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# EMPLOYMENT STANDARDS FOR MOBILE WORKERS

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**NOTE:** This report was completed in April 2017. Between April 2017 and December 2017, changes to the applicable minimum wage occurred in several provinces; as of February 2018 these changes to the applicable minimum wage in the different provinces are reflected accordingly.

## Introduction

This report aims to explore and compare Employment-Related Geographical Mobility (“ERGM”) issues with regards to minimum employment standards (“ES”) of several Canadian provinces. ERGM entails “extended travel and related absences from places of permanent residence for the purpose of, and as part of, employment”.<sup>1</sup> The scope of such travels is variable: they extend from a daily total of 3 hours to more extended absences. ERGM differs from cases of immigration involving permanent relocation. This report seeks to contribute to the policy component of the “On the move” research project.

Minimum employment standards govern the *basic terms and conditions of employment* (wages, vacations, statutory holidays, hours of work and overtime, leaves of absence, etc.) that neither the employee nor the employer can validly contract out of. Since labour law falls under provincial jurisdiction, the ES legal framework is different in each Canadian province and territory.<sup>2</sup> The provincial legislatures have the exclusive power to legislate on labour relations, but the Federal Government has exceptional jurisdiction over employment relations in companies that fall under its jurisdiction. Federally regulated companies include inter-provincial or international transportation, radio, television, postal service, ports, telecommunication businesses, banking and some crown corporations. While provincial and territorial labour laws apply to about 90% of the Canadian workforce, the remaining 10% are federally regulated.<sup>3</sup>

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1 SSHRC, *On the Move: Employment-Related Geographical Mobility in the Canadian Context*, Grant application, 2011.

2 Although the power to legislate on labour issues is not expressly provided for in Articles 91 and 92 of the *Constitution Act, 1867*, which set out the respective powers of Parliament and the provincial legislatures, the courts have determined that the scope of those articles extends to such a power. In 1925, the Privy Council, in *Toronto Electric Commissioners v. Snider*, laid down the principle that labour relations directly connected to property and civil rights fall under the exclusive jurisdiction of the provinces under section 92 (13) of the *Constitution Act, 1867*. See: *Constitution Act-1867*, 30 et 31 Vict., R.-U., c. 3. See also: *Toronto Electric Commissioners c. Snider*, [1925] A.C. 396

3 In this respect, the *Canadian Labour Code* (R.S.C., 1985, c. L-2) defines (s. 2) a “federal work, undertaking or business “ as:

- (a) a work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada,
- (b) a railway, canal, telegraph or other work or undertaking connecting any province with any other province, or extending beyond the limits of a province,
- (c) a line of ships connecting a province with any other province, or extending beyond the limits of a province,
- (d) a ferry between any province and any other province or between

This report is based on a positivist legal approach: its main sources are the legislation in force, the relevant case-law and legal doctrine. We acknowledge that field research will be needed at a later stage to test the accuracy of our key findings and to refine them.

Our report deals primarily with four provinces: Alberta, British Columbia, Ontario and Quebec. However, we have also tried to address the legal situation in other jurisdictions whenever possible and to the best of our ability. It is our sincere hope that the information presented in this report will prove to be useful to as many readers as possible and that our initial findings will stimulate further research in this area. This report should therefore be seen as a “dynamic” document that is intended to be revised and updated as new information becomes available.

We begin by outlining the jurisdictional scope and implementation of various ES statutes (I). This is followed by an introduction to and comparison of key ES (II) and a study of the ES enforcement mechanisms employed in British Columbia, Quebec, Ontario and Alberta (III). We conclude this report with a review of specific ERGM-related issues that mobile workers are likely to face in the reviewed provinces (IV).

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any province and any country other than Canada,

- (e) aerodromes, aircraft or a line of air transportation,
- (f) a radio broadcasting station,
- (g) a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*,
- (h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces,
- (i) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces, and
- (j) a work, undertaking or activity in respect of which federal laws within the meaning of section 2 of the *Oceans Act* apply pursuant to section 20 of that Act and any regulations made pursuant to paragraph 26(1)(k) of that Act.

## I. Jurisdictional scope and implementation

This section analyzes and compares the scope and content of ES legislation in various jurisdictions. This question is important because each Canadian province has its own rules relating to minimum standards, the subjects of those standards and the enforcement of ES legislation when employees are engaged in work outside the province.

### A. Jurisdictional scope

*Introductory note:* although Alberta, British Columbia, Ontario and Quebec are the main focus of this section,<sup>4</sup> we refer the reader to Appendix A that provides useful information on the geographic scope of ES legislation in Newfoundland and Labrador, Nova Scotia and Prince Edward Island.

As a general rule, employees who work entirely in one jurisdiction are covered by the ES legislation of that jurisdiction. Quebec and Ontario have, in their respective ES legislation, a provision that addresses the situation of workers performing jobs in multiple jurisdictions or solely beyond the province boundaries. In Alberta and British Columbia, the law is silent on this point but the jurisprudence offers some guidance in this area. There are significant provincial variations regarding the applicability of labour standards to employees working extraterritorially.

#### 1. When work is performed in only one jurisdiction

When an employee is solely working in a given jurisdiction, the minimum ES laws of that jurisdiction apply.<sup>5</sup> This means

<sup>4</sup> In Québec, ES are found in the *Act Respecting Labour Standards*, CQLR c N-1.1 (hereafter “**QC LSA**”) and its regulations. In Alberta, the relevant legislation is the *Alberta Employment Standards Code*, RSA 2000, c E-9 (hereafter “**AB ESC**”) and its regulations. In British Columbia, the relevant law is the *Employment Standards Act*, RSBC 1996, c.113 (hereafter “**B.C. ESA**”), and its regulations. In Ontario, the relevant legislation is the *Ontario Employment Standards Act*, SO 2000, c 41 (hereafter “**ON ESA**”) and its regulations.

<sup>5</sup> See, in particular, QC LSA, s.2; ON ESA, s. 3(1); AB ESC, s. 2(1). In British Columbia, section 3(1) of the B.C. ESA stipulates: “[T]his Act applies to all employees other than those excluded by regulation”. According to the B.C. policy manual, this means that the Act “applies to all employees within provincial jurisdiction regardless of status (casual, probationary, temporary) or hours worked (full time, part time)”: Ministry of Jobs, Tourism and Skills Training and Responsible for Labour, “On-Line Interpretation Guidelines Manual: British Columbia Employment Standards Act and Regulations” (at: <https://www.labour.gov.bc.ca/esb/igm/welcome.htm>) (hereafter “**B.C. Policy and Interpretation Manual**”). See also: *Dallas Oilfield Contractors Ltd. v. Syroteuk*, [1980] S.J. No. 832, [1980] 3 W.W.R. 119. In this case, the Court was asked to determine whether it was Saskatchewan’s or British Columbia’s minimum standards that applied to an employ-

that where the employee resides or where the employer is incorporated (for instance) does not matter: the only relevant factor for determining which ES apply is whether *the employee is performing work in the province in question* (and is, therefore, covered by the given province’s ES).

### ILLUSTRATIVE CASE STUDIES

*John is working for an insurance company in Ottawa (Ontario). He works solely in Ottawa but he lives in Gatineau (Quebec). Since John is only performing work in Ontario, John is only covered by ON ES legislation.*

*John is working for an insurance company in Ottawa (Ontario) that is incorporated in Edmonton (Alberta). Since John is performing work only in Ontario, John is covered only by ON ES legislation.*

#### 2. When work is performed partly or solely outside the jurisdiction of study

When work is partly or entirely performed outside the province of study, there are significant provincial variations regarding the application of ES law. **Quebec, Ontario and New Brunswick<sup>6</sup> are the only provinces** that have adopted a statutory provision regarding the application of their labour standards beyond their boundaries. In Alberta and British Columbia, although the law is silent on this issue, case-law reveals important differences between the two provinces.

**Regarding Ontario**, ON ES legislation will apply if the work performed outside Ontario is a “continuation of the work to be performed in Ontario”.<sup>7</sup> All other factors, such as where the offer of employment was made or accepted, where the contract of employment was signed, or where

ee who was hired in Saskatchewan to perform work in British Columbia (the dispute concerned overtime rates.) The Court concluded that the employer was bound to pay its employees the minimum rate under British Columbia legislation when they worked in that province.

<sup>6</sup> Although **New Brunswick** is outside the scope of this paper, it is interesting to note that s. 2 of the *Employment Standards Act* (S.N.B. 1982, c. E-7.2) clearly states that all employees are covered by the New Brunswick ES legislation, even if “the work or services [are] performed in whole or in part outside New Brunswick”.

<sup>7</sup> Section 3.(1)(b) of the ON ESA. Section 3.(1) reads as follows: “[T]he employment standards set out in this Act apply with respect to an employee and his or her employer if: (a) the employee’s work is to be performed in Ontario; or (b) the employee’s work is to be performed in Ontario and outside Ontario but the work performed outside Ontario is a continuation of work performed in Ontario” [our emphasis].

the worker resides, are not relevant to the application of the ON ESA; the only relevant factor is whether “the work performed outside Ontario is a continuation of work performed in Ontario”.<sup>8</sup> For example, salespersons who are employed and who have a home base in Ontario will fall under the ON ESA jurisdiction, even if they work both in and out of Ontario in the course of their employment. However, employees who had worked for five years for a company in England, before being transferred to Ontario where they worked for the same company for a further two years, were deemed to only have two years’ employment with the company for the purposes of determining their entitlement under the ON ESA because the employment in Ontario was not a continuation of the employment in England.<sup>9</sup>

In some situations, jurisdiction over labour matters may lie in more than one province. For example, if a person were to perform work in Quebec as a continuation of work in Ontario, Ontario would have jurisdiction over the contract of employment, notwithstanding the fact that Quebec might also have a claim to jurisdiction.<sup>10</sup> Interestingly, s. 5(2) of the ON ESA provides that, in such situations, the statutory rights that provide the greatest benefits to the employee should prevail.<sup>11</sup> This section has major practical implications. For example, a non-managerial employee travelling to **Manitoba, Saskatchewan, Alberta or British Columbia** is generally entitled to overtime pay after 8 hours in a day as opposed to after 44 hours in a week, which is the minimum standard in **Ontario**. However, employers can contractually minimize the amount of additional compensation, due to employees travelling outside Ontario, under a more generous employment standard (i.e., by including a clause on out of province work in the contract of employment). Or alternatively, in some provinces, employers can apply for an exemption to avoid the application of a more generous minimum standard

8 See, among others: *WP Canada Bistro & Express Co.*, [2010] O.E.S.A.D. No. 1137; *James Way Construction Inc.*, [2007] O.E.S.A.D. No. 336; *Brick Warehouse LP*, [2005] O.E.S.A.D. No. 982.

9 These examples are taken from the official manual of the Ontario Employment Standards Branch, *Employment Standards Act, 2000: Policy and Interpretation Manual* (Scarborough: Carswell, 2003); para. 7-3 to 7-5 (hereafter “**Ontario Policy and Interpretation Manual**”).

10 *Ibid*

11 Section 5(2) of the ON ESA reads as follows: “(2) If one or more provisions in an employment contract or in another Act that directly relate to the same subject matter as an employment standard provide a greater benefit to an employee than the employment standard, the provision or provisions in the contract or Act apply and the employment standard does not apply”.

from another province.<sup>12</sup>

**Ontario** makes no distinction between work performed partly in Ontario or solely outside Ontario (the only relevant factor being whether the work performed is a “continuation of work performed in Ontario”), but **Quebec** does make such a distinction. When the work is executed in multiple jurisdictions (i.e., in and outside Quebec), Quebec ES legislation applies to employers whose undertaking, residence, domicile, head office or office is in Quebec. If the employer does not have an undertaking in Quebec, the legislation that applies is that of the jurisdiction from which the employer operates.<sup>13</sup> Moreover, when work is solely done outside Quebec, Quebec ES legislation applies if the employer has an undertaking in Quebec **AND** if the employee resides in Quebec.<sup>14</sup> Thus, in Quebec, the only relevant factor here is whether the employer conducts business in Quebec.

#### ILLUSTRATIVE CASE STUDY: ONTARIO & QUEBEC

*Mary is employed by a clothing company incorporated in Quebec and works both in Quebec and Ontario. She resides in Ontario. Since the clothing company has a place of business in Quebec, Mary is covered by Quebec ES legislation. Mary could also be covered by ON ES legislation if Mary’s work in Quebec is a continuation of her work performed in Ontario.*

In **Alberta** and **British Columbia**, there is no specific provision regarding work partly or entirely executed outside of the province.

In **Alberta**, the *Employment Standards Toolkit for Employers* [hereafter, *Alberta Employer Toolkit*] states: “If an employee works in another province or country, that province’s or country’s labour laws may apply”.<sup>15</sup> The guide also specifies that “[w]hen working outside Alberta for an Alberta employer, the application of Alberta’s legislation will depend on the circumstances and the nature of the employment

12 For more on this topic, see : Doug Macleod, “Employees who sometimes work outside Ontario?”, *First Reference Talks*, May 14, 2013: <http://blog.firstreference.com/dougs-may-2013-scheduled-blog-post/>

13 QC LSA, s.2.

14 QC LSA, s.2 (2).

15 Alberta Human Services, *Employment Standards Tool Kit for Employers*, (2013) online: <http://humanservices.alberta.ca/working-in-alberta/es-toolkit.html> at 7 (hereafter “*Alberta Employer Tool Kit*”).

contract”.<sup>16</sup> Thus, in the case of Alberta, the law that applies is the law “[that the parties intended, either expressly or implicitly, to govern the [employment] contract”.<sup>17</sup> This means that if there is a clause in the employment contract providing that the contract is to be governed by Alberta law, or some supporting evidence of the parties’ intention to have Alberta law governing the employment relationship, such law will apply, even if work is to be entirely done outside Alberta. In the absence of any such intention (i.e., where the relevant jurisdiction is not clear from the employment contract), it is necessary to determine the applicable law.

In order to do so, the following factors have been taken into account by the courts in determining the law that has its “closest and most substantial connection”<sup>18</sup> to the employment contract:

- Where the work is done;
- Whether the employee’s out of province work is incidental to the employment relationship or is for a specific project, such as a construction project;
- Whether the employer is based in Alberta;
- Where payment of wages occurs;
- Where the employment records are kept;
- Where hiring took place;
- Where the contract was signed;
- Whether the employees reside or are based in Alberta;
- The substance of the contract;
- The extent to which any particular system of law is referred to in the contract;
- The currency used in the employee’s remuneration.<sup>19</sup>

An assessment of the relative importance of these factors

16 *Ibid*

17 Stephen G.A. Pitel & Nicolas S. Fafferty, *Conflict of laws* (Toronto: Irwin law, 2010), at 270.

18 A leading Canadian case in this area is *Imperial Life Assurance Co. of Canada v. Colmenares* ([1967] SCR 443), where the Supreme Court, which had to determine whether two life insurance contracts were governed by Ontario law or by the law of Cuba, held that “[t]he place where the contract was made is not by any means decisive in determining the question of what law is applicable to the contract (page 447). The Supreme Court also noted: «The problem of determining the proper law of a contract is to be solved by considering the contract as a whole in light of all the circumstances which surround it and applying the law with which it appears to have the closest and most substantial connection” (page 448).

19 Email from Isabelle Hainault, Employment Standards Officer, Employment Standards Contact Centre Supervisor, August 7, 2013. A request to obtain the Policy Manual was denied by Ms. Hainault, the official response being that public access to the Policy Manual is not permitted.

can make it difficult to know which law should govern an employment contract. Alberta case-law, however, instructs us that no one factor is decisive and factors must be assessed in the context of the particular facts of a given case.<sup>20</sup>

**NB:** An analysis of the relevant case-law shows us that the decision of a worker to file an ES complaint in one provincial jurisdiction may influence any determination. In one leading case, Alberta’s Court of Queen’s Bench ruled that a worker, by choosing to file a complaint in a specific province, had accepted that the ES legislation of the province in question would apply to the claim, and by so doing, was precluded from making a claim for further relief in another provincial jurisdiction:

59 [...] [If] an individual or company is sued in Alberta in relation to a claim that has its origins, or some of its origins, in another jurisdiction, the party is said to have “attorned” to the courts of Alberta (meaning it has accepted the jurisdiction of the courts of Alberta) when it files a statement of defence in Alberta.

60 To my knowledge, the word has not yet been used in [the employment law] context, but in my view the concept is similar: by invoking the enforcement provisions of the *Ontario Employment Standards Act*, the plaintiff has “attorned” to the jurisdiction of the Ontario regulator’s regime and by doing so under that legislation she accepted its recovery process.

61 By doing so, she cannot pick and choose which provisions of the Ontario legislation apply to her. She accepted that the laws of Ontario apply to her claim [...].<sup>21</sup>

20 See: *Flint Canada Inc. v. Bonokoski*, [1997] A.J. No. 311; 145 D.L.R. (4th) 453; *Bode v. Blitz, Barrett and Crown Masonry Ltd.*, [1999] A.J. No. 296, 1999 ABPC 21; *Neft Services Ltd.*, B.C.A.L. 8184, Dec. 95. Note that the text of the judgment in *Neft* is not publicly accessible (even on the Lexis Nexis Quicklaw database). However, the *Neft* decision is referred to in the *Flint* and *Bode* decisions and in an article published by Field Law LLP: Sandra Anderson, “Current Workplace Issues, Out-of-Province Employment Standards Code” (1997) Field Law LLP, online: [http://www.fieldlaw.com/articles/SMA\\_CurrentWorkplacelssues\\_Issue9.pdf](http://www.fieldlaw.com/articles/SMA_CurrentWorkplacelssues_Issue9.pdf).

21 *Karmali v. Donorworx Inc.*, [2015] A.J. No. 174; 2015 ABQB 105. In this case, the plaintiff (employee) was hired by the defendant (employer) in Alberta pursuant to a fixed term employment contract, followed by additional fixed term contracts; ultimately she was hired on an indefinite basis. The original fixed term employment contract was a written document on the letterhead of the defendant using its Toronto, Ontario address. The plaintiff worked for 8 weeks in Alberta, then 6 weeks in Saskatchewan, 26 weeks in Alberta, 11 weeks in the southern Ontario area, 4 weeks in Fredericton and Moncton (New Brunswick), and then after 1 week of “forced vacation” her employment was terminated. She was dismissed, without cause, and the dismissal letter made it clear



### ILLUSTRATIVE CASE STUDY: ALBERTA

Lucas is a truck-driver hired by an Alberta employer. He works partly/entirely in British Columbia. A clause in the employment contract stipulates that the contract is to be governed by Alberta law. Alberta law applies to the employment contract.

Lucas is a truck-driver hired by an Alberta employer. He works partly/entirely in British Columbia. The employment contract makes no explicit reference to the provincial law that should govern the contract. A determination that Alberta ES law applies in this context will only be made if the various factors examined reveal that the employment relationship has the strongest connection to Alberta

In **British Columbia**, an employee hired in British Columbia on a contract of employment for services to be performed solely out of the province is not covered by the B.C. ESA. Although the law is silent on this point, the B.C. Policy and Interpretation Manual states: “[T]here is no provision in the Act that would suggest it is intended to apply to employment contracts that are performed entirely in another jurisdiction”.<sup>22</sup>

Regarding work executed partly in British Columbia, the relevant case-law is clear: if the employment contract does not specify which law should govern the employment relationship, the B.C. ES legislation will apply if there is a “sufficient connection” between the employment and the province. Although each situation is to be considered on a case-by-case basis, it seems clear from existing case-law that the following factors are to be taken into consideration in determining whether a sufficient connection exists:

- whether the place of business of the employer is located in the province;
- whether the residence and usual place of employment of the employee is in the province;
- whether the terms of employment require the employee to work both in and out of the province;
- and whether the employment of a worker outside the province immediately followed employment with the same employer in the province.<sup>23</sup>

Thus, for example, persons hired and resident in British Columbia, who are sent to work in Alberta for specific periods of time will be covered by the British Columbia legislation provided that they also worked for the employer in that province, or return there and continue to work for the same employer. However, if the work performed in British Columbia is incidental to the total length and nature of the employment contract, then the British Columbia legislation won’t apply. In additions, persons who work and reside in another jurisdiction but occasionally perform work in British Columbia are not covered by the B.C. ES legislation.<sup>24</sup>

### ILLUSTRATIVE CASE STUDY

Lucas is a truck-driver hired by a B.C. employer. He works entirely in Alberta. B.C. law does not apply to the employment contract.

Lucas is a truck-driver hired by a B.C. employer. He works and resides in Alberta and occasionally performs work in British Columbia. B.C. ES law does not apply to this employment relationship

that she would receive her entitlements under the Ontario *Employment Standards Act*. The plaintiff brought proceedings before the Ontario Ministry of Labour claiming additional vacation pay and termination pay. It was held that although the employer had paid one week’s termination pay under the ON ESA, the employer was actually obliged to pay two weeks’ pay. While her claim for termination pay was successful, her claim for vacation pay, was denied. This denial was based on the fact that, in Ontario, an employee has a choice of either seeking the assistance of the provincial regulator, or suing, but not both. Since the plaintiff had asked the regulator to enforce her claim, she had no right to make a civil claim (s. 97 of ON ESA). In Alberta, there is no such restrictive provision: a dismissed employee is free to seek the minimum termination pay provided under the legislation and also sue for damages for an additional amount (provided that the Alberta regulator does not find that the employee was dismissed for cause). The plaintiff then sued in Alberta.

22 B.C. Policy and Interpretation Manual, on ESA Section 3 (“Scope of this Act”).

23 See in particular: *British Columbia (British Airways Board) v. British Columbia (Workers’ Compensation Board)*, [1985] B.C.J. No. 2253, 61 B.C.L.R. 1; *Re Can-Achieve Consultants Ltd.*, [1997] B.C.E.S.T.D. No. 500, BCEST #D463/97 (Reconsideration of BCEST#D099/97). The test articulated in *Can-Achieve* is regularly adopted and applied in B.C. court cases in order to determine whether the employment relationship, which gives rise to the complaint, is one with “sufficient connection” to British Columbia: *Livingston v. I.M.W. Industries Ltd.*, [2015] B.C.J. No. 1935, 2015 BCSC 1627; *DesRoches v. Hardt*, 2009 BCHRT 300; *MacLeod v. Watson*, 2008 BCHRT 306; *Re: Xinex Networks Inc.*, [1998] B.C.E.S.T.D. No. 600, BCEST #D575/98; *Selkirk Paving Ltd. (Re)*, [2002] B.C.E.S.T.D. No. 109, BCEST #D110/02.

24 B.C. Policy and Interpretation Manual, on section 3 of BC ESA (“Scope of this Act”).

**SUMMARY:** Application of the province’s ES legislation when the work is performed in whole or in part outside the province

- **Ontario:** the only relevant factor is whether the work performed outside Ontario is a “continuation of the work to be performed in Ontario”
- **Quebec:** For work executed partly outside Quebec: the employer must have an undertaking in Quebec; for work executed entirely in Quebec: the employer must have an undertaking or conduct business in Quebec and the employee’s residence must be in Quebec
- **Alberta:** Unless the employment contract clearly specifies which law applies to the employment relationship, Alberta law will apply (even where that work is entirely executed outside Alberta) if it can be established that the employment relationship has the “strongest connection” to Alberta
- **British Columbia:** Unless the employment contract clearly specifies which law applies to the employment relationship, British Columbia law will not apply if work is executed entirely outside British Columbia. B.C. law will apply when the work is executed partly outside British Columbia if it can be established that the employment relationship has a “sufficient connection” to British Columbia

## B. Who is covered by employment standards legislations?

The main purpose of ES is to provide basic employment conditions and benefits to employees. However, some groups of workers are excluded by definition from these laws, meaning that they do not get the same level of protection as those who are covered by them. The applicability of ES laws to dependent self-employed workers in Alberta, British Columbia, Ontario and Quebec will first be examined (1). This is followed by a detailed examination of provincial ES applicable to temporary foreign workers (TFWs). Although TFWs are, in principle, covered by ES legislations, many of these workers are performing jobs in industries that are excluded from all or part of ES legislation. Exclusion from ES can increase TFWs vulnerability (2).

### 1. Applicability to dependent self-employed employees

The scope of the employment relationship regulated by ES differs from province to province. In **Quebec**, the *Civil Code of Québec* defines an employment contract as “a contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer”.<sup>25</sup> An independent contractor enters a contract of enterprise or for services, which is defined as a contract “by which a person, the contractor or the provider of services, as the case may be, undertakes to another person, the client, to carry out physical or intellectual work or to supply a service, for a price which the client binds himself to pay to him”.<sup>26</sup>

The LSA foresees a middle ground: the dependent contractor. The dependent contractor will benefit from the same protections as all employees.<sup>27</sup> Although benefiting from a legal subordination that differs from that of a “classic” employee, the dependent contractor remains economically dependent on the employer. The LSA defines the dependent contractor as an employee who undertakes “to perform specified work for a person within the scope and in accordance with the methods and means determined by that person; who undertakes to furnish, for the carrying out of the contract, the material, equipment, raw materials or merchandise chosen by that person and to use them in the manner indicated by him or her; and keeps, as remuneration, the amount remaining to him from the sum he or she has received in conformity with the contract, after deducting the expenses entailed in the performance of that contract”.<sup>28</sup>

In **Ontario, Alberta and British Colombia**, the ES legal frameworks do not explicitly address the issue of dependent workers. These workers traditionally fall outside of the standard employment relationship encompassed in the definition of “employee” provided in the ES legislation and

25 *Civil Code of Quebec*, CQLR c C-12, s 2085.

26 *Ibid*, s 2098.

27 The dependent contractor is also included in the definition of ‘employee’ set out in the Canadian Labour Code (section 3) and is defined as “any other person who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person”.

28 QC LSA, s 1(10).

are, therefore, exposed to the “extreme vulnerability”<sup>29</sup> of a single client relationship.<sup>30</sup>

## 2. Temporary foreign workers, domestic and farm workers

*This section must be read in conjunction with several other sections of this report, notably the section on “Wage and other financial benefits” (section II.A) and the section on procedural issues in court proceedings (section IV.C). We also refer the reader to Appendix C which contains information on key legislative provisions regarding temporary foreign workers in the various provinces studied.*

Provincial ES apply to employees in most workplaces, including TFWs. However, as discussed earlier, TFWs may be employed in occupations that are exempted from the general ES rules; some may also be employed in occupations covered by derogatory ES. Given the high proportion of TFWs in seasonal agricultural and domestic work, two industries with exemptions or special rules, this section addresses how TFWs are protected in these jobs in various jurisdictions. This section also focuses on provincial legislation adopted to exclusively address TFWs protections and rights in employment situations. Finally, statutory provisions regarding recruitment and hiring practices (or lack thereof) are highlighted, with a view to revealing major provincial variations in this area.

**NB:** Employment and Development social Canada (ESDC) put forward an employment contract template for TFWs hired under the Seasonal Agricultural Worker Program (SAWP) [hereafter “the template”]. This template stipulates that these workers are to be paid weekly wages “at a rate at least equal to the following, whichever is the greatest:

- a. The minimum wage for workers provided by law in the province in which the worker is employed;
- b. The rate determined annually by ESDC to be the prevailing wage rate for the type of agricultural work being carried out by the worker in the province in which the work will be done; or
- c. The rate being paid by the employer to the Canadian workers performing the same type of agricultural work” (see Annex I).

