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Bill 148

(Chapter 22 of the Statutes of Ontario, 2017)

An Act to amend the Employment Standards Act, 2000, the Labour Relations Act, 1995 and the Occupational Health and Safety Act and to make related amendments to other Acts

The Hon. K. Flynn
Minister of Labour

1st Reading	June 1, 2017
2nd Reading	October 18, 2017
3rd Reading	November 22, 2017
Royal Assent	November 27, 2017



EXPLANATORY NOTE

*This Explanatory Note was written as a reader's aid to Bill 148 and does not form part of the law.
Bill 148 has been enacted as Chapter 22 of the Statutes of Ontario, 2017.*

SCHEDULE 1 EMPLOYMENT STANDARDS ACT, 2000

The Schedule makes various amendments to the *Employment Standards Act, 2000*.

The Act is amended to bind the Crown, subject to an exception in section 4 of the Act (Separate persons treated as one employer).

New section 5.1 prohibits employers from treating, for the purposes of the Act, a person who is their employee as if the person were not an employee under the Act.

New Part VII.1 (Requests for Changes to Schedule or Work Location) adds an ability for employees to request changes to their schedule or work location. Employers who receive these requests must discuss them with the employee and either grant them or provide reasons for a denial.

New Part VII.2 (Scheduling) sets out new scheduling provisions. These include a minimum of three hours' pay for shifts that are under three hours, minimum pay for being on call, a right to refuse requests or demands to work on a day that an employee is not scheduled to work with insufficient notice and entitlement to pay for three hours of work in the event of cancellation with insufficient notice. The existing power to make regulations requiring employers to pay a minimum prescribed amount to employees who work fewer than three hours in a day is repealed.

Part VIII (Overtime Pay) is amended to establish a rule for overtime pay for employees who have two or more regular rates for work performed for the same employer.

Section 23.1 (Determination of minimum wage) is amended to increase the minimum wage on January 1, 2018. The minimum wage increases again on January 1, 2019 and is subject to an annual inflation adjustment on October 1 of every year starting in 2019. The minimum wage for employees who serve liquor now applies only if the employee also regularly receives tips or other gratuities from their work.

Part X (Public Holidays) is amended. The rules for the calculation of public holiday pay under section 24 are amended to be based on the number of days actually worked in the pay period immediately preceding the public holiday. Sections 27, 28, 29 and 30 are amended to require an employer to provide an employee with a written statement that sets out certain information when a day is substituted for a public holiday.

Part XI (Vacation With Pay) is amended to provide a minimum of three weeks of vacation entitlement to employees whose period of employment is five years or more, beginning after the end of the employee's vacation entitlement year. Related amendments are made throughout the Part.

Part XII (Equal Pay for Equal Work) is amended to add four new provisions. A definition is added that provides that "substantially the same" means "substantially the same but not necessarily identical". The Part is amended to provide for an entitlement for equal pay from an employer regardless of a difference in employment status and an entitlement for equal pay for assignment employees of a temporary help agency who perform substantially the same work as an employee of the temporary help agency's client. Finally, new section 42.3 requires that the Minister cause a review of the new entitlements. Related amendments are made to the reprisal provisions in the Act to prohibit reprisals against employees who make inquiries about rates of pay or who disclose their rate of pay for the purpose of determining or assisting in determining whether an employer is complying with Part XII.

Part XIV (Leaves of Absence) is amended. The entitlement to six weeks pregnancy leave in certain circumstances is increased to 12 weeks. Section 48 is amended to provide that a parental leave may begin no later than 78 weeks after the child is born or comes into the employee's custody, care and control for the first time. The entitlement to parental leave is increased from 35 weeks to 61 weeks for employees who take pregnancy leave, and from 37 weeks to 63 weeks otherwise. The entitlement to family medical leave is increased from up to eight weeks to up to 28 weeks. Currently, an employee may take leave to provide care and support to their critically ill child; new section 49.4 provides that an employee is entitled to take leave to provide care and support to any critically ill family member. New section 49.5 establishes an entitlement to up to 104 weeks of unpaid leave if a child of the employee dies for any reason, instead of the current entitlement to leave only in the event of a crime-related child death. New section 49.6 retains the entitlement to crime-related child disappearance leave but increases the entitlement from up to 52 weeks to up to 104 weeks.

New section 49.7 (Domestic or Sexual Violence Leave) provides that an employee who has been employed by an employer for at least 13 consecutive weeks is entitled to up to 10 days and up to 15 weeks of leave if the employee or a child of the employee experiences domestic or sexual violence or the threat of domestic or sexual violence. The first five days of leave are to be paid. The leave must be taken for any of the purposes listed in the section.

Section 50 (Personal Emergency Leave) is amended to provide personal emergency leave to all employees, not just employees of employers who regularly employ 50 or more employees. In addition, two days of personal emergency leave are

now required to be paid days, if the employee has been employed by the employer for one week or longer. The paid days have to be taken before any unpaid days of personal emergency leave in a calendar year. Employers retain the right to require evidence of entitlement to these days but are not permitted to require a certificate from a qualified health practitioner.

Part XVIII.1 (Temporary Help Agencies) is amended to add a new section 74.10.1. This section requires temporary help agencies to provide an assignment employee with one week's written notice or pay in lieu if an assignment that was estimated to last for three months or more is terminated before the end of its estimated term unless another assignment lasting at least one week is offered to the employee.

Subsection 88 (5) (Interest) is amended to allow the Director to calculate rates of interest for amounts owing under different provisions of the Act or the regulations and for money held by the Director in trust.

New sections 88.2 and 88.3 allow the Director to provide recognition of employers that meet prescribed criteria.

The requirement in section 96.1 (Steps required before complaint assigned) for a complainant to take steps specified by the Director before the Director assigns a complaint for investigation is repealed.

Subsection 103 (1) (Order to pay wages) is amended to allow employment standards officers to order employers to pay wages directly to employees. Similar amendments are made to other order-making powers.

Section 113 (Notice of contravention) is amended to provide that the penalties for contraventions shall be determined in accordance with the regulations, which permit the establishment of a penalty range or of different penalties that apply to individuals and to corporations. Employment standards officers are given the discretion to determine a penalty within the range in accordance with the prescribed criteria, if any. New provisions are added to authorize the Director to publish information related to a deemed contravention of the Act following the issuance of a notice of contravention.

New provisions are added to Part XXIV (Collection) to allow the Director to accept security for amounts owing under the Act, issue warrants to collect money pursuant to an order under the Act or register a lien respecting money owed pursuant to an order under the Act. These powers may be delegated to collectors. The Director and the collectors may disclose information to each other for the purpose of collecting an amount payable under the Act.

Related consequential amendments are made to the *Employment Protection for Foreign Nationals Act, 2009* and to the *Occupational Health and Safety Act*.

SCHEDULE 2 LABOUR RELATIONS ACT, 1995

The Schedule makes various amendments to the *Labour Relations Act, 1995*.

Section 6.1 is added to the Act. Under this section, in certain circumstances, a trade union may apply to the Ontario Labour Relations Board for an order directing an employer to provide the trade union with a list of employees of the employer. The section sets out the process for applying, obtaining and using such a list and establishes the rules to be followed by the Board in determining whether to make an order.

The rules that govern when the Board will certify a trade union where there has been a contravention of the Act by an employer in section 11 of the Act are amended.

Section 15.1 is added to the Act. Under that section, in certain circumstances, the Board may review the structure of bargaining units and make orders in respect of the structure of bargaining units, and the parties may by agreement and with the consent of the Board make changes to the structure of bargaining units.

New section 15.2 provides for an alternate process for the certification of trade unions as the bargaining agents of employees of specified industry employers. The specified industries are the building services industry, the home care and community services industry, and the temporary help agency industry. The trade union may elect to have its application for certification dealt with under section 15.2 (application for certification without a vote) rather than under section 8 (representation vote).

Currently, section 43 provides for first agreement arbitration where parties are unable to effect a first collective agreement. The section is re-enacted to provide for first collective agreement mediation. Section 43.1 is also added to the Act and provides for first collective agreement mediation-arbitration where the first collective agreement mediation under section 43 does not result in the parties entering into a collective agreement.

Sections 69.1 and 69.2 are added to the Act. Those sections set out rules governing how section 69 (successor rights) apply in respect of certain service providers.

Amendments are made to section 80 of the Act, which governs the reinstatement of employees. New provisions provide for the reinstatement of employees at the conclusion of a lawful strike or lock-out and set out the rules that govern reinstatement.

Sections 12.1 and 80.1 are added to the Act. Those sections provide that, during certain bargaining periods, an employer may not discharge or discipline an employee in an affected bargaining unit without just cause.

Section 98, which governs the powers of the Board to make interim orders, is amended.

Technical and consequential amendments are also made.

SCHEDULE 3
OCCUPATIONAL HEALTH AND SAFETY ACT

A new section is added to the *Occupational Health and Safety Act* that provides that an employer shall not require a worker to wear footwear with an elevated heel unless it is required for the worker to perform his or her work safely. An exception from this prohibition is made for employers of performers in the entertainment and advertising industry.

An Act to amend the Employment Standards Act, 2000, the Labour Relations Act, 1995 and the Occupational Health and Safety Act and to make related amendments to other Acts

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Fair Workplaces, Better Jobs Act, 2017*.

**SCHEDULE 1
EMPLOYMENT STANDARDS ACT, 2000**

1 (1) Subsection 1 (1) of the *Employment Standards Act, 2000* is amended by adding the following definitions:

“assignment employee” means an employee employed by a temporary help agency for the purpose of being assigned to perform work on a temporary basis for clients of the agency; (“employé ponctuel”)

“client”, in relation to a temporary help agency, means a person or entity that enters into an arrangement with the agency under which the agency agrees to assign or attempt to assign one or more of its assignment employees to perform work for the person or entity on a temporary basis; (“client”)

(2) Subsection 1 (1) of the Act is amended by adding the following definition:

“difference in employment status”, in respect of one or more employees, means,

- (a) a difference in the number of hours regularly worked by the employees; or
- (b) a difference in the term of their employment, including a difference in permanent, temporary, seasonal or casual status; (“situation d’emploi différente”)

(3) Subsection 1 (1) of the Act is amended by adding the following definition:

“domestic or sexual violence leave pay” means pay for any paid days of leave taken under section 49.7; (“indemnité de congé en cas de violence familiale ou sexuelle”)

(4) Clause (c) of the definition of “employee” in subsection 1 (1) of the Act is repealed and the following substituted:

- (c) a person who receives training from a person who is an employer, if the skill in which the person is being trained is a skill used by the employer’s employees, or

(5) Subsection 1 (1) of the Act is amended by adding the following definition:

“personal emergency leave pay” means pay for any paid days of leave taken under section 50; (“indemnité de congé d’urgence personnelle”)

(6) The definition of “public holiday” in subsection 1 (1) of the Act is amended by adding the following paragraph:

- 1.1 Family Day, being the third Monday in February.

(7) The definition of “regular wages” in subsection 1 (1) of the Act is repealed and the following substituted:

“regular wages” means wages other than overtime pay, public holiday pay, premium pay, vacation pay, domestic or sexual violence leave pay, personal emergency leave pay, termination pay, severance pay and termination of assignment pay and entitlements under a provision of an employee’s contract of employment that under subsection 5 (2) prevail over Part VIII, Part X, Part XI, section 49.7, section 50, Part XV or section 74.10.1; (“salaire normal”)

(8) The definition of “stub period” in subsection 1 (1) of the Act is amended by striking out “that starts on or after the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force” in the portion before clause (a).

(9) Subsection 1 (1) of the Act is amended by adding the following definitions:

“temporary help agency” means an employer that employs persons for the purpose of assigning them to perform work on a temporary basis for clients of the employer; (“agence de placement temporaire”)

“termination of assignment pay” means pay provided to an assignment employee when the employee’s assignment is terminated before the end of its estimated term under section 74.10.1; (“indemnité de fin d’affectation”)

“tip or other gratuity” means,

- (a) a payment voluntarily made to or left for an employee by a customer of the employee’s employer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be kept by the employee or shared by the employee with other employees,
- (b) a payment voluntarily made to an employer by a customer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be redistributed to an employee or employees,
- (c) a payment of a service charge or similar charge imposed by an employer on a customer in such circumstances that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be redistributed to an employee or employees, and
- (d) such other payments as may be prescribed,

but does not include,

(e) such payments as may be prescribed, and

(f) such charges as may be prescribed relating to the method of payment used, or a prescribed portion of those charges; (“pourboire ou autre gratification”)

(10) Clause (d) of the definition of “wages” in subsection 1 (1) of the Act is repealed and the following substituted:

(d) tips or other gratuities,

(11) Subsection 1 (2) of the Act is repealed and the following substituted:

Assignment to perform work includes training

(2) For greater certainty, being assigned to perform work for a client of a temporary help agency includes being assigned to the client to receive training for the purpose of performing work for the client.

(12) Section 1 of the Act is amended by adding the following subsection:

Electronic form

(3.1) The requirement in subsection (3) for an agreement to be in writing is satisfied if the agreement is in electronic form.

2 (1) Subsection 3 (4) of the Act is repealed.

(2) Subsection 3 (5) of the Act is amended by adding the following paragraph:

2.1 An individual who performs work under a program that is approved by a private career college registered under the *Private Career Colleges Act, 2005* and that meets such criteria as may be prescribed.

(3) Paragraph 6 of subsection 3 (5) of the Act is repealed.

3 The Act is amended by adding the following section:

Crown bound

3.1 This Act binds the Crown.

4 (1) Subsection 4 (1) of the Act is repealed and the following substituted:

Separate persons treated as one employer

(1) Subsection (2) applies if associated or related activities or businesses are or were carried on by or through an employer and one or more other persons.

(2) Section 4 of the Act is amended by adding the following subsection:

Exception, Crown

(4.1) Subsection (2) does not apply to the Crown, a Crown agency or an authority, board, commission or corporation all of whose members are appointed by the Crown.

5 The Act is amended by adding the following section:

No treating as if not employee

5.1 (1) An employer shall not treat, for the purposes of this Act, a person who is an employee of the employer as if the person were not an employee under this Act.

Onus of proof

(2) Subject to subsection 122 (4), if, during the course of an employment standards officer’s investigation or inspection or in any proceeding under this Act, other than a prosecution, an employer or alleged employer claims that a person is not an employee, the burden of proof that the person is not an employee lies upon the employer or alleged employer.

6 Subsection 11 (2) of the Act is repealed and the following substituted:

Method of payment

(2) An employer shall pay an employee’s wages,

(a) by cash;

(b) by cheque payable only to the employee;

(c) by direct deposit in accordance with subsection (4); or

(d) by any other prescribed method of payment.

7 Section 14.1 of the Act is repealed.

8 (1) Subsection 15 (1) of the Act is amended by adding the following paragraphs:

3.1 The dates and times that the employee worked.

3.2 If the employee has two or more regular rates of pay for work performed for the employer and, in a work week, the employee performed work for the employer in excess of the overtime threshold, the dates and times that the employee worked in excess of the overtime threshold at each rate of pay.

