

**LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
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DISCUSSION PAPER

PROPOSAL TO AMEND THE LABOUR STANDARDS ACT

Statement of Purpose

The purpose of this discussion paper is to propose to amend the Labour Standards Act to include provisions respecting managers and domestic workers; to reduce the standard hours of work to forty hours each week; to enact maternity leave provisions; to clarify the lien and charge on property provisions; to provide for reciprocal enforcement of wage certificates; to add a provision respecting associated corporations; and to authorize the Commissioner to make regulations respecting domestic workers.

Important

This discussion paper is tabled by the Minister of Justice for public review. This discussion paper does not represent the final policy of the Government of the Northwest Territories and is subject to change after public review and comment.

PROPOSAL TO AMEND THE LABOUR STANDARDS ACT

The Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. The Labour Standards Act is amended by adding immediately after paragraph 2(h) the following paragraph:

"maternity leave"

(h.1) "maternity leave" means the total period or periods of leave from work to which an employee is entitled under Part IV.1;"

2. The Act is further amended by repealing subsection 3(1) and substituting the following:

"Application of Act

3.(1) Subject to subsections (2) and (3), this Act applies

- (a) to employment upon or in connection with the operation of any industrial establishment;
- (b) to and in respect of employees who are employed upon or in connection with the operation of any industrial establishment;
- (c) to and in respect of the employers of employees referred to in paragraph (b); and
- (d) to and in respect of domestic workers described by regulation."

3. The Act is further amended by repealing subsection 3(2) and substituting the following subsections:

"Exemption

(2) Part I of this Act does not apply to an employee who is employed primarily in a managerial capacity.

Idem

(3) Sections 5, 6, 7, 10, 12 and 13 of the Act do not apply to an employee who is a domestic worker as described by regulation."

4. The Act is further amended by repealing section 5 and substituting the following:

"Standard hours of work

5. The standard hours of work for an employee are eight hours a day and forty hours a week."

5. The Act is further amended by repealing section 6 and substituting the following:

"Maximum hours of work

6. An employer may require or permit an employee to work more than the standard hours of work provided that the total hours of work for an employee do not exceed ten hours a day and sixty hours a week."

6. The Act is further amended by adding immediately after subsection 12(2) the following subsection:

"General holiday in a week

(3) Notwithstanding subsection (1), where a week contains a general holiday in respect of which an employee is entitled to a holiday with pay pursuant to Part IV,

(a) the standard hours of work shall be eight hours a day and thirty-two hours in that week; and

(b) the hours worked by the employee on the general holiday shall not be included in the calculation of overtime under subsection (1)."

7. The Act is further amended by adding immediately after section 12 the following section:

"Regulations respecting domestic workers

12.1. The hours of work of domestic workers and the establishment of compensation for overtime for domestic workers may be prescribed by regulation."

8. The Act is further amended by deleting paragraph 16(f) and substituting the following:

"(f) specifying the circumstances and occupations in which persons under seventeen years of age may not be employed in any industrial establishment;"

9. The Act is further amended by deleting paragraph 16(g) and substituting the following:

"(g) exempting, upon such terms and conditions and for such periods as are considered advisable, any employer from the application of section 13 in respect of any class of employees who are being trained on the job, if the training facilities provided and used by the employer are adequate to provide a training program that will increase the skill or proficiency of an employee; and"

10. The Act is further amended by adding immediately after paragraph 16(g) the following paragraph:

"(h) prescribing minimum wages for domestic workers.".

11. The Act is further amended by adding immediately after section 32 the following Part and headings:

"Part IV.1

MATERNITY LEAVE

Entitlement to maternity leave

32.1.(1) An employee is entitled to maternity leave, without pay, in accordance with subsection (2), where the employee

- (a) has been employed by an employer for a period to be prescribed by regulation;
- (b) submits to her employer a written request for maternity leave at least four weeks before the day on which she intends to commence the leave; and
- (c) if so requested by her employer, provides her employer with a certificate from a qualified medical practitioner stating that she is pregnant and giving the estimated date of delivery.

Length of leave

(2) Subject to this Part, an employee referred to in subsection (1) is entitled to maternity leave of not more than seventeen consecutive weeks commencing at any time during the period of eleven weeks immediately preceding the estimated time of delivery.

Leave may be extended ;

(3) If the actual date of delivery is after the estimated date of delivery, an employee is entitled, at her request, to extend the maternity leave for a further period of time, without pay, consisting of the time between the estimated date of delivery and the actual date of delivery, to a maximum of six consecutive weeks.

Leave may be shortened

(4) An employee who has requested maternity leave may, with the consent of her employer, resume employment before the expiration of that period.

Leave after delivery

32.2. Where an employee gives birth before a request for maternity leave is made, the employer shall,

- (a) at the request of the employee, and
- (b) on receipt of a certificate of a qualified medical practitioner stating that the employee has given birth on a specified date,

grant the employee maternity leave, without pay, for a period of not more than six consecutive weeks, commencing on the specified date.

Medical leave

32.3. Where an employee

- (a) is unable to return to work at the end of her maternity leave, and
- (b) provides her employer with a certificate of a qualified medical practitioner stating that the employee is unable to return to work for reasons related to the birth,

the employer shall grant to the employee a further period of maternity leave, without pay, for the period specified in the certificate, to a maximum of six consecutive weeks.

Employee to take leave

32.4.(1) The Labour Standards Officer may, at the request of an employer, require an employee to commence maternity leave where, in the opinion of the Labour Standards Officer, the duties of the employee cannot reasonably be performed because of the pregnancy.

Leave to continue

(2) The employee shall continue the maternity leave until the Labour Standards Officer is satisfied that the employee is able to perform her duties.