The template also states that employees in the SAWP are entitled to at least two rest periods of ten minutes per day, 30-minute meal periods and one day of rest for every six consecutive days of work (sections I and II of the template). Finally, under this template, workers must be provided free suitable housing, either on-farm (e.g., in a bunkhouse) or off-site (e.g., in a commercial establishment), **except in British Columbia** where a portion of these costs can be recovered through payroll deductions.<sup>31</sup> These requirements, laid down at the federal level, must be followed at the employer and provincial state level. This means that SAWP workers have rights under both the federal Employment Agreement and the provincial ES applicable to agricultural workers (see Appendix I for more on this topic).

**In Alberta, Quebec, British Columbia, Newfoundland and Labrador and Prince Edward Island**, there is no legislation that addresses issues specific to TFWs or more generally, to foreign nationals. In contrast, **Manitoba and Saskatchewan** have adopted legislation that deals exclusively with TFWs, whereas **Nova Scotia** has considerably amended its key ES legislation, with a view to better addressing TFWs specific vulnerabilities.

**In Alberta**, TFWs are considered as having “the same rights and responsibilities as any other employee in the workplace”.<sup>32</sup> Recruitment agencies are governed by the *Fair Trading Act* and its *Employment Agency Business Licensing*

29 Law Commission of Ontario, *Vulnerable Workers and Precarious Work: Final Report* (Toronto: 2012), p 92. In this report, the LCO notably recommends that: “The Ontario government consider extending some ESA protections to self-employed persons in dependent working relationships with one client, focusing on low wage earners, and/or identifying other options for responding to their need for employment standards protection”.

30 In these three provinces, case law has recognized the right of dependant contractors in some circumstances to sue under common law for notice or termination pay. Thus, these rulings do not give dependant contractors ES entitlements per se. For Ontario, see *McKee v. Reid’s Heritage Homes Ltd.*, 2009 ONCA 916 and *Belton v. Liberty Insurance Co. of Canada*, [2004] O.J. No. 3358, 72 O.R. (3d) 81 (C.A.); for Alberta, see *Weber v. Coco Homes Inc.*, 2013 ABQB 180 and *Drew Oliphant Professional Corp v. Dr. Kelly Harrison*, 2011 ABQB 216; for British Columbia, see *Khan v. All-Can Express Ltd.*, 2014 BCSC 1429.

31 Employers must fill in an employment contract and send it, along with the Labour Market Impact Assessment application, to Service Canada. The employment contract template requires the signature of the liaison officer for the foreign government and the migrant worker identified on the LMIA application (ideally prior his or her arrival in Canada, and on the first day of employment at the latest). See for example: Government of Canada, “Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2017”: [https://www.canada.ca/content/dam/canada/employment-social-development/migration/documents/assets/portfolio/docs/en/foreign\\_workers/hire/seasonal\\_agricultural/documents/sawpmc2017.pdf](https://www.canada.ca/content/dam/canada/employment-social-development/migration/documents/assets/portfolio/docs/en/foreign_workers/hire/seasonal_agricultural/documents/sawpmc2017.pdf) . For more on this topic, see also Appendix I and the section on “Wage and other financial benefits” that deals with payroll deductions for room and board.

32 Government of Alberta, “Temporary Foreign Worker Guide for Employers”, 2010.

*Regulation.* These legislations require employment agencies to be licensed by Service Alberta, regardless of where they are located or the nature of the services they provide.<sup>33</sup> However, Alberta does not require employers of TFWs to register and provide information about themselves and their TFWs. The *Employment Agency Business Licensing Regulation* also forbids recruiters from charging workers (including TFWs) for finding them a job or giving them “false, misleading or deceptive” immigration information.<sup>34</sup> But the law permits them to charge TFWs for services “that are not employment agency business services,” including immigration services.<sup>35</sup>

In December 2015, the Government of Alberta passed *Bill 6, the Enhanced Protection for Farm and Ranch Workers Act*.<sup>36</sup> Prior to Bill 6, Alberta’s labour and employment legislation exempted farm and ranch employees, and their employers, from sections of the *Employment Standards Code* that set minimum hours of work, overtime, general holidays, vacations and vacation pay, and rest periods. Bill 6 repeals the exemption so as to extend these provisions to all farm and ranch workers. Furthermore, in Alberta, the right to unionize is a statutory right granted by the *Labour Relations Code*.<sup>37</sup> Bill 6 eliminated the portions of the *Labour Relations Code* that expressly prohibited farm or ranch workers from unionizing. The changes to the *Employment Standards Code* and the *Labour Relations Code* came into force gradually, during the year of 2016.

In Alberta, domestic employees are entitled to general holidays and general holiday pay; vacations and vacation pay; notice of termination of employment; maternity and parental leave; and a day of rest each week. However, they are exempted from minimum standards on overtime and overtime pay. While domestic employees who do not live at the employer’s residence are entitled to minimum wage, those who live in the employer’s residence are entitled to at least \$2,582 per month (regardless of the number of hours worked).<sup>38</sup>

33 *Fair Trading Act*, RSA 2000, c. F-2; *Employment Agency Business Licensing Regulation*, Alberta Reg. 45/2012.

34 Par. 12(1) and 13 (2) of the Alberta Reg. 45/2012.

35 For more on this topic, see: D. Nakache and L. Dixon-Perera, “Temporary or Transitional? Migrant Workers’ Experiences with Permanent Residence in Canada”, *Institute for Research on Public Policy*, No. 55, 2015, p. 39.

36 29th Legislature, 1st Session (2015-2016).

37 *Labour Relations Code*, RSA 2000, c. L-1

38 Alberta Regulation 14/97, s.s. 6.9(b) and 9(c).

**British Columbia** has not enacted any specific legislation on TFWs, but there are provisions contained within the ES legislation and regulations that are of particular relevance for TFWs. The B.C. ESA prohibits charging a fee to a person seeking employment for finding a job or providing information about available jobs.<sup>39</sup> However, recruitment agencies are permitted to charge TFWs for a variety of other services outside the scope of this provision, such as CV writing services, or immigration services.<sup>40</sup> In addition to this, the B.C. legislation- with the exception of live-in caregivers<sup>41</sup>- does not require employers of TFWs to register and provide information about themselves and the TFWs recruiters they use.

ES for agricultural workers are found in the *Employment Standards Act* and in the *Employment Standards Regulation 396/95*. The ESA addresses the responsibility of farm labour contractors.<sup>42</sup> The *Employment Standards Regulation 396/95* deals with specific aspects of farm workers’ rights and protections, such as minimum wage, paying wages, deductions from wages, overtime, and statutory holidays. Farm workers are entitled to at least the minimum wage. The legislation also sets out a process for calculating piece-work rates for workers involved in harvesting. Farm workers are excluded from the overtime provisions and statutory holidays with pay; they are entitled, however, to annual vacations and vacation pay.<sup>43</sup> Special standards apply to farm workers employed by licensed farm labor contractors. The farm labor contractor must pay wages directly into the worker’s bank account.<sup>44</sup>

39 B.C. ESA, s. 10.

40 For more on this topic, see: *Gorenshtein & ICN Consulting Inc. v. Tagirova*, 2010 BCPC 384. See also: Linnse Clark, “Migrant Worker Recruitment & Protection – Model Legislation”, B.C. Employment Standards Collation, 2013 (updated in December 2014), at 11.

41 *Employment Standards Regulation*, B.C. Reg. 396 /95, s. 13 [hereafter B.C. Reg. 396/95].

42 B.C. ESA, s. 13 & s. 30 to s. 30.2. For example, s.13 of B.C. ESA stipulates that all farm labour contractors must be licensed, or again, s.30.1 of B.C. ESA sets out the liability of a farm labour contractor to pay a \$500 administrative fee when the contractor’s vehicle is removed from the road for safety reasons and the province provides alternative transportation to the workers who were travelling in the vehicle. Responsibility of farm labour contractors is addressed under ss. 2 to 12 of the B.C. Reg. 396/95.

43 A “farm worker” is a person employed in a farming, ranching, orchard or agricultural operation (B.C. Reg. 396/95, s. 1). The minimum wage provision is found in s. 18 of B.C. Reg. 396/95. Provisions on overtime and statutory holiday are found in s. 34.1 of the B.C. Reg. 396/95.

44 B.C. Reg. 396/95, s.40.2.

In British Columbia, all ES apply to caregivers. In 1994, the *Employment Standards Act* was amended to require an employer to provide domestic workers (including migrant caregivers) with an employment contract outlining duties, hours of work, wages and rent, and to establish a maximum charge of \$325/month for room and board.<sup>45</sup> The legislation also specifies that any additional hours worked must be added in that pay period.<sup>46</sup> Part 3 of the *Employment Standards Regulation 396/95* has a very small section that deals specifically with “employees working in residences.” Under this section, employers of a domestic or textile worker must provide certain information to the Labour Standards Director, such as the employee’s name, address and telephone number and the employer’s name, address, telephone and fax number. It is specified that, in the case of an employee who is to be employed as a domestic and who is coming to Canada from another country, this information must be given to the director before the employee is hired and before the employer makes an application to bring the employee to Canada.<sup>47</sup>

**Seemingly, Quebec has not enacted any specific legislation on TFWs**, but there are provisions contained within the ES legislation and regulations that are of particular relevance for TFWs. **Quebec** requires all employers wishing to hire TFWs to submit an application to the Quebec Ministry of Immigration (Ministère de l’Immigration, de la Diversité et de l’Inclusion) or approval. The application to the Ministry contains the names and places of employment for all TFWs that an employer seeks to bring to the province. An LMIA and work permit will only be provided by the federal government if the Quebec Ministry of Immigration (Ministère de l’Immigration, de la Diversité et de l’Inclusion) has approved the employer’s application and terms of employment.

In **Quebec**, farm workers and domestic workers are covered by the LSA but certain exceptions and specific provisions address the reality of these workers. Hence, if a domestic worker is living in the employer may not require an amount for the employees’ room and board.<sup>48</sup> The 40-hour regular work week set in the LSA does not apply to farm workers, as regards the computing of overtime hours and hourly wages. If the indemnity for an employee’s annual leave must generally be paid to him in a lump sum before

45 B.C. ESA, s. 14; B.C. Reg. 396/95, s. 14.

46 B.C. ESA, s. 14.

47 B.C. Reg. 396/95, s. 13.

48 Quebec, LSA, s. 59.0.1.

the beginning of the leave, in the case of a farm worker hired on a daily basis, the indemnity may be added to his wages and be paid in the same manner.<sup>49</sup> Finally, although an employee is usually entitled to a weekly minimum rest period of 32 consecutive hours, in the case of a farm worker, the day of rest may be postponed to the following week if the employee consents thereto.<sup>50</sup>

It is also noteworthy that, in Quebec, the activities of recruitment agencies are not formally regulated.

As in Alberta and British Columbia, Newfoundland and Labrador has no specific legislation that deals with TFWs (although Newfoundland and Labrador has been closely examining the Manitoba model since 2014).<sup>51</sup> The *Labour Standards Act*,<sup>52</sup> which prescribes general minimum ES, is applicable to all employees, including TFWs.

In **Newfoundland and Labrador**, agricultural employees are entitled to all ES, except overtime pay, paid at minimum wage for persons employed in the planting, cultivating and harvesting of farm produce, and in raising of livestock (see Appendix H).<sup>53</sup>

Like **Alberta, British Columbia, Newfoundland and Labrador, the PEI government** relies solely on its *Employment Standards Act*<sup>54</sup> to address the situation of TFWs. In Prince Edward Island, farm workers are excluded from most minimum standards, including minimum wage, hours of work, overtime, paid general holidays, vacation, vacation pay and rest periods (agricultural employees are, however, fully subject to the act if they transport, process or package raw products on a farm considered to be a commercial undertaking).<sup>55</sup> Persons employed as caregivers in private

49 Quebec, LSA, s. 75.

50 Quebec, LSA, s. 78.

51 Joe Friesen, “Manitoba’s foreign worker strategy called a model for other provinces”, *The Globe and Mail*, July 2, 2014.

52 *Labour Standards Act*, RSNL 1990 c L-2.

53 Consolidated Newfoundland and Labrador regulation 781/96, *Labour Standards Regulations under the Labour Standards Act* (O.C. 96-261), s. 9(1). S. 9(1) also stipulates that the rate of wages for overtime does not apply to a person employed as a live-in housekeeper, or as babysitter (where there is an arrangement for time off).

54 *Employment Standards Act*, RSPEI 1988, c E-6.2.

55 *Employment Standards Act*, s. 2(2)(b). See also: Prince Edward Island Government, Employment Standards Branch, “Prince Edward Island Guide Employment Standards”: [http://www.gov.pe.ca/photos/original/lir\\_esguide.pdf](http://www.gov.pe.ca/photos/original/lir_esguide.pdf) (no publication date provided, last accessed: July 09, 2016).

homes are subject to the legislation except for minimum wage and rules concerning hours of work (including overtime pay). Other domestic workers are covered.<sup>56</sup>

**Ontario, Manitoba and Nova Scotia are the three provinces that have established laws or statutory provisions aimed at addressing the specific employment situation of temporary foreign workers.**

In **Ontario**, the *Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009* [hereafter EPFNA] came into force on March 22, 2010. That legislation applied only to foreign nationals employed or seeking employment as live-in caregivers in Ontario, however, it was amended and renamed the *Employment Protection for Foreign Nationals Act, 2009* effective November 20, 2015. The change in the legislation expanded its scope to all foreign nationals who are employed or seeking employment in Ontario.<sup>57</sup> The EPFNA is enforced by the Ministry of Labour's Employment Standards Officers.

The EPFNA prohibits recruiters from charging any fees to foreign nationals,<sup>58</sup> either directly or indirectly; generally prevents employers from recovering or attempting to recover from the foreign national any cost incurred in arranging to become the foreign national's employer;<sup>59</sup> prohibits employers and recruiters from taking a foreign national's property, including documents such as a passport or work permit;<sup>60</sup> prohibits a recruiter, an employer, or a person acting on their behalf from intimidating or penalizing a foreign national for asking about or asserting their rights under the EPFNA;<sup>61</sup> requires recruiters and, in some situations, employers to distribute information sheets to foreign nationals setting out their rights under the EPFNA and the Ontario the *Employment Standards Act* ("ON ESA") (these sheets are available in 12 languages).<sup>62</sup>

56 *Employment Standards Act*, s. 2(3).

57 *Employment Protection for Foreign Nationals Act, 2009*, S.O. 2009, c. 32.

58 According to section 7 of EPFNA, recruiters are prohibited from "charging the foreign national...a fee for any service, good or benefit provided to the foreign national," which wording is understood to include both recruitment and immigration assistance.

59 EPFNA, section 8. See also the section of this report on "travel costs".

60 EPFNA, section 9.

61 EPFNA, section 10.

62 EPFNA, section 11 and section 12.

A TFW who is an agricultural employee has rights under both the EPFNA and the ON ESA. There are four categories of agricultural employees under the ON ESA (farm employees, harvesters, "near farmers" and landscape gardeners) and these employees have very different rights. For example, farm employees are not entitled to the minimum wage, to a meal period, to public holidays or public holiday pay or to a vacation with pay. They are not covered by the daily and weekly limits on hours of work, the daily and weekly rest period rules, or the rule concerning the minimum time off between shifts. However, they are covered by ON ESA provisions on notice of termination/termination pay and severance pay.<sup>63</sup> Harvesters of fruit, vegetables or tobacco are not covered by the hours of work rule, the daily and weekly rest period rules, or the rule concerning the minimum time off between shifts, and they are not entitled to a meal period or overtime pay.<sup>64</sup> However, special rules regarding minimum wage, public holidays, and vacation with pay apply to harvesters. Regarding the rule on minimum wage, for example, if employees are paid on a piece work basis, the employer is considered to be in compliance with the minimum wage requirement, even if a particular employee earns less than the minimum wage, as long as the piece work rate is customarily and generally recognized in the area where the work is being done as being high enough that an employee using reasonable effort could earn at least the minimum wage. Moreover, where employees are not provided with a room but are provided with some other type of housing accommodation, special rules set out the maximum amount at which the accommodation may be valued for purposes of determining whether the minimum wage has been paid.<sup>65</sup> Or again, harvesters are entitled to public holidays and public holiday pay if they have been employed by the same employer for at least 13 consecutive weeks. However, harvesters are treated as if they are employed in a continuous operation. This means that an employee may be required to work on a public holiday if the day on which the holiday falls is normally a working day for the employee and the employee is not on vacation on that day.<sup>66</sup>

Ontario makes a distinction between "domestic workers" and "homemakers". Domestic workers are employed directly by householders, and not by a business or agency.

63 *Ibid*, s. 2(2).

64 *Ibid*.

65 *Ibid*, s. 24-25.

66 *Ibid*, s. 27. For the special rules on vacation with pay, see s. 26 of "Exemptions, special rules and establishment of minimum wage", *Ontario Regulation 285/01* [hereafter Ontario Reg. 285/01].

“Homemakers” are employees hired by a business, agency or any person other than the householder to perform homemaking services for a householder.<sup>67</sup> While “homemakers” are subject to special rules and exemptions under the ON ESA, domestic workers in Ontario have the same rights as other employees in Ontario workplaces under the ESA. An employer can take into account the provision of room and meals to a domestic worker when calculating the minimum wage. However, room and/or meals (board) will not be considered wages unless the employee has actually received the meals or occupied the room.<sup>68</sup> In addition to the ESA, a migrant domestic worker is also covered by the *Employment Protection for Foreign Nationals Act* (EPFNA).

In **Manitoba**, the *Manitoba Worker Recruitment and Protection Act* [hereafter the “Manitoba Act”] and its regulations prohibit anyone from charging or collecting fees from a TFW for finding or attempting to find him or her employment.<sup>69</sup> According to its factsheets, the Manitoba Employment Standards Branch interprets this provision as placing an absolute ban on TFWs recruiters or employers from receiving a fee (directly or indirectly) from the worker. The *Manitoba Act* also requires any person engaged in recruiting TFWs to be licensed and, in order to be licensed, an individual must provide an irrevocable letter of credit or cash bond in the amount of \$10,000.<sup>70</sup> In addition, Manitoba knows where its temporary TFWs are working. According to the *Manitoba Act*, businesses must register with the province to get a work permit for a TFW hired under the TFWP, which allows inspectors to check on their working conditions to make sure they meet ES and health and safety rules. This also allows the province to block anyone who breaks those rules from bringing in more workers.<sup>71</sup>

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67 *Ibid.*, s.1.

68 For prescribed amounts, see *ibid.*, s. 19(2).

69 *Worker Recruitment and Protection Act*, CCSM c W197 (2008), s. 15(1).

70 *Ibid.*, s. 2(1) to 2(5); and ss. 9 and 10 of the *Worker Recruitment and Protection Regulation*, Regulation 21/2009. The Manitoba government provides the following clarification of this point on its website: “The Worker Recruitment and Protection Act regulates the business of employment agencies and migrant worker recruitment and the associated fees, but does not regulate the business of immigration assistance. However, licensees cannot charge temporary foreign workers for immigration assistance and be involved in the recruitment process. This would contravene the Act, which prohibits a licensee from charging fees, either directly or indirectly, from temporary foreign workers.”: Government of Manitoba, “Fact Sheet: Employer Registration Information” (2015) & “Fact Sheet: Foreign Worker Recruitment Licence Information” (2016). Online: <http://www.gov.mb.ca/labour/standards/wrpa.html> (last accessed: July 3, 2016)

71 *Worker Recruitment and Protection Act*, *ibid.*, s. 11 (1) to

Regarding farm workers hired in Manitoba, changes to the *Employment Standards Code* came into effect in June 2008. Different standards apply depending on the type of employment,<sup>72</sup> but the key point to remember here is that farm workers who work on a farm directly in the production of agricultural products are covered by the *Employment Standards Code* for most key employment standards provisions (i.e., minimum wage, deductions from wages, termination of employment, vacations and vacation pay, unpaid leave, work breaks, weekly rest, child employment, equal pay, employment records). However, they are not covered by the general provisions on hours of work and overtime, general holidays and reporting pay.<sup>73</sup> As for domestic workers, those who work more than 12 hours per week are covered by all aspects of the *Employment Standards Code*, although they are entitled to a longer period of rest each week than most other employees. Domestic workers who work less than 12 hours per week, and persons who care for, or supervise, a member of the household in their employer’s residence but do not live with the employer are not covered by most areas of the *Employment Standards Code*, except for unpaid leaves and the employment of children.<sup>74</sup>

In **Nova Scotia**, temporary foreign workers are covered by the *Labour Standards Code*,<sup>75</sup> which provides employment protections for most employees. Although some rules apply to all workers, not only TFWs, these rules are particularly relevant in the context of migrant labour work. For example, recruiters and employers cannot charge workers a fee for recruitment-related services.<sup>76</sup> Employers cannot make deductions, directly or indirectly, from workers’ pay to cover the costs of recruiting.<sup>77</sup>

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11(5); *Worker Recruitment and Protection Regulation*, *ibid.*, ss. 8(1) and 8(2). The CIC will not process an unregistered employer’s immigration application for a TFW destined for Manitoba

72 For more on this topic, see the table titled “Employment Standards in Agriculture at a glance”, in: Government of Manitoba, “Standards for employees working on a farm in the primary production of agricultural products”, May 2016: [http://www.gov.mb.ca/labour/standards/doc.ag\\_employee\\_standards,factsheet.html](http://www.gov.mb.ca/labour/standards/doc.ag_employee_standards,factsheet.html)

73 *The Employment Standards Code*, C.C.S.M. c. E110, and Reg. 62/99, ss. 3(1), 3(1.1), 3(1.2), 3(1.3).

74 For more on this topic, see: Government of Manitoba, “Fact Sheet: Domestic Workers (Live-In Nannies)”, April 2016, at: <http://www.gov.mb.ca/labour/standards/doc.domestic-workers,factsheet.html>

75 *Labour Standards Code*, R.S.N.S. 1989, c. 246.

76 *Ibid.*, s. 89B.

77 *Ibid.*, s. 89E.

Most individuals who wish to provide TFWs with recruitment-related services in Nova Scotia must be licensed with Labour Standards. If an employer wants to use a third party recruiter to hire TFWs, the employer must generally resort to a recruiter who is licensed.<sup>78</sup> What's more, most employers (with very limited exemptions) who wish to recruit and hire TFWs for employment in Nova Scotia must register and obtain a Foreign Worker Employer Registration Certificate from the Director of Labour Standard Labour Standards.<sup>79</sup> In addition, the *Employment Standards Act* specifies that employers cannot eliminate or reduce a foreign worker's wages, benefits or other terms or conditions of employment (e.g., hours). Also, a foreign worker cannot agree to an elimination or reduction in wages, benefits or other terms or conditions of employment.<sup>80</sup> Finally, employers and recruiters cannot take or keep a foreign worker's property (e.g., passport, work permit).<sup>81</sup>

In Nova Scotia, farm workers are generally entitled to the minimum wage, with the exception of employees under the age of 16 who are employed on a farm primarily involved in the production of eggs, milk, grain, seeds, fruit, vegetables, Christmas trees, Christmas wreaths, maple products, honey, tobacco, pigs, cattle, sheep, poultry or animal furs.<sup>82</sup> Also excluded from the minimum wage in Nova Scotia are agricultural workers paid on a piecework basis whose work is directly related to the in-field, non-mechanized harvesting of fruit, vegetables and tobacco.<sup>83</sup> Holiday pay rules and hours of labour rules do not apply to most farm employees.<sup>84</sup>

Domestic workers in Nova Scotia - understood as employees who do domestic service for, or give personal care to, an immediate family member in a private home and are working for the householder<sup>85</sup> are exempted from the application of the *Labour Standards Code*. This means that they are not covered by minimum wage rules, overtime rules,

holiday pay rules, and minimum rules on vacation time, vacation pay or employee termination.<sup>86</sup>

## II. Key employment standards

In this section, we outline four specific “normative bouquets”. A normative bouquet is understood in this report to mean a set of ES that aim to achieve specific purposes.<sup>87</sup> We will not engage in an in-depth analysis of all the standards contained in these bouquets but will discuss instead the ES pertaining to wage and financial benefits (A), working time (B), employment termination (C), and employees' right to a workplace free of psychological harassment (D). For the purposes of this section, we will focus primarily (but not exclusively) on Alberta, British Columbia, Ontario and Quebec. We also refer the reader to the various appendices to this report, which summarize key information on other jurisdictions.

### A. Wage and other financial benefits

*INTRODUCTORY NOTE:* Appendix B provides useful information on provincial minimum hourly wage rates. Appendix E provides information on the rules that apply in each jurisdiction reviewed regarding reporting pay. Appendix F provides a summary of allowable deductions from wages in each reviewed jurisdiction (i.e., uniforms and room and board).

**Alberta** ESC provides a definition of wages as including “salary, pay, money paid for time off instead of overtime pay, commission or remuneration for work” but not including “overtime pay, vacation pay, general holiday pay and termination pay”, “a payment made as a gift or bonus [at the employer's discretion]”, or “tips or other gratuities”.<sup>88</sup> Since October 1<sup>st</sup>, 2017, the general minimum wage rate is \$13.60 per hour for most employees.<sup>89</sup> There are other categories of employees who are subject to different minimum wage arrangements: salespersons, domestic employees who live in the employer's residence, land agents and other professionals who are exempted from recording daily hours of work.<sup>90</sup> There are also employees exempt from

78 *Ibid*, s. 89C and 89H.

79 *Ibid*, ss. 89T to 89V.

80 *Ibid*, s. 89F. There are very narrow exceptions to this rule: see s. 12 of the *General Labour Standards Code Regulations*, N.S. Reg. 298/90 [hereafter N.S. Reg. 298/90].

81 S. 89G of *Labour Standards Code*, R.S.N.S. 1989, c. 246.

82 S. 2 of the *Minimum Wage Order (General) made under Sections 50 and 52 of the Labour Standards Code*, R.S.N.S. 1989, c. 246.

83 *Minimum Wage Order*, s. 13

84 N.S. Reg. 298/90, s. 2(3).

85 N.S. Reg. 298/90, s.2(1).

86 *Ibid*.