(2) Subsection 15 (1) of the Act is amended by adding the following paragraphs:

3.3 The dates and times that the employee was scheduled to work or to be on call for work, and any changes made to the on call schedule.

3.4 Any cancellations of a scheduled day of work or scheduled on call period of the employee, as described in subsection 21.6 (2), and the date and time of the cancellation.

(3) Paragraph 5 of subsection 15 (1) of the Act is amended by striking out “section 12.1” and substituting “section 12.1, subsections 27 (2.1), 28 (2.1), 29 (1.1) and 30 (2.1)”.

(4) Subsection 15 (3) of the Act is amended by striking out “paragraph 4” in the portion before clause (a) and substituting “paragraph 3.1 or 4”.

(5) Paragraph 3 of subsection 15 (5) of the Act is amended by striking out “paragraph 4” and substituting “paragraph 3.1, 3.2 or 4”.

(6) Paragraph 3 of subsection 15 (5) of the Act, as amended by subsection (5), is amended by striking out “paragraph 3.1, 3.2 or 4” and substituting “paragraph 3.1, 3.2, 3.3, 3.4 or 4”.

(7) Subsection 15 (7) of the Act is amended by striking out “critically ill child care leave” and substituting “critical illness leave”.

(8) Subsection 15 (7) of the Act is amended by striking out “crime-related child death or disappearance leave” and substituting “child death leave, crime-related child disappearance leave, domestic or sexual violence leave”.

9 (1) Subsection 15.1 (2) of the Act is amended by adding the following paragraph:

4.1 The amount of vacation pay that the employee earned during the vacation entitlement year and how that amount was calculated.

(2) Subsection 15.1 (3) of the Act is amended,

(a) by striking out “for an employee an alternative vacation entitlement year that starts on or after the day on which section 3 of Schedule J to the *Government Efficiency Act, 2002* comes into force” in the portion before paragraph 1 and substituting “an alternative vacation entitlement year for an employee”; and

(b) by adding the following paragraph:

3.1 The amount of vacation pay that the employee earned during the stub period and how that amount was calculated.

(3) Subsection 15.1 (5) of the Act is amended by striking out “three years” and substituting “five years”.

(4) Subsection 15.1 (7) of the Act is repealed and the following substituted:

Transition

(7) Subsections 15.1 (2) and (3), as they read immediately before the day section 9 of Schedule 1 to the *Fair Workplaces, Better Jobs Act, 2017* came into force, continue to apply with respect to vacation entitlement years and stub periods that began before that day.

10 The French version of subsection 18 (2) of the Act is amended by striking out “sur demande” and substituting “sur appel”.

11 The Act is amended by adding the following Part:

PART VII.1

REQUESTS FOR CHANGES TO SCHEDULE OR WORK LOCATION

Request for changes to schedule or work location

21.2 (1) An employee who has been employed by his or her employer for at least three months may submit a request, in writing, to the employer requesting changes to the employee’s schedule or work location.

Receipt of request

(2) An employer who receives a request under subsection (1) shall,

(a) discuss the request with the employee; and

(b) notify the employee of the employer’s decision within a reasonable time after receiving it.

Grant of request

(3) If the employer grants the request or any part of it, the notification in clause (2) (b) must specify the date that the changes will take effect and their duration.

Denial of request

(4) If the employer denies the request or any part of it, the notification in clause (2) (b) must include the reasons for the denial.

12 The Act is amended by adding the following Part:

**PART VII.2
SCHEDULING**

Three hour rule

21.3 (1) If an employee who regularly works more than three hours a day is required to present himself or herself for work but works less than three hours, despite being available to work longer, the employer shall pay the employee wages for three hours, equal to the greater of the following:

1. The sum of,
 - i. the amount the employee earned for the time worked, and
 - ii. wages equal to the employee's regular rate for the remainder of the time.
2. Wages equal to the employee's regular rate for three hours of work.

Exception

(2) Subsection (1) does not apply if the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work.

Minimum pay for being on call

21.4 (1) If an employee who is on call to work is not required to work or is required to work but works less than three hours, despite being available to work longer, the employer shall pay the employee wages for three hours, equal to the greater of the following:

1. The sum of,
 - i. the amount the employee earned for the time worked, and
 - ii. wages equal to the employee's regular rate for the remainder of the time.
2. Wages equal to the employee's regular rate for three hours of work.

Exception

(2) Subsection (1) does not apply if,

- (a) the employer required the employee to be on call for the purposes of ensuring the continued delivery of essential public services, regardless of who delivers those services; and
- (b) the employee who was on call was not required to work.

Limit

(3) Subsection (1) only requires an employer to pay an employee a minimum of three hours of pay during a twenty-four hour period beginning at the start of the first time during that period that the employee is on call, even if the employee is on call multiple times during those twenty-four hours.

Collective agreement prevails

(4) If a collective agreement that is in effect on January 1, 2019 contains a provision that addresses payment for being on call and there is a conflict between the provision of the collective agreement and this section, the provision of the collective agreement prevails.

Same, limit

(5) Subsection (4) ceases to apply on the earlier of the date the collective agreement expires and January 1, 2020.

Right to refuse

21.5 (1) An employee has the right to refuse an employer's request or demand to work or be on call on a day that they were not scheduled to work or be on call if the request or demand is made less than 96 hours before the time he or she would commence work or commence being on call, as applicable.

Exception

- (2) Subsection (1) does not apply if the employer's request or demand to work or be on call is,
- (a) to deal with an emergency;
 - (b) to remedy or reduce a threat to public safety;
 - (c) to ensure the continued delivery of essential public services, regardless of who delivers those services; or
 - (d) made for such other reasons as may be prescribed.

Notice to be provided

(3) An employee who refuses an employer's request or demand to work or be on call under subsection (1) shall notify the employer of the refusal as soon as possible.

Collective agreement prevails

(4) If a collective agreement that is in effect on January 1, 2019 contains a provision that addresses an employee's ability to refuse the employer's request or demand to perform work or be on call on a day the employee is not scheduled to work or be on call and there is a conflict between the provision of the collective agreement and this section, the provision of the collective agreement prevails.

Same, limit

(5) Subsection (4) ceases to apply on the earlier of the date the collective agreement expires and January 1, 2020.

Definition

(6) In this section,
 "emergency" means,

- (a) a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise, or
- (b) a situation in which a search and rescue operation takes place.

Cancellation

21.6 (1) An employer shall pay an employee wages equal to the employee's regular rate for three hours of work if the employer cancels the employee's scheduled day of work or scheduled on call period within 48 hours before the time the employee was to commence work or commence being on call, as applicable.

Meaning of cancellation

(2) For the purposes of subsection (1), a scheduled day of work or scheduled on call period is cancelled if the entire day of work or on call period is cancelled but not if the day of work or on call period is shortened or extended.

Exception

- (3) Subsection (1) does not apply if,
- (a) the employer is unable to provide work for the employee because of fire, lightning, power failure, storms or similar causes beyond the employer's control that result in the stopping of work;
 - (b) the nature of the employee's work is weather-dependent and the employer is unable to provide work for the employee for weather-related reasons; or
 - (c) the employer is unable to provide work for the employee for such other reasons as may be prescribed.

Collective agreement prevails

(4) If a collective agreement that is in effect on January 1, 2019 contains a provision that addresses payment when the employer cancels the employee's scheduled day of work or on call period and there is a conflict between the provision of the collective agreement and this section, the provision of the collective agreement prevails.

Same, limit

(5) Subsection (4) ceases to apply on the earlier of the date the collective agreement expires and January 1, 2020.

Limit

21.7 An employee's entitlement under this Part in respect of one scheduled day of work or scheduled on call period is limited to payment for three hours.

13 (1) Subsection 22 (1) of the Act is amended by adding "Subject to subsection (1.1)" at the beginning.

(2) Section 22 of the Act is amended by adding the following subsection:

Same, two or more regular rates

- (1.1) If an employee has two or more regular rates for work performed for the same employer in a work week,
- (a) the employee is entitled to be paid overtime pay for each hour of work performed in the week after the total number of hours performed for the employer reaches the overtime threshold; and
 - (b) the overtime pay for each hour referred to in clause (a) is one and one-half times the regular rate that applies to the work performed in that hour.

14 The Act is amended by adding the following section:

Change to minimum wage during pay period

23.0.1 If the minimum wage rate applicable to an employee changes during a pay period, the calculations required by subsection 23 (4) shall be performed as if the pay period were two separate pay periods, the first consisting of the part falling before the day on which the change takes effect and the second consisting of the part falling on and after the day on which the change takes effect.

15 (1) Subsection 23.1 (1) of the Act is repealed and the following substituted:

Determination of minimum wage

- (1) The minimum wage is the following:
1. On or after January 1, 2018 but before January 1, 2019, the amount set out below for the following classes of employees:
 - i. For employees who are students under 18 years of age, if the student's weekly hours do not exceed 28 hours or if the student is employed during a school holiday, \$13.15 per hour.
 - ii. For employees who, as a regular part of their employment, serve liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act* and who regularly receive tips or other gratuities from their work, \$12.20 per hour.
 - iii. For the services of hunting and fishing guides, \$70.00 for less than five consecutive hours in a day and \$140 for five or more hours in a day, whether or not the hours are consecutive.
 - iv. For employees who are homeworkers, \$15.40 per hour.
 - v. For any other employees not listed in subparagraphs i to iv, \$14.00 per hour.
 2. On or after January 1, 2019 but before October 1, 2019, the amount set out below for the following classes of employees:
 - i. For employees who are students under 18 years of age, if the student's weekly hours do not exceed 28 hours or if the student is employed during a school holiday, \$14.10 per hour.
 - ii. For employees who, as a regular part of their employment, serve liquor directly to customers, guests, members or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act* and who regularly receive tips or other gratuities from their work, \$13.05 per hour.
 - iii. For the services of hunting and fishing guides, \$75.00 for less than five consecutive hours in a day and \$150 for five or more hours in a day, whether or not the hours are consecutive.
 - iv. For employees who are homeworkers, \$16.50 per hour.
 - v. For any other employees not listed in subparagraphs i to iv, \$15.00 per hour.
 3. From October 1, 2019 onwards, the amount determined under subsection (4).

Student homemaker

(1.1) If an employee falls within both subparagraphs 1 i and iv of subsection (1) or both subparagraphs 2 i and iv of subsection (1), the employer shall pay the employee not less than the minimum wage for a homemaker.

(2) Subsection 23.1 (2) of the Act is amended by striking out "subparagraph 1 v of subsection (1)" in the portion before clause (a) and substituting "subparagraph 1 v or 2 v of subsection (1)".

(3) Subsection 23.1 (4) of the Act is amended by striking out the portion before the equation and substituting the following:

Annual adjustment

(4) On October 1 of each year starting in 2019, the minimum wage that applied to a class of employees immediately before October 1 shall be adjusted as follows:

(4) Subsection 23.1 (7) of the Act is amended by striking out “2014” and substituting “2018”.

(5) Subsection 23.1 (8) of the Act is repealed.

(6) Subsection 23.1 (10) of the Act is amended by striking out “2020” and substituting “2024”.

16 Subsection 24 (1) of the Act is repealed and the following substituted:

Public holiday pay

(1) An employee’s public holiday pay for a given public holiday shall be equal to,

- (a) the total amount of regular wages earned in the pay period immediately preceding the public holiday, divided by the number of days the employee worked in that period; or
- (b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation.

Same, leave or vacation

(1.1) If an employee is on a leave under section 50, on vacation or both for the entire pay period immediately preceding the public holiday, the calculation in clause 24 (1) (a) shall be applied to the pay period before the start of that leave or vacation.

Same, no pay period before public holiday

(1.2) If the employee was not employed during the pay period immediately preceding a public holiday, the employee’s public holiday pay for the public holiday shall be equal to the amount of regular wages earned in the pay period that includes the public holiday divided by the number of days the employee worked in that period.

17 Section 27 of the Act is amended by adding the following subsection:

Substitute day of holiday

(2.1) If a day is substituted for a public holiday under clause (2) (a), the employer shall provide the employee with a written statement, before the public holiday, that sets out,

- (a) the public holiday on which the employee will work;
- (b) the date of the day that is substituted for a public holiday under clause (2) (a); and
- (c) the date on which the statement is provided to the employee.

18 Section 28 of the Act is amended by adding the following subsection:

Substitute day of holiday

(2.1) If a day is substituted for a public holiday under clause (2) (a), the employer shall provide the employee with a written statement, before the public holiday, that sets out,

- (a) the public holiday on which the employee will work;
- (b) the date of the day that is substituted for a public holiday under clause (2) (a); and
- (c) the date on which the statement is provided to the employee.

19 Section 29 of the Act is amended by adding the following subsection:

Substitute day of holiday

(1.1) If a day is substituted for a public holiday under subsection (1), the employer shall provide the employee with a written statement, before the public holiday, that sets out,

- (a) the public holiday that is being substituted;
- (b) the date of the day that is substituted for a public holiday under subsection (1); and
- (c) the date on which the statement is provided to the employee.

20 Section 30 of the Act is amended by adding the following subsection:

Substitute day of holiday

(2.1) If a day is substituted for a public holiday under clause (2) (a), the employer shall provide the employee with a written statement, before the public holiday, that sets out,

- (a) the public holiday on which the employee will work;
- (b) the date of the day that is substituted for a public holiday under clause (2) (a); and
- (c) the date on which the statement is provided to the employee.

21 Sections 33, 34 and 35 of the Act are repealed and the following substituted:

Right to vacation

33 (1) An employer shall give an employee a vacation of,

- (a) at least two weeks after each vacation entitlement year that the employee completes, if the employee's period of employment is less than five years; or
- (b) at least three weeks after each vacation entitlement year that the employee completes, if the employee's period of employment is five years or more.

Active and inactive employment

(2) Both active employment and inactive employment shall be included for the purposes of subsection (1).

Where vacation not taken in complete weeks

(3) If an employee does not take vacation in complete weeks, the employer shall base the number of days of vacation that the employee is entitled to,

- (a) on the number of days in the employee's regular work week; or
- (b) if the employee does not have a regular work week, on the average number of days the employee worked per week during the most recently completed vacation entitlement year.

Transition

(4) Clause (1) (b) requires employers to provide employees with a period of employment of at least five years or more with at least three weeks of vacation after each vacation entitlement year that ends on or after December 31, 2017 but does not require them to provide additional vacation days in respect of vacation entitlement years that ended before that time.

Alternative vacation entitlement year**Application**

34 (1) This section applies if the employer establishes an alternative vacation entitlement year for an employee.

Vacation for stub period, less than five years of employment

(2) If the employee's period of employment is less than five years, the employer shall do the following with respect to the stub period:

- 1. The employer shall calculate the ratio between the stub period and 12 months.
- 2. If the employee has a regular work week, the employer shall give the employee a vacation for the stub period that is equal to two weeks multiplied by the ratio calculated under paragraph 1.
- 3. If the employee does not have a regular work week, the employer shall give the employee a vacation for the stub period that is equal to,

$$2 \times A \times \text{the ratio calculated under paragraph 1}$$

where,

A = the average number of days the employee worked per work week in the stub period.