No rights to benefits

32.5.(1) No employee is entitled under this Part to accumulate any pension, health, disability, annual vacation or other benefits or seniority during the period that the employee is on maternity leave.

No contribution

(2) An employee who normally makes a monetary contribution to be entitled to a benefit referred to in subsection (1) shall not be required to make that contribution while the employee is on maternity leave.

Suspension of operations

32.6 An employer who has suspended or discontinued operations during the maternity leave and has not resumed operations on the expiry of the maternity leave shall not, on resumption of operations, refuse to reinstate or hire the employee because the employee has taken maternity leave.

Prohibitions

32.7.(1) An employer shall not

- (a) terminate an employee, or
- (b) refuse to reinstate an employee upon the expiration of the maternity leave, in the position previously occupied or in a comparable position, with the seniority and benefits accrued up to the time of the commencement of the maternity leave; or
- (c) otherwise change a condition of employment of an employee without the employee's written consent

because the employee has applied for, is on or has taken maternity leave, unless the employee has been absent for a period exceeding that permitted under this Part.

Onus on employer

(2) The onus is on the employer to establish that a contravention of subsection (1) is not because the employee has applied for, is on or has taken maternity leave.

Powers of Labour Standards Officer

32.8. Notwithstanding section 43, where the Labour Standards Officer is satisfied that an employer has contravened this Part, the Labour Standards Officer may order the employer to:

- (a) comply with this Part;
- (b) remedy the breach or cease doing an act;
- (c) hire or reinstate a person and pay her any wages lost by reason of the contravention; or
- (d) pay a person compensation instead of reinstating her."

12. The Act is further amended by repealing section 39.7 and substituting the following:

"Lien and charge on property

39.7.(1) Subject to the Maintenance Orders Enforcement Act and notwithstanding any other Act,

- (a) unpaid wages constitute a lien, charge and secured debt in favour of the Board, dating from the time that the wages were earned, against all the real and personal property of the employer, including money due or accruing due to the employer from any source; and
- (b) the amount of the lien, charge and secured debt referred to in paragraph (1)(a) is payable and enforceable in priority over all liens, judgments, charges or any other claims or rights including those of the Government of the Northwest Territories, except as provided in this section, and, without limiting the generality of the foregoing, the amount has priority over
 - (i) an assignment, including an assignment of book debts, whether absolute or otherwise and whether crystallized or not,
 - (ii) a mortgage of personal property,
 - (iii) a debenture charging personal property, whether crystallized or not, and
 - (iv) a contract, account receivable, insurance claim or proceeds of a sale of goods,whether made or created before or after the date the wages were earned or the date a payment for the benefit of an employee became due.

Idem

(2) Notwithstanding subsection (1), the lien, charge and secured debt referred to in subsection (1) does not have priority over a mortgage of or debenture charging land that was registered in a land title office before registration against that property of a certificate obtained under section 39.6, except with respect to money advanced under the mortgage or debenture after the certificate was filed."

13. The Act is further amended by adding immediately after section 39.7 the following section:

"Reciprocal enforcement of certificates

39.7.1.(1) Where the Minister is satisfied that reciprocal provisions will be made by a province or the Yukon Territory for the enforcement of certificates issued under this Act, he may, by order,

- (a) declare the province or the Yukon Territory to be a reciprocating province or territory; and
- (b) designate an authority in that province or the Yukon Territory for the purpose of this section.

Idem

(2) Where an order, judgment or certificate for the payment of wages has been issued, obtained or received by a designated authority of a reciprocating province or territory, the authority may apply to the Board to enforce the order, judgment or certificate.

Idem

(3) On receipt of a copy of the order, judgment or certificate for the payment of wages

- (a) certified by the court in which the order, judgment or certificate is registered, or
- (b) where there is no provision in the reciprocating province or the Yukon Territory for registration in a court of the order, judgment or certificate, certified to be a true copy by the designated authority

and on being satisfied that the wages are still owing, the Board shall issue a certificate showing the amount owing and file it in the office of the Clerk of the Court.

Idem

(4) A certificate filed under subsection 39.7.1(3) is enforceable as a judgment or order of the Court in favour of the Board, and is enforceable by the Board for the amount shown in the certificate in the same manner and with the same priorities as are provided in this Act for wages owing."

14. The Act is further amended by adding immediately after section 39.14 the following sections:

"Associated corporations

39.14.1.(1) Where the Labour Standards Officer considers that there is common control or direction between two or more corporations, individuals, firms, syndicates or associations, the Labour Standards Officer may declare the corporations, individuals, firms, syndicates or associations, or any combination of them, to be one employer for the purposes of this Act.

Appeal

(2) An employer, employee or other person affected by a declaration made under subsection (1) may appeal to the Board.

Effect of declaration

39.14.2. Where the Labour Standards Officer has made a declaration under subsection 39.14.1(1), the corporations, individuals, firms, syndicates or associations treated as one employer shall be jointly and severally liable for any contravention of this Act or the regulations."

15. The Act is further amended by deleting paragraph 47(f) and substituting the following:

"(f) providing for the payment of any wages of an employee to the Commissioner or to some other person in the event that the employee cannot be found or in any other case;"

16. The Act is further amended by adding immediately after paragraph 47(f) the following paragraphs:

- "(f.1) respecting domestic workers;
- (f.2) prescribing the hours of work for domestic workers;
- (f.3) prescribing the compensation for overtime for domestic workers;
- (f.4) establishing the conditions of employment of domestic workers;
- (f.5) prescribing the length of time that an employee must be employed by an employer to be entitled to maternity leave; and"