87 For further analysis of this concept, see: Dalia Gesualdi-Fecteau, *L'usage par les travailleurs étrangers temporaires des ressources proposées par le droit du travail: une contribution aux études portant sur l'effectivité du droit*, Doctoral Thesis, Faculté de droit, Université de Montréal, 2015

88 AB ESC, s. 1(1)(x).

89 Alberta Reg 14/97, s. 9(a),

90 Salespersons, land agents and other professionals who are



the minimum wage: real estate brokers, securities sales persons, insurance sales persons paid entirely by commission, students engaged in a work experience program approved by the Minister of Innovation and Advanced Education or the Minister of Human Services, students engaged in an off-campus education program provided under the *School Act*,<sup>91</sup> extras in a film or video production, counselors or instructors at an educational or recreational camp operated on a non-profit basis for children or handicapped individuals or for religious purposes.<sup>92</sup> The methods an employer uses to pay wages include cash, cheque, or direct deposit.<sup>93</sup> Alberta's ESC provides employees with other financial benefits, since most employees are entitled to vacations and vacation pay<sup>94</sup>, general holidays and general holiday pay<sup>95</sup> and to overtime pay.<sup>96</sup>

Employees who regularly work more than three hours a day and who are required to present themselves for work on a day on which they work fewer than three hours must receive at least three hours of pay at the minimum wage. This three-hour minimum does not apply if the employee is not available to work the full three hours.<sup>97</sup> School bus drivers; home care employees; adolescents (12, 13 or 14 years of age) who work on a school day; and part-time employees employed in a recreational or athletic program who are employed by a municipality, Métis Settlement or a non-profit community service organization must be paid

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exempted from recording daily hours of work are defined in s. 2(2) of the Alberta Reg 14/97. Under s.9 (b), they are entitled to a minimum wage of \$542 per week. Domestic employees who live in the employer's residence are entitled to at least \$2,316 per month (regardless of the number of hours worked). Note: domestic employees who do not live in their employer's residence are entitled to at least \$13.60 per hour for all hours worked: s. 9(c) of Alberta Reg. 14/97.

91 *School Act*, RSA 2000, c S-3.

92 Alberta Reg 14/97, s. 8.

93 AB ESC, s. 11(1) to 11(4).

94 Part 2, Division 6 of the AB ESC sets out the general rules for vacations and vacation pay (ss. 34 to 44).

95 Part 2, Division 5 of the AB ESC provides the general requirements and entitlements to general holidays and general holiday pay (ss. 25 to 33). Part 4 of Alberta Reg. 14/97 creates a different regime for general holidays and general holiday pay for construction employees (see s. 45).

96 Part 2, Division 4 of the AB ESC sets out the general rules for "Overtime Hours" and "Overtime Pay" (ss. 21 to 14). Alberta Reg. 14/97 excludes a number of occupations from these sections and also provides special rules for calculating overtime for several other occupations. In addition, s. 2(3) of the AB ESC exempts certain farm and ranch employees from the application of this standard.

97 Alberta Regulation 14/97, s. 11(1).

minimum compensation for at least two hours at not less than the minimum wage.<sup>98</sup>

Deductions from wages can be problematic when the wages are already at the legislated minimum. For this reason, some provinces have enacted provisions regarding the maximum amount that employers can charge for certain common deductions -namely room and board and uniforms. In Alberta, an employer can, with written authorization from the employee, make deductions for the supply or cleaning of uniforms or special wearing apparel, but cannot reduce the employee's wages below the minimum wage or deduct more than the actual cost to the employer. An employer can, however, reduce an employee's wages below minimum wage by \$3.35 for each consumed meal and \$4.41 per day for lodging provided.<sup>99</sup>

The **BC** ESA defines "wage" as any money paid or payable by an employer to an employee for services rendered or labour provided. This includes any incentive related to an employee's work performance or the performance of the company.<sup>100</sup> As in **Alberta**, gratuities (tips) are not wages for the purposes of the B.C. ESA (unless used to pay an employer's business costs).<sup>101</sup> This means that employees must be paid at least the minimum wage in addition to any tips or gratuities they receive. The minimum wage applies to all employees regardless of how they are paid - hourly, salary, commission or another incentive basis. The general minimum wage in BC is \$11.35 per hour.<sup>102</sup> There are specific minimum wage rates for live-in home support workers, resident caretakers, farm workers who hand-harvest certain fruit and vegetable crops, and liquor servers.<sup>103</sup> The method an employer uses to pay wages can be cash, cheque, or direct deposit. However, farm labour contractors can only be paid by way of direct deposit to their accounts in a savings institution.<sup>104</sup> The B.C. ESA provides employees with other financial benefits, such as pay for a statutory holiday or annual vacation,<sup>105</sup> and overtime

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98 Alberta Regulation 14/97, s. 11(3) and s. 13.6(1). Note: according to s. 52(3) of the regulation, adolescents are prohibited from working more than two hours on a school day.

99 Alberta Reg. 14/97, s. 12(1), s. 13 and s. 13(1).

100 B.C. ESA, ss. 1(a) and (b).

101 B.C. ESA, ss. 1(f).

102 B.C. Reg. 396/95, ss. 17, 18 and 18.1.

103 B.C. Reg. 396/95, s.15.

104 *Ibid*, s. 40.2.

105 *Ibid*, ss. 44-45 and s. 58.

rates.<sup>106</sup>

Under B.C. ES law, employees who report for work must be paid for at least two hours, even if they work less than two hours.<sup>107</sup> If employees are scheduled for more than eight hours reports for work, they must be paid for at least four hours.<sup>108</sup> If work stops for a reason completely beyond the employer's control, the employee must still be paid for two hours or the actual time worked, whichever is greater.<sup>109</sup> The minimum daily pay requirements do not apply when an employee who is scheduled to work 8 hours or less is unfit to work or fails to comply with Work Safe B.C. occupational health and safety regulations. In these two cases, the employee has to be paid for the time actually worked.<sup>110</sup>

British Columbia specifies that uniform charges can in no case be deducted.<sup>111</sup> In fact, required uniforms must be provided and cleaned without charge.<sup>112</sup> According to the B.C. Policy and Instruction Manual on domestic workers, room and board may be charged if it is not prohibited by federal requirements.<sup>113</sup> An employer must not charge a domestic worker more than \$325 per month for room and board, and this rate must be included in the employment contract.<sup>114</sup> However, since federal requirements do not allow in-home caregivers who enter Canada under the Temporary Foreign Worker Program to be charged room and board, foreign caregivers cannot be charged room and board.<sup>115</sup>

The Ontario ESA defines “wage” as follows:

- a. “any monetary remuneration payable by an employer to an employee under the terms of an employment contract, oral or written, express or implied

- b. any payment required to be made by an employer to an employee under this Act, and

- c. any allowances for room or board under an employment contract or prescribed allowances.<sup>116</sup>

Gratuities (tips) are not wages for the purposes of the ON ES legislation. The definition also includes “(e) any sums paid as gifts or bonuses that are dependent on the discretion of the employer and that are not related to hours, production or efficiency” and “(f) expenses and travelling allowances”. Most employees are eligible for minimum wage, whether they are full-time, part-time, casual employees, or are paid an hourly rate, commission, piece rate, flat rate or salary. However, some employees have jobs that are exempt from the minimum wage provisions of the ON ESA.<sup>117</sup> Since January 2018, the general minimum wage in Ontario is \$14.00 per hour. The table below summarizes the current minimum wage rates:<sup>118</sup>

Minimum Wage Rate	Current rates
General Minimum Wage	\$14.00 per hour
Student Minimum Wage	\$13.15 per hour
Liquor Servers Minimum Wage	\$12.20 per hour
Hunting and Fishing Guides Minimum Wage	\$70.00 Rate for working less than five consecutive hours in a day \$140.00 Rate for working five or more hours in a day whether or not the hours are consecutive
Homeworkers Wage	\$15.40 per hour

An employer may pay wages by cash, cheque, and direct deposit into the employee's account at a bank or other financial institution.<sup>119</sup> **As in other jurisdictions**, Ontario's employees benefit from additional financial benefits, such as statutory holiday pay, vacation pay and overtime pay.<sup>120</sup>

106 *Ibid*, ss. 37 and 40.

107 *Ibid*, s. 34. (1).

108 *Ibid*, s. 34. (2).

109 *Ibid*, ss. 34. (1) and 34(4).

110 *Ibid*, s. 34. (1).

111 *Ibid*, s. 21.

112 *Ibid*, s. 25.

113 Employment Standards and Workplace Safety, “A Guide to the Employment Standards Act For Domestic Workers and their Employers”, December 2015: [http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/employment-standards-workplace-safety/employment-standards/domestics/domestics\\_brochure.pdf](http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/employment-standards-workplace-safety/employment-standards/domestics/domestics_brochure.pdf)

114 B.C. Reg. 396/95, s. 14.

115 For more on this topic, see section I.B.2. of this report.

116 ON ESA, s. 1.

117 The rates and other rules relating to the minimum wage are set out in Ontario Reg. 285/01. Also, note that there is a specific calculation method for employees whose pay is based completely or partly on commission.

118 This table, which is based on ss. 23. (1) and 23.1 of the ON ESA, is taken from the Ontario government website: <http://www.labour.gov.on.ca/english/es/pubs/guide/minwage.php> (last visited: July, 9 2016).

119 ON ESA, s. 11.

120 ON ESA, s. 22 to 22.2 (overtime pay); s. 24 (public holiday pay); ss. 33 to 41.1 (vacation with pay).

An employee who regularly works more than three hours a day and who is required to report to work but works less than three hours must be paid whichever of the following amounts is greater: three hours at the minimum wage, or the employee's regular wage for the time worked.<sup>121</sup> For example, if an employee who is a liquor server is paid \$13.00 an hour and works only two hours, he or she is entitled to three hours at minimum wage (i.e., \$12.20, the liquor servers minimum wage, × 3 = \$36.60) instead of two hours at his or her regular wage (\$13.00 × 2 = \$26.00). This rule, however, does not apply to students (including students over 18 years of age), employees whose regular shift is three hours or less, and in some cases, where the cause of the employee's not being able to work at least three hours was beyond the employer's control.<sup>122</sup>

In Ontario, the room and board provision affects the minimum wage. More precisely, the definition of wages includes allowances for room or board under an employment contract.<sup>123</sup> Accordingly, certain amounts can be taken into account when an employer provides the employee with room or both or both.<sup>124</sup> Room and board will only be deemed to have been paid as wages if the employee has received the meals and occupied the room.<sup>125</sup> The amounts that an employer is deemed to have paid to the employee as wages for room or board or both are set out in the table below:<sup>126</sup>

Room (weekly) private	\$31.70
Room (weekly) non-private	\$15.85
Meals (each meal)	\$2.55
Meals (weekly maximum)	\$53.55
Rooms and meals (weekly) with private room	\$85.25
Rooms and meals (weekly) with non private room	\$69.40

121 Ontario Reg. 285/01, ss. 5(7).

122 Ontario Reg. 285/01, ss. 5(8).

123 ON ESA, s. 1(1)(c).

124 ON ESA, s. 23(2).

125 ON ESA, ss. 12(1)(f) and 23(2). For an example of the assessment of damages following a successful labour standards claim, namely the deduction of the amounts for room and board provided by the employer, see: *Teen Challenge Inc v Banick*, [2014] O.E.S.A.D. No. 234, paras 25-26.

126 Based on Ontario Reg. 285/01: sections 5(4), 5(5) and 25(5). For minimum requirements regarding what can be deemed an appropriate accommodation, see, in particular, section 5(5).

Note that there are different prescribed amounts for certain categories of workers, notably domestic workers<sup>127</sup> and harvesters.<sup>128</sup> Note also that Ontario does not have any explicit provision on uniform deductions in their *Employment Standards Act* and regulations.

In **Quebec**, the LSA provides a legislative definition of the concept of "wage". It is defined as "a remuneration in currency and benefits having a financial value due for the work or services performed by an employee".<sup>129</sup> Aside from a few exceptions,<sup>130</sup> all employees are entitled to the minimum wage rates determined in the *Regulation respecting labour standards*. As of May 1<sup>st</sup> 2017, the general minimum wage payable to employees is set at 11,25\$ per hour, whereas the minimum wage payable to employees who receive gratuities or tips is set at 9,45\$ per hour.<sup>131</sup> The LSA does not favour any particular method of remuneration. In practice, wages can be determined on an hourly basis, in accordance with the duration of the work performed. Although all employees must receive at least the minimum wage for all the hours worked, work time is not the only unit used to measure the work performed; employees can also receive a fixed remuneration, paid on a weekly or yearly basis. Employees can also be paid on a piecework basis.

The LSA also provides employees with other financial benefits. These include, in particular, annual leave indemnities,<sup>132</sup> indemnities payable for statutory general holidays<sup>133</sup> and a premium on the prevailing hourly wage for work performed in addition to the regular workweek.<sup>134</sup> An em-

127 ON ESA, s. 19(2).

128 ON ESA, s. 25(5).

129 QC LSA, s 1 (9). For an interpretation of this provision, see: *Leduc c Habitabecinc.*, D.T.E. 90T-751 (T.A.) (Judgment upheld by the Québec Court of Appeal, D.T.E. 94T-1240 (C.A.)).

130 The minimum wage determined in the *Regulation respecting labour standards* does not apply to students employed in a non-profit organization having social or community purposes, such as a vacation camp or a recreational organization; to trainees under a programme of vocational training recognized by law; to trainees under a programme of vocational integration to employees entirely on commission who works in a commercial undertaking outside the establishment and whose working hours cannot be controlled. Moreover, the employees assigned exclusively, during a pay period, to non-mechanized operations relating to the picking of raspberries or strawberries is established on the basis of yield: *Quebec Regulation Respecting Labour Standards*, RLRQ c. N.1-1, r. 3, s 4.1.

131 *Ibid*, ss. 3-4.

132 QC LSA, ss 66-77.

133 *Ibid*, ss 59.1-65.

134 *Ibid*, ss 54-59.0.1.

ployee who reports for work at his place of employment at the express demand of his employer or in the regular course of his employment and who works fewer than three consecutive hours, except in the case of a force majeure, is entitled, to an indemnity equal to three hours' wages at the prevailing hourly rate.<sup>135</sup> Moreover, an employee is deemed to be at work, and therefore must be paid, while available to the employer at the place of employment and required to wait for work to be assigned, during the break periods granted by the employer, when travel is required by the employer and during any trial period or training required by the employer.<sup>136</sup>

The financial benefits provided for in the LSA are calculated according to the wages agreed upon by the parties.<sup>137</sup> The LSA and its regulations also govern the employer's obligations with regard to travel costs<sup>138</sup> and to expenses related to the operations of the enterprise.<sup>139</sup>

The LSA states that the maximum amount that an employer may require for the employee's room and board is that fixed by Government regulation.<sup>140</sup> The *Regulation Respecting Labour Standards* stipulates that "where an employer, because of the employee's working conditions, must provide meals or accommodation," a maximum of \$2.15 per meal and up to \$28.00 per week can be charged to the employee.<sup>141</sup> As for accommodation, the employer can charge up to \$48.45 per week for a dwelling that accommodates 4 employees or less and \$32.32 for a room accommodating 5 employees or more.<sup>142</sup> Quebec legislation specifies that uniforms must be supplied free for those who work for minimum wage. Any charges for those who make more than minimum wage cannot result in pay that is below the minimum wage. Moreover, the employee cannot be charged when the uniform bears the company logo.<sup>143</sup>

135 *Ibid*, s 58.

136 *Ibid*, s 57.

137 *Ibid*, s 74.

138 *Ibid*, s. 85.2

139 *Ibid*, s. 85.1

140 LSA, s 51.

141 *Quebec Regulation Respecting Labour Standards*, s 6(1).

142 *Ibid*, ss 6(2), 6(3). With each increase in the general rate of the minimum wage, the amounts provided for in Section 6 of the RLS are increased by the percentage corresponding to the increase in the general rate of the minimum wage, without exceeding the percentage corresponding to the Consumer Price Index.

143 QC LSA, s. 85

## B. Working time and overtime

**NB:** although this section deals mainly with four jurisdictions (Alberta, British Columbia, Ontario and Quebec), Appendices D, G & H to this report provide useful information on standard hours and maximum hours (Appendix D), rest day, rest periods between shifts and meals and breaks (Appendix G) and overtime pay (Appendix H) in each jurisdiction reviewed.

Rules governing working time illustrate what is seen in employment law as a "reasonable" amount of time at work. It is through these important provisions that workers' rights for time paid and time off can be guaranteed and work-life balance achieved.

### 1. Hours of work

#### KEY INFORMATION ON HOURS OF WORK IN VARIOUS JURISDICTIONS (TAKEN FROM APPENDIX D)

The standard work week is eight hours per day and/or 40 hours per week (in **Ontario** and **Alberta**, the standard work week is 44 hours; the longest standard work week in Canada is in **Nova Scotia and Prince Edward Island: 48 hours per week**). The normal work week is generally established to determine after how many hours of work the overtime premium will be due.

Some jurisdictions state a maximum number of hours that can be worked per day or per week (for example, in **Ontario**, this maximum is 48 hours per week); the parties to the employment contract can nonetheless agree to a longer working week. Other jurisdictions do not stipulate explicit maximum hours in their legislation (as is the case in **Manitoba, Québec, Nova Scotia, Prince Edward Island, and Yukon**). **New Brunswick** has an explicit provision stating that there is no maximum limit to hours workable per day, week or month.

In **Alberta**, “hours of work” refers to the period of time during which an employee works for an employer, and includes time off with pay (instead of overtime pay) provided by an employer and taken by the employee.<sup>144</sup> The legislation is silent on what is included in “hours of work”. However, according to the interpretation guidelines, being on call or on standby waiting to be called to work is not considered as hours worked, unless the employee is waiting at the place of employment. In addition, where an employee must attend training that is directly work-related, the employer is required to pay the wage agreed to for the training period of at least minimum wage, plus overtime if applicable. Finally, travel time is considered as hours of work when the employee 1) travels between two job locations during the time of work; 2) is directed to pick up materials or perform other tasks on the way to work or home; or 3) is directed to report to a given location (hours of work will begin on arrival at that location) (see the section on “Travel Time”, below, for more on this topic).<sup>145</sup>

Alberta legislation has no specific provision that explicitly states what a “standard” work week is (i.e., in terms of the number of hours per week). However, it can be inferred from the provisions on “Overtime Pay” and “Overtime Hours” (Part 2, Division 4 of the Alberta ESC) that a normal work week is of 44 hours, since overtime is all hours worked in excess of 44 hours a week (or eight hours a day).<sup>146</sup> Employees can work a compressed work week, which means they work fewer days but more hours in each day. A compressed workweek must be scheduled in advance and be a maximum of 44 hours per week and 12 hours per day.<sup>147</sup> Moreover, an employee cannot be required to work more than 12 hours in any 24-hour period unless there is an emergency (for example, if plant or machinery needs urgent work) or with authorization from the Director of Employment Standards (in which case the employer has a permit for extended work hours).<sup>148</sup> Certain occupations are exempted from the rule on maximum hours.<sup>149</sup> However, all work hours must fall within a 12-hour period (8am to 8pm for example).<sup>150</sup>

<sup>144</sup> AB ESC, section 1(1)(n).

<sup>145</sup> See the Alberta Employer Toolkit, at 18.

<sup>146</sup> AB ESC, s. 21.

<sup>147</sup> AB ESC, s. 20.

<sup>148</sup> AB ESC, s. 16(1).

<sup>149</sup> These occupations are listed in s. 2(2) of Alberta Reg. 14/97.

<sup>150</sup> *Ibid*

In **British Columbia**, the normal work week is 40 hours.<sup>151</sup> Although there is no indication regarding the maximum amount of hours that can be worked per week, **British Columbia is the only province** that has a provision in its legislation stating that the hours worked cannot be so excessive so as to cause damage to the worker’s health or safety.<sup>152</sup> In general, employees’ time that is controlled by the employer (i.e., when employees are on call and must remain at a specific location) is paid time. The exception to this rule is when employees are required to remain on call at home.<sup>153</sup> Employees are considered to be at work while attending meetings conducted or arranged by their employer where they are instructed or provided information that serves a business purpose. Training directed by the employer, or on the employer’s behalf, which is related to the performance of duties the employee has been hired to do, is also considered work. In addition, the time spent by an employee who, while acting on instructions from the employer, is providing a service to the employer when traveling to and from a workplace is considered work (see the section on “Travel Time”, below, for more on this topic).<sup>154</sup>

In **Ontario**, recognized work time is when an employee is either performing work for the employer or not performing work but nonetheless required to stay at the workplace. The three exceptions to this rule are eating periods, time in between shifts to sleep (provided that the employer provides the sleeping facilities and the employee is entitled to at least six uninterrupted hours off work), and when the employee is conducting his or her own private affairs during the normal workday. Note that an employee who is not at the workplace but is “on call” is not consid-

<sup>151</sup> B.C. ESA, s. 35(1).

<sup>152</sup> B.C. ESA, s. 39: “Despite any provision of this Part, an employer must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee’s health or safety”.

<sup>153</sup> B.C. ESA, s. 1 and s. 34. The B.C. Policy and Interpretation Manual states:

“If an employer requires an employee to remain in their residence to await a call to work the employee is considered on call and as such is not considered at work. If employees are on call and must remain at a specific location, the employees must be paid wages because they are still under the employer’s direction and not free to pursue their own interests [...] The exception, however, would be when the employer places restrictions on the activities of the employee that were so severe so as to have the same effect as specifying a place. For example, an employee whose employer expects a response within an hour of being paged is not considered to be at work, however, one who must report to the workplace within five minutes of being paged is, since the employee would have to be within blocks of the workplace in order to meet this expectation”.

<sup>154</sup> B.C. Policy and Interpretation Manual: interpretation of «work» (<https://www.labour.gov.bc.ca/esb/igm/esa-part-1/igm-esa-s1-work.htm>).

ered to be working unless he or she is called into work.<sup>155</sup> Time spent travelling during the course of the workday is considered to be work time, as well as time spent by an employee in training that is required by the employer or by law. For example, where the training is required because the employee is a new employee or where it is required as a condition of continued employment in a position, the training time is considered to be work time. However, training time that is optional -(for example, where an employee hoping for a promotion undergoes training for that purpose) is not considered to be work time.<sup>156</sup>

The normal workweek in Ontario is 44 hours.<sup>157</sup> The ON ES legislation also provides for a maximum workweek of 48 hours. Nonetheless, an employer and employee may sign a written agreement to fix a longer work week, but it cannot exceed 60 hours a week. To exceed the 60-hour limit, the employer must receive the approval of the Ministry of Labour. In most cases, an employee can cancel an agreement to work more hours by giving the employer two weeks' written notice, while an employer can cancel the agreement by providing reasonable notice. Once the agreement is revoked, an employee is not permitted to work excess daily or weekly hours even if the employer has an approval from the Director of Employment Standards for excess weekly hours.<sup>158</sup> There are exceptional circumstances

155 Ontario Reg. 285/01. Section 6 reads as follows:

6. (1) Subject to subsection (2), work shall be deemed to be performed by an employee for the employer,

(a) where work is,

(i) permitted or suffered to be done by the employer, or

(ii) in fact performed by an employee although a term of the contract of employment expressly forbids or limits hours of work or requires the employer to authorize hours of work in advance;

(b) where the employee is not performing work and is required to remain at the place of employment,

(i) waiting or holding himself or herself ready for call to work, or

(ii) on a rest or break-time other than an eating period.

(2) Work shall not be deemed to be performed for an employer during the time the employee,

(a) is entitled to,

(i) take time off work for an eating period,

(ii) take at least six hours or such longer period as is established by contract, custom or practice for sleeping and the employer furnishes sleeping facilities, or

(iii) take time off work in order to engage in the employee's own private affairs or pursuits as is established by contract, custom or practice;

(b) is not at the place of employment and is waiting or holding himself or herself ready for call to work.

156 Ministry of Labour, « The Employment Standards Workbook », 2010 (revised in October 2015), at 21. For more on this topic, see also: *Canadian Union of Public Employees v Canadian Office and Professional Employees Union*, Local 491, [2012] O.L.A.A. No. 87.

157 ON ESA, ss. 15(4) and 22(1).

158 ON ESA, s. 17.

where an employee may be required to work more than the daily or weekly limits on hours of work (for example, in cases of a natural disaster/very extreme weather, a major equipment failure or a fire or flood). In such cases, the limits on hours of work may be exceeded or the rest period may be reduced, but only to the extent that this is necessary to avoid serious interference with the ordinary working of the employer's establishment or operations.<sup>159</sup> Several industries are not required to get an approval from the Director of Employment Standards for excess weekly hours. These industries are listed as :firefighting, construction, fishing, hunting, working from home, building management, funeral homes, farming, harvesting, housekeeping, real estate, mobile marketing, gardening, pool management, and executive positions.<sup>160</sup>

In **Quebec**, the LSA sets the normal work week at 40 hours.<sup>161</sup> While employees must be compensated for all the time spent working, they will also be "deemed to be at work" while available to the employer at the place of employment and required to wait for work to be assigned.<sup>162</sup> Employees who must travel on behalf of the employer<sup>163</sup> or employees during a trial or training period are also deemed to "be at work".<sup>164</sup>

The LSA does not refer to the concept of "optional overtime", which would enable an employee to refuse to work beyond his or her regular work week in any circumstances. The LSA circumscribes employees' right to refuse to work beyond their regular work time to certain precise circumstances. Employees can exercise their right to refuse to work on a daily basis if they have worked more than four hours beyond their regular daily working hours or more than 14 working hours per 24-hour period, whichever period is shorter.<sup>165</sup> Employees can also exercise this right if they have worked more than 50 hours in a given week.<sup>166</sup>

Employees can also refuse to work beyond their regular

159 ON ESA, s. 19. For more information on the "Exceptional Circumstances", see: Ministry of Labour, « The Employment Standards Workbook », 2010 (revised in October 2015), p. 20-21.

160 For more on this topic, see: Ontario Reg. 285/01.

161 QC LSA s 52.

162 QC LSA, s 57 (1).

163 *Ibid*, s 57 (3).

164 *Ibid*, s 57 (4).

165 *Ibid*, s 59.0.1 (1).

166 *Ibid*, s 59.0.1 (2). For exceptions, see: s. 59.0.1 al 2.

working hours if their presence is required to “fulfil obligations relating to the care, health or education of their child or their spouse’s child, or because of the state of health of their spouse, father, mother, brother, sister or one of their grandparents, even though they have taken reasonable steps within their power to assume those obligations otherwise”.<sup>167</sup>

## 2. Rest day, rest periods between shifts and meal breaks

### KEY INFORMATION ON WEEKLY REST PERIODS (TAKEN FROM APPENDIX G)

The most common weekly rest period is 24 consecutive hours per week. **Québec and British Columbia** require longer rest periods per week of 32 consecutive hours, **Prince Edward Island and Yukon** have the longest required rest period of two calendar days, with Sunday being one of those two days if possible.

In **Alberta**, the employer must ensure that no employee works more than 5 consecutive hours without a break of 30 minutes for rest, except where special circumstances occur (for example, an accident occurs, urgent work is necessary, or because of other unforeseeable or unpreventable circumstances).<sup>168</sup> The break can be paid or unpaid, at the employer’s discretion. However, if the employer places restrictions on an employee’s activities during a break, such as prohibiting the employee from leaving the premises, the break must be paid. The break can be taken all at once, or broken into two 15 minute breaks or three 10 minute breaks.<sup>169</sup> Employees are also entitled to certain minimum days of rest as follows: one day of rest each work week, or two consecutive days of rest in each period of two consecutive work weeks, or three consecutive days of rest in each period of three consecutive work weeks, or four consecutive days of rest in each period of four consecutive work weeks, or at least four consecutive days of rest after 24 consecutive work days.<sup>170</sup>

<sup>167</sup> *Ibid*, s 122 (6).