Vacation for stub period, five years or more of employment

(3) If the employee's period of employment is five years or more, the employer shall do the following with respect to the stub period:

- 1. The employer shall calculate the ratio between the stub period and 12 months.
- 2. If the employee has a regular work week, the employer shall give the employee a vacation for the stub period that is equal to three weeks multiplied by the ratio calculated under paragraph 1.
- 3. If the employee does not have a regular work week, the employer shall give the employee a vacation for the stub period that is equal to,

$$3 \times A \times \text{the ratio calculated under paragraph 1}$$

where,

A = the average number of days the employee worked per work week in the stub period.

Active and inactive employment

(4) Both active employment and inactive employment shall be included for the purposes of subsections (2) and (3).

Transition

(5) Subsection (3) requires employers to provide employees with a period of employment of at least five years or more with vacation calculated in accordance with that subsection for any stub period that ends on or after December 31, 2017 but does not require them to provide additional vacation days in respect of a stub period that ended before that time.

Timing of vacation

35 The employer shall determine when an employee shall take vacation for a vacation entitlement year, subject to the following rules:

1. The vacation must be completed no later than 10 months after the end of the vacation entitlement year for which it is given.
2. If the employee's period of employment is less than five years, the vacation must be a two-week period or two periods of one week each, unless the employee requests in writing that the vacation be taken in shorter periods and the employer agrees to that request.
3. If the employee's period of employment is five years or more, the vacation must be a three-week period or a two-week period and a one-week period or three periods of one week each, unless the employee requests in writing that the vacation be taken in shorter periods and the employer agrees to that request.

22 Subsection 35.1 (1) of the Act is repealed and the following substituted:

Timing of vacation, alternative vacation entitlement year

(1) This section applies if an employer establishes an alternative vacation entitlement year for an employee.

23 Section 35.2 of the Act is repealed and the following substituted:

Vacation pay

35.2 An employer shall pay vacation pay to an employee who is entitled to vacation under section 33 or 34, equal to at least,

- (a) 4 per cent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is less than five years; or
- (b) 6 per cent of the wages, excluding vacation pay, that the employee earned during the period for which the vacation is given, if the employee's period of employment is five years or more.

24 Subsection 41.1 (6) of the Act is repealed.

25 Part XII of the Act is amended by adding the following section:

Interpretation

41.2 In this Part,

"substantially the same" means substantially the same but not necessarily identical.

26 (1) Clause 42 (2) (d) of the Act is amended by adding "or employment status" at the end.

(2) The French version of subsection 42 (4) of the Act is amended by striking out "doit faire" and substituting "ne doit faire".

(3) Section 42 of the Act is amended by adding the following subsection:

Written response

(6) An employee who believes that their rate of pay does not comply with subsection (1) may request a review of their rate of pay from the employee's employer, and the employer shall,

- (a) adjust the employee's pay accordingly; or
- (b) if the employer disagrees with the employee's belief, provide a written response to the employee setting out the reasons for the disagreement.

27 Part XII of the Act is amended by adding the following section:

Difference in employment status

42.1 (1) No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,

- (a) they perform substantially the same kind of work in the same establishment;
- (b) their performance requires substantially the same skill, effort and responsibility; and
- (c) their work is performed under similar working conditions.

Exception

- (2) Subsection (1) does not apply when the difference in the rate of pay is made on the basis of,
- (a) a seniority system;
 - (b) a merit system;
 - (c) a system that measures earnings by quantity or quality of production; or
 - (d) any other factor other than sex or employment status.

Reduction prohibited

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

Organizations

- (4) No trade union or other organization shall cause or attempt to cause an employer to contravene subsection (1).

Deemed wages

- (5) If an employment standards officer finds that an employer has contravened subsection (1), the officer may determine the amount owing to an employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that employee.

Written response

- (6) An employee who believes that their rate of pay does not comply with subsection (1) may request a review of their rate of pay from the employee's employer, and the employer shall,
- (a) adjust the employee's pay accordingly; or
 - (b) if the employer disagrees with the employee's belief, provide a written response to the employee setting out the reasons for the disagreement.

Transition, collective agreement

- (7) If a collective agreement that is in effect on April 1, 2018 contains a provision that permits differences in pay based on employment status and there is a conflict between the provision of the collective agreement and subsection (1), the provision of the collective agreement prevails.

Same, limit

- (8) Subsection (7) ceases to apply on the earlier of the date the collective agreement expires and January 1, 2020.

28 Part XII of the Act is amended by adding the following section:**Difference in assignment employee status**

42.2 (1) No temporary help agency shall pay an assignment employee who is assigned to perform work for a client at a rate of pay less than the rate paid to an employee of the client when,

- (a) they perform substantially the same kind of work in the same establishment;
- (b) their performance requires substantially the same skill, effort and responsibility; and
- (c) their work is performed under similar working conditions.

Exception

- (2) Subsection (1) does not apply when the difference in the rate of pay is made on the basis of any factor other than sex, employment status or assignment employee status.

Reduction prohibited

- (3) No client of a temporary help agency shall reduce the rate of pay of an employee in order to assist a temporary help agency in complying with subsection (1).

Organizations

- (4) No trade union or other organization shall cause or attempt to cause a temporary help agency to contravene subsection (1).

Deemed wages

- (5) If an employment standards officer finds that a temporary help agency has contravened subsection (1), the officer may determine the amount owing to an assignment employee as a result of the contravention and that amount shall be deemed to be unpaid wages for that assignment employee.

Written response

(6) An assignment employee who believes that their rate of pay does not comply with subsection (1) may request a review of their rate of pay from the temporary help agency, and the temporary help agency shall,

- (a) adjust the assignment employee's pay accordingly; or
- (b) if the temporary help agency disagrees with the assignment employee's belief, provide a written response to the assignment employee setting out the reasons for the disagreement.

Transition, collective agreement

(7) If a collective agreement that is in effect on April 1, 2018 contains a provision that permits differences in pay between employees of a client and an assignment employee and there is a conflict between the provision of the collective agreement and subsection (1), the provision of the collective agreement prevails.

Same, limit

(8) Subsection (7) ceases to apply on the earlier of the date the collective agreement expires and January 1, 2020.

29 Part XII of the Act is amended by adding the following section:**Review**

42.3 (1) Before April 1, 2021, the Minister shall cause a review of sections 42.1 and 42.2 to be commenced.

Same

(2) The Minister may specify a date by which a review under subsection (1) must be completed.

30 The Act is amended by adding the following section:**Definition**

46.1 In section 46,

“legally qualified medical practitioner” means,

- (a) a person who is qualified to practice as a physician,
- (b) a person who is qualified to practice as a midwife,
- (c) a registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991*, or
- (d) in the prescribed circumstances, a member of a prescribed class of medical practitioners. (“médecin dûment qualifié”)

31 (1) Subclause 47 (1) (b) (ii) of the Act is amended by striking out “six weeks” and substituting “12 weeks”.

(2) Section 47 of the Act is amended by adding the following subsection:

Transition

(1.1) Despite clause (1) (b), if an employee who is not entitled to parental leave began her pregnancy leave before January 1, 2018, her pregnancy leave ends on the day that is the later of,

- (a) 17 weeks after the pregnancy leave began; and
- (b) six weeks after the birth, still-birth or miscarriage.

32 (1) Subsection 48 (2) of the Act is amended by striking out “52 weeks” and substituting “78 weeks”.

(2) Section 48 of the Act is amended by adding the following subsection:

Transition

(2.1) Despite subsection (2), an employee may begin parental leave no later than 52 weeks after the day the child is born or comes into the employee's custody, care and control for the first time if that day was before the day subsection 32 (2) of Schedule 1 to the *Fair Workplaces, Better Jobs Act, 2017* came into force.

33 (1) Subsection 49 (1) of the Act is amended by striking out “35 weeks” and substituting “61 weeks” and by striking out “37 weeks” and substituting “63 weeks”.

(2) Section 49 of the Act is amended by adding the following subsection:

Transition

(1.1) Despite subsection (1), if the child in respect of whom the employee takes parental leave was born or came into the employee's custody, care and control for the first time before the day subsection 33 (2) of Schedule 1 to the *Fair Workplaces, Better Jobs Act, 2017* came into force, the employee's parental leave ends,

- (a) 35 weeks after it began, if the employee also took pregnancy leave; and

- (b) 37 weeks after it began, otherwise.

34 (1) The definition of “qualified health practitioner” in subsection 49.1 (1) of the Act is repealed and the following substituted:

“qualified health practitioner” means,

- (a) a person who is qualified to practise as a physician under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (3),
- (b) a registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991* or an individual who has an equivalent qualification under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (3), or
- (c) in the prescribed circumstances, a member of a prescribed class of health practitioners; (“praticien de la santé qualifié”)

(2) Subsections 49.1 (2) and (3) of the Act are repealed and the following substituted:

Entitlement to leave

(2) An employee is entitled to a leave of absence without pay of up to 28 weeks to provide care or support to an individual described in subsection (3) if a qualified health practitioner issues a certificate stating that the individual has a serious medical condition with a significant risk of death occurring within a period of 26 weeks or such shorter period as may be prescribed.

Application of subs. (2)

(3) Subsection (2) applies in respect of the following individuals:

- 1. The employee’s spouse.
- 2. A parent, step-parent or foster parent of the employee or the employee’s spouse.
- 3. A child, step-child or foster child of the employee or the employee’s spouse.
- 4. A child who is under legal guardianship of the employee or the employee’s spouse.
- 5. A brother, step-brother, sister or step-sister of the employee.
- 6. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee’s spouse.
- 7. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
- 8. A son-in-law or daughter-in-law of the employee or the employee’s spouse.
- 9. An uncle or aunt of the employee or the employee’s spouse.
- 10. A nephew or niece of the employee or the employee’s spouse.
- 11. The spouse of the employee’s grandchild, uncle, aunt, nephew or niece.
- 12. A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
- 13. Any individual prescribed as a family member for the purposes of this section.

(3) Subsections 49.1 (5) and (6) of the Act are repealed and the following substituted:

Latest date employee can remain on leave

(5) The employee may not remain on a leave under this section after the earlier of the following dates:

- 1. The last day of the week in which the individual described in subsection (3) dies.
- 2. The last day of the 52-week period starting on the first day of the week in which the period referred to in subsection (2) begins.

Same

(5.1) For greater certainty, but subject to subsection (5), if the amount of leave that has been taken is less than 28 weeks it is not necessary for a qualified health practitioner to issue an additional certificate under subsection (2) in order for leave to be taken under this section after the end of the period referred to in subsection (2).

Two or more employees

(6) If two or more employees take leaves under this section in respect of a particular individual, the total of the leaves taken by all the employees shall not exceed 28 weeks during the 52-week period referred to in paragraph 2 of subsection (5) that applies to the first certificate issued for the purpose of this section.

(4) Subsections 49.1 (11) and (12) of the Act are repealed and the following substituted:

Further leave

(11) If an employee takes a leave under this section and the individual referred to in subsection (3) does not die within the 52-week period referred to in paragraph 2 of subsection (5), the employee may, in accordance with this section, take another leave and, for that purpose, the reference in subsection (6) to “the first certificate” shall be deemed to be a reference to the first certificate issued after the end of that period.

Leave under ss. 49.3, 49.4, 49.5, 49.6, 49.7 and 50

(12) An employee’s entitlement to leave under this section is in addition to any entitlement to leave under sections 49.3, 49.4, 49.5, 49.6, 49.7 and 50.

Transition

(13) If a certificate described in subsection (2) was issued before January 1, 2018, then this section, as it read immediately before January 1, 2018, applies.

35 (1) Section 49.3 of the Act is amended by adding the following subsection:

Leave deemed to be taken in entire weeks

(7.1) For the purposes of an employee’s entitlement under subsection (4), if an employee takes any part of a week as leave, the employer may deem the employee to have taken one week of leave.

(2) Subsection 49.3 (9) of the Act is amended “by striking out “49.5 and 50” and substituting “49.5, 49.6, 49.7 and 50”.

36 The heading immediately before section 49.4 and section 49.4 of the Act are repealed and the following substituted:

CRITICAL ILLNESS LEAVE

Critical illness leave

Definitions

49.4 (1) In this section,

“adult” means an individual who is 18 years or older; (“adulte”)

“critically ill”, with respect to a minor child or adult, means a minor child or adult whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury; (“gravement malade”)

“family member”, with respect to an employee, means the following:

1. The employee’s spouse.
2. A parent, step-parent or foster parent of the employee or the employee’s spouse.
3. A child, step-child or foster child of the employee or the employee’s spouse.
4. A child who is under legal guardianship of the employee or the employee’s spouse.
5. A brother, step-brother, sister or step-sister of the employee.
6. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee’s spouse.
7. A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
8. A son-in-law or daughter-in-law of the employee or the employee’s spouse.
9. An uncle or aunt of the employee or the employee’s spouse.
10. A nephew or niece of the employee or the employee’s spouse.
11. The spouse of the employee’s grandchild, uncle, aunt, nephew or niece.
12. A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
13. Any individual prescribed as a family member for the purpose of this definition; (“membre de la famille”)

“minor child” means an individual who is under 18 years of age; (“enfant mineur”)

“qualified health practitioner” means,

- (a) a person who is qualified to practise as a physician, a registered nurse or a psychologist under the laws of the jurisdiction in which care or treatment is provided to the individual described in subsection (2) or (5), or
- (b) in the prescribed circumstances, a member of a prescribed class of health practitioners; (“praticien de la santé qualifié”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”)

Entitlement to leave — critically ill minor child

(2) An employee who has been employed by his or her employer for at least six consecutive months is entitled to a leave of absence without pay to provide care or support to a critically ill minor child who is a family member of the employee if a qualified health practitioner issues a certificate that,

- (a) states that the minor child is a critically ill minor child who requires the care or support of one or more family members; and
- (b) sets out the period during which the minor child requires the care or support.

Same

(3) Subject to subsection (4), an employee is entitled to take up to 37 weeks of leave under this section to provide care or support to a critically ill minor child.

Same — period less than 37 weeks

(4) If the certificate described in subsection (2) sets out a period of less than 37 weeks, the employee is entitled to take a leave only for the number of weeks in the period specified in the certificate.

Entitlement to leave — critically ill adult

(5) An employee who has been employed by his or her employer for at least six consecutive months is entitled to a leave of absence without pay to provide care or support to a critically ill adult who is a family member of the employee if a qualified health practitioner issues a certificate that,

- (a) states that the adult is a critically ill adult who requires the care or support of one or more family members; and
- (b) sets out the period during which the adult requires the care or support.

Same

(6) Subject to subsection (7), an employee is entitled to take up to 17 weeks of leave under this section to provide care or support to a critically ill adult.

