2001</b>	\$ 8.07	2.60 %	
<b>2002</b>	\$ 8.28	2.70 %	\$ 6.00	<b>2003</b>	\$ 8.50	3.60 %	\$ 6.25
<b>2004</b>	\$ 8.68	2.10 %		<b>2005</b>	\$ 8.96	3.20 %	\$ 6.80

Source: Canadian Union of Public Employees Prince Edward Island

## APPENDIX A: LIST OF PRESENTERS/SUBMISSIONS

### Presenters:

1. Women's Network PEI
2. Prince Edward Island Advisory Council on the Status of Women
3. Prince Edward Island Working Group for a Livable Income
4. Prince Edward Island Federation of Labour
5. Debra J. Hawkes
6. Canadian Restaurant and Foodservices Association
7. The National Anti-Poverty Organization
8. Canadian Federation of Independent Business
9. Canadian Union of Public Employees - Prince Edward Island

### Submissions:

1. Employer's Council Inc.
2. Tourism Industry Association of Prince Edward Island
3. Greater Charlottetown Area Chamber of Commerce
4. Greater Summerside Area Chamber of Commerce
5. Women's Network PEI
6. Gail E. McCallum
7. Edith Perry
8. Mary Anne Clarke
9. Janice McKendrick
10. Prince Edward Island Federation of Agriculture

## **APPENDIX B: LIST OF CONSULTATIONS**

1. Gregory J. Howard, Executive Director, PEI Human Rights Commission
2. George Stewart, Director, Occupational Health and Safety Division
3. Murray L. Murphy, counsel, McInnes Cooper
4. Marilyn Kennedy, Community Care/Nursing Home Inspector, Department of Health
5. Eddy Dykerman, president, PEI Federation of Agriculture