<sup>168</sup> See AB ESC, s. 18. There are several exceptions to the daily rest period: an accident occurs, urgent work is necessary, or other unforeseeable or unpreventable circumstances occur; different rest provisions have been agreed upon pursuant to a collective agreement; it is not reasonable for the employee to take a rest period. However, if the employee is unable to take his or her break, then it must be paid.

<sup>169</sup> *Ibid*

<sup>170</sup> AB ESC, s. 19(1).

In **British Columbia**, the employer must ensure that no employee works more than 5 consecutive hours without a meal break, and that each meal break lasts at least 1/2 hour.<sup>171</sup> Certain work situations require that employees be available for work, or actually perform work, through their meal break. If an employer allows an employee to work at any time during a scheduled meal break, the employer must count the entire meal break as time worked for that day and include the time worked in payroll records.<sup>172</sup> The employer must ensure that an employee has at least 32 consecutive hours free from work each week, or he must pay an employee 1 1/2 times the regular wage for time worked during the 32 hour period the employee would otherwise be entitled to have free time from work.<sup>173</sup> The employer must also ensure that each employee has at least 8 consecutive hours free from work between each shift worked.<sup>174</sup>

In **Ontario**, employees must have at least eight hours free from work between shifts, unless the total time worked during both shifts does not exceed 13 hours, or the employer and employee agree in writing to reduce or forego the eight-hour rest period.<sup>175</sup> In addition, employees must have at least 11 consecutive hours free from performing work in each “regular work day” (this requirement does not apply where an employee is on call and is called in to work during a period them employee would not otherwise have been expected to work).<sup>176</sup> Finally, an employee must receive at least 24 consecutive hours off work in each work week, or 48 consecutive hours off work in every two consecutive work weeks.<sup>177</sup>

In most industries, an employee must not work for more than five hours in a row without getting a 30-minute eating period (meal break) free from work. If the employer and employee agree, the eating period can be split into two eating periods within every five consecutive hours. Together these must total at least 30 minutes. This agreement can be

<sup>171</sup> B.C. ESA, s. 32(1).

<sup>172</sup> B.C. ESA, s. 32(2) and s. 28.

<sup>173</sup> B.C. ESA, s. 36(1).

<sup>174</sup> B.C. ESA, s. 36(2).

<sup>175</sup> ON ESA, s. 18(3).

<sup>176</sup> ON ESA, ss. 18 (1) & (2).

<sup>177</sup> ON ESA, s. 18(4). According to s. 1 of the ON ESA, work week means “a recurring period of seven consecutive days selected by the employer for the purpose of scheduling work, or if the employer has not selected such a period, a recurring period of seven consecutive days beginning on Sunday and ending on Saturday”.

oral or in writing. Meal breaks are unpaid unless the employee's employment contract requires payment. Even if the employer pays for meal breaks, the employee must be free from work for the time to be considered a meal break.<sup>178</sup>

In **Quebec**, the legislation states that employers must grant employees who work for a period of five consecutive hours an unpaid rest period of thirty minutes.<sup>179</sup> If an employee is not authorized to leave his work station, that daily rest period must be remunerated.<sup>180</sup> The responsibility for granting a daily rest period for meals lies with employers. If an employer fails to meet this responsibility, his employees must be remunerated for the daily rest period they did not effectively benefit from.<sup>181</sup> Employees must also be remunerated if the nature of the tasks requires them to be available during the daily rest period,<sup>182</sup> or if they are on call during that period.<sup>183</sup> The LSA also establishes a weekly rest period; it merely provides that employees are entitled to a minimum rest period of 32 consecutive hours per week. Although the employer must grant a weekly rest period to his/her employees, there is nothing to prevent employees from agreeing to continue working during those rest periods.<sup>184</sup> This rest period does not need to consist of a full calendar day. An employee who finishes work in the morning could thus be called to work in the evening of the next day.<sup>185</sup> Apparently, an employer may also grant a once weekly rest period at the beginning of a 7-day period and another such rest

period at the end of a second 7-day period.<sup>186</sup> The right to a weekly rest period also contains an exemption for farm workers; their weekly rest period may be postponed to the following week if they so consent.<sup>187</sup>

**NB:** although provincial ES legislations state that an employer must allow employees days of rest, there is no mention (with the exception of the federal sector and Prince Edward Island) of which specific days must constitute days of rest. This means that an employer can require an employee to work weekends.<sup>188</sup>

### 3. Overtime

Overtime pay applies in all jurisdictions when an employee works over the standard work hours in a week. **In all Canadian jurisdictions**, overtime pay is 1.5 times an established rate of pay (either the worker's regular rate or minimum wage). **The only exception is British Columbia**, where if an employee works over 12 hours, those additional hours are paid at twice the worker's regular rate of pay (see below for the situation in British Columbia and see Appendix H for the situation in other jurisdictions).

**In Alberta**, overtime hours are to be calculated on a daily and a weekly basis and the higher of the two numbers is overtime hours. For example, last week, employee X worked 50 hours a week (10 hours per day for five days):

- In counting the total hours worked more than eight hours per day, overtime is 10 hours (2 overtime hours /day for 5 days)
- In counting the total hours worked more than forty-four hours per week during the workweek, overtime is 6 hours.
- X's larger number (10 hours) constitutes her overtime hours.

178 ON ESA, s. 20. See also : Ministry of Labour, « The Employment Standards Workbook », 2010 (revised in October 2015), at 23.

179 LSA, s 79 al 1.

180 *Ibid*, s 79 al. 2.

181 This principle was clearly stated in: *Commission des normes du travail c. 2859-0818 Québec inc.*, D.T.E. 96T-108 (C.Q.).

182 See: *Commission des normes du travail c. Boucher*, D.T.E. 2003T-16 (C.Q.), *Syndicat des communications, de l'énergie et du papier, section locale 2009 et HS Telecom*, 2013EXPT-512 (T.A.).

183 *CSSS d'Argenteuil c. Syndicat québécois des employées et des employés de service, section locale 298*, 2014 QCTA 709 (request for judicial review partially granted, 2016 QCCS 5385).

184 The case law from unionized work contexts reveals, however, that collective agreements are usually interpreted in a way consistent with the right to a weekly rest period established in the Act. See: *CSSS Basse-Côte-Nord c. Syndicat des infirmières et infirmiers du Nord-Est québécois*, D.T.E. 2004T-900 (T.A) (request for judicial review rejected); *Compagnie Christie Brown, division Nabisco Brands Ltée c. Syndicat international des travailleurs et travailleuses de la boulangerie, de la confiserie et du tabac, section locale 350*, D.T.E. 94T-973.

185 This example is cited in Christian Désilets et Denis Ledoux, *Histoire des normes du travail au Québec de 1885 à 2005: De l'Acte des manufactures à la Loi sur les normes du travail*, Québec, Publications du Québec, 2006, p. 254.

186 *Marché Chèvrefils St-Sauveur inc. c. Syndicat des employés de Métro St-Sauveur, section locale 501*, D.T.E. 2003T-56 (T.A.).

187 The official report in *Hansard* of the debate in Parliament concerning the enactment of the 1979 Act, sheds light on the Legislator's intent in introducing the exception for farm workers. This provision aimed to take into consideration harvest time periods, where more than 6 days of consecutive work are sometimes required. This provision thus enabled employers and employees to manage the workweek over a 13-day period: Québec, Assemblée nationale, *Journal des débats*, 31<sup>e</sup> lég, 3<sup>e</sup> sess (1979) à la p B-5486.

188 PEI legislation stipulates that the day off should be Sunday « whenever possible » (s. 16(1), *Employment Standards Act* (RSPEI 1988, c E-6.2)). The federal legislation states that "wherever practicable, Sunday shall be the normal day of rest in the week" (s.173, *Canada Labour Code* (R.S.C., 1985, c. L-2).



All overtime hours must be paid at the rate of at least 1.5 times the employee's regular wage rate,<sup>189</sup> unless the employer and employee have entered into an overtime agreement, in which case the employer is entitled to give the employee time off in lieu of overtime hours.<sup>190</sup>

In Alberta, certain employees are exempt from overtime rules, such as managers, supervisors, those employed in a confidential capacity, farm workers, professionals, certain types of salespersons, licensed land agents, extras in a film or video production, residential and homecare caregivers, domestic employees, and counsellors or instructors at an educational or recreational camp that is operated on a charitable or non-profit basis for children, persons with disabilities, or religious purposes.<sup>191</sup> There are also industries and employees with different hours of work and overtime rules (ambulance services, geophysical exploration, irrigation districts, logging and lumbering, oil well servicing land surveying, trucking, field catering, highway and railway construction and brush clearing, nurseries, road maintenance activities, taxi cabs, and caregivers (home and residential)).<sup>192</sup> For example, overtime hours in respect of a taxi drivers' work week are: a) the total of an employee's hours of work in excess of 10 on each work day in the work week, or b) the employee's hours of work in excess of 60 in the work week (whichever is greater).<sup>193</sup> For those employees to whom different overtime rules apply, the formula for calculating overtime pay is the same, and overtime hours must be paid at not less than 1.5 times the employee's wage rate.

**In British Columbia**, an employee who works more than 8 hours in a day or 40 hours in a week as required by an employer must be paid overtime rates as set out in s.40 of the B.C. ESA. However, if an employee is working under an averaging agreement that has been established in accordance with s.37 of the B.C. ESA, the overtime rules con-

tained in of that provision apply. An agreement to average hours of work under s. 37 allows an employer and an employee to agree to a work schedule of up to 40 hours in a one-week work schedule, or an average of up to 40 hours in a 2-to-4-week work schedule without weekly overtime. A daily work schedule in an averaging agreement results in daily overtime when scheduled hours worked exceed 12. An agreement to average hours of work is voluntary and pertains to an employer and an individual employee not groups of employees. This means that an employer who enters into individual agreements with the majority of the employees cannot inform the employees who did not sign this agreement that they are now included under the agreement that the majority signed.

*Rules that apply to an employee who has signed and is working under a s.37 averaging agreement:*

- If the employer requires or allows the employee to work more than 40 hours in a one-week agreement, or an average of 40 in a 2- to-4-week agreement, weekly overtime applies and the employer must pay the employee at 1 1/2 times the regular wage.<sup>194</sup>
- If the employer requires or allows an employee to work more than the scheduled hours in an agreement, the employer is required to pay daily overtime at 1 1/2 times the wage for unscheduled time worked over 8 hours and at double time regular wage for all time worked over 12 hours.<sup>195</sup>

*Rules that apply to an employee who works more than 8 hours per day or 40 hours per week:*

- An employee who works more than 40 hours in a week must be paid 1 1/2 times their regular rate of pay for the time worked over 40 hours in the week.<sup>196</sup>
- An employee who works more than 8 hours in a day must be paid 1 1/2 times their regular rate of pay for any time worked over 8 hours up to 12 hours in a day. An employee who works more than 12 hours in a day must be paid double their regular rate of pay for any time worked over 12 hours in a day. This ap-

189 AB ESC, s. 22(1) and 22(2).

190 AB ESC, s. 23(1) and 23(2). Certain conditions must be met in this case: 1) the employee must agree to time off in lieu in writing; 2) the contract must be in writing and the employee must get a copy of it; 3) the employee must use the banked overtime hours within three months after they were earned; 4) the hours of time off must be at least equal to the number of hours of overtime worked; 5) the time off must be taken at a time you normally would be working; 6) if the employee does not end up taking the time off, he or she must be paid for the overtime hours.

191 For a complete list of employees exempt from rules dealing with hours of work and overtime pay, see Part I of Alberta Reg. 14/97.

192 See Part 3 of Alberta Reg. 14/97 ("Special Provisions for Specific Industries and Occupations").

193 Alberta Reg. 14/97, s. 38.

194 B.C. ESA, s. 37(5).

195 B.C. ESA, s. 37(6).

196 B.C. ESA, ss. 40(1), 40 (2) and 40(3). Under s.1 of the B.C. ESA, a "week" for purposes of weekly overtime is a period of 7 consecutive days beginning on Sunday at 12:00 am and ending at midnight the following Saturday. Only time worked within this 7-day period can be considered for the purposes of overtime. Therefore, if a shift straddling midnight ends on a Sunday, the time worked on Sunday will be applied to the time worked on Saturday.

plies even if the employee does not work more than 40 hours in a week.<sup>197</sup>

It is also worth recalling that the B.C. ESA requires employers to provide their employees with at least 32 consecutive hours free from work each week.<sup>198</sup> If an employee does not have 32 consecutive hours free from work each week, the employer must pay the employee 1 1/2 times the regular rate of pay for time worked during a 32-hour period during the week.<sup>199</sup>

This overtime rule does not apply to several categories of employees, such as fishing or hunting guides, managers, live-in home support workers, faculty members<sup>200</sup> and farmers.<sup>201</sup> These employees are entitled to be paid for all time worked, according to their terms of employment. This means that extra work means extra pay, but not at overtime rates. There are also special overtime rules for several categories of employees listed in the regulation. For example, an employer who requires, or allows, a long-haul truck driver to work more than 60 hours in a week must pay the employee at least 1 1/2 times their regular wage for all hours worked in excess of 60 in a week.<sup>202</sup> Another example: a taxi driver who works more than 120 hours within two consecutive weeks is entitled to be paid 1 1/2 times his or her regular wage for all hours worked in excess of the 120 hours.<sup>203</sup>

**In Ontario**, for most occupations, overtime begins after 44 hours of work in a work week. Workers must receive overtime pay, which is 1.5 times regular pay for additional hours worked over 44 hours. For example, an employee who has a regular rate of \$14.00 an hour will have an overtime rate of \$21.00 an hour ( $14 \times 1.5 = 21$ ). This means

197 B.C. ESA, ss. 40 (2) and (3).

198 B.C. ESA, s. 36(1)(a). The B.C. Policy and Interpretation Manual explains: « For purposes of this section “week” is defined in s. 1 of the Act as a period of seven consecutive days beginning on any day. Since failing to receive 32 hours free from work often coincides with working overtime, and overtime is calculated on a week that runs from Sunday to Saturday, premium pay for the purposes of this section is calculated in the same manner”

199 B.C. ESA, s. 36(1)(a).

200 B.C. ESA, s. 34.

201 B.C. ESA, s. 34.1. A “farm worker” as defined in s.1 of this Regulation is excluded from Part 4 of the B.C. ESA (“Hours of Work and Overtime”) except for s.39 (“No excessive hours”). A farm worker is also excluded from Part 5 of the Act (“Statutory Holidays”).

202 B.C. Reg. 396/95, s. 37.3(2).

203 B.C. Reg. 396/95, s. 37.1(2).

that the employee must be paid at a rate of at least \$21.00 an hour for every hour worked in excess of 44 in a work week.<sup>204</sup> If the employee and employer both agree, overtime pay can be replaced with paid time-off, with every hour of overtime being paid with 1.5 hours of paid time-off.<sup>205</sup>

The law also allows an employer and employee to sign an agreement, allowing them to average the employee’s hours of work over a specified period of 2 weeks or more instead of calculating pay based on one week’s work hours. These averaging agreements must receive the Ministry of Labour’s approval. If the averaging method to calculate work hours is used, an employee qualifies for overtime pay only if the average hours worked per week in the specified averaging period exceed 44 hours. For example, an employee worked 50 hours the first week, 50 hours the second week, 38 hours the third week and another 38 hours the fourth week. The total hours worked during the four-week period is 176 hours. The average hours worked per week is exactly 44 hours; hence the employer does not have to pay overtime wages. In another scenario, an employee works 40 hours in week 1 of the averaging period and 54 hours in week 2. The total hours worked during the two-week period is 94 hours. The average number of hours worked per week is 47 ( $94 \div 2$ ). The average number of overtime hours per week is 3 ( $47 - 44$ ), so the total overtime hours in averaging period is 6 ( $2 \times 3$ ). **NB:** averaging agreements must specify an expiry date and the agreement cannot last more than 2 years.<sup>206</sup>

Some employees work in jobs where the overtime threshold is more than 44 hours in a work week or where the right to overtime pay does not apply. Employees to which the rules for overtime work do not apply belong to the following industries: firefighting, construction, fishing, hunting, working from home, building management, farming, taxi services, harvesting, housekeeping, real estate, mobile marketing, gardening, pool management.<sup>207</sup>

As noted, in **Quebec**, the LSA sets the normal workweek

204 ON ESA, s. 22 (1).

205 Paid time-off must be taken within 3 weeks from the date the overtime was earned or if both sides agree in writing, the time-off limit can be extended to 12 months: ON ESA, s. 22 (7). If an employee’s job ends before he or she has taken the paid time off, the employee must be paid for all unused banked time. This must be paid no later than seven days after the date the employment ended or on what would have been the employee’s next pay day: ON ESA, s. 22 (8).

206 ON ESA, ss. 22 (2) to 22(6) & 22.1(1).

207 For more on this topic, see: “Exemptions, special rules and establishment of minimum wage”, Ontario Reg. 285/01.

at 40 hours.<sup>208</sup> Any work performed in addition to the normal workweek entails a premium of 50% on the prevailing hourly wage.<sup>209</sup> The employer may, at the request of the employee or if specified by a collective agreement, replace the payment of overtime by paid leave equivalent to the overtime worked plus 50%.<sup>210</sup>

This normal workweek does not apply to several categories of employees such as the managerial personnel of an undertaking, employees assigned to canning, packaging and freezing fruit and vegetables during the harvesting period, to an employee of a fishing, fish processing or fish canning industry or to farm workers.<sup>211</sup> Since the normal workweek does not apply to these workers for the purpose of their hourly wage rate, they must be remunerated for all the hours that were actually worked, but at the regular rate, without any increase.

Section 52 of the LSA also states that other “normal” workweeks can be fixed by government regulation. Thus, the standard workweek of a watchman who guards a property for a firm supplying a surveillance service is 44 hours.<sup>212</sup> The standard workweek of an employee working in a forestry operation or in a sawmill is 47 hours.<sup>213</sup> Lastly, the normal workweek for employees working in remote areas or in the James Bay territory is 55 hours.<sup>214</sup> A “remote area” is defined in the RLS as an “area that is inaccessible by a passable road and where no regular transport system connects it to the Québec road network”.<sup>215</sup> The Superior Court considers a bi-weekly rail connection to be a regular transport system.<sup>216</sup> In this decision, the Superior Court mentioned that employees who work in inaccessible workplaces cannot easily leave their workplace and will, therefore, generally be willing to work longer hours as “they are captive of an austere environment with little entertainment”.<sup>217</sup> The LSA specifies that employers may, with the authoriza-

tion of the *Commission des normes de l'équité, de la santé et de la sécurité du travail* (CNESST), stagger the working hours of their employees on a basis other than a weekly basis, provided that the average of the weekly working-hours corresponds to the standard workweek provided in the LSA or the regulations.<sup>218</sup> In order to obtain the CNESST's authorization, the employer must: 1) indicate the advantages accruing to employees affected by the absence of overtime pay; 2) obtain the signatures of the employees affected; 3) demonstrate that the employees have been informed of the consequences of the staggering of their working hours; 4) prove that the staggering of working hours sought is not a means to circumvent the labour standards regarding overtime pay and 5) post a copy of the request and the authorization at the workplace.<sup>219</sup> The authorization for the staggering of working hours is valid for up to one year and is subject to renewal.<sup>220</sup> If the employer fails to obtain the CNESST's authorization and nevertheless staggers the working hours of his employees, he must pay them the overtime premium established in section 55 of the LSA.<sup>221</sup> A collective agreement may also provide for the staggering of working hours; in such a situation, the authorization of the CNESST is not required.<sup>222</sup>

### C. Employment Termination-Related Protections

In most provinces, employers have the right to terminate employees but must -in most cases- give notice that the employment is ending. If the employer fails to give the notice as required by law, termination pay must be given to the employee. Termination notice and pay are bound to provide employees with some financial relief while they attempt to find another job. The longer the length of notice and financial support, the greater the chance that the worker will be able to dedicate the time necessary to finding an appropriate job to replace the lost job.<sup>223</sup> Severance

208 QC LSA s 52.

209 QC LSA, s 55.

210 QC LSA, s 55 (2).

211 *Ibid*, s 54.

212 *Quebec Regulation Respecting Labour Standards*, s 9.

213 *Ibid*, ss 10, 11.

214 *Ibid*, ss 12, 13.

215 *Ibid*, s 1 “remote area.”

216 *Québec (Commission des normes du travail) c. Aramark Québec inc.*, 2005 CanLII 41336 (QC CS).

217 *Ibid*, para 88-102.

218 QC LSA, s 53.

219 CNESST, *Interprétation et jurisprudence – Loi sur les normes du travail, ses règlements et sur la Fête nationale*, online : <http://www.cnt.gouv.qc.ca/en/wages-pay-and-work/etalement-des-heures/index.html> (consulted on May 7th 2015)

220 QC LSA, s 115.

221 *Syndicat des paramédics et du préhospitalier de la Montérégie—CSN c. Nadeau*, 2012 QCCS 1986, para 28., 36 and 39 ; *Commission des normes du travail c. Blais et Castilloux*, C.P. Bonaventure, n° 105-02-000291-818, 15 novembre 1982, j. Fortier.

222 QC LSA, s 53. See also: *Syndicat des métallos, section locale 7065 c. Fabnorinc.*, 2010 CanLII 70682, para 42.

223 Johanna Willows and Sylvain Schetagne “Mapping Basic

pay may also be given to long-term employees as a reward for their long years of service. However, legislation mandating severance pay is contained in the ES of only two jurisdictions: **the Federal Sector and Ontario**.<sup>224</sup>

It must be pointed out that Quebec's LSA provides employees with employment protection, as employees have recourse against wrongful dismissals.<sup>225</sup> This provision is one of the most innovative contributions of the LSA. To this day, only the **Canada Labour Code**<sup>226</sup> and the **Nova Scotia**<sup>227</sup> legislation provide such protection. To benefit from it, an employee must have two years of uninterrupted service in the same enterprise.

### 1. Provincial definitions of termination and protections against reprisals

In **Ontario**, the ES legislation defines an "employment termination" as a dismissal or a layoff that is permanent or longer than a temporary layoff.<sup>228</sup> Employees are protected from possible reprisals.<sup>229</sup> Employers are prohibited from penalizing or threatening to penalize employees in any way for asking the employer to comply with the ESA and its regulations, for asking questions about rights under the ESA, for filing a complaint under the ESA or for exercising or trying to exercise a right under the ESA. Employees

are also protected if they give information to an employment standards officer, if they take or plan to take, to be eligible or become eligible for a pregnancy, parental, personal emergency, family caregiver, family medical, critically ill child care, organ donor, reservist or crime-related child death or disappearance leave. Lastly, employers cannot engage in reprisals if employees are subject to a garnishment order (i.e., a court order to have a certain amount deducted from wages to satisfy a debt) or if they participate in a proceeding under the ESA or Section 4 of the *Retail Business Holidays Act*.<sup>230</sup> An employer who does penalize an employee for any of these reasons can be ordered by an employment standards officer to reinstate the employee and to compensate him or her for any loss incurred because of a violation of the ESA.<sup>231</sup>

In **Quebec, as in Ontario**, employers are prohibited from retaliating in any way against employees who try to claim their entitlements under the legislation.<sup>232</sup> For example, employers cannot dismiss, suspend or transfer an employee, practise discrimination or take reprisals against him, or impose any other sanction on him because he has

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Working Conditions in Employment Standards Laws Across Canada — 2011/2012", Canadian Labour of Congress, Research Report no 51, at 42.

224 In Quebec, the severance pay issue is addressed in the *Civil Code*; section 2091 of that Code stipulates that "either party to a contract for an indeterminate term may terminate it by giving notice of termination to the other party. The notice of termination shall be given in reasonable time, taking into account, in particular, the nature of the employment, the specific circumstances in which it is carried on and the duration of the period of work": *Civil Code of Quebec*, CQLR c C-12, s 2091.

225 *Ibid*, s 124.

226 *Canada Labour Code*, RSC 1985, c L-2, s. 204-246. The employee must have at least one year of uninterrupted service for the same employer (s 240(1) a)).

227 *Labour Standards Code*, RS, c 246, s 1, s 71. The employee must have at least 10 years of uninterrupted service for the same employer. Gilles Hébert and Gilles Trudeau stress that this norm is directly inspired by the content of collective agreements, insofar as the employers' obligation to justify the dismissal of a unionized employee by a good and sufficient cause is widely used and recognised. See: Gilles Hébert et Gilles Trudeau, *Les normes minimales du travail au Canada et au Québec*, Cowansville, Les Éditions Yvon Blais, 1987, p 160.

228 ON ESA, s 56 (1). The ESA defines a temporary layoff as: not more than 13 weeks of layoff in any period of 20 consecutive weeks, or more than 13 weeks in any period of 20 consecutive weeks, but less than 35 weeks of layoff in any period of 52 consecutive weeks: ON ESA, s 56 (2).

229 ON ESA, s 74.

230 *Retail Business Holidays Act*, R.S.O. 1990, c. R.30

231 *Ibid*, s 74.17. An interesting case on this topic is: *Mediclean Incorporated v. Mendoza*, [2010] O.E.S.A.D. No. 188. In *Mediclean*, the employee was a cleaner. The employer promised to pay her an additional 3 hours' pay after it assigned her to a more difficult work area, but then refused to pay her those hours. The employer also didn't pay her proper overtime pay. The employee consulted the Workers' Action Centre, an employee advocacy centre in Toronto, and she wrote to the employer requesting they comply with the Act. Within days of the letter from the lawyer, the employer gave the employee a 'written warning' for poor performance, and sent one of the owners of the company to 'retrain' her. The employee subsequently resigned and filed a claim under the ESA seeking the outstanding money, and claiming that the bogus reprimand was a reprisal for her seeking to recover her ESA entitlements and also amounted to a constructive dismissal under the ESA, entitling her to termination pay. All of the employee's claims were upheld. The OLRB found (par. 18) that Section 74 applies when:

1. The employee has engaged in a protected activity (such as claiming their ESA entitlements);
2. The employer was aware or suspects that the employee engaged in the protected activity;
3. The employer penalized or threatened to penalize the employee; and
4. There is intention, i.e. that the penalty or threat of penalty by the employer was because the employee engaged in the protected activity.

See also: *Morgan v. Herman Miller Canada Inc.*, 2013 HRTO 650; *Moffatt v. Kinark Child and Family Services*, [1999] O.H.R.B.I.D. No. 15, 36 C.H.R.R. D/346.