Same — period less than 17 weeks

(7) If the certificate described in subsection (5) sets out a period of less than 17 weeks, the employee is entitled to take a leave only for the number of weeks in the period specified in the certificate.

When leave must end

(8) Subject to subsection (9), a leave under this section ends no later than the last day of the period specified in the certificate described in subsection (2) or (5).

Limitation period

(9) If the period specified in the certificate described in subsection (2) or (5) is 52 weeks or longer, the leave ends no later than the last day of the 52-week period that begins on the earlier of,

- (a) the first day of the week in which the certificate is issued; and
- (b) the first day of the week in which the minor child or adult in respect of whom the certificate was issued became critically ill.

Death of minor child or adult

(10) If a critically ill minor child or adult dies while an employee is on a leave under this section, the employee's entitlement to be on leave under this section ends on the last day of the week in which the minor child or adult dies.

Total amount of leave — critically ill minor child

(11) The total amount of leave that may be taken by one or more employees under this section in respect of the same critically ill minor child is 37 weeks.

Total amount of leave — critically ill adult

(12) The total amount of leave that may be taken by one or more employees under this section in respect of the same critically ill adult is 17 weeks.

Limitation where child turns 18

(13) If an employee takes leave in respect of a critically ill minor child under subsection (2), the employee may not take leave in respect of the same individual under subsection (5) before the 52-week period described in subsection (9) expires.

Further leave — critically ill minor child

(14) If a minor child in respect of whom an employee has taken a leave under this section remains critically ill while the employee is on leave or after the employee returns to work, but before the 52-week period described in subsection (9) expires, the employee is entitled to take an extension of the leave or a new leave if,

- (a) a qualified health practitioner issues an additional certificate described in subsection (2) for the minor child that sets out a different period during which the minor child requires care or support;
- (b) the amount of leave that has been taken and the amount of leave the employee takes under this subsection does not exceed 37 weeks in total; and
- (c) the leave ends no later than the last day of the 52-week period described in subsection (9).

Further leave — critically ill adult

(15) If an adult in respect of whom an employee has taken a leave under this section remains critically ill while the employee is on leave or after the employee returns to work, but before the 52-week period described in subsection (9) expires, the employee is entitled to take an extension of the leave or a new leave if,

- (a) a qualified health practitioner issues an additional certificate described in subsection (5) for the adult that sets out a different period during which the adult requires care or support;
- (b) the amount of leave that has been taken and the amount of leave the employee takes under this subsection does not exceed 17 weeks in total; and
- (c) the leave ends no later than the last day of the 52-week period described in subsection (9).

Additional leaves

(16) If a minor child or adult in respect of whom an employee has taken a leave under this section remains critically ill after the 52-week period described in subsection (9) expires, the employee is entitled to take another leave and the requirements of this section apply to the new leave.

Advising employer

(17) An employee who wishes to take a leave under this section shall advise his or her employer in writing that he or she will be doing so and shall provide the employer with a written plan that indicates the weeks in which he or she will take the leave.

Same

(18) If an employee must begin a leave under this section before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it and shall provide the employer with a written plan that indicates the weeks in which he or she will take the leave.

Same — change in employees plan

(19) An employee may take a leave at a time other than that indicated in the plan provided under subsection (17) or (18) if the change to the time of the leave meets the requirements of this section and,

- (a) the employee requests permission from the employer to do so in writing and the employer grants permission in writing; or
- (b) the employee provides the employer with such written notice of the change as is reasonable in the circumstances.

Copy of certificate

(20) If requested by the employer, the employee shall provide the employer with a copy of the certificate referred to in subsection (2) or (5) or clause (14) (a) or (15) (a) as soon as possible.

Leave under ss. 49.1, 49.3, 49.5, 49.6, 49.7 and 50

(21) An employee's entitlement to leave under this section is in addition to any entitlement to leave under sections 49.1, 49.3, 49.5, 49.6, 49.7 and 50.

Transition

(22) If a certificate mentioned in subsection (2) or (12), as those subsections read immediately before the day section 36 of Schedule 1 to the *Fair Workplaces, Better Jobs Act, 2017* came into force, was issued before that day, then this section, as it read immediately before that day, applies.

37 The heading immediately before section 49.5 of the Act is struck out and the following substituted:

CHILD DEATH LEAVE

38 Section 49.5 of the Act is repealed and the following substituted:

Child death leave

Definitions

49.5 (1) In this section,

“child” means a child, step-child, foster child or child who is under legal guardianship, and who is under 18 years of age; (“enfant”)

“crime” means an offence under the *Criminal Code* (Canada), other than an offence prescribed by the regulations made under paragraph 209.4 (f) of the *Canada Labour Code* (Canada); (“acte criminel”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”)

Entitlement to leave

(2) An employee who has been employed by an employer for at least six consecutive months is entitled to a leave of absence without pay of up to 104 weeks if a child of the employee dies.

Exception

(3) An employee is not entitled to a leave of absence under this section if the employee is charged with a crime in relation to the death of the child or if it is probable, considering the circumstances, that the child was a party to a crime in relation to his or her death.

Single period

(4) An employee may take a leave under this section only in a single period.

Limitation period

(5) An employee may take a leave under this section only during the 105-week period that begins in the week the child dies.

Total amount of leave

(6) The total amount of leave that may be taken by one or more employees under this section in respect of a death, or deaths that are the result of the same event, is 104 weeks.

Advising employer

(7) An employee who wishes to take a leave under this section shall advise the employer in writing and shall provide the employer with a written plan that indicates the weeks in which the employee will take the leave.

Same

(8) If an employee must begin a leave under this section before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it and shall provide the employer with a written plan that indicates the weeks in which the employee will take the leave.

Same — change in employee’s plan

(9) An employee may take a leave at a time other than that indicated in the plan provided under subsection (7) or (8) if the change to the time of the leave meets the requirements of this section and,

- (a) the employee requests permission from the employer to do so in writing and the employer grants permission in writing; or
- (b) the employee provides the employer with four weeks written notice before the change is to take place.

Evidence

(10) An employer may require an employee who takes a leave under this section to provide evidence reasonable in the circumstances of the employee’s entitlement to the leave.

Leave under ss. 49.1, 49.3, 49.4, 49.6, 49.7 and 50

(11) An employee’s entitlement to leave under this section is in addition to any entitlement to leave under sections 49.1, 49.3, 49.4, 49.6, 49.7 and 50.

Transition

(12) If, on December 31, 2017, an employee was on a crime-related child death or disappearance leave under this section, as it read on that date, then the employee’s entitlement to the leave continues in accordance with this section as it read on that date.

CRIME-RELATED CHILD DISAPPEARANCE LEAVE

Crime-related child disappearance leave

Definitions

49.6 (1) In this section,

“child” means a child, step-child, foster child or child who is under legal guardianship, and who is under 18 years of age; (“enfant”)

“crime” means an offence under the *Criminal Code* (Canada), other than an offence prescribed by the regulations made under paragraph 209.4 (f) of the *Canada Labour Code* (Canada); (“acte criminel”)

“week” means a period of seven consecutive days beginning on Sunday and ending on Saturday. (“semaine”)

Entitlement to leave

(2) An employee who has been employed by an employer for at least six consecutive months is entitled to a leave of absence without pay of up to 104 weeks if a child of the employee disappears and it is probable, considering the circumstances, that the child disappeared as a result of a crime.

Transition

(3) Despite subsection (2), if the disappearance occurred before January 1, 2018, the employee is entitled to a leave of absence without pay in accordance with section 49.5 as it read on December 31, 2017.

Exception

(4) An employee is not entitled to a leave of absence under this section if the employee is charged with the crime or if it is probable, considering the circumstances, that the child was a party to the crime.

Change in circumstance

(5) If an employee takes a leave of absence under this section and the circumstances that made it probable that the child of the employee disappeared as a result of a crime change and it no longer seems probable that the child disappeared as a result of a crime, the employee’s entitlement to leave ends on the day on which it no longer seems probable.

Child found

(6) The following rules apply if an employee takes a leave of absence under this section and the child is found within the 104-week period that begins in the week the child disappears:

1. If the child is found alive, the employee is entitled to remain on leave under this section for 14 days after the child is found.
2. If the child is found dead, the employee’s entitlement to be on leave under this section ends at the end of the week in which the child is found.

Same

(7) For greater certainty, nothing in paragraph 2 of subsection (6) affects the employee’s eligibility for child death leave under section 49.5.

Single period

(8) An employee may take a leave under this section only in a single period.

Limitation period

(9) Except as otherwise provided for in subsection (8), an employee may take a leave under this section only during the 105-week period that begins in the week the child disappears.

Total amount of leave

(10) The total amount of leave that may be taken by one or more employees under this section in respect of a disappearance, or disappearances that are the result of the same event, is 104 weeks.

Advising employer

(11) An employee who wishes to take a leave under this section shall advise the employer in writing and shall provide the employer with a written plan that indicates the weeks in which the employee will take the leave.

Same

(12) If an employee must begin a leave under this section before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it and shall provide the employer with a written plan that indicates the weeks in which the employee will take the leave.

Same — change in employee's plan

(13) An employee may take a leave at a time other than that indicated in the plan provided under subsection (11) or (12) if the change to the time of the leave meets the requirements of this section and,

- (a) the employee requests permission from the employer to do so in writing and the employer grants permission in writing; or
- (b) the employee provides the employer with four weeks written notice before the change is to take place.

Evidence

(14) An employer may require an employee who takes a leave under this section to provide evidence reasonable in the circumstances of the employee's entitlement to the leave.

Leave under ss. 49.1, 49.3, 49.4, 49.5, 49.7 and 50

(15) An employee's entitlement to leave under this section is in addition to any entitlement to leave under sections 49.1, 49.3, 49.4, 49.5, 49.7 and 50.

DOMESTIC OR SEXUAL VIOLENCE LEAVE

Domestic or sexual violence leave

Definitions

49.7 (1) In this section,

"child" means a child, step-child, foster child or child who is under legal guardianship, and who is under 18 years of age; ("enfant")

"week" means a period of seven consecutive days beginning on Sunday and ending on Saturday. ("semaine")

Entitlement to leave

(2) An employee who has been employed by an employer for at least 13 consecutive weeks is entitled to a leave of absence if the employee or a child of the employee experiences domestic or sexual violence, or the threat of domestic or sexual violence, and the leave of absence is taken for any of the following purposes:

1. To seek medical attention for the employee or the child of the employee in respect of a physical or psychological injury or disability caused by the domestic or sexual violence.
2. To obtain services from a victim services organization for the employee or the child of the employee.
3. To obtain psychological or other professional counselling for the employee or the child of the employee.
4. To relocate temporarily or permanently.
5. To seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence.
6. Such other purposes as may be prescribed.

Exception

(3) Subsection (2) does not apply if the domestic or sexual violence is committed by the employee.

Length of leave

(4) An employee is entitled to take, in each calendar year,

- (a) up to 10 days of leave under this section; and
- (b) up to 15 weeks of leave under this section.

Entitlement to paid leave

(5) If an employee takes a leave under this section, the employee is entitled to take the first five such days as paid days of leave in each calendar year and the balance of his or her entitlement under this section as unpaid leave.

Domestic or sexual violence leave pay

(6) Subject to subsections (7) and (8), if an employee takes a paid day of leave under this section, the employer shall pay the employee,

- (a) either,
- (i) the wages the employee would have earned had they not taken the leave, or

- (ii) if the employee receives performance-related wages, including commissions or a piece work rate, the greater of the employee's hourly rate, if any, and the minimum wage that would have applied to the employee for the number of hours the employee would have worked had they not taken the leave; or

(b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation.

Domestic or sexual violence leave where higher rate of wages

(7) If a paid day of leave under this section falls on a day or at a time of day when overtime pay, a shift premium, or both would be payable by the employer,

- (a) the employee is not entitled to more than his or her regular rate for any leave taken under this section; and
- (b) the employee is not entitled to the shift premium for any leave taken under this section.

Domestic or sexual violence leave on public holiday

(8) If a paid day of leave under this section falls on a public holiday, the employee is not entitled to premium pay for any leave taken under this section.

Leave deemed to be taken in entire days

(9) For the purposes of an employee's entitlement under clause (4) (a), if an employee takes any part of a day as leave, the employer may deem the employee to have taken one day of leave on that day.

Advising employer

(10) An employee who wishes to take leave under clause (4) (a) shall advise the employer that the employee will be doing so.

Same

(11) If an employee must begin a leave under clause (4) (a) before advising the employer, the employee shall advise the employer of the leave as soon as possible after beginning it.

Leave deemed to be taken in entire weeks

(12) For the purposes of an employee's entitlement under clause (4) (b), if an employee takes any part of a week as leave, the employer may deem the employee to have taken one week of leave.

Advising employer

(13) An employee who wishes to take a leave under clause (4) (b) shall advise the employer in writing that the employee will be doing so.

Same

(14) If an employee must begin a leave under clause (4) (b) before advising the employer, the employee shall advise the employer of the leave in writing as soon as possible after beginning it.

Evidence

(15) An employer may require an employee who takes a leave under this section to provide evidence reasonable in the circumstances of the employee's entitlement to the leave.

Leave under ss. 49.1, 49.3, 49.4, 49.5, 49.6 and 50

(16) An employee's entitlement to leave under this section is in addition to any entitlement to leave under sections 49.1, 49.3, 49.4, 49.5, 49.6 and 50.

Confidentiality

(17) An employer shall ensure that mechanisms are in place to protect the confidentiality of records given to or produced by the employer that relate to an employee taking a leave under this section.

Disclosure permitted

(18) Nothing in subsection (17) prevents an employer from disclosing a record where,

- (a) the employee has consented to the disclosure of the record;
- (b) disclosure is made to an officer, employee, consultant or agent of the employer who needs the record in the performance of their duties;
- (c) the disclosure is authorized or required by law; or
- (d) the disclosure is prescribed as a permitted disclosure.

39 (1) Section 50 of the Act is amended by adding the following subsection:

Definition

(0.1) In this section,

“qualified health practitioner” means,

- (a) a person who is qualified to practise as a physician, a registered nurse or a psychologist under the laws of the jurisdiction in which care or treatment is provided to the employee or to an individual described in subsection (2), or
- (b) in the prescribed circumstances, a member of a prescribed class of health practitioners.

(2) Subsection 50 (1) of the Act is repealed and the following substituted:

Personal emergency leave

(1) An employee is entitled to a leave of absence because of any of the following:

- 1. A personal illness, injury or medical emergency.
- 2. The death, illness, injury or medical emergency of an individual described in subsection (2).
- 3. An urgent matter that concerns an individual described in subsection (2).

(3) Subsections 50 (5), (6) and (7) of the Act are repealed and the following substituted:

Limit

(5) Subject to subsection (6), an employee is entitled to take a total of two days of paid leave and eight days of unpaid leave under this section in each calendar year.

Same, entitlement to paid leave

(6) If an employee has been employed by an employer for less than one week, the following rules apply:

- 1. The employee is not entitled to paid days of leave under this section.
- 2. Once the employee has been employed by the employer for one week or longer, the employee is entitled to paid days of leave under subsection (5), and any unpaid days of leave that the employee has already taken in the calendar year shall be counted against the employee’s entitlement under that subsection.
- 3. Subsection (8) does not apply until the employee has been employed by the employer for one week or longer.

Leave deemed to be taken in entire days

(7) If an employee takes any part of a day as paid or unpaid leave under this section, the employer may deem the employee to have taken one day of paid or unpaid leave on that day, as applicable, for the purposes of subsection (5) or (6).

Paid days first

(8) The two paid days must be taken first in a calendar year before any of the unpaid days can be taken under this section.

Personal emergency leave pay

(9) Subject to subsections (10) and (11), if an employee takes a paid day of leave under this section, the employer shall pay the employee,

- (a) either,
 - (i) the wages the employee would have earned had they not taken the leave, or
 - (ii) if the employee receives performance-related wages, including commissions or a piece work rate, the greater of the employee’s hourly rate, if any, and the minimum wage that would have applied to the employee for the number of hours the employee would have worked had they not taken the leave; or
- (b) if some other manner of calculation is prescribed, the amount determined using that manner of calculation.

Personal emergency leave where higher rate of wages

(10) If a paid day of leave under this section falls on a day or at a time of day when overtime pay, a shift premium or both would be payable by the employer,

- (a) the employee is not entitled to more than his or her regular rate for any leave taken under this section; and
- (b) the employee is not entitled to the shift premium for any leave taken under this section.

Personal emergency leave on public holiday

(11) If a paid day of leave under this section falls on a public holiday, the employee is not entitled to premium pay for any leave taken under this section.

Evidence

(12) Subject to subsection (13), an employer may require an employee who takes leave under this section to provide evidence reasonable in the circumstances that the employee is entitled to the leave.

Same

(13) An employer shall not require an employee to provide a certificate from a qualified health practitioner as evidence under subsection (12).

40 The French version of subsection 73 (3) of the Act is amended by striking out “son poste” and substituting “son quart”.

41 Clause 74 (1) (a) of the Act is amended by adding the following subclauses:

- (v.1) makes inquiries about the rate paid to another employee for the purpose of determining or assisting another person in determining whether an employer is complying with Part XII (Equal Pay for Equal Work),
- (v.2) discloses the employee’s rate of pay to another employee for the purpose of determining or assisting another person in determining whether an employer is complying with Part XII (Equal Pay for Equal Work),

42 Section 74.1 of the Act is repealed.

43 Subsection 74.4.1 (1) of the Act is repealed and the following substituted:

Agency to keep records re: work for client, termination

- (1) In addition to the information that an employer is required to record under Part VI, a temporary help agency shall,
 - (a) record the number of hours worked by each assignment employee for each client of the agency in each day and each week; and
 - (b) retain a copy of any written notice provided to an assignment employee under subsection 74.10.1 (1).

44 The Act is amended by adding the following section:

Termination of assignment

74.10.1 (1) A temporary help agency shall provide an assignment employee with one week’s written notice or pay in lieu of notice if,

- (a) the assignment employee is assigned to perform work for a client;
- (b) the assignment had an estimated term of three months or more at the time it was offered to the employee; and
- (c) the assignment is terminated before the end of its estimated term.

Amount of pay in lieu

(2) For the purposes of subsection (1), the amount of the pay in lieu of notice shall be equal to the wages the assignment employee would have been entitled to receive had one week’s notice been given in accordance with that subsection.

Exception

(3) Subsection (1) does not apply if the temporary help agency offers the assignment employee a work assignment with a client during the notice period that is reasonable in the circumstances and that has an estimated term of one week or more.

Same

- (4) Subsection (1) does not apply if,
 - (a) the assignment employee has been guilty of wilful misconduct, disobedience or wilful neglect of duty that is not trivial and has not been condoned by the temporary help agency or the client;
 - (b) the assignment has become impossible to perform or has been frustrated by a fortuitous or unforeseeable event or circumstance; or
 - (c) the assignment is terminated during or as a result of a strike or lock-out at the location of the assignment.

45 Clause 74.12 (1) (a) of the Act is amended by adding the following subclauses:

- (v.1) makes inquiries about the rate paid to an employee of the client for the purpose of determining or assisting another person in determining whether a temporary help agency is complying with Part XII (Equal Pay for Equal Work),
- (v.2) discloses the assignment employee’s rate of pay to an employee of the client for the purpose of determining or assisting another person in determining whether a temporary help agency is complying with Part XII (Equal Pay for Equal Work),

- (v.3) discloses the rate paid to an employee of the client to the assignment employee's temporary help agency for the purposes of determining or assisting another person in determining whether a temporary help agency is complying with Part XII (Equal Pay for Equal Work),

46 Section 74.12.1 of the Act is repealed.

47 Subsection 74.14 (1) of the Act is amended by striking out "or" at the end of clause (a) and by adding the following clause:

- (a.1) order the agency to repay the amount of the fee to the assignment employee or prospective assignment employee; or

48 Subsection 74.16 (2) of the Act is repealed and the following substituted:

Terms of orders

(2) If an order issued under this section requires a temporary help agency to compensate an assignment employee or prospective assignment employee, it shall also require the agency to,

- (a) pay to the Director in trust,
 - (i) the amount of the compensation, and
 - (ii) an amount for administration costs equal to the greater of \$100 and 10 per cent of the amount of compensation; or
- (b) pay the amount of the compensation to the assignment employee or prospective assignment employee.

49 Subsection 74.17 (2) of the Act is repealed and the following substituted:

Terms of orders

(2) If an order issued under this section requires the client to compensate an assignment employee, it shall also require the client to,

- (a) pay to the Director in trust,
 - (i) the amount of the compensation, and
 - (ii) an amount for administration costs equal to the greater of \$100 and 10 per cent of the amount of compensation; or
- (b) pay the amount of the compensation to the assignment employee.

50 Subsection 81 (8) of the Act is repealed.

51 Subsection 88 (5) of the Act is repealed and the following substituted:

Interest

(5) The Director may, with the approval of the Minister, determine the rates of interest and the manner of calculating interest for,

- (a) amounts owing under different provisions of this Act or the regulations, and
- (b) money held by the Director in trust.

52 The Act is amended by adding the following sections:

Recognition of employers

88.2 (1) The Director may give recognition to an employer, upon the employer's application, if the employer satisfies the Director that it meets the prescribed criteria.

Classes of employers

(2) For greater certainty, the criteria under subsection (1) may be prescribed for different classes of employers.

Information re recognitions

(3) The Director may require any employer who is seeking recognition under subsection (1), or who is the subject of a recognition, to provide the Director with whatever information, records or accounts he or she may require pertaining to the recognition and the Director may make such inquiries and examinations as he or she considers necessary.

Publication

(4) The Director may publish or otherwise make available to the public information relating to employers given recognition under subsection (1), including the names of employers.

Validity of recognitions

(5) A recognition given under subsection (1) is valid for the period that the Director specifies in the recognition.

Revocation, etc., of recognitions

(6) The Director may revoke or amend a recognition.

Delegation of powers under s. 88.2

88.3 (1) The Director may authorize an individual employed in the Ministry to exercise a power conferred on the Director under section 88.2, either orally or in writing.

Residual powers

(2) The Director may exercise a power conferred on the Director under section 88.2 even if he or she has delegated it to an individual under subsection (1).

Duty re policies

(3) An individual authorized by the Director under subsection (1) shall follow any policies established by the Director under subsection 88 (2).

53 Section 96.1 of the Act is repealed.

54 Subsection 103 (1) of the Act is amended by striking out “or” at the end of clause (a) and by adding the following clause:

(a.1) order the employer to pay wages to the employee; or

55 Subsection 104 (3) of the Act is repealed and the following substituted:

Terms of orders

(3) If an order made under this section requires a person to compensate an employee, it shall also require the person to,

(a) pay to the Director in trust,

(i) the amount of the compensation, and

(ii) an amount for administration costs equal to the greater of \$100 and 10 per cent of the amount of compensation; or

(b) pay the amount of the compensation to the employee.

56 Subsection 105 (1) of the Act is repealed and the following substituted:

Employee cannot be found

(1) If an employment standards officer has arranged with an employer or ordered an employer to pay wages under clause 103 (1) (a) or (a.1) to the employee and the employer is unable to locate the employee despite having made reasonable efforts to do so, the employer shall pay the wages to the Director in trust.

57 Paragraphs 1 and 2 of subsection 108 (4) of the Act are amended by striking out “within the meaning of Part XVIII.1” wherever it appears.

58 (1) Subsection 112 (6) of the Act is repealed and the following substituted:

Administrative costs and collector fees

(6) If the settlement concerns an order to pay, the Director is, despite clause (1) (c), entitled to be paid,

(a) that proportion of the administrative costs that were ordered to be paid that is the same as the proportion of the amount of wages, fees or compensation ordered to be paid that the employee is entitled to receive under the settlement; and

(b) that proportion of the collector’s fees and disbursements that were added to the amount of the order under subsection 128 (2) that is the same as the proportion of the amount of wages, fees or compensation ordered to be paid that the employee is entitled to receive under the settlement.

(2) Paragraphs 1 and 2 of subsection 112 (9) of the Act are amended by striking out “within the meaning of Part XVIII.1” wherever it appears.

59 (1) Subsection 113 (1) of the Act is repealed and the following substituted:

Notice of contravention

(1) If an employment standards officer believes that a person has contravened a provision of this Act, the officer may issue a notice to the person setting out the officer’s belief and specifying the amount of the penalty for the contravention.

Amount of penalty

(1.1) The amount of the penalty shall be determined in accordance with the regulations.

Penalty within range

(1.2) If a range has been prescribed as the penalty for a contravention, the employment standards officer shall determine the amount of the penalty in accordance with the prescribed criteria, if any.

(2) Section 113 of the Act is amended by adding the following subsections:

Publication re notice of contraventions

(6.2) If a person, including an individual, is deemed under subsection (5) to have contravened this Act after being issued a notice of contravention, the Director may publish or otherwise make available to the general public the name of the person, a description of the deemed contravention, the date of the deemed contravention and the penalty for the deemed contravention.

Internet publication

(6.3) Authority to publish under subsection (6.2) includes authority to publish on the Internet.

Disclosure

(6.4) Any disclosure made under subsection (6.2) shall be deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*.

60 Paragraphs 1 and 2 of subsection 114 (6) of the Act are amended by striking out “within the meaning of Part XVIII.1” wherever it appears.

61 Paragraphs 1 and 2 of subsection 115 (1.1) of the Act are amended by striking out “within the meaning of Part XVIII.1” wherever it appears.

62 Section 115.1 of the Act is amended by striking out “within the meaning of Part XVIII.1” at the end.

63 Clause 120 (6) (b) of the Act is repealed and the following substituted:

- (b) despite clause (4) (b), is entitled to be paid,
 - (i) that proportion of the administrative costs that were ordered to be paid that is the same as the proportion of the amount of wages, fees or compensation ordered to be paid that the employee is entitled to receive under the settlement, and
 - (ii) that proportion of the collector’s fees and disbursements that were added to the amount of the order under subsection 128 (2) that is the same as the proportion of the amount of wages, fees or compensation ordered to be paid that the employee is entitled to receive under the settlement.

64 Subsection 125 (2) of the Act is amended by striking out “within the meaning of Part XVIII.1”.

65 The Act is amended by adding the following sections:

Security for amounts owing

125.1 If the Director considers it advisable to do so, the Director may accept security for the payment of any amounts owing under this Act in any form that the Director considers satisfactory.

Warrant

125.2 If an order to pay money has been made under this Act, the Director may issue a warrant, directed to the sheriff for an area in which any property of the employer, director or other person liable to make a payment under this Act is located, to enforce payment of the following amounts, and the warrant has the same force and effect as a writ of execution issued out of the Superior Court of Justice:

1. The amount the order requires the person to pay, including any applicable interest.
2. The costs and expenses of the sheriff.

Lien on real property

125.3 (1) If an order to pay money has been made under this Act, the amount the order requires the person to pay, including any applicable interest is, upon registration by the Director in the proper land registry office of a notice claiming a lien and charge conferred by this section, a lien and charge on any interest the employer, director or other person has in the real property described in the notice.

Lien on personal property

(2) If an order to pay money has been made under this Act, the amount the order requires the person to pay, including any applicable interest is, upon registration by the Director with the registrar under the *Personal Property Security Act* of a notice claiming a lien and charge under this section, a lien and charge on any interest in personal property in Ontario owned or held at the time of registration or acquired afterwards by the employer, director or other person liable to make a payment.

Amounts included and priority

(3) The lien and charge conferred by subsection (1) or (2) is in respect of all amounts the order requires the person to pay, including any applicable interest at the time of registration of the notice or any renewal of it and all amounts for which the person afterwards becomes liable while the notice remains registered and, upon registration of a notice of lien and charge, the lien and charge has priority over,

- (a) any perfected security interest registered after the notice is registered;
- (b) any security interest perfected by possession after the notice is registered; and
- (c) any encumbrance or other claim that is registered against or that otherwise arises and affects the employer, director or other person's property after the notice is registered.

Exception

(4) For the purposes of subsection (3), a notice of lien and charge under subsection (2) does not have priority over a perfected purchase money security interest in collateral or its proceeds and is deemed to be a security interest perfected by registration for the purpose of the priority rules under section 30 of the *Personal Property Security Act*.

Lien effective

(5) A notice of lien and charge under subsection (2) is effective from the time assigned to its registration by the registrar and expires on the fifth anniversary of its registration unless a renewal notice of lien and charge is registered under this section before the end of the five-year period, in which case the lien and charge remains in effect for a further five-year period from the date the renewal notice is registered.

Same

(6) If an amount payable under this Act remains outstanding and unpaid at the end of the period, or its renewal, referred to in subsection (5), the Director may register a renewal notice of lien and charge; the lien and charge remains in effect for a five-year period from the date the renewal notice is registered until the amount is fully paid, and is deemed to be continuously registered since the initial notice of lien and charge was registered under subsection (2).

Where person not registered owner

(7) Where an employer, director or other person liable to make a payment has an interest in real property but is not shown as its registered owner in the proper land registry office,

- (a) the notice to be registered under subsection (1) shall recite the interest of the employer, director or other person liable to make a payment in the real property; and
- (b) a copy of the notice shall be sent to the registered owner at the owner's address to which the latest notice of assessment under the *Assessment Act* has been sent.

Secured party

(8) In addition to any other rights and remedies, if amounts owed by an employer, director or other person liable to make a payment remain outstanding and unpaid, the Director has, in respect of a lien and charge under subsection (2),

- (a) all the rights, remedies and duties of a secured party under sections 17, 59, 61, 62, 63 and 64, subsections 65 (4), (5), (6), (6.1) and (7) and section 66 of the *Personal Property Security Act*;
- (b) a security interest in the collateral for the purpose of clause 63 (4) (c) of that Act; and
- (c) a security interest in the personal property for the purposes of sections 15 and 16 of the *Repair and Storage Liens Act*, if it is an article as defined in that Act.