232 See QC LSA, s 122. In case of reprisals, several other labour laws also provide remedies. See: *Act respecting industrial accidents and occupational diseases*, CQLR, c A-3.001, s 32; *Act respecting occupational health and safety*, CQLR, c s-2.1, s 30; *Code du travail*, RLRQ, c C-27, s 15; *Canadian Charter of Rights and Freedoms, Pt I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, ss 82, 134.*

exercised his right under the LSA.<sup>233</sup> In such cases, the employer may be ordered to reinstate the employee and to compensate him/her for lost salary.<sup>234</sup>

**In contrast to Ontario and Quebec, Alberta's and British Columbia's ES legislation** do not provide employees with a general protection against reprisals. **In Alberta**, employers cannot terminate the employment, or lay off, employees because they have started their maternity leave or are entitled to or have started parental leave.<sup>235</sup> Similarly, an employer cannot terminate the employment of an employee who has started a reservist leave<sup>236</sup> or a compassionate care leave.<sup>237</sup> **In British Columbia**, when an employee does not agree that her termination was for just cause, recourse exists through statute law (B.C. ESA, *Human Rights Code*) or common law action for wrongful dismissal. The *Human Rights Tribunal*<sup>238</sup> has jurisdiction to hear

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233 QC LSA, s 122. This section also provides for other situations in which employees are protected against reprisals: (2) the ground that such employee has given information to the Commission or one of its representatives on the application of the labour standards or that he has given evidence in a proceeding related thereto; (3) on the ground that a seizure of property in the hands of a third person has been or may be effected against such employee; (3.1) on the ground that such employee is a debtor of support subject to the Act to facilitate the payment of support (chapter P-2.2); (4) on the ground that such employee is pregnant; (5) for the purpose of evading the application of this Act or a regulation; (6) on the ground that the employee has refused to work beyond his regular hours of work because his presence was required to fulfil obligations relating to the care, health or education of the employee's child or the child of the employee's spouse, or because of the state of health of the employee's spouse, father, mother, brother, sister or one of the employee's grandparents, even though he had taken the reasonable steps within his power to assume those obligations otherwise; (7) on the ground of a disclosure by an employee of a wrongdoing within the meaning of the Anti-Corruption Act (chapter L-6.1) or on the ground of an employee's cooperation in an audit or an investigation regarding such a wrongdoing; (8) on the ground that such employee has exercised a right arising from the Voluntary Retirement Savings Plans Act (chapter R-17.0.1); (9) for the purpose of evading the application of the Voluntary Retirement Savings Plans Act; or (10) on the ground of a communication by an employee to the inspector general of Ville de Montréal or the employee's cooperation in an investigation conducted by the inspector general under Division VI.0.1 of Chapter II of the Charter of Ville de Montréal (chapter C-11.4).

234 QC LSA, ss 123.4 & 128. Section 123.5 of the LSA bestows the Labour Relations Commission the power to represent an employee who has filed a complaint under s. 122 or 124 of the Act if the employee is not unionized.

235 *Ibid*, s 52.

236 *Ibid*, s 53.4.

237 *Ibid*, s 53.91.

238 *Human Rights Code*, RSBC 1996, Chapter 210.

complaints from employees who allege they were terminated as a result of discrimination that contravenes the *Code*. The *Human Rights Code* and the *Employment Standards Act* both include procedures for dealing with complaints from employees who allege that their employment was terminated for reasons related to pregnancy.<sup>239</sup> However, the common law principles that can form the basis of a court action are different than the rights protected by the B.C. ESA.

**In Alberta and British Columbia**, an employer may only terminate the employment of an employee by giving the employee a termination notice, a termination payment or a combination of termination notice and termination pay (this rule only applies to employees who have been employed for three consecutive months or more-see the section on notice of termination below). It is worth noting that in British Columbia, any layoff, including a temporary layoff, constitutes termination of employment, unless the possibility of temporary layoff is expressly provided for in the contract of employment, is implied by well-known industry-wide practice (e.g. logging, where work cannot be performed during "break-up"), or is agreed to by the employee.<sup>240</sup> If a temporary layoff exceeds 13 weeks in a 20-week period, the employee is deemed to be terminated effective the first day of the layoff, and the employee's entitlement to compensation for length of service is based on that date.<sup>241</sup>

## 2. Termination notice and termination pay

Termination notice provisions are contained in all ES legislation, with varying time limits within which the employer must notify workers in writing that they no longer have a job. All jurisdictions, with **the exception of the Federal Sector**, require that the notice period be longer if the employee has been employed at the workplace for a longer amount of time. In that jurisdiction, all workers who have been employed for at least three months, no matter how long they have been employed in that position, must receive two weeks' notice.<sup>242</sup> **In Alberta, British Columbia, Nova Scotia, Ontario, Prince Edward Island and Québec**, the maximum notice that an employee must receive is eight weeks, with the requirement for such

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239 S. 79(2) of the B.C. ESA discusses the remedies for a violation of pregnancy and other leave provisions of the Act.

240 BS ESA, s. 1(1), definition of "temporary layoff" and s. 63(5).

241 *Ibid*. See also the B.C. Policy and Interpretation Manual, on s. 63(5).

242 S. 230(1)(a)) of the *Canada Labour Code*, RSC 1985, c L-2.

notice being anywhere from eight to 15 years of service.<sup>243</sup> In **Newfoundland and Labrador**, the maximum notice is six weeks for workers who have been employed for 15 years or more.<sup>244</sup> Where termination notice is not given to employees, they must be given termination pay. In the **Federal Sector, British Columbia, Alberta, Québec, Nova Scotia, Prince Edward Island, Newfoundland and Labrador**, termination pay is the amount the worker would have regularly earned had they worked through the notice period. In **Prince Edward Island**, the legislation clarifies that this amount is exclusive of overtime, while in **Ontario**, the legislation explicitly states that the employer is required to provide not only termination pay but the benefits that the worker would have been entitled to had they worked through the required notice period.<sup>245</sup>

A detailed examination of termination notice and termination pay in Quebec, Ontario, Alberta and British Columbia is now required.

In **Quebec**, the employer must give an employee written notice before terminating a contract of employment or laying an employee off for six months or more.<sup>246</sup> The notice shall be of one week if the employee is credited with less than one year of uninterrupted service, two weeks if he is credited with one year to five years of uninterrupted service, four weeks if he is credited with five years to ten years of uninterrupted service and eight weeks if he is credited with ten years or more of uninterrupted service. An employer is not bound to provide any notice to an employee who has less than three months of uninterrupted service, whose contract for a fixed term or for a specific undertaking is due to expire, who has committed a serious offence, or for whom the end of the contract of employment or the layoff is the result of unavoidable circumstances (*force majeure*).<sup>247</sup> An employer who does not give the prescribed notice, or who gives insufficient notice, must pay the employee a compensatory payment equal to

his regular wage excluding overtime for a period equal to the period or remaining period of notice to which he was entitled.<sup>248</sup>

Period of Employment	Notice Required
Less than one year	One week
One year or more but less than five years	Two weeks
Five years or more but less than ten years	Four weeks
Ten years or more	Eight weeks

In **Ontario**, an employee is entitled to notice of termination if he has been continuously employed for at least three months.<sup>249</sup> The length of the notice will vary according to the period of employment.<sup>250</sup>

Period of Employment	Notice Required
Less than one year	One week
One year or more but less than three years	Two weeks
Three years or more but less than four years	Three weeks
Four years or more but less than five years	Four weeks
Five years or more but less than six years	Five weeks
Six years or more but less than seven years	Six weeks
Seven years or more but less than eight years	Seven weeks
Eight years or more	Eight weeks

An employer who does not give the prescribed notice must pay wages and provide benefits equivalent to what the employee would have earned during the notice period.<sup>251</sup>

In **British Columbia**, an employer who terminates an employee must give the employee either a written notice of termination or a combination of notice and pay equal to the number of weeks of pay for which the employee is eligible (i.e., one week's wages after three months of service, two weeks after a year, three weeks after three years, and an additional weeks' pay for every year worked over

243 Alberta, British Columbia, Ontario and Quebec are examined in further detail below. For other provinces, we refer the reader to: *Labour Standards Code*, RSNS 1989, c 246, s. 72(1); *Employment Standards Act*, RSPEI 1988, c E-6.2, s. 29(1).

244 *Labour Relations Act*, RSNL 1990, c L-1, s. 55.

245 See: *Canada Labour Code*, RSC 1985, c L-2, s. 230(1) (b); *Labour Standards Code*, RSNS 1989, c 246, s.72(4); *Employment Standards Act*, RSPEI 1988, c E-6.2, s.29(4); *Labour Relations Act*, RSNL 1990, c L-1, s.53(1)(b). Alberta, British Columbia, Ontario and Quebec are examined in further detail below.

246 QC LSA, ss. 82-84.

247 *Ibid*, s 82.1.

248 *Ibid*, s 83.

249 ON ESA s 54.

250 ON ESA, s 57.

251 ON ESA, s. 61.

three to a maximum of eight).<sup>252</sup> The notice of termination is based on the following formula:<sup>253</sup>

Period of Employment	Notice Required
Less than three consecutive months	Nothing
More than three consecutive months	One week's pay
More than 12 consecutive months	Two weeks' pay
More than three consecutive years	Three weeks' pay, plus one week's pay for each additional year of employment to a maximum of eight weeks

Notice or compensation is not required if the employee resigns or retires; is dismissed for just cause; works on an on-call basis doing temporary assignments which the employee can accept or reject; is employed for a limited term; or was hired for specific work to be completed in 12 months or less.<sup>254</sup>

**In Alberta**, an employer may terminate the employment of an employee by giving the employee a termination notice, a termination pay or a combination of termination notice and termination pay.<sup>255</sup> Termination notice is not required if the employment is terminated for just cause, when an employee has been employed by the employer for 3 months or less or when the employee is employed for a definite term or task for a period not exceeding 12 months on completion of which the employment terminates.<sup>256</sup> The length of the notice varies according to the

252 B.C. ESA, s. 63(1)& (2); s.63(3)(a) & s. 63(3)(b).

253 B.C. ESA, s. 63(3)(a).

254 For a list of all the circumstances where employers are not required to provide written notice or compensation for length of service, see ss. 63(3)(c) and 65 of the B.C. ESA. In situations where an employee is dismissed for just cause, the onus is on the employer to prove that just cause for termination exists.

255 AB ESC, s. 55 (1).

256 AB ESC, s. 55 (2). The notice is not required under other circumstances: when the employee is laid off after refusing an offer by the employer of reasonable alternative work, if the employee refuses work made available through a seniority system, if the employee is not provided with work by the employer by reason of a strike or lock-out occurring at the employee's place of employment, when the employee is employed under an agreement by which the employee may elect either to work or not to work for a temporary period when requested to work by the employer, if the contract of employment is or has become impossible for the employer to perform by reason of unforeseeable or unpreventable causes beyond the control of the employer or if the employee is employed on a seasonal basis and on the

duration of the period of employment.<sup>257</sup>

Period of Employment	Notice Required
Less than two years	One week
One year or more but less than four years	Two weeks
Four years or more but less than six years	Four weeks
Six years or more but less than eight years	Five weeks
Eight years or more but less than ten years	Six weeks
Ten years or more	Eight weeks

Instead of giving a termination notice, an employer may pay an employee termination pay of an amount at least equal to the wages the employee would have earned if the employee had worked the regular hours for the applicable termination notice period; the employer may give an employee a combination of termination pay and termination notice.<sup>258</sup>

### 3. Severance pay

In the **Federal Sector**, an employee who has completed at least 12 consecutive months of continuous employment is eligible for severance pay. The amount of the severance pay is the equivalent of two days' pay at the employee's regular rate of wages for regular hours of work for each complete year of employment, with a minimum benefit equivalent to five days' wages. Severance pay does not have to be paid to employees dismissed for just cause.<sup>259</sup>

In **Ontario**, long-term employees (i.e., employees who were employed by the employer for five years or more) who lose their jobs may also be entitled to severance pay.<sup>260</sup> Workers are entitled to severance pay in two cases: if they were employed by a company with a payroll of at least \$2.5 million or if they are employed by a company that has laid off over 50 workers in a six-month period because of the closing of all or part of the business. A severance payment is calculated by multiplying the employee's regular wages for a regular workweek by the sum of the number of years

completion of the season the employee's employment is terminated.

257 AB ESC, s. 56.

258 AB ESC, s. 57(1).

259 *Canada Labour Code*, RSC 1985, c L-2, s. 235.

260 AB ESC, s. 64.

of employment the employee has completed.<sup>261</sup>

#### D. Psychological harassment

In Canada, psychological harassment is generally seen as an occupational health issue.<sup>262</sup> The only notable exception is **Quebec** where psychological harassment is an ES issue. Since June 1<sup>st</sup> 2004, the LSA has explicitly prohibited psychological harassment in the workplace. The LSA defines psychological harassment as “any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee’s dignity or psychological or physical integrity and that results in a harmful work environment for the employee”.<sup>263</sup> The LSA also specifies that “[a] single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment”.<sup>264</sup> Every employee has a right to a work environment free from psychological harassment. Employers must take “reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it”.<sup>265</sup>

In 2016, four TFWs saw their psychological harassment files upheld by Quebec’s Labour Board. To justify its decision, the Board pointed to the unhygienic housing, the confinement of the workers to the farm, their inhumane schedules and the confiscation of their passports.<sup>266</sup>

### III. Enforcement

*NOTE: this section should be read in conjunction with Section IV.C of this report.*

In all jurisdictions, ES laws provide a process through which employees can ensure the enforcement of their labour rights (A). This legislation also enables the reciprocal enforcement of court orders made in other Canadian ju-

risdictions (B). These interprovincial agreements make it easier to recover unpaid wages when, for example, an employer undertakes business in several provinces.

#### A. Enforcing ES: the institutional perspective

In **Quebec**, whether it is to contest a dismissal, file a complaint relating to psychological harassment or claim unpaid wages, unionized employees will usually turn to their union. Non-unionized employees – as well as unionized employees who, for a variety of reasons, cannot take advantage of the grievance process set up by their collective agreement – can call upon the CNESST. The CNESST is an administrative body, distinct from the Ministry of Labour, although acting under its responsibility.<sup>267</sup> The CNESST’s main function is to supervise the implementation of the labour standards established in the LSA.<sup>268</sup> It is vested with the responsibility to inform employees and employers of their rights and obligations under the LSA.<sup>269</sup> The LSA also explicitly bestows the CNESST with the power to receive financial complaints and to carry out investigations on its own initiative.<sup>270</sup>

Throughout the years, the scope of the CNESST’s mission has gradually expanded. The CNESST now represents employees before the Labour Standards Board in wrongful dismissal and prohibited practice cases. Moreover, since June 1<sup>st</sup> 2004, the CNESST also has the mandate to investigate psychological harassment complaints filed by non-unionized employees and, ultimately, to represent such employees before the Labour Standards Board.<sup>271</sup>

Employees who believe their labour rights have been violated can lodge a complaint with the CNESST regarding financial issues following what they believe to have been a wrongful dismissal or a prohibited practice or when they believe they have been psychologically harassed. These complaints can be filed by an employee and can also be based on a third party’s denunciation.

The CNESST can claim, on behalf of an employee, the unpaid wages or other financial benefits resulting from the

261 AB ESC, s. 65.

262 On this specific issue, see Katherine Lippel, « Law, public policy and mental health in the workplace », (2011) 11 *Healthcare papers* 20 and Katherine Lippel and Anette Sikka, « Access to Workers’ Compensation Benefits and Other Legal Protections for Work-Related Mental Health Problems : a Canadian Overview », (2010) 101:1 *Revue canadienne de santé publique/Canadian Journal of Public Health* S-16.

263 QC LSA, s 81.18 al 1.

264 *Ibid*, s 81.18 al 2.

265 *Ibid*, s 81.19.

266 *Orantes Silva et 9009-1729 Québec inc.*, 2016 QCTAT 2155.

267 QC LSA, s 170. On Quebec’s Labour inspection system: Dalia Gesualdi-Fecteau et Guylaine Vallée. « Labour Inspection and Labour Standards Enforcement in Quebec: Contingencies and Intervention Strategies », (2016) 37:2 *Comparative Labor Law and Policy Journal* 339.

268 QC LSA, s 5.

269 *Ibid*.

270 *Ibid*, ss. 104-105.

271 *Ibid*, s 123.6.



application of the LSA and its regulations.<sup>272</sup> During the course of any inquiries that may lead to legal proceedings,<sup>273</sup> the CNESST may not disclose the identity of an employee who is a party to a complaint without their consent.<sup>274</sup> Civil actions brought under the LSA must be filed within one year from each due date.<sup>275</sup>

Employees who believe they have been the victim of a prohibited practice or of a wrongful dismissal and who wish to assert their rights must do so before the CNESST within 45 days of the occurrence. The clock starts when the employee is duly notified of the dismissal or of the imposition of a prohibited practice.<sup>276</sup> For seasonal workers, this deadline starts once they effectively find out that they will not be reemployed.<sup>277</sup> In such cases, the identity of the employee cannot be protected. These claims are heard by the *Tribunal administratif du travail* and the CNESST provides legal representation to all non-unionized workers.<sup>278</sup>

A complaint concerning psychological harassment must be filed, in writing, within 90 days of the last incidence of the offending behaviour.<sup>279</sup> A psychological harassment complaint can also be filed by a non-profit organization dedicated to the defence of employees' rights if the employee provides written consent in writing.<sup>280</sup> The CNESST, on receipt of a psychological harassment complaint, will open an inquiry after which it will decide whether or not to pursue the complaint. If the CNESST decides to pursue the complaint, it will be referred to the Labour Standards Board and the CNESST will provide legal representation to the complainant.<sup>281</sup> If the CNESST refuses to proceed,

the employee may, within 30 days of the CNESST's decision, make a written request for the referral of his or her complaint to the Labour Standards Board.<sup>282</sup> In such cases, employees must provide their own legal representation. The provisions pertaining to psychological harassment are deemed to be an integral part of every collective agreement.<sup>283</sup> Consequently, only non-unionized employees may call upon the CNESST in such matters.<sup>284</sup>

In **Ontario**, the Minister of Labour is responsible for the administration of the ON ESA,<sup>285</sup> and the ESA states that the Minister shall appoint a person to be the Director of Employment Standards to administer this Act and the regulations.<sup>286</sup> An employment standards officer may, without a warrant, enter and inspect any workplace in order to investigate a possible contravention of ES legislation, or to perform an inspection to ensure that the Act is being complied with.<sup>287</sup> The employment standards officer conducting an investigation or inspection may question any person on matters the officer thinks may be relevant to the investigation or inspection.<sup>288</sup>

A worker alleging that the ESA has been contravened may file a complaint with the Ministry of Labour.<sup>289</sup> Where the employer is bound by a collective agreement, the ESA is enforceable through a grievance procedure as if it were part of the collective agreement.<sup>290</sup> Employment standards officers can order the employer to compensate an unfairly terminated employee for unpaid wages.<sup>291</sup> These officers can also order the employer to compensate the employee for any loss incurred as a result of the contravention of the ESA. If an employee suffered a reprisal following the exercise of a right provided in the ESA, the employment stan-

272 *Ibid*, ss 98-99. The LSA grants the power to the CNESST to "institute in its own name and on behalf of an employee, where such is the case, proceedings to recover amounts due by the employer under this Act or a regulation, notwithstanding any Act to the contrary, any opposition or any express or implied waiver by the employee and without having to justify an assignment of debt of the employee.": *Ibid*, s 39 (5).

273 *Ibid*, s 113.

274 *Ibid*, s 103.

275 *Ibid*, s 115. The term "Due date" refers to the date when the wage should have been paid.

276 See: *Garage Montplaisir ltée c Couture*, D.T.E. 2001T-1090 (C.S.); *L'Heureux c Maxinetenr.*, D.T.E. 2000T-60 (C.T.).

277 See: *Jean-François c L.V.M. Tech inc.*, D.T.E. 96T-1377 (C.T.).

278 *Labour Code*, RLRQ, c C-27, Appendix I.

279 QC LSA, ss 123.6, 123.7.

280 QC LSA, s 123.6.

281 QCLSA, ss 123.8, 123.13; *Labour Code*, RLRQ, c C-27, Appendix I.

282 QC LSA, s 123.9.

283 *Ibid*, s 81.20.

284 *Ibid*, s 123.7.

285 ON ESA, s 84. The Minister of Labour may exercise a power or perform a duty under this Act even if he or she has delegated it to a person under this section (s. 87(2)).

286 *Ibid*, s 85(1).

287 *Ibid*, s 91(1).

288 *Ibid*, s 91(6).

289 *Ibid*, s 96.

290 *Ibid*, s 99.

291 *Ibid*, s 103.

dards officer can order the employee's reinstatement.<sup>292</sup> Employees may opt for civil proceedings or choose to file a complaint under the ESA; it is important to point out that an employee who files a complaint under the ON ESA with respect to an alleged failure to pay wages may not initiate a civil proceeding with respect to the same matter.<sup>293</sup> Similarly, an employee who files a complaint alleging an entitlement to termination pay or severance pay may not initiate a civil proceeding for wrongful dismissal if the complaint involves that same termination or severance of employment.<sup>294</sup>

According to Leah Vosko, workers in Ontario are facing a crisis with regard to the enforcement of their ES. The complaint-based system is "outmoded" and "the dearth of support for ES enforcement is cultivating a situation in which an unprecedented number of workers are bearers of rights without genuine opportunities for redress".<sup>295</sup> Interestingly, since May 20th 2015, an employment standards officer may, by giving written notice, conduct an examination of an employer's records to determine whether the employer is in compliance with one or more provisions of this Act or the regulations.<sup>296</sup> Employment standards officers therefore now have the power to carry out audits.

In **Alberta**, the "Employment Standards" branch of the Ministry of Jobs, Skills, Training and Labour in Alberta monitors compliance with ES and provides information about standards to employers and employees.<sup>297</sup> The "Employment Standards" branch offers three key services: a telephone service, an educational program, and investigative and compliance initiatives. Where employees believe they have received less than the minimum ES and are unable to resolve the matter with their employer, the "Employment Standards" branch staff will investigate the matter on receipt of a written complaint. The ES branch also targets employers and industry sectors that have shown "continued non-compliance with minimum employment standards".<sup>298</sup>

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292 *Ibid*, s 104.

293 *Ibid*, s 97(1).

294 *Ibid*, s 97(2).

295 Leah Vosko, «Rights without Remedies: Enforcing Employment Standards in Ontario by Maximizing Voice among Workers in Precarious Jobs» (2013) 50:4 *Osgoode Hall Law Journal* 845.

296 ON ESA, s 91.1(1).

297 The information provided here is from the Albertan's Ministry of Jobs, Skills, Training and Labour website: <http://work.alberta.ca/>

298 *Ibid*.

Unionized employees are covered by the Code, but minimum standards are generally enforced through the collective agreement's grievance procedures.<sup>299</sup> A complaint by an unionized employee may be filed at any time while the employee is employed by the employer or within six months of the employee's last day of employment.<sup>300</sup> In extenuating circumstances, the Director of Employment Standards may extend the period for filing a complaint.<sup>301</sup>

If an officer determines that an employee is owed money and the employer pays as requested, the complaint is concluded. If the employer disputes the amount owing, the officer will investigate and undertake appropriate mediation and resolution efforts. If a voluntary resolution cannot be achieved, the officer will issue a formal order to pay. The order must be paid or appealed to an Employment Standards Umpire with the Provincial Court of Alberta. If the order is not paid or appealed to an Umpire, it will be filed with the Court of Queen's Bench and has the same legal status as a judgment of that Court.

Finally, in **BC**, the Employment Standards Branch of the Employment, Business and Economic Development ministry oversees the application of the ESA. It is important to mention that any dispute regarding the application, interpretation, or operation of the Act deemed to be incorporated in a collective agreement must be resolved under the grievance procedures in the collective agreement.<sup>302</sup>

In most circumstances, the Employment Standards Branch requires that the parties use a "Self-Help Kit" to attempt to resolve a dispute before the Branch will proceed further with a complaint under the ESA.<sup>303</sup> The Self-Help Kit is designed as a first step to assist employees and employers to resolve workplace disputes quickly and fairly without intervention from the Employment Standards Branch. Complaints can be filed, in writing, to an office of the Employment Standards Branch, or can be sent electronically; the terminated employee must file a complaint

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299 Alberta ES Employer Tool Kit, at 8.

300 Ontario ESC, s 82(2).

301 Ontario ESC, s 82(3).

302 B.C. Policy and Interpretation Manual on s. 3 of B.C. ESA.

303 B.C. Policy and Interpretation Manual on s. 74 of B.C. ESA. The Manual mentions that under certain circumstances, the Employment Standards Branch will accept complaints where a *Self-Help Kit* has not been used, such as when the complainant is under the age of 19, when the complainant would have difficulty using the Kit because of language or comprehension difficulties or when the complainant is a farm worker, textile or garment worker, or a domestic worker.

within 6 months after his or her last day of employment.<sup>304</sup> If requested in writing by a complainant, the director of the Branch may not disclose any identifying information about the complainant unless such disclosure is necessary for the purposes of a proceeding under the Act, or the director considers the disclosure to be in the public interest.<sup>305</sup> The director is not obliged to accept, review, mediate, investigate or adjudicate every complaint.<sup>306</sup> It is important to note that the ESA favours settlements and the Branch can assist the parties to reach them.<sup>307</sup>

Nevertheless, when the director is satisfied that the Act or the regulations have been infringed, and the parties have not been able, or were unwilling, to reach a settlement, the director may issue a decision, called a “determination”.<sup>308</sup> In the determination, the director may require that the employer comply with the ESA, cease from performing the act causing the infringement, or remedy the infringement.<sup>309</sup> Once a determination has been made requiring payment of wages, an employee cannot commence another proceeding for recovery unless the director has consented to such in writing, or the director or the tribunal has cancelled the determination.<sup>310</sup>

Finally, it should be pointed out that the Employment Branch’s mandate is not restricted to reacting to complaints; the director can take whatever initiatives are considered advisable in order to ensure compliance with the Act.<sup>311</sup>

## B. Reciprocal enforcement of orders

In **Quebec**, the LSA allows the CNESST to ensure that decisions rendered outside Quebec under a regulation that shares similar objectives to those pursued by the CNESST are enforced in Quebec.<sup>312</sup> In **Ontario**, the ESA allows for

304 BC ESA, s 74.

305 BC ESA, s 75. For example, disclosure of the complainant’s identity may be necessary if the matter is brought before the Employment Standards Tribunal: B.C. Policy and Interpretation Manual on s. 75 of B.C. ESA.

306 BC ESA, s 76. Circumstances where the director can exercise such discretion and also stop or postpone reviewing, mediating, investigating or adjudicating a complaint include a complaint that was not filed within 6 months or a frivolous, vexatious or trivial complaint.

307 BC ESA, s. 78.

308 B.C. Policy and Interpretation Manual on s. 79 of B.C. ESA.

309 B.C. Policy and Interpretation Manual on s. 79 of B.C. ESA.

310 BC ESA, s 82.

311 BC, ESA, s 76.

312 QC LSA, s. 39.0.0.1.

the reciprocal enforcement of orders with all Canadian provinces and territories.<sup>313</sup> The Ontario ES Manual specifies that the reciprocal enforcement scheme may apply more broadly than the ESA itself. Thus, for example, “the [...] reciprocal enforcement provisions may apply to persons (such as chartered banks), even though they themselves do not come under the jurisdiction of the Act”.<sup>314</sup> In **Alberta**, the ESC allows for the reciprocal enforcement of orders with the following Canadian provinces and territories: British Columbia, Yukon Territory, Saskatchewan, Northwest Territories, Manitoba, Nova Scotia, Ontario, New Brunswick, Nunavut, Newfoundland and Labrador.<sup>315</sup> Québec and Prince Edward Island are not listed as reciprocating provinces. In **BC**, the Lieutenant-Governor in Council may declare a jurisdiction to be reciprocating if satisfied that reciprocal provisions exist, even if the jurisdiction is outside of Canada.<sup>316</sup>

## IV. ERGM-related issues

ERGM encompasses very diverse situations. If an increasing number of temporary TFWs are hired by Canadian employers to fulfill a wide range of positions, intra and interurban daily commuting is also widespread, as is rural-urban and urban-rural commuting. Interprovincial ERGM is also common and can last for months. ERGM can entail short or long distance travels in the course of the employment. From a labour law perspective, ERGM can blur the frontiers between work time and personal time and entail travel costs.