Registration of documents

(9) A notice of lien and charge under subsection (2) or any renewal of it shall be in the form of a financing statement or a financing change statement as prescribed under the *Personal Property Security Act* and may be tendered for registration under Part IV of that Act, or by mail addressed to an address prescribed under that Act.

Errors in documents

(10) A notice of lien and charge or any renewal thereof is not invalidated nor is its effect impaired by reason only of an error or omission in the notice or in its execution or registration, unless a reasonable person is likely to be materially misled by the error or omission.

Bankruptcy and Insolvency Act (Canada) unaffected

(11) Subject to Crown rights provided under section 87 of that Act, nothing in this section affects or purports to affect the rights and obligations of any person under the *Bankruptcy and Insolvency Act (Canada)*.

Definitions

(12) In this section,

“real property” includes fixtures and any interest of a person as lessee of real property.

66 (1) Subsection 127 (2) of the Act is amended by striking out “sections 125, 126, 130” and substituting “sections 125, 125.1, 125.2, 125.3, 126, 130”.

(2) Section 127 of the Act is amended by adding the following subsections:

Disclosure

(6) The Director may disclose, or allow to be disclosed, information collected under the authority of this Act or the regulations to a collector for the purpose of collecting an amount payable under this Act.

Same

(7) Any disclosure of personal information made under subsection (6) shall be deemed to be in compliance with clause 42 (1) (d) of the *Freedom of Information and Protection of Privacy Act*.

67 Section 128 of the Act is amended by adding the following subsections:

Disclosure by collector

(5) A collector may disclose to the Director or allow to be disclosed to the Director any information that was collected under the authority of this Act or the regulations for the purpose of collecting an amount payable under this Act.

Same

(6) Any disclosure of personal information made under subsection (5) shall be deemed to be in compliance with clause 42 (1) (d) of the *Freedom of Information and Protection of Privacy Act*.

68 Subsection 133 (1) of the Act is amended by striking out “within the meaning of Part XVIII.1”.

69 (1) Subsection 141 (1) of the Act is amended by adding the following paragraph:

1.1 Prescribing a method of payment for the purposes of clause 11 (2) (d) and establishing any terms, conditions or limitations on its use.

(2) Paragraph 2.0.1 of subsection 141 (1) of the Act is amended by striking out “described in subparagraph 1 v of subsection 23.1 (1)” and substituting “described in subparagraph 1 v or 2 v of subsection 23.1 (1)”.

(3) Paragraph 2.0.2 of subsection 141 (1) of the Act is repealed.

(4) Subsection 141 (1) of the Act is amended by adding the following paragraph:

16.1 Governing penalties for contraventions for the purposes of subsection 113 (1).

(5) Subsections 141 (2.0.3) and (2.0.4) of the Act are repealed and the following substituted:

Transitional regulations

(2.0.3) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Fair Workplaces, Better Jobs Act, 2017*.

Conflict with transitional regulations

(2.0.4) In the event of a conflict between this Act or the regulations and a regulation made under subsection (2.0.3), the regulation made under subsection (2.0.3) prevails.

(6) Subsection 141 (3.1) of the Act is repealed and the following substituted:

Regulations re Part XXII

(3.1) A regulation made under paragraph 16.1 of subsection (1) may,

- (a) establish different penalties or ranges of penalties for different types of contraventions or the method of determining those penalties or ranges;
- (b) specify that different penalties, ranges or methods of determining a penalty or range apply to contraveners who are individuals and to contraveners that are corporations; or
- (c) prescribe criteria an employment standards officer is required or permitted to consider when imposing a penalty.

Employment Protection for Foreign Nationals Act, 2009

70 (1) Subsection 1 (2) of the *Employment Protection for Foreign Nationals Act, 2009* is amended by adding the following paragraph:

4. For greater certainty, references in section 88 of that Act to an amount owing under the provisions of that Act or the regulations shall be read as references to an amount owing under the provisions of this Act or its regulations.

(2) Subsection 4 (1) of the Act is repealed and the following substituted:

Separate persons treated as one employer

- (1) Subsection (2) applies if associated or related activities or businesses are or were carried on by or through an employer or recruiter and one or more other persons.

(3) Subsection 24 (2) of the Act is amended by striking out “pay the amount of the fees to the Director of Employment Standards in trust” and substituting “pay the amount of the fees to the foreign national or prescribed person or to the Director of Employment Standards in trust”.

(4) Subsection 24 (3) of the Act is amended by striking out “pay the amount of the costs to the Director of Employment Standards in trust” and substituting “pay the amount of the costs to the foreign national or prescribed person or to the Director of Employment Standards in trust”.

(5) Subsection 27 (1) of the Act is repealed and the following substituted:

Notice of contravention

- (1) If an employment standards officer believes that a person has contravened a provision of this Act, the officer may issue a notice to the person setting out the officer’s belief and specifying the amount of the penalty for the contravention.

Amount of penalty

- (1.1) The amount of the penalty shall be determined in accordance with the regulations.

Penalty within range

- (1.2) If a range has been prescribed as the penalty for a contravention, the employment standards officer shall determine the amount of the penalty in accordance with the prescribed criteria, if any.

(6) Subsection 27 (4) of the Act is amended by striking out “prescribed penalty” and substituting “penalty”.

(7) Section 27 of the Act is amended by adding the following subsections:

Publication re notice of contraventions

- (5) If a person, including an individual, is deemed under subsection (3) to have contravened this Act after being issued a notice of contravention, the Director of Employment Standards may publish or otherwise make available to the general public the name of the person, a description of the deemed contravention, the date of the deemed contravention and the penalty for the deemed contravention.

Internet publication

- (6) Authority to publish under subsection (5) includes authority to publish on the Internet.

Disclosure

- (7) Any disclosure made under subsection (5) shall be deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*.

(8) Subsection 50 (1) of the Act is amended by adding the following clause:

- (e) governing penalties for contraventions for the purposes of subsection 27 (1).

(9) Section 50 of the Act is amended by adding the following subsection:

Regulations re penalties for contraventions

- (3) A regulation made under clause (1) (e) may,

- (a) establish different penalties or ranges of penalties for different types of contraventions or the method of determining those penalties or ranges;
- (b) specify that different penalties, ranges or methods of determining a penalty or range apply to contraveners who are individuals and to contraveners that are corporations; or
- (c) prescribe criteria an employment standards officer is required or permitted to consider when imposing a penalty.

Occupational Health and Safety Act

71 (1) Paragraph 3 in the definition of “worker” in subsection 1 (1) of the *Occupational Health and Safety Act* is amended by striking out “university or other post-secondary institution” at the end and substituting “university, private career college or other post-secondary institution”.

(2) Paragraph 4 in the definition of “worker” in subsection 1 (1) of the Act is repealed.

Commencement

72 (1) Subject to subsections (2) to (5), this Schedule comes into force on January 1, 2018.

(2) Section 5 and this section come into force on the day the *Fair Workplaces, Better Jobs Act, 2017* receives Royal Assent.

(3) Subsection 8 (7), sections 32, 33 and 36 come into force on the later of December 3, 2017 and the day the *Fair Workplaces, Better Jobs Act, 2017* receives Royal Assent.

(4) Subsection 1 (2) and sections 25, 26, 27, 28, 29, 41 and 45 come into force on April 1, 2018.

(5) Subsections 2 (3), 8 (2) and (6), sections 11 and 12 and subsection 69 (3) come into force on January 1, 2019.

SCHEDULE 2
LABOUR RELATIONS ACT, 1995

1 The *Labour Relations Act, 1995* is amended by adding the following section after the heading “Establishment of Bargaining Rights by Certification”:

Application for employee list

6.1 (1) Where no trade union has been certified as bargaining agent of the employees of an employer in a unit that a trade union claims to be appropriate for collective bargaining and the employees are not bound by a collective agreement, a trade union may apply to the Board for an order directing the employer to provide to the trade union a list of employees of the employer.

Notice to employer

(2) The trade union shall deliver a copy of the application under subsection (1) to the employer by such time as is required under the rules made by the Board and, if there is no rule, not later than the day on which the application is filed with the Board.

Content of application

(3) An application under subsection (1) must include,

- (a) a written description of the proposed bargaining unit, including an estimate of the number of individuals in the unit; and
- (b) a list of the names of the union members in the proposed bargaining unit and evidence of union membership, but the trade union shall not give this information to the employer.

Notice of disagreement

(4) If the employer disagrees with the description of the proposed bargaining unit or with the estimate of the number of individuals in the unit included in the application under subsection (1), the employer may give the Board notice of the disagreement and shall do so within two days (excluding Saturdays, Sundays and holidays) after the day the employer receives the application.

Content of notice

(5) A notice under subsection (4) must include,

- (a) a statement that,
 - (i) the employer agrees with the description of the bargaining unit included in the application under subsection (1) but not with the estimate of the number of individuals in the unit, or
 - (ii) explains why the employer believes the description of the bargaining unit included in the application could not be appropriate for collective bargaining; and
- (b) a statutory declaration setting out the number of individuals in the bargaining unit described in the application under subsection (1), if the employer disagrees with the trade union’s estimate.

Board determinations, etc., no notice of disagreement

(6) The following rules apply if the Board does not receive a notice under subsection (4):

1. If the Board determines that 20 per cent or more of the individuals in the bargaining unit proposed in the application under subsection (1) appear to be members of the union at the time the application was filed, the Board shall direct the employer to provide the list to the trade union.
2. If the Board determines that fewer than 20 per cent of the individuals in the bargaining unit proposed in the application under subsection (1) appear to be members of the union at the time the application was filed, the Board shall dismiss the application.

Same, notice of disagreement

(7) The following rules apply if the Board receives a notice under subsection (4):

1. The Board shall determine whether the description of the bargaining unit included in the application under subsection (1) could be appropriate for collective bargaining. The determination shall be based only on that description and the notice under subsection (4).
2. If the Board determines that the description of the bargaining unit included in the application under subsection (1) could not be appropriate for collective bargaining, the Board shall dismiss the application.

3. If the Board determines that the description of the bargaining unit included in the application under subsection (1) could be appropriate for collective bargaining, the Board shall determine an estimated number of individuals in the unit as described in the application.
4. After the Board determines the estimated number of individuals in the unit, the Board shall determine the percentage of the individuals in the bargaining unit who appear to be members of the union at the time the application under subsection (1) was filed.
5. If the percentage determined under paragraph 4 is fewer than 20 per cent, the Board shall dismiss the application.
6. If the percentage determined under paragraph 4 is 20 per cent or more, the Board shall direct the employer to provide a list of employees of the employer to the trade union.

No hearing or consultation required

(8) The Board is not required to hold a hearing or to consult with the parties when making a determination under subsection (7) and may make a determination under paragraphs 3 or 4 of subsection (7) based only on the information provided in the application under subsection (1) and the notice under subsection (4).

Mandatory content of employee list

(9) If the Board directs an employer to provide a list of employees of the employer to the trade union under subsection (6) or (7), the list must include,

- (a) the name of each employee in the proposed bargaining unit; and
- (b) a phone number and personal email for each employee in the proposed bargaining unit, if the employee has provided that information to the employer.

Discretionary content of employee list

(10) If, in the opinion of the Board, it is equitable to do so in the circumstances, the Board may order that the list also include,

- (a) other information relating to the employee, including the employee's job title and business address; and
- (b) any other means of contact that the employee has provided to the employer, other than a home address.

Security and confidentiality of employee list

(11) If the Board directs an employer to provide a list of employees of the employer to a trade union under subsection (6) or (7), the employer shall ensure that all reasonable steps are taken to protect the security and confidentiality of the list, including protecting its security and confidentiality during its creation, compilation, storage, handling, transportation, transfer and transmission.

Restriction on use of listed information

(12) If a list of employees of an employer is provided to a trade union in compliance with a direction made by the Board under subsection (6) or (7), the use of that list is subject to the following conditions and limits:

1. The list must only be used by the trade union for the purpose of a campaign to establish bargaining rights.
2. The list must be kept confidential and must not be disclosed to anyone other than the appropriate officials of the trade union.
3. The trade union shall ensure that all reasonable steps are taken to protect the security and confidentiality of the list and to prevent unauthorized access to the list.
4. If the trade union makes an application for certification in respect of the employer and employees on the list and the application for certification is dismissed less than one year after the Board's direction to provide the list, the list must be destroyed on or before the day the application is dismissed.
5. If the list is not destroyed in accordance with paragraph 4, it must be destroyed on or before the day that is one year after the Board's direction to provide the list was made.

Destruction of list

(13) For the purposes of paragraphs 4 and 5 of subsection (12), a list must be destroyed in such a way that it cannot be reconstructed or retrieved.

Deemed compliance FOI Acts

(14) Any disclosure of personal information made by an employer in compliance with a direction made by the Board under subsection (6) or (7) shall be deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act* and clause 32 (e) of the *Municipal Freedom of Information and Protection of Privacy Act*.

Subsequent certification application

(15) Where a list of employees is provided to a trade union by an employer in compliance with a direction made by the Board under subsection (6) or (7), and, within one year after the Board's direction to provide the list, the trade union makes an application for certification in respect of that employer and employees on the list, if that application is dismissed, the Board shall not consider another application under subsection (1) from any trade union in respect of a proposed bargaining unit that is the same or substantially similar to the one that was described in the original application under subsection (1) until one year after the application for certification is dismissed.

Effect of determination

(16) A determination made by the Board under this section does not limit the Board's ability to consider or determine matters under section 7, 8, 8.1, 9 or 10.

Non-application to construction industry

(17) This section does not apply with respect to an employer as defined in subsection 126 (1).

2 Subsections 11 (2), (3) and (4) of the Act are repealed and the following substituted:

Same

(2) In the circumstances described in subsection (1), the Board shall certify the trade union as the bargaining agent of the employees in the bargaining unit that the Board determines could be appropriate for collective bargaining.

3 The Act is amended by adding the following section:

No discharge or discipline following certification

12.1 If a trade union is certified as the bargaining agent of employees in a bargaining unit, the employer shall not discharge or discipline an employee in that bargaining unit without just cause during the period that begins on the date of certification and ends on the earlier of the date on which a first collective agreement is entered into and the date on which the trade union no longer represents the employees in the bargaining unit.

4 The Act is amended by adding the following sections:

Review of structure of bargaining units — consolidation after certification

15.1 (1) If the Board certifies a trade union or council of trade unions as the bargaining agent of the employees in a bargaining unit, the Board may review the structure of the bargaining units if all of the following conditions are met:

1. The employer, trade union or council of trade unions makes an application to the Board requesting the review at the time the application for certification is made, or within three months after the date of certification.
2. A collective agreement has not yet been entered into in respect of the bargaining unit.
3. The same trade union or council of trade unions that is certified as the bargaining agent of the employees in the bargaining unit already represents employees of the employer in another bargaining unit at the same or a different location.

Same

(2) If an application for review under subsection (1) is made at the same time as an application for certification, the applications may be heard together, but the Board shall determine the application for certification first.

Agreement of parties

(3) If the Board reviews the structure of the bargaining units, the Board,

- (a) must allow the parties to come to an agreement, within a period that the Board considers reasonable, with respect to the determination of bargaining units and any questions arising from its review; and
- (b) may make any orders it considers appropriate to implement any agreement.

Orders

(4) If the Board is of the opinion that the agreement reached by the parties would not lead to the creation of units appropriate for collective bargaining or if the parties do not agree on certain issues within the period that the Board considers reasonable, the Board shall determine any question that arises and make any orders it considers appropriate in the circumstances.

Contents of orders

(5) For the purposes of subsection (4), the Board may,

- (a) consolidate the bargaining unit in respect of which the trade union or council of trade unions was certified with an existing bargaining unit or units of employees of the employer represented by the same trade union or council of trade unions;

- (b) amend any certification order or description of a bargaining unit contained in any collective agreement;
- (c) order that a collective agreement between the employer and the trade union or the council of trade unions that applied to an existing bargaining unit that is consolidated under clause (a) applies, with or without modifications, to the consolidated bargaining unit;
- (d) declare that the employer is no longer bound to a collective agreement that applied in respect of an existing bargaining unit before the consolidation;
- (e) amend, to the extent that the Board considers necessary, the provisions of collective agreements respecting expiry dates or seniority rights, or amend other such provisions;
- (f) if the conditions of subsection 79 (2) have been met with respect to some of the employees in a consolidated bargaining unit, decide which terms and conditions of employment apply to those employees until the time that a collective agreement becomes applicable to the consolidated bargaining unit or the conditions of that subsection are met with respect to that unit; and
- (g) authorize a party to give notice to bargain collectively.

Factors to consider

(6) In making a determination in an application for review under subsection (1), the Board shall take into consideration all factors that the Board considers relevant, including whether consolidating the bargaining units would,

- (a) contribute to the development of an effective collective bargaining relationship; and
- (b) contribute to the development of collective bargaining in the industry.

Authority to review structure of bargaining units on mutual agreement

(7) The employer and a trade union or council of trade unions that represents employees of the employer in multiple bargaining units at the same or a different location may, at any time, agree in writing to review the structure of bargaining units.

Same

(8) Despite subsections 58 (2), (3) and (5) and 59 (1), following a review under subsection (7), the parties may, with the consent of the Board on the joint application of the parties,

- (a) consolidate bargaining units;
- (b) amend the description of a bargaining unit contained in any collective agreement;
- (c) make a collective agreement between the employer and the trade union or the council of trade unions that applied to an existing bargaining unit that is consolidated under clause (a) apply, with or without modifications, to the consolidated bargaining unit;
- (d) terminate the operation of a collective agreement that applied in respect of an existing bargaining unit before the consolidation;
- (e) amend the provisions of a collective agreement, including provisions respecting expiry dates or seniority rights or other such provisions;
- (f) if the conditions of subsection 79 (2) have been met with respect to some of the employees in a consolidated bargaining unit, decide which terms and conditions of employment apply to those employees until the time that a collective agreement becomes applicable to the consolidated bargaining unit or the conditions of that subsection are met with respect to that unit; and
- (g) permit a party to give notice to bargain collectively.

Non-application to construction industry

(9) This section does not apply with respect to an employer as defined in subsection 126 (1).

Application for certification without a vote, certain industries

Definitions

15.2 (1) In this section,

“building services industry” means, subject to the regulations, businesses engaged in providing services directly or indirectly by or to a building owner or manager that are related to servicing the premises, including building cleaning services, food services and security services; (“industrie des services de gestion d’immeubles”)

“home care and community services industry” means, subject to the regulations, businesses engaged in providing community services under the *Home Care and Community Services Act, 1994*; (“industrie des services de soins à domicile et des services communautaires”)

“specified industry employer” means a person who operates a business in the building services industry, the home care and community services industry or the temporary help agency industry; (“employeur d’une industrie déterminée”)

“temporary help agency industry” means, subject to the regulations, businesses engaged in employing persons for the purpose of assigning them to perform work on a temporary basis for clients of the employer. (“industrie des agences de placement temporaire”)

Applications re specified industry employers only

(2) Subject to subsection (3), this section applies with respect to applications for certification as bargaining agent of the employees of a specified industry employer.

Non-application

(3) This section does not apply with respect to such classes of employees of a specified industry employer as may be prescribed.

Election

(4) A trade union applying for certification as bargaining agent of the employees of a specified industry employer may elect to have its application dealt with under this section rather than under section 8.

Notice to Board and employer

(5) The trade union shall give written notice of the election,

- (a) to the Board, on the date the trade union files the application; and
- (b) to the employer, on the date the trade union delivers a copy of the application to the employer.

Employer to provide information

(6) Within two days (excluding Saturdays, Sundays and holidays) after receiving notice under subsection (5), the employer shall provide the Board with,

- (a) the names of the employees in the bargaining unit proposed in the application, as of the date the application is filed; and
- (b) if the employer gives the Board a written description of the bargaining unit that the employer proposes, in accordance with subsection 7 (14), the names of the employees in that proposed bargaining unit, as of the date the application is filed.

Matters to be determined

(7) On receiving an application for certification from a trade union that has elected to have its application dealt with under this section, the Board shall determine, as of the date the application is filed and on the basis of the information provided in or with the application and under subsection (6),

- (a) the bargaining unit; and
- (b) the percentage of employees in the bargaining unit who are members of the trade union.

Exception: allegation of contravention, etc.

(8) Nothing in subsection (7) prevents the Board from considering evidence and submissions relating to any allegation that section 70, 72 or 76 has been contravened or that there has been fraud or misrepresentation, if the Board considers it appropriate to consider the evidence and submissions in making a decision under this section.

Hearing

(9) The Board may hold a hearing if it considers it necessary in order to make a decision under this section.

Dismissal: insufficient membership

(10) The Board shall not certify the trade union as bargaining agent of the employees in the bargaining unit and shall dismiss the application if it is satisfied that fewer than 40 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed.

Remedial dismissal

(11) Subsection (12) applies where the trade union or person acting on behalf of the trade union contravenes this Act and, as a result, the membership evidence provided in or with the trade union’s application for certification does not likely reflect the true wishes of the employees in the bargaining unit.

Same

(12) In the circumstances described in subsection (11), on the application of an interested person, the Board may dismiss the application for certification if no other remedy, including a representation vote directed under clause (16) (b), would be sufficient to counter the effects of the contravention.

Bar to reapplying

(13) If the Board dismisses an application for certification under subsection (12), the Board shall not consider another application for certification by the trade union as the bargaining agent for any employee that was in the bargaining unit proposed in the original application until one year after the application is dismissed.

Same

(14) Despite subsection (13), the Board may consider an application for certification by the trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made.

Board shall direct representation vote

(15) If the Board is satisfied that at least 40 per cent but not more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it shall direct that a representation vote be taken.

Board may certify or may direct representation vote

(16) If the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union on the date the application is filed, it may,

- (a) certify the trade union as the bargaining agent of the employees in the bargaining unit; or
- (b) direct that a representation vote be taken.

Representation votes

(17) If the Board directs that a representation vote be taken,

- (a) the vote shall, unless the Board directs otherwise, be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the direction for a representation vote is made;
- (b) the vote shall be by ballots cast in such a manner that individuals expressing their choice cannot be identified with the choice made;
- (c) the Board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the Board directs;
- (d) subject to section 11.1, the Board shall certify the trade union as bargaining agent of the employees in the bargaining unit if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union; and
- (e) subject to section 11, the Board shall not certify the trade union as bargaining agent of the employees in the bargaining unit and shall dismiss the application for certification if 50 per cent or fewer of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.

Bar to reapplication

(18) If the Board dismisses an application for certification under clause (17) (e), the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee who was in the bargaining unit proposed in the original application until one year after the original application is dismissed.

Exception

(19) Despite subsection (18), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

- (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
- (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made.

Same

(20) Subsection (18) does not apply if the trade union whose application was dismissed is a trade union that the Board is prohibited from certifying under section 15.

Non-application of certain provisions

(21) Sections 8, 8.1 and 10 do not apply in respect of a certification application that the trade union has elected to have dealt with under this section.

Withdrawal of application: discretionary bar

(22) Subsection 7 (9) applies, with necessary modifications, if the trade union withdraws the application for certification,

- (a) before the Board takes any action under subsection (10), (15) or (16) of this section; or
- (b) after the Board directs a representation vote under subsection (15) or clause (16) (b) of this section, but before the vote is taken.

Second withdrawal: mandatory bar

(23) Subsections 7 (9.1), (9.2) and (9.3) apply, with necessary modifications, if the trade union withdraws an application for certification in the circumstances described in subsection (22) of this section and had withdrawn a previous application for certification not more than six months earlier.

Withdrawal of application after vote taken: mandatory bar

(24) Subsections 7 (10), (10.1) and (10.2) apply, with necessary modifications, if the trade union withdraws the application for certification after a representation vote is taken in accordance with the Board's direction under subsection (15) or clause (16) (b) of this section.

5 The Act is amended by adding the following section:**Educational support**

16.1 (1) Where notice has been given under section 16, either party may request educational support in the practice of labour relations and collective bargaining and the Minister shall make such educational support available to the parties.

Same, non-application

(2) Subsection (1) does not apply in the circumstances described in subsection 43 (12).

6 Section 43 of the Act is repealed and the following substituted:**First collective agreement mediation**

43 (1) If the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Minister to appoint a first collective agreement mediator.

Content of application

(2) The applicant must include in its application under subsection (1) a list of the issues in dispute and the applicant's position with respect to those issues.

Notice to other party

(3) The applicant shall deliver a copy of the application under subsection (1) to the other party not later than the day on which the application is made to the Minister.

Response from other party

(4) No later than five days after receiving the copy of the application under subsection (1), the other party shall provide to the Minister and to the applicant a list of the issues in dispute and the other party's position with respect to those issues.

Appointment of mediator

(5) If an application is made under subsection (1), the Minister shall, within seven days of receiving the application, appoint a single first collective agreement mediator and shall inform the parties of the appointment.

Duties of mediator

(6) The first collective agreement mediator shall,

- (a) meet with the parties and assist them in their endeavour to effect a collective agreement; and
- (b) facilitate and encourage the process of collective bargaining.

Educational support

(7) Either party may request educational support in the practice of labour relations and collective bargaining and the first collective agreement mediator shall make such educational support available to the parties.

Prohibition re strike

(8) No employee shall strike and no person or trade union shall call or authorize or threaten to call or authorize a strike by any employee during the period beginning at the time the Minister makes an appointment under subsection (5) and ending on the day that is 45 days later.

Same

(9) No officer, official or agent of a trade union shall counsel, procure, support or encourage a strike by any employees during the time period described in subsection (8).

Prohibition re lock-out

(10) The employer shall not lock out or threaten to lock out any employees during the time period described in subsection (8).

Same

(11) No officer, official or agent of an employer shall counsel, procure, support or encourage a lock-out of any employees during the time period described in subsection (8).

Non-application

(12) This section does not apply,

- (a) in respect of a bargaining unit that the Board has consolidated under section 15.1; or
- (b) to the negotiation of a first collective agreement,
 - (i) if the trade union was certified pursuant to an application made under subsection 7 (4), (5) or (6),
 - (ii) if one of the parties is an employers' organization accredited under section 136 as a bargaining agent for employers, or
 - (iii) if the agreement is a provincial agreement within the meaning of section 151.

Definitions

(13) In subsections (14) and (15),

“decertification application” means an application for a declaration that a trade union no longer represents the employees in a bargaining unit; (“requête en révocation de l'accréditation”)

“displacement application” means an application for certification by a trade union, other than the trade union that represents the employees in a bargaining unit, as bargaining agent for those employees. (“requête en substitution”)

Application of subs. (15)

(14) Subsection (15) applies if,

- (a) a decertification application or displacement application has been filed with the Board and, before a final decision is made on it, an application under subsection (1) is made to the Minister; or
- (b) an application under subsection (1) has been made to the Minister and, on or after that date, a decertification application or displacement application is filed with the Board.

Procedure in dealing with multiple applications

(15) The Board shall not deal or continue to deal with a decertification application or displacement application until 45 days after the Minister makes an appointment under subsection (5), at which time subsections 43.1 (24) and (25) apply.

First collective agreement mediation-arbitration

43.1 (1) At any time on or after the day that is 45 days after the Minister makes an appointment under subsection 43 (5), if the parties have not entered into a collective agreement, either party may apply to the Board to direct the settlement of a first collective agreement by mediation-arbitration.

Duty of Board

(2) The Board shall consider and make its decision on an application under subsection (1) within 30 days of receiving the application and, subject to subsections (3) and (4), the Board may,

- (a) order the parties to engage in further mediation;
- (b) dismiss the application; or

- (c) direct the settlement of a first collective agreement by mediation-arbitration.

Same

- (3) The Board shall direct the settlement of a first collective agreement by mediation-arbitration unless,
- (a) the applicant has contravened section 17;
 - (b) it appears to the Board that the process of collective bargaining has been unsuccessful because of the uncompromising nature of any bargaining position adopted by the applicant without reasonable justification; or
 - (c) the Board is of the opinion that further mediation would be appropriate.

Same

- (4) If the Board certified the trade union under subsection 11 (2), the Board shall direct the settlement of a first collective agreement by mediation-arbitration unless,
- (a) the applicant has contravened section 17; or
 - (b) it appears to the Board that the process of collective bargaining has been unsuccessful because of the uncompromising nature of any bargaining position adopted by the applicant without reasonable justification.

Order for further mediation or dismissal

- (5) If the Board orders the parties to engage in further mediation or dismisses an application under subsection (2), the following rules apply:
- 1. The right to strike and the right to lock out is governed by section 79.
 - 2. In the case of an order under clause (2) (a), the parties shall request further assistance from the first collective agreement mediator or from another mediator the parties agree upon, or the parties shall make a joint request to the Minister for further mediation assistance.
 - 3. In the case of a dismissal under clause (2) (b), the parties may request further assistance from the first collective agreement mediator or from another mediator the parties agree upon, or the parties may make a joint request to the Minister for further mediation assistance.
 - 4. A party may make a second application under subsection (1) and the Board may consider the application if the Board is satisfied that, since the Board made its original decision under subsection (2), the applicant has taken all reasonable steps to engage in good faith collective bargaining with the assistance of a mediator.

Direction to mediation-arbitration

- (6) If the Board gives a direction for the settlement of a first collective agreement by mediation-arbitration under clause (2) (c), the rules set out in subsections (7) to (22) apply.

Joint appointment of mediator-arbitrator

- (7) Within seven days of the giving of the direction, the parties may agree in writing to jointly appoint a single mediator-arbitrator to settle the first collective agreement by mediation-arbitration.