How does labour law fare with regards to mobile workers? Analysis of the legislation and relevant case-law provides some answers to these questions. We will first examine issues pertaining to travel and commuting time in Alberta, British Columbia, Ontario and Quebec (A). This is followed by a discussion of the way these and other jurisdictions legislate travel costs (B). Finally, we analyse some procedural issues that certain categories of mobile workers are likely to face when they seek to enforce their labour rights (C).

### A. Travel time/commuting time

In the context of ERGM, it is particularly important to determine under which circumstances travel time can count as work time (i.e., hours of work) because this has an impact on numerous benefits, such as overtime calculations or vacation pay.

313 ON ESA, s. 130.

314 Ontario Policy and Interpretation Manual, at 28-2.

315 AB ESC, s. 113; Alberta Reg. 14/97, s. 55.

316 B.C. ESA, s. 119.

**With the exception of Quebec**, provincial legislations do not explicitly deal with travel time. Nonetheless in all of the reviewed provinces, “travel time” is counted as “work time” if the time spent traveling is for the benefit of the employer; in such cases, employees must be paid for their travel time. Employees who earn wages for travel time do not have to be paid the usual wage rate, but must be paid at least minimum wage.<sup>317</sup> This is an important consideration for mobile workers who might be compensated for their travel, but at a much lower rate than their usual salary. This also has implications for payment of overtime if the number of hours “worked”, including travel, exceed the weekly or daily limits of work (unless the employee works in jobs where the overtime threshold is more than the daily or weekly limit or where the right to overtime pay does not apply). Thus, the employer still has to pay overtime based upon the number of hours worked but the amount of pay is reduced by the lower travel rate.

Hence, unless the employment contract or collective agreement stipulates otherwise, the time it takes an employee to travel from her home to her work is not “work time” but “commuting time” and is not included in the employee’s hours of work.<sup>318</sup> However, once the employee arrives at the worksite, time spent travelling between various worksites during workday is considered work time and must be paid.<sup>319</sup>

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317 This information must be given to employees ahead of time, or beset out in the workplace policy. Thus, travel time hours may be paid out at a smaller rate of pay, as long as the employee is informed and the rate is at least minimum wage. **For British Columbia**, see: B.C. Policy and Interpretation Manual on s.1 of B.C. ESA, definition of “Work”, “Wages for travel time”; Ministry of Jobs, Tourism and Skills Training and Minister Responsible for Labour, “Travel time: factsheet”, Dec. 2009. **For Ontario**, see the Ontario Policy and Interpretation Manual, at 13-28. **For Alberta**, see the Alberta ES Employer Tool Kit, at 18. For Quebec, see *Association des ingénieurs et scientifiques des systèmes spatiaux c. Corporation Macdonald Dettwiler & Associés*, 2014 QCCS 6510; *Association des ingénieurs et scientifiques des systèmes spatiaux c. MDA*, DTE 2013T-754.

318 In **Nova Scotia**, there is no specific indication as to whether travel time counts as on the clock. In **Northwest Territories**, the Labour Standards Board refused to consider an employee’s claim for travel time. The Board reasoned that since “the Labour Standards Act does not address travel time and living allowances, Labour Services could not consider that aspect of [the employee’s] complaint: *Northern Lights Drywall Ltd. v. Gabrielson*, [2007] 14597 (NWT LSB). See also: Brian Johnston, “Pay for remote worker to come to office”, *HR Reporter*, April 29, 2015, p. 2

319 B.C. Policy and Interpretation Manual, on s.1 of B.C. ESA, definition of “Work”, “Wages for travel time”; Alberta Employer ES Tool Kit, p. 18. See also: Alberta Fact Sheet on “Minimum Wage” (June 2016) at: <https://work.alberta.ca/documents/minimum-wage.pdf>. See finally (for Alberta): *Finning International Inc v International Association of Machinists and Aerospace Workers*, Local Lodge 99, 2014 CanLII 25000 (AB GAA); *Finning International Inc v The International Association of Machinists and Aerospace Workers Local Lodge 99*, [2014] A.J. No. 685, 2014 ABCA 220.

Thus, there are occasions when the time an employee spends getting to and from the work place is considered to be work, and there are some provincial variations in this area.<sup>320</sup> Regarding time spent travelling from home to a pick-up point and from the pick-up point to a remote work site; provincial rules do nonetheless tend to converge. In this section, we present the general rules relating to the compensation of travel time (1). We then address two specific issues: the circumstances under which commuting time counts as work time (2) and the circumstances under which the time spent traveling from a pick-up point to a remote work site is considered working time (3).

## 1. Travel time as working time? The General rules

**ON ES legislation** recognizes work time as the time that an employee spends working for the employer or, if not working for the employer, the time that the employee is required to stay at the workplace.<sup>321</sup> However, neither the ON ES legislation nor its regulations specify whether and when travel time ought to fall within “hours worked”. In Ontario, Court decisions have clarified that the time an employee spends travelling to and from her normal work location to home each day does not generally count as recognized work time. However, once employees arrive at their workplace, any subsequent travel they conduct for their job up to the point where they leave for home at the end of the day will equate to recognized work time.<sup>322</sup>

Three situations are seen by Ontario courts as working time: 1) when the employee takes a work vehicle home in the evening for the convenience of the employer; 2) when the employee is required to transport materials, supplies

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320 It is important to note that the vast majority of travel time decisions concern unionized employees. These decisions are nonetheless very useful for this report because they provide an interpretation of whether and how travel time can properly be viewed as “work” or “time worked” under the various ES provincial legislations.

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322 Ministry of Labour, « The Employment Standards Workbook », at 21: “[T]he time an employee spends getting to or from a place where work was or will be performed (with the exception of commuting time) [is] working time”. See also *Town & Country Fencing Ltd.*, ES 93-49A, April 27, 1993; *Ontario Nurses Association*, Board File No. 3619-96-ES, February 5, 1998; *1760644 Ontario Inc. (Capital Alarm) v Inglis*, [2015] O.E.S.A.D. No. 882; *Noah Allison v 3359492 Canada Inc. o/a Meeker’s Aquaculture o/a Blue Goose*, [2016] O.E.S.A.D. No. 85. See also: Stuart Rudner, “Paying an employee for a single daytrip”, *Canadian HR Reporter*, October 25, 2015 (from the November 2, 2015 issue). See finally: Jennifer L. Costin, “How is Travel Time Treated Under the Employment Standards Act, 2000?”, (2012) Commercial Litigation Lens Blog, online: Lerner’s <http://lernercommerciallitigation.ca/blog/post/how-is-travel-time-treated-under-the-employment-standards-act-2000/>

or other staff to or from the workplace or work site; and 3) when the employee has a usual workplace but is required by his or her employer to travel to another location to perform work.<sup>323</sup> In each of these circumstances, the employee is “deemed at work” because the employer exercises control and direction over the employee.<sup>324</sup>

**In British Columbia**, the Interpretation Manual mentions the following circumstances to be considered as worked hours: 1) when the employee, acting on instructions from the employer, is providing a service to the employer when traveling to and from a work place (i.e., bringing employer provided tools, equipment, materials, supplies, or other employees, to the work place); 2) when the employer instructs the employee to report directly to a workplace different from the normal one. Regarding the latest circumstance, if an employee is required to report to a location different than her regular workplace and that this involves some “measurable inconvenience”, he or she should be compensated for that travel time.<sup>325</sup>

323 Ministry of Labour, « The Employment Standards Workbook », p. 21 & p. 36. See also : Ministry of Labour, “What Counts as Work Time: Hours of Work and Overtime Tool”: [https://www.labour.gov.on.ca/english/es/tools/hours/what\\_counts.php](https://www.labour.gov.on.ca/english/es/tools/hours/what_counts.php) (last reviewed: January 2012). See again: *Pivotech Doors Inc. v Ladouceur*, [2015] O.E.S.A.D. No. 787.

324 More precisely, the courts have interpreted s. 6(1)(a)(i) of Ontario Reg. 285/01 (the “deemed work” provisions) to mean that employees are “at work” when their employer exercises direct control over them: *Mulvihill v. Ottawa (City)*, [2008] O.J. No. 1070, 2008 ONCA 201; *Deyonge v. Liberty Mutual Insurance Co.*, 2003] O.J. No. 548, [2003] O.T.C. 54. Also note that the Workplace Safety and Insurance Board’s Operational Policy Manual provides useful information on this question. The Board recalls that, “as a general rule, a worker is considered to be in the course of the employment when the person reaches the employer’s premises or place of work and is not in the course of employment when the person leaves the premises or place of work”. The Board also notes: “The worker is considered to be “in the course of employment” when the conditions of the employment require a worker to drive a vehicle to and from work for the purpose of that employment [...] “In the course of employment” also extends to the worker while going to and from work in a conveyance under the control and supervision of the employer”: Document No. 15-03-03 of the Operational Policy Manual: “On/Off Employers’ Premises”, 12 oct. 2004; Doc. No 15-03-05 of the Operational Policy Manual: “Travelling”, 12 oct. 2004. See finally: Brian Johnston, “Pay for remote worker to come to office”, *HR Reporter*, April 29, 2015, p. 2.

325 See among others: *Re Simon Fraser Health Region and British Columbia Nurses’ Union* (2000), [2000] B.C.C.A.A.A. No. 423 (McPhillips); *Vancouver (City) Fire and Rescue Services v. Vancouver Firefighters’ Union, Local 18*, [2006] B.C.C.A.A.A. No. 114 (Gordon); *Vancouver (City) v. Vancouver Firefighters’ Union, Local 18 (Police Records Checks Grievance)*, [2010] B.C.C.A.A.A. No. 81 (the court held in this case that the employer must pay employees for the time they spend, including travel time, and the expenses they incur in obtaining police record checks, as requested by the employer); *TNG, a Division of Great Pacific Industries Inc. v. Teamsters Local Union No. 213 (Vancouver Island Drivers Grievance)*, [2013] B.C.C.A.A.A. No. 33; *Renfrew County and District Health Unit v. Ontario Nurses’ Assn. (Travel and Transportation Costs Griev-*

**In Québec**, since May 1st 2003, the Act stipulates that time spent while traveling at the employer’s request is deemed to be devoted to work; during these journeys, employees are entitled to wages.<sup>326</sup> However, travel from the employee’s residence to his or her workplace is generally excluded from this provision.<sup>327</sup>

**In Alberta**, the legislation offers a definition of work time but there is no reference to “travel time” or “commuting time” in the relevant provision.<sup>328</sup> Policy interpretations and case law do not provide extensive guidance on this issue.

Despite its apparent clarity, the concept of when travel time counts as work time has not been uniformly interpreted by the courts. It is important, therefore, to bear in mind that the courts’ analysis is always driven by the specific facts and determined on a case by case basis.

## 2. Circumstances under which commuting time count as work time

In all provinces, there are exceptions to the general rule that employees are not entitled to compensation for commuting to and from work. For example, if an employee is required by her employer to travel from home to a client’s place of business or other work sites, this travel time will be compensated as work time. Regarding the situation of an employee who is required by an employer to report to a different place at the beginning of the shift or work schedule, case-law is also clear on this point: *any time spent travelling to a different location -either for the purpose of carrying out a work assignment or to attend a training program, conference, orientation session or board meeting-, will generally be counted as work time, even if the trip begins at home rather than at the usual workplace.*<sup>329</sup> This

*ance*), [2016] O.L.A.A. No. 228. See also: B.C. Interpretation Manual on s.1 of B.C. ESA, definition of “Work”, “Wages for travel time”.

326 QC LSA, s 57 al. 3. «An employee is deemed to be at work... (3) when travel is required by the employer».

327 *Syndicat des employés de manutention et de services (SEMS) et Armoires Fabritectée (grief syndical)*, 2014 QCTA 170.

328 Hours of work: “A period of time during which an employee works for an employer and time off with pay instead of overtime pay is provided by an employer and taken by an employee” (s. 1(1)).

329 See among others: *Re C.N.R. and Canadian Telecommunications Union*, [1978] O.L.A.A. No. 11; *Re London and District Association for the Mentally Retarded and Ontario Public Service Employees Union*, [1984] O.L.A.A. No. 81; *Re Steinberg Inc. and United Food and Commercial Workers Union, Local 486*, [1985] O.L.A.A. No. 5; *Thunder Bay Regional Health Sciences Centre v. Ontario Nurses’ Assn. (Travel Payment Grievance)*, [2007]

is so because getting to and returning from work is “on the employer’s business, at the employer’s particular request, [and] at some inconvenience to [the employee]”.<sup>330</sup> Employees are not entitled to compensation if travel from home to the unusual workplace or training/conference/meeting location involves no more time or inconvenience than travel from home to the usual workplace. However, if an employee is required to report to a different location and this involves some “measurable inconvenience” for the employee, he or she should be compensated.<sup>331</sup> It is worth pointing out here that it is not only travel time to “distant unusual” locations that is considered as compensable: an employee could receive compensation for extended travel time to locations that are geographically not too distant, due to traffic congestion (for example).<sup>332</sup> Ontario court and labour arbitration decisions have established that an employee who is required to work at a different branch out of town for a week, or whose entire day is dedicated to an out-of-town meeting should be entitled to wages for *all* travel time from home and back again. This is considered as time spent travelling for business purposes and must be seen as one continuous work period until the employee

has arrived back home. Boards and courts have also sometimes reasoned that out-of-town professional conferences count as work time if the employer directed the travel and the travel is undertaken for the employer’s benefit. In these cases, meal breaks, sleeping periods and rest times, however, will remain separate from work time.<sup>333</sup>

While the Ontario Policy and Interpretation Manual makes it clear that being required to keep a company vehicle overnight and to drive it to and from work each day is commute time that is paid time, **British Columbia** Policy Interpretation Manual is silent on this point. However, it is useful to remind that in BC, there is a consistent trend in the case-law to the effect that travel time to and from work is compensable if it can be demonstrated that the employee is under the employer’s “direction and control” during that time.<sup>334</sup> Thus it was held that an employees who are required to drive a company vehicle to and from the worksite (for example, to protect the contents or to be available for service calls) should be paid for the commute because this travel is under the direction and control of the employer and benefits the employer.<sup>335</sup>

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O.L.A.A. No. 243; *Re Children’s Aid Society of the County of Prince Edward and Ontario Public Service Employees’ Union, Local 448*, [2002] O.L.A.A. No. 952; *Oxford (County) v. Canadian Union of Public Employees, Local 1146 (Taplay Grievance)*, [2003] O.L.A.A. No. 368; *Your Credit Union v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers (Overtime Grievance)*, [2010] O.L.A.A. No. 587.

330 *Re Wiberg and Treasury Board (Ministry of Transport)*, Public Service Staff Relations Board, No. 166-2-286 (unreported). In the *Wiberg* decision, the grievor was a steamship inspector. Although his office was in Toronto, the grievor was frequently dispatched to other locations to carry out inspections. On the occasion in question, the employer refused to compensate the grievor for time spent in travelling between his home in Toronto and the inspection site in Collingwood. The grievor filed a grievance, claiming that he was entitled to be compensated for the travel time at overtime rates.

331 Alan McEwen, “Hours of work rules in Ontario: A guide for Canadian employers and payers on complying with employment standards rules on hours of work”, *First Reference Compliance & Best Practices Guides*, Stringer LLP, 2012, p. 29.

332 *Re Simon Fraser Health Region and British Columbia Nurses’ Union* (2000), [2000] B.C.C.A. No. 423 (McPhillips), at par. 30. That dispute involved a claim for compensation for time spent by nurses traveling to another hospital to attend an orientation session. Arbitrator McPhillips upheld the nurses’ claims for compensation for travel time. He found the orientation schedule was within the employer’s control and the nurses were required to report to a location other than their regular workplace involving some measure of inconvenience. This British Columbia case is cited by the Ontario Courts in a number of cases including: the *Oxford* case (*Oxford (County) v. Canadian Union of Public Employees, Local 1146 (Taplay Grievance)*, [2003] O.L.A.A. No. 368) and in the *Thunder Bay* and *Your Credit Union* case (*Re Thunder Bay Regional Health Sciences Centre and Ontario Nurses’ Association*, [2007] O.L.A.A. No. 243; *Your Credit Union v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers (Overtime Grievance)*, [2010] O.L.A.A. No. 587.

In **Alberta**, time spent going from home to work will be payable if the employee has to “pick up materials or

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333 Stuart Rudner, “Paying an employee for a single daytrip”, *Canadian HR Reporter*, October 25, 2015 (from the November 2, 2015 issue).

334 *Brock Services Ltd. (Re)*, [2004] B.C.E.S.T.D. No. 176, at par. 30.

335 The *Rutti* decision from the US Ninth Circuit Court of Appeals provides a useful insight into how the American courts treat hours of work claims regarding travel time to the employee’s first work assignment. In this case, the employee installed and repaired vehicle recovery systems in customers’ vehicles. Rather than requiring the employee to come to the employer facility to have the work done, Lojack (the employer) dispatched the employee to his customers. In order to complete work assignments, the employee drove to his respective job sites in a vehicle owned by Lojack. The employee, like most of the company technicians, drove directly from his own home to the customer’s location. In this decision, the court held that an employee’s commute time is not compensable under ES law if it can be demonstrated that such travel is analogous to commuting, and thus not part of an employee’s principal activity in the job. However, employers are liable for compensating employees where it can be shown that driving to the work site forms a required component of the employee’s job duties, and if such activities take a significant amount of time: *Rutti v. Lojack Corporation*, 9th Cir., No. 07-56599, Mar. 2, 2010). It is also instructive to look at decisions of the British Columbia Workers’ Compensation Appeal Tribunal and decisions of the Appeals Commission for Alberta Workers’ Compensation which suggest that workers will be covered if commute time is under the direction and control of the employer, for example when workers are required to drive company vehicles to and from the worksite for a work-related purpose such as to protect the business’ contents or to be available for service calls, etc. See also: Hannah Roskey, “Overtime and the Salaried Employee: Case Law Overview and Update”, Lorman Conference, Edmonton, July 30, 2014; Madeleine Loewenberg, “Paying for travel time”, *Horticulture Review*, Nov. 15, 2007.

perform other tasks on the way to work or home” (i.e., work-related duties).<sup>336</sup> The Alberta Policy and Interpretation Manual is silent regarding situations in which employees have a usual workplace and are required by their employer to travel to another location to perform work. However, it can be deduced from various governmental sources that hours of work would only begin on arrival at that unusual location (whereas in British Columbia and Ontario, the time traveling to and from a distant unusual location would be counted as work time).<sup>337</sup> We haven’t been able to locate an Alberta court or board decision rejecting or confirming the government’s position on this point. In fact, we have identified only two decisions in which arbitrators make comments -but not a ruling- regarding travel to an unusual place in work. In one case involving a unionized employee driving after her regular workday to an out-of-town corporation project board meeting, the board commented that there was “no doubt that [the employee] was “working” when she was travelling”.<sup>338</sup> In another case, the board referred to an Ontario board decision dealing with travel time and highlighted that the reasoning of the board in this decision was “sound” (i.e. that time spent travelling to a different location to perform a task assigned or authorized by the employer should be considered work time in calculating compensation even if the trip begins at home rather than at the usual workplace).<sup>339</sup> Given the lack of

guidance from both case law and policy manuals regarding commuting to an unusual work location, and since several non-unionized employees in Alberta seem to publicly complain that Alberta does not compensate them in such circumstances,<sup>340</sup> this issue definitely needs to be investigated further. It could be the case that the employment contract most often clearly provides that travel time from home to an unusual work location is not compensated, or that, in the case of unionized employees, most collective agreements specify that expenses occurred during travel time will be borne by the employer; however, this needs to be confirmed and clarified by key stakeholders during the interview stage of our project.

In **Quebec**, even though we found very little case-law on this issue, it seems that commuting time will be considered as time spent at work when the employee leaves his or her home to reach an unusual workplace, such as a client’s place of business. In such cases, the travel times which will be compensated will be the “fictitious” travel time, corresponding to the distance between the place of business of the employer and the client’s place of business.<sup>341</sup>

### 3. Circumstances under which the time spent traveling from a pick-up point to a remote work site is considered working time

In **British Columbia**, the law is clear regarding transportation from a pick-up to a remote work site: if employees are required to report to a designated pick-up point from which they are taken to the job site by employer-arranged transportation, the trip from the marshaling point to the worksite is paid travel time. The Policy and Interpretation Manual specifies:

The employer may provide a vehicle or arrange with an employee to drive others in their vehicle. Since reporting to the pick-up point is reporting to a place designated by the employer, the clock starts there and the driver and passengers are entitled to wages. This arrangement is distinguished from one

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paid for all employees who live in Fort McMurray and commute daily to the Aurora site should be applied to specific categories of employees, however, this case is not relevant here because the question of when travel time should be seen as work time was not addressed: *P.C.L. Industrial Constructors Inc. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 488 (Travel Time Grievance)*, [2000] A.G.A.A. No. 27.

340 See for example: <http://forums.beyond.ca/showthread/t-325952.html>

341 *Association de la construction du Québec c. Conseil provincial du Québec des métiers de la construction*, 2009 QCCA 1814.

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336 Alberta Employer ES Tool Kit, at 18

337 The Alberta ES Tool Kit (at p.18) states: “travel time is work when [...] the employee is directed to report to a given location (hours of work will begin on arrival at that location)”. In addition, another governmental publication addressed to employers specifically states: “Employees are working when they are providing a service to you as an employer. Work includes the time employees spend at meetings or training that you request them to attend, and time spent between jobs and locations. It does not include the time employees spend travelling to and from work”: Alberta Human Services, “An employer’s guide to employment rules”, HR Series for employers, 2009, at 25 (revised in 2013): <http://alis.alberta.ca/pdf/cshop/employersguide.pdf>

338 *Re Alberta Housing Corporation and Alberta Union of Provincial Employees*, [1982] A.G.A.A. No. 3, par. 12. After working her regular day from 8 a.m. to 4:15 p.m., the grievor drove to another town to attend a corporation board meeting. Following the meeting, she drove back to her hometown, arriving there at 11 p.m. The grievor’s claim for overtime pay was disputed because the employer did not agree that the grievor was entitled to two and one-half hours at double time for the time spent at the board meeting. According to the employer’s, the grievor had to have been doing work other than traveling for two hours before double time could be applied under the collective agreement. The union took the position that the traveling constituted “work” and, therefore, the grievor had been working for two hours prior to the board meeting.

339 *Caritas Health Group v. Health Sciences Assn. of Alberta (Friesen Grievance)*, [2008] A.G.A.A. No. 59, at par. 53 and 54, referring to *Thunder Bay Regional Health Sciences Centre v. Ontario Nurses’ Assn. (Travel Payment Grievance)*, [2007] O.L.A.A. No. 243. An Alberta case deals with how a collective agreement providing that travel time is to be

where employees may choose to carpool to work. If an employer provides a vehicle to an employee and that employee uses it to pick up other employees at a meeting place they have chosen at a designated time, both driver and passengers are considered to be commuting, and therefore, wages are not earned during the trip. It is considered a convenience.<sup>342</sup>

The same rule applies to employees performing a job in **Alberta**: if employees are directed to a designated pick-up point from which they are taken to the job site by employer-arranged transportation, the trip from the pick-up point to the worksite is paid travel time. However, if employees are given the choice of providing their own transportation to or from the work location or reporting to a certain point from which they may take a company-provided bus or receive a ride with the employer, the trip from the pick-up point to the worksite won't be paid as travel time.<sup>343</sup>

Although the Ontario Policy and Interpretation Manual is silent on this point, **Ontario** case law also seems to imply that, *unless the employee is required to come to a pick-up point in order to commence work*, he or she cannot claim travel time simply because the job sites are far from his or her home.<sup>344</sup>

Therefore, in **Ontario, Alberta, and British Columbia**, it would appear that a distinction is traditionally made between cases where the employer facilitates employees getting to and from work by providing transportation for part of the way and cases when the employer requires employees to report to a pick-up point from which they are taken to the job site (although this trends will need to be confirmed with further documentary research and follow-up interviews). While the first scenario does not entail any payment due to the employee for travel time from the pick-up point to the first job site or from the last job site to the drop-off point, the second does entail such a payment. In **Quebec**, a close look at the case-law leads one to conclude that the case-law on this point is not settled. For some, the time spent traveling from a predetermined meeting point, fixed by the employer, to the workplace, should be deemed to be work time and therefore com-

pensated.<sup>345</sup> This conclusion is supported by the fact that employees *do not choose* where they are assigned.<sup>346</sup> For others, “work time” should be distinguished from “preparatory time” or time “prior” to work. In such cases, “the nature of the employee’s duties should be considered”. In this perspective, the time that a security consultant takes to travel from one site of operation to another or the travels of a forester or a miner assigned to a remote area should not be considered as working time.<sup>347</sup> This position stems from the consideration that the location of a worker’s home and the type of work he or she carries on is the result of personal choices.

## B. Travel costs

In **Quebec**, the LSA requires that an employer reimburse an employee for reasonable expenses incurred while traveling (transportation expenses, lodging, meals, etc.).<sup>348</sup> “Reasonable expenses” are those that are “usual and acceptable”, as opposed to those that are “exaggerated and extravagant”.<sup>349</sup> Such travels must be imposed by the employer and must not result from an initiative taken by the employee. Moreover, when an employee is free to conduct his or her professional activities from the workplace of her choice and therefore determines his or her own movements, this provision does not apply.<sup>350</sup>

The LSA also prohibits employers from charging employees for expenses related to the operations of the employ-

345 See: *Syndicat national de la sylviculture (CSN), section locale Entreprises agricoles et forestières de la Péninsule c. Entreprises agricoles et forestières de la Péninsule inc.*, AZ-50425169 (T.A.); *Syndicat national de la sylviculture (CSN) c. Aménagement Vertechnic.*, D.T.E. 2007T-523 (T.A.) (Request for judicial review rejected, 2007 QCCS 6829).

346 See *Association des ingénieurs et scientifiques des systèmes spatiaux (AISS) c. MDA — établissement de Sainte-Anne-de-Bellevue*, 2013EXPT-2047 (T.A.) (Request for judicial review rejected, 2014 QCCS 6510)

347 *Commission des normes du travail c. Hydro-Québec*, 2012 QCCQ 4424; *Syndicat national de la sylviculture (CSN) c. Société d'exploitation des ressources de la Vallée*, 2010 QCCS 2930.

348 QC LSA, s 85.2: «An employer is required to reimburse an employee for reasonable expenses incurred where, at the request of the employer, the employee must travel or undergo training.»

349 The employer must determine the framework in which the travel is to take place and may adopt directives or policies aimed to this end: CNESST, *Interpretation Guide*, online: <http://www.cnt.gouv.qc.ca/en/interpretation-guide/ps-i/act-respecting-labour-standards/labour-standards-sect-391-to-97/miscellaneous-other-labour-standards-sect-85-to-87/852/index.html> (consulted on May 3rd 2015).