Fees and expenses

- (8) If the parties jointly appoint a single mediator-arbitrator, each party shall pay one-half of the fees and expenses of the mediator-arbitrator.

Failure to appoint

- (9) If the parties do not jointly appoint a mediator-arbitrator within the seven-day period, either party may apply to the Board to settle the first collective agreement by mediation-arbitration.

Mediation-arbitration by Board

- (10) If an application is made to the Board under subsection (9), the chair or a vice-chair shall be appointed to act as the mediator-arbitrator and shall have all the powers and duties of a mediator-arbitrator under this Act.

Same

- (11) The parties to a mediation-arbitration by the Board shall jointly pay to the Board for payment into the Consolidated Revenue Fund the amount determined under the regulations for the expense of the mediation-arbitration.

Replacement

- (12) If the person appointed as mediator-arbitrator is unable or unwilling to perform the mediator-arbitrator's duties, the following rules apply:

1. If the appointment was made under subsection (7), the parties shall agree on the appointment of a new mediator-arbitrator, and if they cannot do so, either party may apply to the Board under subsection (9) and the process shall begin anew.
2. If the mediator-arbitrator was a chair or vice-chair acting under subsection (10), the matter shall be reassigned by the Board and the process shall begin anew.

Procedure of mediator-arbitrator

(13) A mediator-arbitrator appointed under this section shall determine the mediator-arbitrator's own procedure but shall give full opportunity to the parties to present their evidence and make their submissions, and section 116 applies to the mediator-arbitrator and the mediator-arbitrator's decision and proceedings as if it were the Board.

Same

(14) Subsections 48 (12) and (18) apply, with necessary modifications, to a mediator-arbitrator appointed under this section.

Same

(15) The date of the first hearing of a mediator-arbitrator appointed under this section shall not be later than 21 days after the appointment of the mediator-arbitrator.

Same

(16) A mediator-arbitrator appointed under this section shall determine all matters in dispute and release a decision within 45 days of the commencement of the mediator-arbitrator's hearing of the matter.

Effect of direction on strike or lock-out

(17) The employees in the bargaining unit shall not strike and the employer shall not lock out the employees where a direction has been given under clause (2) (c) and, where the direction is made during a strike by, or a lock-out of, employees in the bargaining unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lock-out and the employer shall forthwith reinstate the employees in the bargaining unit in the employment they had at the time the strike or lock-out commenced in accordance with section 80, with necessary modifications.

Working conditions not to be altered

(18) If a direction has been given under clause (2) (c), the rates of wages and all other terms and conditions of employment and all rights, privileges and duties of the employer, the employees and the trade union in effect at the time notice was given under section 16 shall continue in effect, or, if altered before the giving of the direction, be restored and continued in effect until the first collective agreement is settled.

Non-application

(19) Subsection (18) does not apply so as to effect any alteration in rates of wages or in any other term or condition of employment agreed to by the employer and the trade union.

Matters to be accepted or considered

(20) In mediating-arbitrating the settlement of a first collective agreement under this section, matters agreed to by the parties, in writing, shall be accepted without amendment.

Effect of settlement

(21) A first collective agreement settled under this section is effective for a period of two years from the date on which it is settled and it may provide that any of the terms of the agreement, except its term of operation, shall be retroactive to the day that the mediator-arbitrator may fix, but not earlier than the day on which notice was given under section 16.

Extension of time

(22) The parties, by agreement in writing, or the Minister may extend any time limit set out in this section, despite the expiration of the time.

Definitions

(23) In subsections (24) to (28),

"decertification application" means an application for a declaration that a trade union no longer represents the employees in a bargaining unit; ("requête en révocation de l'accréditation")

"displacement application" means an application for certification by a trade union, other than the trade union that represents the employees in a bargaining unit, as bargaining agent for those employees. ("requête en substitution")

Application of subs. (25)

(24) Subsection (25) applies if,

- (a) a decertification application or displacement application has been filed with the Board and, before a final decision is made on it, an application under subsection (1) is filed with the Board; or
- (b) an application under subsection (1) has been filed with the Board and, before a final decision is made on it, a decertification application or displacement application is filed with the Board.

Procedure in dealing with multiple applications

(25) The Board shall proceed to deal with an application under subsection (1) before dealing with or continuing to deal with the decertification application or displacement application.

Same

(26) If the Board directs the settlement of a first collective agreement by mediation-arbitration under clause (2) (c), it shall dismiss the decertification application or displacement application.

Same

(27) If the Board dismisses the application under clause (2) (b), it shall proceed to deal with the decertification application or displacement application.

Same

(28) If the Board makes an order under clause (2) (a), it shall not consider the decertification application or displacement application for a period of 30 days after the date of the order.

Same

(29) An application for a declaration that a trade union no longer represents the employees in the bargaining unit filed with the Board after the Board has given a direction under clause (2) (c) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsection 63 (2).

Same

(30) An application for certification by another trade union as bargaining agent for employees in the bargaining unit filed with the Board after the Board has given a direction under clause (2) (c) is of no effect unless it is brought after the first collective agreement is settled and unless it is brought in accordance with subsections 7 (4), (5) and (6).

Procedure

(31) The *Arbitration Act, 1991* does not apply to a mediation-arbitration under this section.

7 The Act is amended by adding the following sections:

Successor rights, building services

69.1 (1) This section applies with respect to services provided directly or indirectly by or to a building owner or manager that are related to servicing the premises, including building cleaning services, food services and security services.

Exclusions

(2) This section does not apply with respect to the following services:

1. Construction.
2. Maintenance other than maintenance activities related to cleaning the premises.
3. The production of goods other than goods related to the provision of food services at the premises for consumption on the premises.

Services under contract

(3) For the purposes of section 69, the sale of a business is deemed to have occurred,

- (a) if employees perform services at premises that are their principal place of work;
- (b) if their employer ceases, in whole or in part, to provide the services at those premises; and
- (c) if substantially similar services are subsequently provided at the premises under the direction of another employer.

Interpretation

(4) For the purposes of section 69, the employer referred to in clause (3) (b) of this section is considered to be the employer who sells the business and the employer referred to in clause (3) (c) of this section is considered to be the person to whom the business is sold.

Successor rights, other service providers

69.2 If the regulations so provide, section 69 applies to such other types of service providers that directly or indirectly receive public funds as may be prescribed, subject to such terms and conditions as may be prescribed.

8 (1) Subsection 80 (1) of the Act is amended by striking out “within six months from” and substituting “following”.

(2) Section 80 of the Act is amended by adding the following subsections:

Same

(3) Subject to subsections (5) to (7), at the conclusion of a lawful strike or lock-out, an employer of an employee who was engaged in a lawful strike or lawfully locked out shall reinstate the employee in the employee’s former employment on such terms as the employer and the bargaining agent that represents the employee may agree upon.

Same

(4) The requirement in subsection (3) may be enforced through the grievance procedure and arbitration procedure established in the new collective agreement or deemed to be included in the collective agreement under section 48.

Right to displace others

(5) Striking or locked out employees are entitled to displace any other persons who were performing the work of striking or locked out employees during the strike or lock-out if the length of service of the other person, as of the time the strike or lock-out began, is less than that of the striking or locked-out employee.

Insufficient work

(6) If there is not sufficient work for all striking or locked out employees, the employer shall reinstate them to employment in the bargaining unit as work becomes available,

- (a) if the collective agreement contains recall provisions that are based on seniority, in accordance with seniority as defined in those provisions and as determined when the strike or lock-out began, in relation to other employees in the bargaining unit who were employed at the time the strike or lock-out began; or
- (b) if there are no such recall provisions, in accordance with each employee’s length of service, as determined when the strike or lock-out began, in relation to other employees in the bargaining unit who were employed at the time the strike or lock-out began.

Starting up operations

(7) Subsection (6) does not apply if an employee is not able to perform work required to start up the employer’s operations, but only for the period of time required to start up operations.

9 The Act is amended by adding the following section:

No discharge or discipline following strike or lock-out

80.1 (1) An employer shall not discharge or discipline an employee in a bargaining unit without just cause during the period that begins on the date on which a strike or lock-out in respect of that bargaining unit became lawful and that ends on the earlier of the date on which a new collective agreement is entered into and the date on which the trade union no longer represents the employees in the bargaining unit.

Same, enforcement

(2) The requirement in subsection (1) may be enforced through the grievance procedure and arbitration procedure established in the new collective agreement or deemed to be included in the collective agreement under section 48.

10 Section 98 of the Act is repealed and the following substituted:

Board power re interim orders

98 (1) The Board may make interim decisions and orders in any proceeding.

Conditions

(2) The Board may impose conditions on an interim decision or order.

Reasons

(3) An interim decision or order need not be accompanied by reasons.

11 (1) Clause 104 (1) (a) of the Act is amended by striking out “\$2,000” and substituting “\$5,000”.

(2) Clause 104 (1) (b) of the Act is amended by striking out “\$25,000” at the end and substituting “\$100,000”.

12 (1) Subsection 111 (2) of the Act is amended by adding the following clauses:

- (h.1) to conduct votes at a location or in a manner that, in the opinion of the Board, is appropriate in the circumstances, including to conduct votes outside the workplace and to conduct votes electronically or by telephone;
- (h.2) to issue direction relating to the voting process or voting arrangements;

(2) Clause 111 (2) (i) of the Act is amended by striking out “clauses (a) to (h)” and substituting “clauses (a) to (h.2)”.

13 (1) Section 125 of the Act is amended by adding the following clauses:

- (i.1) prescribing classes of employees in respect of which section 15.2 does not apply;
- (i.2) further defining or clarifying the meaning of “building services industry” in section 15.2 and specifying businesses or types of businesses that are or are not included in the building services industry for the purposes of that section;
- (i.3) further defining or clarifying the meaning of “home care and community services industry” in section 15.2 and specifying businesses or types of businesses that are or are not included in the home care and community services industry for the purposes of that section;
- (i.4) further defining or clarifying the meaning of “temporary help agency industry” in section 15.2 and specifying businesses or types of businesses that are or are not included in the temporary help agency industry for the purposes of that section;

(2) Clause 125 (j) of the Act is repealed and the following substituted:

- (j) prescribing amounts or a method of determining amounts payable under subsection 43.1 (11) for the expense of a mediation-arbitration by the Board;

(3) Section 125 of the Act is amended by adding the following clause:

- (j.1) for the purposes of section 69.2, prescribing types of service providers that directly or indirectly receive public funds to which section 69 applies and prescribing terms and conditions for the purpose of the application of that section;

(4) Section 125 of the Act is amended by adding the following subsections:

Transitional regulations

(2) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Fair Workplaces, Better Jobs Act, 2017*.

Conflict with transitional regulations

(3) In the event of a conflict between this Act and a regulation made under subsection (2), the regulation prevails.

14 Subsection 160 (2) of the Act is amended by striking out “clause 11 (2) (c)” and substituting “subsection 11 (2)”.

Colleges Collective Bargaining Act, 2008

15 (1) Subsection 78 (1) of the *Colleges Collective Bargaining Act, 2008* is amended by striking out “Subsections 98 (1) to (5), sections 110 to 113” at the beginning and substituting “Sections 98 and 110 to 113”.

(2) Paragraph 1 of subsection 78 (2) of the Act is repealed.

Crown Employees Collective Bargaining Act, 1993

16 (1) Subsection 5 (1) of the *Crown Employees Collective Bargaining Act, 1993* is amended by striking out “section 43” and substituting “section 43.1”.

(2) Subsection 5 (2) of the Act is amended by striking out “arbitrations under section 43” in the portion before paragraph 1 and substituting “mediation-arbitrations under section 43.1”.

(3) Subsection 5 (3) of the Act is amended by striking out “arbitration” wherever it appears and substituting in each case “mediation-arbitration” and by striking out “subsection 43 (11)” and substituting “subsection 43.1 (15)”.

(4) Subsection 5 (4) of the Act is amended by,

- (a) striking out “board of arbitration” in the portion before clause (a) and substituting “mediator-arbitrator”;
- (b) striking out “subsection 43 (12)” in the portion before clause (a) and substituting “subsection 43.1 (16)”;
- (c) striking out “members of the board of arbitration” in clause (b) and substituting “mediator-arbitrator”.

(5) Subsection 5 (5) of the Act is amended by striking out “An arbitrator or board of arbitration” at the beginning and substituting “A mediator-arbitrator”.

(6) Section 26 of the Act is amended by striking out “Section 43 of the *Labour Relations Act, 1995* does not apply” at the beginning and substituting “Sections 43 and 43.1 of the *Labour Relations Act, 1995* do not apply”.

Public Sector Dispute Resolution Act, 1997

17 Clause 2 (1) (e) of the *Public Sector Dispute Resolution Act, 1997* is amended by adding “as it read immediately before the day section 6 of Schedule 2 to the *Fair Workplaces, Better Jobs Act, 2017* came into force” after “*Labour Relations Act, 1995*”.

Public Sector Labour Relations Transition Act, 1997

18 Subsections 32 (1), (2) and (3) of the *Public Sector Labour Relations Transition Act, 1997* are amended by striking out “*Labour Relations Act, 1995*” wherever it appears and substituting in each case “*Labour Relations Act, 1995, as it read immediately before the day section 6 of Schedule 2 to the Fair Workplaces, Better Jobs Act, 2017 came into force*”.

School Boards Collective Bargaining Act, 2014

19 Section 7 of the *School Boards Collective Bargaining Act, 2014* is amended by adding the following subsections:

s. 15.1 of the *Labour Relations Act, 1995*

(2) Section 15.1 of the *Labour Relations Act, 1995* does not apply for the purpose of determining bargaining units under subsection (1) unless the Lieutenant Governor in Council, by regulation, provides otherwise.

Same, regulations

(3) A regulation made under subsection (2) may provide for the application of section 15.1 of the *Labour Relations Act, 1995* for the purposes of this section and may clarify, modify or restrict the application of that section.

Commencement

20 This Schedule comes into force on the later of January 1, 2018 and the day the *Fair Workplaces, Better Jobs Act, 2017* receives Royal Assent.

**SCHEDULE 3
OCCUPATIONAL HEALTH AND SAFETY ACT**

1 The *Occupational Health and Safety Act* is amended by adding the following section:

Footwear

25.1 (1) An employer shall not require a worker to wear footwear with an elevated heel unless it is required for the worker to perform his or her work safely.

Exception

(2) Subsection (1) does not apply with respect to an employer of a worker who works as a performer in the entertainment and advertising industry.

Definitions

(3) In subsection (2),

“entertainment and advertising industry” means the industry of producing,

- (a) live or broadcast performances, or
- (b) visual, audio or audio-visual recordings of performances, in any medium or format; (“industrie du spectacle et de la publicité”)

“performance” means a performance of any kind, including theatre, dance, ice skating, comedy, musical productions, variety, circus, concerts, opera, modelling and voice-overs, and “performer” has a corresponding meaning. (“représentation”, “artiste”, “interprète”)

Commencement

2 This Schedule comes into force on the day the *Fair Workplaces, Better Jobs Act, 2017* receives Royal Assent.