350 *Commission des normes du travail c. Enesco Canada*, 2015 QCCA 260.

342 B.C. Policy and Interpretation Manual on s.1 of B.C. ESA, definition of “Work”, “Pick-up Point”. See also: *Lacroix (c.o.b. Lone Wolf Contracting) (Re)*, [1996] B.C.E.S.T.D. No. 257.

343 Alberta ES Employer Tool Kit, p. 18.

344 *Celestino Vargas-Garcia and Yolanda Mino, Applicants v. Nik's Janitorial Services Inc. and Ministry of Labour*, [2001] O.E.S.A.D. No. 63, at par. 19.



er's undertaking.<sup>351</sup> We believe that travel expenses, in specific cases, can also be related to such operations where, for example, the employer's activities are carried out far away from its headquarters.

Are there circumstances in which employees can nevertheless be required to bear those expenses?

This question is at the centre of a 2014 judgment of the Quebec Court, which upheld the validity of a penal clause.<sup>352</sup> The penal clause in question stipulated that in the event of a "justified" dismissal, the employee would have to cover the cost of his repatriation from the workplace. The worker in this case was employed by a subcontractor operating, for the benefit of his client, in a remote area. The travels were therefore performed at the request of the employer. The CNESST claimed unpaid wages and other financial benefits provided for by the LSA. The CNESST alleged that, according to the relevant statutory provisions on mandatory payment for employment-related travel costs, the employer could not lawfully retain these sums to compensate for the repatriation cost of the employee.

The Court rejected the Commission's claim. According to the Court, the reason justifying the employee's dismissal made it "conceivable that these travel costs, which in the circumstances would not be reimbursed by the client to the employer, should be incurred by the offending worker".<sup>353</sup> Interestingly, the circumstances of the dismissal do not seem to have been discussed. Moreover, and in spite of the LSA's stipulations, the Court was of the opinion that it was "undoubtedly conceivable, even in the absence of such a clause[a penal clause], for an employer invoking a breach of contract, to obtain damages for harm suffered at the hands of a person who has committed an offence and as a result of which the employer has incurred additional costs".<sup>354</sup> Thus, the decision of the employer's client and its financial impact on the employer in this case seems to have superseded the effective implementation of the LSA.

**NB:** In **Newfoundland and Labrador**, the law stipulates that when an employer terminates the employment of an employee or lays off an employee who was employed by the employer at a remote site, the employer must provide transportation for the employee without cost to the em-

351 QC LSA, s 85.1.

352 *Commission des normes du travail c. Service de forage Orbit Garant inc.*, 2014 QCCQ 6187.

353 *Ibid*, par. 78.

354 *Ibid*, par. 79.

ployee to the nearest point at which regularly scheduled transportation services are available.<sup>355</sup>

In **Ontario** the *Employment Protection for Foreign Nationals Act* (see s. I.B.2. above) has a specific provision regarding the recovery of costs from a foreign national. Generally speaking, if an employer paid fees or had any other costs for hiring a foreign national (including travel-costs), the law stipulates that the employer cannot charge these costs to the worker and cannot deduct them from the worker's wages. However, if the foreign national is employed under the federal government's Seasonal Agricultural Worker Program (SAWP), the employer can deduct the costs of air travel and the costs of work permits if these deductions are allowed under the SAWP employment contract.<sup>356</sup> It should be recalled that the **Agreement for Employment regarding SAWP workers** stipulates that employers must arrange and pay for the round-trip transportation (e.g. plane, train, boat, car, bus) of the TFW to the location of work in Canada, and back to the worker's country of residence. A portion of these costs can be recovered through payroll deductions in all provinces, except in British Columbia, however the employer is not allowed to deduct more than the maximum amounts specified in the contract. **NB:** SAWP does not allow money to be deducted from workers' wages for the cost of travel between their point of arrival in Canada and their place of employment.<sup>357</sup>

**Alberta and British Columbia** have no specific legislative provision regarding the mandatory payment of employment-related travel costs to employees.

### C. Procedural issues in court proceedings: practical barriers for temporary foreign workers and other mobile workers and videoconference evidence

*NOTE: This section should be read in conjunction with section III of this report.*

If workers believe that their labour rights have been violated, there is a process through which they can file a complaint against their employer. In **Alberta**, workers can file a complaint with Alberta Employment Standards and have the decision reviewed by the Director of Employ-

355 *Labour Standards Act*, RSNL1990 CHAPTER L-2, s. 43.12.

356 Ontario EPFNA, ss. 8(1) and 8(2).

357 Government of Canada, "Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2016", section VII: "Travel and reception arrangements".

ment Standards. If necessary, parties can then appeal the decision to the Employment Standards Umpire with the Provincial Court of Alberta. In **British Columbia**, workers can file a claim with the Employment Standards Branch; the decision will be reviewed by the Employment Standards Tribunal and can ultimately be appealed to the Supreme Court of British Columbia. In **Ontario**, employees can file a complaint with the Ministry of Labour. If parties are not satisfied with the decision, they can have the decision reviewed by the Ontario Labour Relations Board and then further appealed to the Ontario Superior Court of Justice. In **Quebec**, employees can take their complaint to the CNESST with. If no agreement is reached between the parties, the case is heard before the competent jurisdictional body. More precisely, complaints pertaining to psychological harassment, to wrongful dismissals and to prohibited practices are heard by the *Tribunal administratif du travail*. The financial claims provided for under the LSA are heard before the Court of Québec or the Superior Court, depending on the sums that are claimed.<sup>358</sup> The rules of evidence and procedure before the judicial courts are established by the *Civil code of Procedure*.<sup>359</sup> Whether the case is heard before a judicial court or the *Tribunal administratif du travail*, the burden of proof applicable is the civil trials' rule of the balance of probabilities. In order to discharge themselves from this burden of proof, the parties will generally present evidence. In the vast majority of cases, each party will assign witnesses to be heard by the arbitrator. In such circumstances, the *audi alteram partem* rule implies the right for the other party to cross-examine the witness.<sup>360</sup>

Theoretically, these layers of protection may appear satisfactory; in practice, however, they are woefully inadequate for some categories of mobile workers, such as TFWs. Firstly, the system is complaint driven, and TFWs are less likely than others to file a complaint against a broker, due to lack of awareness of their rights, lack of familiarity with the language, reluctance to jeopardize their jobs (especially when jobs are tied to work permits) and fear of intimidation and reprisal. Secondly, the complaints process is potentially risky and lengthy. A worker who files a complaint risks losing his or her job without the possibility of new employment, regardless of the outcome of their case.

358 The Court of Québec has jurisdiction to the exclusion to the Superior Court in suits wherein the amount involved is less than 85,000\$: *Code of Civil Procedure*, CQLR c C-25, s 34 [C.p.c.].

359 On this issue, see: Jean-Claude Royer et Sophie Lavallée, *La preuve civile*, 4<sup>e</sup> éd, Cowansville, Yvon Blais, 2008.

360 Patrice Garant, *Droit administratif*, Cowansville, Yvon Blais, 6<sup>e</sup> éd, 2010 à la p 667.

In addition, time limitations on a work permit constitute significant obstacles to the ability of TFWs to complain, as these workers are expected to leave the country once their work permit has expired. Oftentimes they do not have the resources to return to Canada for a court proceeding, a factor which can severely hamper the successful conduct of a case.<sup>361</sup> For these reasons, it is very difficult for TFWs to successfully address violations of their labour rights.

Key court cases illustrate the numerous barriers that TFWs can encounter when mobilizing their labour rights. For example, in a British Columbia case involving 77 TFWs employed in Denny's restaurants, the plaintiffs alleged that "it was suggested to them that they should decide to opt out of [the] proceedings rather than run the risk of losing their employment with Denny's or otherwise losing support from Denny's in relation to their work permits or in obtaining permanent residency status in Canada".<sup>362</sup> Furthermore, although on paper the complaints process is free of charge, such a case would have been prohibitively expensive for an individual TFW.<sup>363</sup> Another case involved a non-unionized farm worker from Guatemala who filed a prohibited practice complaint against his Quebec employer alleging that he was wrongfully dismissed after a sick leave. By the time the hearing was about to take place the worker had returned to Guatemala.<sup>364</sup> In its initial de-

361 For more on this topic, see: Delphine Nakache and Paula J. Kinoshita, "The Canadian Temporary Foreign Worker Program: Do Short-Term Economic Needs Prevail over Human Rights Concerns?", IRPP Study No 5, May 2010, pp. 21-23. See also: Linnie Clark, "Migrant Worker Recruitment & Protection – Model Legislation", *B.C. Employment Standards Collation*, 2013 (updated in December 2014), pp. 19-24.

362 *Dominguez v. Northland Properties Corporation*, 2013 BCSC 468 (para. 13). The Denny's case was filed after an individual came forward in January 2011 and was certified as a class action consisting of 77 plaintiffs in March 2012. After embarking on dispute resolution proceedings, a settlement was ultimately approved in March of 2013. See also: *Edey Geovani Chamale Santizo c Potager Riendeau*, 2009 QCCRT 0566.

363 The Denny's case was dealt with on a contingency fee basis by law firms. The SELI case would also have been far too expensive for any individual migrant worker to take on. In this case, Construction and Specialized Workers' Union, Local 1611 provided the necessary support to pursue the migrant workers' human rights claim. SELI Canada and SNC Lavalin had employed Latin American, European and Canadian workers for the construction of the Canada Line rapid transit project. Latin American workers were performing the same work as other European and Canadian workers, but "they were paid less, they were housed in inferior accommodation, they were given less choice about where and what to eat, and were made to account for every expense incurred, rather than being given an allowance to do with as they wished": *C.S.W.U. Local 1611 v. SELI Canada and others* (No. 8), 2008 BCHRT 436 (para. 415).

364 *Edey Geovani Chamale Santizo c Potager Riendeau*, 2009 QCCRT 0566.

cision, Quebec's Labour Relations Board, which has been replaced since January 1<sup>st</sup> 2016 by the *Tribunal administratif du Travail*, had to determine whether the plaintiff could testify by videoconferencing.<sup>365</sup> The Labour Relations Board reached the following decision:

Although a testimony delivered by videoconference [may] ensure the right to cross-examination and assessment of credibility, it is not equivalent to what is required in this case. The witness remains behind a screen. The transmission of images and sound does not have the required precision and fluidity to receive a testimony that may take some time and that does not carry on secondary or non-contentious items, especially in a context where the testimony must be translated. Besides the impact this may have on the cross-examination and the assessment of credibility, planning the videoconference in itself is problematic, as the plaintiff did not have easy access to a reliable videoconference system. It is up to the plaintiff to demonstrate why he should be excused from testifying in person and to demonstrate the reliability of a videoconference.<sup>366</sup>

According to the Board, it was actually likely that the plaintiff could afford such travel expenses because TFWs, before coming to Quebec to work, "must deposit 500\$US and incur administrative fees amounting to 150\$".<sup>367</sup> If the plaintiff wished to return to Quebec to work, he had to have these amounts and thus had the means to travel for the hearing.<sup>368</sup> The Superior Court overturned the Labour Relations Board's decision on the ground that it violated the worker's right to procedural fairness. A new hearing was ordered. The Superior Court also concluded, in light of the plaintiff's socio-economic condition, that the Board's refusal to hear him through a videoconference system negated his right to be heard and his right to exercise his rights in a fair and equitable manner.<sup>369</sup>

365 The plaintiff also suggested that his testimony could be delivered through a sworn statement or a conference call. The CRT rejected these alternative means: *Ibid*, para 68-70.

366 *EdyeGeovaniChamaleSantizo c PotagerRiendeau*, *supra* note 375, para 71.

367 *Ibid*, para 76.

368 *Ibid*.

369 *EdyeGeovaniChamaleSantizo c Commission des relations du travail*, 2011 QCCS 2990 [*Santizo*, C.S. I] (Request for appeal rejected, 2011 QCCA1906), para 37-38. It is worth noting that no case law

The requirement to participate in person to court proceedings works as a deterrent for many TFWs: clearly, they aren't able to pursue their case once they have gone back home after the expiration of their work permit (unless they have the financial means to go back to Canada to attend the hearing). But this requirement is also likely to affect Canadian (or permanent resident) "on the move" workers who are in a precarious financial situation. For example, there could be major financial implications associated with attendance at a hearing in British Columbia for individuals who live in New Brunswick. Interestingly, the handful of court decisions on this topic do not seem to indicate a willingness to accommodate mobile workers' in labour complaint-related proceedings.

In **Quebec**, this is very little case-law regarding videoconference; however it seems that the conventional rule remains: a person's testimony must be given in person, although "some circumstances may justify the testimony of a person in 'virtual presence.'"<sup>370</sup> In this respect, the impact of the *Act to establish the new Code of Civil Procedure*, which should come into force in early 2016, will have to be closely monitored. The rules of interpretation of the new code underline that "appropriate technological means that are available to both the parties and the court should be used whenever possible, taking into account the technological environment in place to support the business of the courts."<sup>371</sup> Also, the new code explicitly acknowledges the possibility of hearing a witness at a distance using technological means, provided that it is necessary for the case and that the witness can be identified, heard and seen.<sup>372</sup> Courts may therefore also, even on their own initiative, order witnesses to be examined at a distance using technological means in order to avoid unnecessary travel by a witness living in a remote location.<sup>373</sup> Even if these rules do not technically apply to administrative jurisdictions, we believe that they could influence the practices and strategies

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could be found in **Ontario, Alberta and British Columbia** that specifically permitted migrant workers to testify by video conferencing.

370 See: *Christian Denis v Delta Airlines Inc*, (May 20<sup>th</sup> 2011), Court of Arbitration, Grievance YM2707-8581, para 25. In this case, the employer's request to have his witnesses heard from the company's head offices in Atlanta was denied. The employer's argument, based on the disproportionate expenses the company would have to incur to send them to Montreal, failed to convince the arbitrator to set aside the conventional rule of giving evidence in person.

371 Bill 28, *Act to establish the new Code of Civil Procedure*, 1<sup>st</sup> Sess, 40<sup>th</sup> Leg, Québec, 2014, cl 26 al 1.

372 *Ibid*, al 2.

373 *Ibid*, cl 296.

of such jurisdictions.

In all of the other jurisdictions (**Alberta, British Columbia and Ontario**), most of the case-law that deals with videoconferencing involves videoconferencing by *non-party* witnesses such as expert witnesses, so this case law is not particularly relevant to “on the move” workers who are the plaintiffs in legal proceedings. This dearth of case-law is compounded by the fact that courts have received video-conferenced trial evidence but do not always include a discussion in the reported judgment about their decision to admit the video-conferenced evidence.<sup>374</sup> **As in Quebec**, although the handful of cases that exist regarding videoconferenced plaintiff testimony are not consistent, the general rule for video conferencing seems to be that evidence and argument should be presented orally in open court - especially when it is the plaintiff who is required to testify and credibility of the witness is an important factor.<sup>375</sup> In a 2000 Alberta case involving a plaintiff residing in Brazil, the court agreed to hear the plaintiff testimony by videoconferencing. The court noted that videoconferencing should not be used generally as a substitute for personal appearances, but that there were exceptions to this rule, notably when “an individual is a long way away from the jurisdiction in which the examination would normally take place, where the costs for the personal attendance of that individual would be extremely substantial, where the examination can be carried out with a minimum of difficulty by the use of such video conferencing technology, and where there has already been a opportunity for counsel to engage in personal cross-examination of an extensive nature of the particular witness or potential witness, with the witness having been present for that examination or cross-examination”.<sup>376</sup> In a 2010 Alberta case, the court outlined general principles that should guide decisions as to whether to admit videoconference testimony. “Significant inconvenience” for the plaintiff was considered as a valid reason to accept testimony via video teleconference.

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374 For more on this topic, see: Amy Salyzyn, “A New Lens: Reframing the Conversation about the Use of Video Conferencing in Civil Trials in Ontario”, *Osgoode Hall Law Journal* 2012 50 Osgoode Hall L.J. 42.

375 *Ibid.* As cited in *R. v. Hinkley* 2011 ABQB 567, in several criminal cases the complainant who was the “key witness” was required to testify in person even though travel involved significant costs: *R. v. Cardinal*, 2006 YKTC 67; *R. v. Chapple*, 2005 BCSC 383. Although these were criminal cases, the same principle seems to be applied to employment law cases (i.e., where the credibility of the witness is an important factor in the outcome of the case).

376 *De Carvalho v. Watson* (2000), 1 C.P.C. (5th) 88 (Alta. Q.B.) In this decision, the fact that counsel had already had the opportunity to engage in personal cross-examination of the witness was an important consideration when allowing the plaintiff in the proceeding to testify via videoconference.

At the same time, the court made it clear that when the plaintiff has to respond to more than “technical questions”, videoconference testimony would be difficult to justify.<sup>377</sup> **As with the other jurisdictions reviewed here**, the courts in British Columbia are reluctant to allow plaintiffs to testify by videoconference. Thus, it seems that where a witness’ credibility is not expected to be an issue or where the evidence is unlikely to be disputed, the Court will be more inclined to find that videoconference testimony is appropriate.<sup>378</sup>

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377 *R. v. Denham*, 2010 ABPC 82, par. 16-18 & par. 27-29.

378 For British Columbia cases, see: *Slaughter v Sluys*, 2010 BCSC 1576, at par. 10.

## APPENDIX A: Key legislations and legislative provisions regarding the geographic scope of employment standards legislations in Newfoundland & Labrador, Nova Scotia and Prince Edward Island

### ✓ **NEWFOUNLAND AND LABRADOR**

#### **Key legislation**

- *Labour Standards Act*, R.S.N.L. 1990, c. L-2 [NFL LSA]
- Regulations
  - o *Labour Standards Regulations*, C.N.L.R. 781/96 [NFL Reg]
  - o *Labour Standards Reciprocating Jurisdictions Regulations*, N.L.R. 94/04

#### **Interpretation Manual**

- Labour Relations Agency Government of Newfoundland and Labrador, “Labour Relations at Work”, 2016, online, [http://www.gov.nl.ca/lra/faq/pdf/labour\\_relations\\_work.pdf](http://www.gov.nl.ca/lra/faq/pdf/labour_relations_work.pdf)

### ✓ **NOVA SCOTIA:**

#### **Key legislation**

- *Labour Standards Code*, R.S.N.S. 1989, c. 246
- Regulations:
  - o *General Labour Standards Code Regulations* [NS Gen Reg], amended to N.S. Reg. 302/2013.
  - o *Labour Standards Code Reciprocal Enforcement Regulations*, amended to N.S. Reg. 164/97; additional declarations made by N.S. Reg. 127/2002 & N.S. Reg. 245/2011
  - o *General Minimum Wage Regulation*, amended to N.S. Reg. 14/2016.
  - o *Construction and Property Maintenance*, amended to N.S. Reg. 15/2016.
  - o *Logging and Forest Operations*, amended to N.S. Reg. 16/2016).

#### **Interpretation Manual**

- Department of Labour and Advanced Education, “Guide to the Nova Scotia Labour Standards Code”, Halifax, Labour Standards Division, 04/16 [NS Interpretation Manual].

### ✓ **PEI**

#### **Key legislation**

- *Employment Standards Act*, R.S.P.E.I. 1988, c. E-6.2 [PEI ESA]
- Regulations:
  - o *General Regulations*, P.E.I. Reg 573/98
  - o *Minimum Wage Order*, P.E.I. Reg. EC139/96
  - o *Employment Standards Reciprocity Order*, P.E.I. Reg. EC810/95

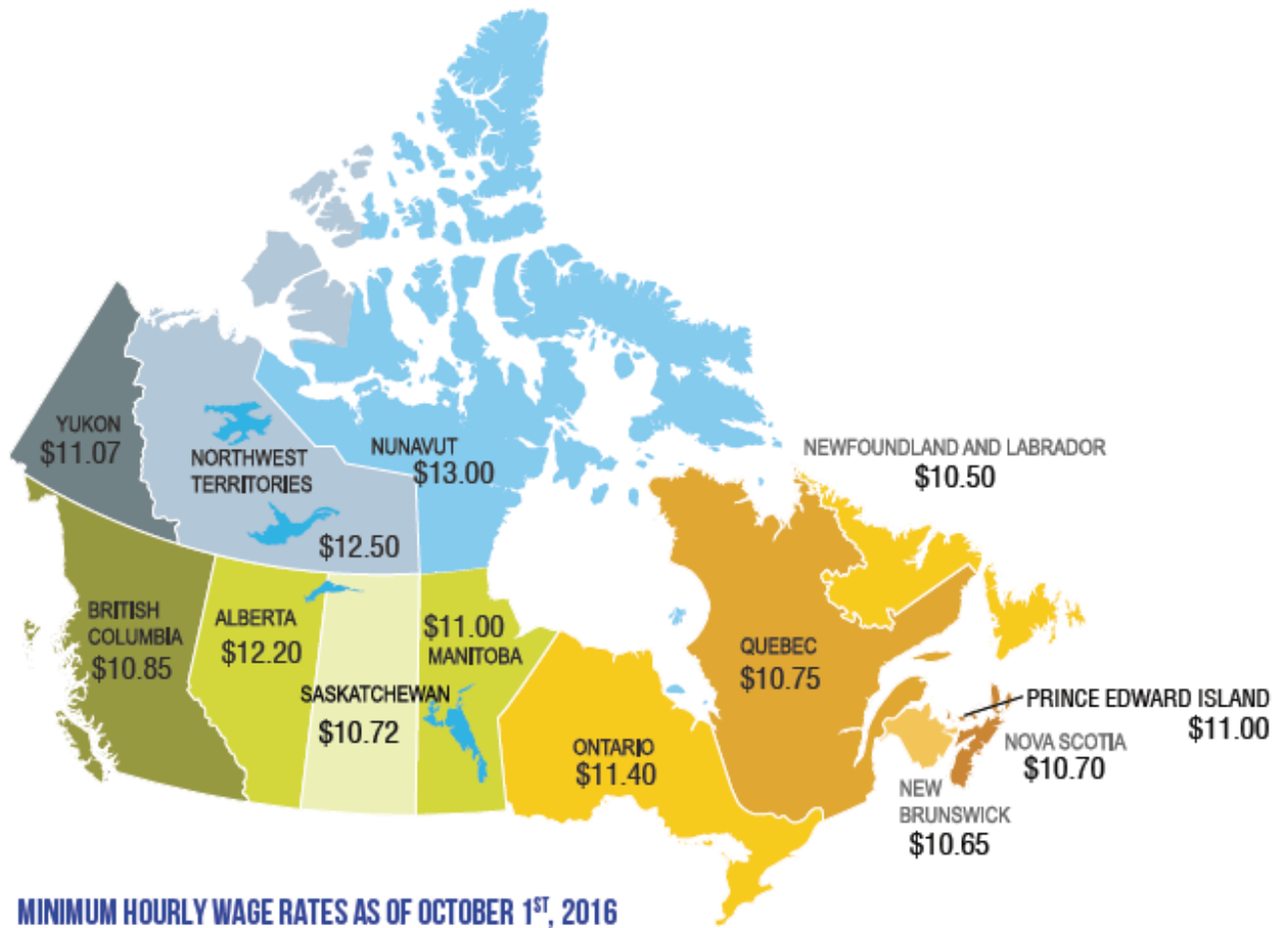
#### **Interpretation Manual**

- Department of Justice and Public Safety, “Guide to Employment Standards, 2016”, online [http://www.gov.pe.ca/photos/original/lir\\_esguide.pdf](http://www.gov.pe.ca/photos/original/lir_esguide.pdf)

	<b>Newfoundland and Labrador</b>	<b>Nova Scotia</b>	<b>PEI</b>
<b>APPLICATION</b>	<p><b>NFL Reg, section 3:</b> “Except where the contrary is indicated, these regulations apply to all employers and employees and to persons who are parties to a contract of service”</p> <p><b>No further information provided in the interpretation manual</b></p>	<p><b>NS LSC, section 4:</b> “this Act applies to all matters within the legislative jurisdiction of the Province.</p> <p><b>The NS Interpretation Manual states:</b> “Generally, Labour Standards legislation applies to employers whose business is regulated by the provincial government” ( NS Interpretation Manual, “Introduction to Labour Standards.”)</p>	<p><b>PEI ESA, section 2.(1)</b> “this Act and the regulations apply to all employers and employees”</p> <p>No further information provided in the interpretation manual</p>
<b>WORK EXECUTED OUTSIDE OF THE PROVINCE OR IN MULTIPLE PROVINCES</b>	<p><b>No specific legal provision and no specific information in the interpretation manual</b></p>	<p><b>No specific legal provision.</b></p> <p><b>The NS Interpretation Manual states:</b> “The legislation does not apply to employers whose business is regulated by the federal government”.  (NS Interpretation Manual, “Introduction to Labour Standards.”)</p>	<p>No specific legal provision and no specific information in the interpretation manual</p>

**APPENDIX B: Minimum hourly wage rates by province (as of October 1st , 2016,)<sup>379</sup>**

379 Taken from the Retail Council of Canada website: <http://www.retailcouncil.org/quickfacts/minimum-wage> (last visited: June 3, 2016).



**APPENDIX C: Key legislative provisions dealing with temporary foreign workers in Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Ontario and Quebec.**

**ALBERTA**

**Reference: *Employment Agency Business Licensing Regulation, Alberta Regulation 45/2012***

***Fee prohibition***

**12(1)** No employment agency business operator shall directly or indirectly demand or collect a fee, reward or other compensation (

- (a) from an individual who is seeking employment or from another person on that individual's behalf,
- (b) from an individual who is seeking information respecting employers seeking employees or from another person on that individual's behalf,
- (c) from an individual for securing or attempting to secure employment for the individual or providing the individual with information respecting any employer seeking employees or from another person on that individual's behalf, or
- (d) from an individual for evaluating or testing the individual, or for arranging for the individual to be evaluated or tested, for skills or knowledge required for employment, where the individual or the employment is in Alberta, or from another person on that individual's behalf.

**(2)** Nothing in subsection (1) prohibits an employment agency business operator from charging a fee for the provision of services to an individual that are not employment agency business services including, without limitation, resume-writing services and job-skills training services, if

- (a) the employment agency business operator and the person to whom the fee is charged have entered into a written agreement for the provision of the services that
  - (i) sets out the fee, and
  - (ii) is separate from any agreement between the individual to whom the services are provided and the employment agency business operator for the provision of employment agency business services to the individual,
- (b) the individual to whom the services are provided is not required to access the services in order to access the employment agency business operator's employment agency business services, and
- (c) the fee is reasonable.

***Unfair practices***

**(2)** It is an unfair practice for an employment agency business operator to do any of the following:

- (a) exert undue pressure on or threaten or harass a consumer, a person related to a consumer or a member of a consumer's household;
- (b) give false, misleading or deceptive information to a consumer with respect to matters relating to
  - (i) employment positions,
  - (ii) legal rights,
  - (iii) immigration, or
  - (iv) the general living or working conditions in Alberta;

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**Reference: *Employment Standards Code, RSA 2000, c E-9***

***Part 1: Application and Operation of this Act***

**2 (3)** The following Divisions and regulations do not apply to employees and employers specified in subsection (4):

- (a) Part 2, Division 3, Hours of Work;
- (b) Part 2, Division 4, Overtime and Overtime Pay;
- (c) Part 2, Division 5, General Holidays and General Holiday Pay;



- (d) Part 2, Division 6, Vacations and Vacation Pay;
  - (e) Part 2, Division 9, Restriction on Employment of Children and regulations made under section 138(1)(e), prohibiting or regulating the employment of individuals under 18 years of age;
  - (f) regulations under section 138(1)(d) respecting vacations, vacation pay, general holidays and general holiday pay;
  - (g) regulations under section 138(1)(f) respecting the minimum wage.
- (4) The Divisions and regulations specified in subsection (3) do not apply to employees employed on a farm or ranch whose employment is directly related to
1. (a) the primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, diversified livestock animals within the meaning of the Livestock Industry Diversification Act, poultry or bees, or
  2. (b) any other primary agricultural operation specified in the regulations, or to their employer while acting in the capacity as employer.

**Options for employer to terminate employment**

**55 (2)** Termination notice is not required

- (g) when the employee is employed under an agreement by which the employee may elect either to work or not to work for a temporary period when requested to work by the employer,
- (i) if the employee is employed on a seasonal basis and on the completion of the season the employee's employment is terminated

**Employer's duty to notify Minister of terminations**

**137** If an employer intends to terminate the employment of 50 or more employees at a single location within a 4-week period, the employer must give the Minister 4 weeks' written notice of intention to do so, specifying the number of employees whose employment will be terminated and the effective date of the terminations, unless the employees are employed on a seasonal basis or for a definite term or task.

**Reference: Employment Standards Regulation, Alta Reg 14/1997**

**Domestic employment**

- 6.** The following provisions do not apply to employees employed in domestic work in a private dwelling, or to their employer while the employer is ordinarily resident in the dwelling and acting in the capacity of employer:
- (a) Part 2, Divisions 3 and 4 of the Act (relating to hours of work, overtime and overtime pay), except for sections 18 and 19 of the Act (relating to rest periods and days of rest).
  - (b), (c) repealed AR 114/2000 s9.

**Reference: Government of Alberta, Temporary Foreign Workers: A Guide for Employees (2010),**  
 online <https://work.alberta.ca/documents/WIA-IM-tfw-employee.pdf>

**Employment Standards (pg 4)**

**When and how do I get paid?**

Employers must have regular pay periods such as every week, every two weeks or once a month. You must be paid within ten days after the end of each pay period. You may be paid in cash, by cheque or money order, or by direct deposit into your bank account.

## **Deductions from your earnings**

The Employment Standards Code allows certain deductions to be taken from your earnings. These are deductions for income tax, Canada Pension Plan and Employment Insurance. If an employer wants to make other deductions, you must give written permission first. There are some deductions that are never allowed, even with written permission from you. Employers cannot take deductions for mistakes. Also, they cannot deduct for cash shortages or loss of property if more than one person has access to the cash or property.

Your employer cannot charge you more than their cost for buying, cleaning and maintaining work clothes and uniforms. There are also limits to the rates your employer can charge you for providing you with a place to stay.

## **Hours of work**

- Your workday cannot be longer than 12 hours.
- You must be given at least 30 minutes of rest during each shift that is longer than five hours.
- You must be given at least one rest day for each week you work.

## **Overtime and overtime pay**

In most industries, overtime is all hours worked over eight hours a day or 44 hours a week. If you are paid a weekly, monthly, or annual salary, you will still earn overtime benefits for overtime hours worked. Overtime is either paid at the rate of at least 1.5 times your regular wage, or you and your employer can agree to replace overtime pay with paid time off (a day off work, for example).

## **General holidays**

The Employment Standards Code names nine days as general holidays in Alberta. For a complete listing of the dates and eligibility requirements visit [www.employment.alberta.ca/es](http://www.employment.alberta.ca/es).

## **Vacations and vacation pay**

Vacations and vacation pay are intended to ensure that each year employees have a rest from work without loss of income. After one year of employment, you are entitled to at least two weeks' vacation with pay.

## **Maternity and parental leave**

Employees who qualify are entitled to a period of maternity or parental leave without pay. You must have 52 consecutive weeks of employment with your employer to be eligible for maternity or parental leave. At the end of the leave you must be reinstated to your original, or an equivalent, job.

## **Termination of employment and layoffs**

You have the right to terminate your employment with an employer and they have the right to terminate your employment. These rights, however, come with responsibilities. The main responsibility is to provide proper notice. The length of notice you are required to give depends on how long you have worked in that position and must be in writing.

Neither you nor your employer has to give notice of termination during the first three months of employment. For employment of more than three months, but less than two years, proper notice is one week. Your employer must pay all your earnings within ten days following termination of employment. The due date for getting your final pay will depend on whether notice was required.

Your employer can temporarily lay you off for up to 59 days without giving you a termination notice. However, if your employer does not recall you before the 60th day, they must give you a termination notice or termination pay.

If you do not return to work within seven days of receiving a recall notice, your employer does not have to provide you with a termination notice or termination pay.

## **Using an Employment Agency (pg. 10).**

As a temporary migrant worker planning to, or currently working in Alberta, you may be thinking about using the ser-

vices of an employment agency to find you a job. Employment agencies charge the employer a fee for recruiting a worker. This fee is negotiated between the employer and employment agency. The employer is not allowed to recover the cost of this service from the employee. Any agency that indicates this is possible is wrong. Fees cannot be charged to potential or recruited workers to find a job.

## **BRITISH COLUMBIA**

**Reference: Employment Standards Act, RSBC 1996 c 113**

### ***Farm labour contractors must be licensed***

- 13** (1) A person must not act as a farm labour contractor unless the person is licensed under this Act.  
(2) A person who engages the services of an unlicensed farm labour contractor is deemed for the purposes of this Act to be the employer of the farm labour contractor's employees.  
(3) A person must not engage the services of a farm labour contractor unless the farm labour contractor is licensed under this Act.

### ***Written employment contract required for domestics***

- 14** (1) On employing a domestic, the employer must provide the domestic with a copy of the employment contract.  
(2) The copy of the employment contract provided to the domestic must clearly state the conditions of employment, including  
(a) the duties the domestic is to perform,  
(b) the hours of work,  
(c) the wages, and  
(d) the charges for room and board.  
(3) If an employer requires a domestic to work during any pay period any hours other than those stated in the employment contract, the employer must add those hours to the hours worked during that pay period under the employment contract.

### ***Producer and farm labour contractor are liable for unpaid wages***

- 30** (1) A producer and a farm labour contractor are jointly and separately liable for wages earned by an employee of the farm labour contractor for work done on behalf of the producer.  
(2) Subsection (1) does not apply in respect of a producer if  
(a) the farm labour contractor is licensed under this Act at the time the producer engages the services of the farm labour contractor; and  
(b) the producer satisfies the director that the producer paid the farm labour contractor for wages earned by each employee of the farm labour contractor for work done on behalf of the producer.  
Liability of farm labour contractor for transportation costs

- 30.1** (1) A farm labour contractor is liable to pay a prescribed administrative fee to the Province if  
(a) a motor vehicle used by the farm labour contractor to transport employees of the farm labour contractor, of another farm labour contractor or of a producer is, during the transportation of the employees, removed from service as the result of a failure to comply with, or a contravention of, an enactment of British Columbia or of Canada, and  
(b) the Province, at its own cost, provides alternative transportation to transport the employees to the employees' work site or another location.  
(2) If a farm labour contractor is liable under subsection (1) to pay an administrative fee, the director must serve on the contractor a notice setting out  
(a) the amount of the fee,  
(b) the date by which the fee must be paid,

- (c) the consequences of failing to pay the fee, and
- (d) the manner and method for payment of the fee.
- (3) A farm labour contractor liable to pay an administrative fee under subsection (1) must pay the fee in accordance with the regulations.
- (4) The director may vary or cancel a notice
  - (a) if (i) the farm labour contractor on whom the notice was served provides evidence satisfactory to the director that the finding that the farm labour contractor failed to comply with or contravened an enactment as described in subsection (1) (a) has been reversed on appeal under that enactment, or (ii) evidence comes to the attention of the director that was not available at the time the notice was issued that another requirement under subsection (1) was not met, or
  - (b) to correct a clerical, typographical or inadvertent error, an omission or a similar mistake.

### **Enforcement of administrative fee**

30.2 (1) An administrative fee imposed under section 30.1 is a debt payable to the government.

- (2) If a farm labour contractor fails to pay the administrative fee as required under section 30.1, the director may do one or more of the following:
  - (a) suspend, cancel or refuse to reinstate the farm labour contractor's licence, or refuse to grant a new licence to the farm labour contractor, until the fee is paid;
  - (b) file with the Supreme Court a copy of the notice referred to in section 30.1 (2).
- (3) On being filed, the notice is enforceable in the same manner as a judgment of the Supreme Court in favour of the director for the recovery of the amount of the fee stated in the notice.
- (4) Sections 79 and 98 do not apply to a contravention of section 30.1.

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**Reference: *Employment Standards Regulations B.C. Reg. 396/95***

## **Part 2 — Employment Agencies and Farm Labour Contractors (ss. 2-12)**

### **Part 3 — Employees Working in Residences**

#### **Registry information**

- 13 (1) An employer of a domestic or a textile worker must provide the director with the following information:
- (a) the employer's name, address, telephone number and fax number;
  - (b) the employee's name, address and telephone number;
  - (c) whether the employee is a domestic or a textile worker.
- (2) The employer must provide the information required under subsection (1) in writing to the director
- (a) within 30 days after the date the employee was hired,
  - (b) in the case of an employee hired before November 1, 1995, by January 1, 1996, or
  - (c) in the case of an employee who is to be employed as a domestic and who is coming to Canada from another country, before the employee is hired and before making an application to bring the employee to Canada.
- (3) An employer who is aware of any change in the information provided under subsection (1) must, each 6 months after January 1, 1996, provide the director with a written list of the changes.
- [am. B.C. Reg. 204/99, s. (b).]

#### **Maximum room and board rates for domestics**

14 An employer must not charge a domestic more than \$325 per month for room and board.

## Minimum wage — farm workers

**18 (1)** The minimum wage, including 4% of gross earnings vacation pay, for farm workers who are employed on a piece work basis and hand harvest the following berry, fruit or vegetable crops, is, for the gross volume or weight picked, as follows:

(a) apples	\$18.89 a bin (27.1 ft <sup>3</sup> / 0.767 m <sup>3</sup> );	(h) mushrooms	\$0.260 a pound / \$0.573 a kg
(b) apricots	\$21.73 a 1/2 bin (13.7 ft <sup>3</sup> / 0.388 m <sup>3</sup> );	(i) peaches	\$20.07 a 1/2 bin (12.6 ft <sup>3</sup> / 0.357 m <sup>3</sup> );
(c) beans	\$0.259 a pound / \$0.571 a kg	(j) pears	\$21.27 a bin (27.1 ft <sup>3</sup> / 0.767 m <sup>3</sup> );
(d) blueberries	\$0.438 a pound / \$0.966 a kg;	(k) peas	\$0.323 a pound / \$0.712 a kg;
(e) Brussels sprouts	\$0.180 a pound / \$0.397 a kg	(l) prune plums	\$21.27 a 1/2 bin (13.7 ft <sup>3</sup> / 0.388 m <sup>3</sup> );
(f) cherries	\$0.248 a pound / \$0.547 a kg;	(m) raspberries	\$0.395 a pound / \$0.871 a kg;
(g) grapes	\$20.07 a 1/2 bin (13.7 ft <sup>3</sup> / 0.388 m <sup>3</sup> );	(n) strawberries	\$0.380 a pound / \$0.838 a kg.

(1.1) The minimum wage for farm workers who are employed on a piece work basis and hand harvest daffodils \$0.152 a bunch (10 stems) for gross number picked.

(2) Each employer of farm workers must display, in a location where they can be read by all employees, notices stating the following:

- (a) the volume of each picking container being used;
- (b) the volume or weight of fruit, vegetables or berries required to fill each picking container;
- (c) the resulting piece rate.

(3) Farm workers described in subsection (1), and their employers, are exempted from section 58 of the Act on condition that the farm workers receive not less than the minimum wage described in subsection (1).

(4) A farm labour contractor must keep records of the following information:

- (a) the name of each worker;
- (b) the work site location and dates worked by each worker;
- (c) the fruit, vegetable, berry or flower crop picked in each day by each worker;
- (d) the volume or weight picked in each day by each worker.

(5) The records required by subsection (4) must

- (a) be in English,
- (b) be kept at the employer's principal place of business in British Columbia, and
- (c) be retained by the employer for 2 years after the employment terminates.

## Farm workers

**34.1** Part 4, except section 39, and Part 5 of the Act do not apply to farm workers

### Exclusions from payday requirements for certain farm workers

**40.1** Farm workers who hand harvest fruit, vegetable, flower or berry crops are excluded from subsection 17 (1) of the Act on the condition that the employer must pay to the farm workers within 8 days after the end of each pay period

- (a) at least 80% of wages earned in the first pay period in the month, and
- (b) monthly, all wages earned in the month, less wages previously paid under paragraph (a).

**Exclusion from payment options for farm labour contractors**

**40.2** (1) In respect of the payment of wages to farm workers, farm labour contractors are excluded from section 20 of the Act.

(2) A farm labour contractor must pay all wages to farm workers employed by the farm labour contractor

- (a) in Canadian dollars, and
- (b) by deposit to the credit of the farm worker's account in a savings institution.

## **NEWFOUNDLAND**

**Reference: Consolidated Newfoundland and Labrador Regulation 781/96**

**Overtime wage**

**9.** (1) Effective April 1, 2017, for the purpose of section 25 of the Act, overtime wages shall be paid at a rate of not less than \$16.13 an hour.

(2) Effective October 1, 2017, for the purpose of section 25 of the Act, overtime wages shall be paid at a rate of not less than \$16.50 an hour.

(3) Section 25 of the Act does not apply to a person employed

- (a) in the planting, cultivating and harvesting of farm produce other than the production of fruit and vegetables in greenhouse and nursery operations;
- (b) in the raising of livestock; or
- (c) as a live-in housekeeper or baby-sitter where there is an arrangement by which that employee is entitled to time off with pay for hours worked in excess of 40 hours per week.

## **NOVA SCOTIA**

**Reference: Labour Standards Code, R.S.N.S. 1989, c. 246**

**Interpretation 2 In this Act,**

(fa) "foreign worker" means an individual who is not

- (i) a Canadian citizen, or
- (ii) a permanent resident within the meaning of the Immigration and Refugee Protection Act (Canada), and who is recruited to become employed in the Province, regardless of whether the individual becomes so employed;

**Inspection of records**

**16** The Director or an officer may

- (a) inspect and examine all registers, books, payrolls and other records of any employer or recruiter that in any way relate to
  - (i) the employment of employees, or
  - (ii) the recruitment of individuals, including foreign workers;
- (b) require an employer or recruiter to verify by statutory declaration any entry in any such register, book, payroll or other record;
- (c) take extracts from or make copies of any such register, book, payroll or other record;

(d) at all reasonable times enter any establishment, inspect any place where he has reason to believe any person is or was employed, or any individual was or is being recruited, and question any employee, or individual who is or was being recruited, during or outside working hours apart from or together with the employer or recruiter for the purpose of ascertaining whether this Act or any regulation or order made under it is being

### ***Complaint to Director by individual recruited for employment***

81A Where, within the preceding six months, any person has acted contrary to Section 89B, 89E, 89F or 89G,

(a) the individual referred to in Section 89B;

(b) the employee referred to in Section 89E; or

(c) the foreign worker referred to in Sections 89F and 89G, may make a complaint to the Director in accordance with Section 21.

## **PROTECTION OF INDIVIDUALS RECRUITED FOR EMPLOYMENT**

### ***No fee permitted***

#### **89B**

(1) No person shall, directly or indirectly, charge or collect a fee from an individual for:

(a) finding or attempting to find employment in the Province for the individual; or

(b) providing the individual with information about any employer who is seeking employees for employment in the Province.

(2) No person shall assist another person to do any of the things described in subsection (1).

(3) Where the Director is satisfied that (a) any person, except a licensee, has contravened subsection (1) or (2), the Director may, by order in writing, recover the fee from that person or from the employer of the individual on behalf of the individual; or (b) a licensee has contravened subsections (1) or (2), the Director may, by order in writing, recover the amount from the licensee on behalf of the individual.

(4) Notwithstanding subsection (1), the Governor in Council may by regulation prescribe a class or classes of individuals exempt from the operation of this Section.

### ***No engagement of unlicensed recruiter***

**89C** No person shall engage the services of a recruiter of foreign workers unless the recruiter holds a valid and subsisting licence issued pursuant to this Act or is otherwise exempt by the provisions of this Act or the regulations from the obligation to be licenced. 2011, c. 19, s. 21.

### ***Contract void***

**89D** A provision in a contract that provides for the payment of a fee contrary to Section 89B is void.

### ***No cost recovery from employee***

**89E** No employer shall, directly or indirectly, recover from an employee any cost incurred by the employer in recruiting the employee.

### ***No wage reduction***

**89F** (1) No employer shall reduce the wages of a foreign worker employed by the employer, or reduce or eliminate any other benefit, term or condition of the foreign worker's employment that the employer undertook to provide as a result of participating in the recruitment of a foreign worker.

(2) Any agreement by a foreign worker to a reduction or elimination of wages contrary to subsection (1) is void.

### ***Property foreign worker entitled to possess***

**89G** (1) In this Section, “property that the foreign worker is entitled to possess” includes the foreign worker’s passport and work permit.

(2) No employer or recruiter, and no person on the employer’s behalf, shall take possession of, or retain, property that the foreign worker is entitled to possess.

(3) No person shall assist another person to do any of the things described in subsection (2).

(4) Where the Director is satisfied that an employer or recruiter, or any person on behalf of an employer or recruiter, has taken possession of, or retained, property that a foreign worker is entitled to possess, the Director may, in writing, order the contravening person to (a) do any act or thing that in the opinion of the Director constitutes full compliance with this Act; or (b) rectify an injury caused to the person injured or make compensation therefor.

## **LICENSING OF RECRUITERS AND REGISTRATION OF EMPLOYERS OF FOREIGN WORKERS**

### ***No recruiting unless licensed***

**89H** (1) No person shall engage in foreign worker recruitment unless the person is an individual who holds a licence under this Act that authorizes the person to do so.

(2) Notwithstanding subsection (1), the following persons are not required to hold a licence under this Act:

- (a) a person who is engaged in recruiting a foreign worker for employment with that person;
- (b) an individual who, on behalf of his or her employer, engages in foreign worker recruitment for the employer;
- (c) a person who, without receiving a fee directly or indirectly, engages in activities to find employment for a foreign worker who is his or her family member;
- (d) a department or agency of the government or a municipality; and
- (e) a person or class of persons exempt under the regulations.

### ***Application for licence***

**89I** (1) An individual may apply, in a form approved by the Director, for a licence or renewal of a licence authorizing the individual to engage in foreign worker recruitment.

(2) When applying for a licence or renewal of a licence, the applicant shall provide

- (a) the information required by the regulations and the application form; and
- (b) any additional information requested by the Director.

2011, c. 19, s. 21.

### ***Fee and security***

**89J** Before the Director issues or renews a licence, the applicant shall

- (a) pay any licence or renewal fee which is specified in the regulations; and
- (b) provide the Director with security on terms and conditions, and in the amount, specified in the regulations.

\*Section 89k to 89z contain more information about Licensing of Recruiters and Registration of Employers of Foreign Workers (Continued in Code <http://nslegislature.ca/legc/statutes/labour%20standards%20code.pdf> )



**Reference: General Labour Standards Code Regulations, NS Reg 298/90**

- 2 (1) Persons who are employed in a private home by the householder to provide domestic service
- (a) for a member of the employee's immediate family; or
  - (b) for no more than 24 hours within a period beginning on a Sunday and ending on the following Saturday, or during such other seven day period which is the customary pay period of the employer are exempted from the application of the Code.

[...]

- 2(3) Persons engaged in work on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, Christmas trees, Christmas wreaths, maple products, honey, tobacco, pigs, cattle, sheep, poultry or animal furs are exempted from application of:
- (a) Sections 37, 38, 39, 40, 41, 42 and 43, and
  - (b) Sections 61, 62, 63, 64, 65, 66, and 67 of the Code.

[...]

- 2 (12) Section 89F of the Code does not apply to an employer if the reduction in wages or the reduction or elimination of a benefit, term or condition of a foreign worker's employment referred to in subsection 89F(1) of the Code results from any of the following:
- (a) a change in federal law or a law of the Province;
  - (b) a change to the provisions of a collective agreement;
  - (c) measures implemented by the employer in response to a dramatic and unforeseeable or unavoidable change in economic conditions that directly affects the business of the employer, if the measures are not directed disproportionately at the foreign worker;
  - (d) good faith error in interpretation made by the employer respecting its obligations to the foreign worker that results in the foreign worker suffering a disadvantage, if the employer provides compensation to the foreign worker for the disadvantage;
  - (e) an unintentional accounting or administrative error made by the employer that results in the foreign worker suffering a disadvantage, if the employer provides compensation to the foreign worker for the disadvantage.

- 2 (13) A recruiter belongs to a class of persons that is exempt from the licensing requirement under subsection 89H(1) of the Code if the recruitment activities of the recruiter are limited solely to activities in relation to the employment of a foreign worker with an employer referred to in clause (14)(a), (b), (c) or (d).

- 2 (14) The following employers are deemed to belong to a class of persons that is exempt from the requirement under subsection 89T(1) of the Code to be registered with the Director and the requirement under Section 89C of the Code to engage only licensed recruiters of foreign workers:
- (a) a Government Reporting Entity, as defined in the *Finance Act*;
  - (b) a municipality as defined in the *Municipal Government Act*;
  - (c) a university that is a designated university under the *University Foundations Act*; and
  - (d) any employer who recruits or engages the services of another person to recruit a foreign worker for a position in an occupation that is listed in one or both of the following classifications under the National Occupational Classification 2011 matrix developed by Human Resources and Skills Development Canada and Statistics Canada:
    - (i) Skill Type 0 Management Occupations,
    - (ii) Skill Level A.

*\*Sections 15-22 of Regulations contain more information about licencing process and information required from registered employers*

**Reference: Minimum Wage Order (General) made under Sections 50 and 52 of the Labour Standards Code, R.S.N.S. 1989, c. 246.**

[...]

### **Application**

- 2** This Order applies within the Province of Nova Scotia to all employees and their employers excepting
- (a) persons who are employed in a private home by the householder to provide domestic service
    - (i) for a member of the employee's immediate family, or
    - (ii) for no more than 24 hours within a period beginning on a Sunday and ending on the following Saturday, or during such other 7 day period which is the customary pay period of the employer;
  - (b) persons under the age of 16 years engaged in work on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, Christmas trees, Christmas wreaths, maple products, honey, tobacco, pigs, cattle, sheep, poultry, or animal furs;

[...]

### **Piecework**

**13** Where an employer pays an employee on a piecework basis the employer shall pay not less than the hourly rate fixed by this Order for the number of hours worked regardless of the amount earned in accordance with the established piecework rates excepting employees employed on a farm whose work is directly related to the harvesting of fruit, vegetables and tobacco.

## **ONTARIO**

**Reference: Employment Protection for Foreign Nationals Act, 2009, S.O. 2009, c. 32**

### **PROTECTIVE MEASURES**

#### ***Prohibition against charging fees***

**7** (1) No person who acts as a recruiter in connection with the employment of a foreign national shall directly or indirectly charge the foreign national or such other persons as may be prescribed a fee for any service, good or benefit provided to the foreign national.

#### ***Prescribed exceptions***

(2) Subsection (1) does not apply with respect to such fees as may be prescribed. 2009, c. 32, s. 7 (2).

#### ***Prohibition against collecting fees***

(3) No person acting on behalf of a recruiter shall collect a fee charged by the recruiter in contravention of subsection (1). 2009, c. 32, s. 7 (3).

#### ***Prohibition against cost recovery by employers***

**8** (1) No employer shall directly or indirectly recover or attempt to recover from a foreign national or from such other persons as may be prescribed,

(a) any cost incurred by the employer in the course of arranging to become or attempting to become an employer of the foreign national; or

(b) any other cost that is prescribed.

**Prescribed exceptions**

(2) Subsection (1) does not apply with respect to such costs as may be prescribed.

**Prohibitions against taking, retaining property**

**Employer**

9 (1) No person who employs a foreign national, and no person acting on the employer's behalf, shall take possession of, or retain, property that the foreign national is entitled to possess.

**Recruiter**

(2) No person acting as a recruiter in connection with the employment of a foreign national, and no person acting on the recruiter's behalf, shall take possession of, or retain, property that the foreign national is entitled to possess.

**Example: passports, etc.**

(3) For example and without limiting the generality of subsections (1) and (2), a person described in subsection (1) or (2) is not permitted to take possession of, or retain, a foreign national's passport or work permit.

**Prohibitions against reprisal**

**Reprisal by employer**

10(1) No person who employs a foreign national, and no person acting on the employer's behalf, shall intimidate or penalize or attempt or threaten to intimidate or penalize the foreign national because he or she,

- (a) asks any person to comply with this Act;
- (b) makes inquiries about his or her rights under this Act;
- (c) files a complaint with the Ministry under this Act;
- (d) exercises or attempts to exercise a right under this Act;
- (e) gives information to an employment standards officer; or
- (f) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act.

**Reprisal by recruiter**

(2) No person acting as a recruiter in connection with the employment of a foreign national, and no person acting on the recruiter's behalf, shall intimidate or penalize or attempt or threaten to intimidate or penalize the foreign national because he or she,

- (a) asks any person to comply with this Act or the Employment Standards Act, 2000;
- (b) makes inquiries about his or her rights under this Act or the Employment Standards Act, 2000;
- (c) files a complaint with the Ministry under this Act or the Employment Standards Act, 2000;
- (d) exercises or attempts to exercise a right under this Act or the Employment Standards Act, 2000;
- (e) gives information to an employment standards officer; or
- (f) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act or the Employment Standards Act, 2000.

**Onus of proof**

(3) In a proceeding for the contravention of this section, other than a proceeding described in subsection (4), the burden of proof that a person did not contravene this section lies on that person. 2009, c. 32, s. 10 (3).

## **Exceptions**

(4) Subsection (3) does not apply with respect to the burden of proof in a review under section 30 of a notice of contravention of this section or the burden of proof in a prosecution for a contravention of this section.

## ***Duty to provide documents to foreign nationals***

### **Employer's duty**

11(1) A person who employs a foreign national shall give him or her a copy of the most recent documents published by the Director of Employment Standards under section 12 before the employment commences if the employer did not use the services of a recruiter in connection with the employment.

### **Recruiter's duty**

(2) If a recruiter contacts or is contacted by a foreign national in connection with employment, the recruiter shall give the foreign national a copy of the most recent documents published by the Director under section 12 as soon as is practicable after first making contact with him or her.

## **Duties re languages other than English**

(3) If the language of the foreign national is a language other than English, the employer or recruiter, as the case may be, shall make enquiries as to whether the Director has prepared a translation of the documents published under section 12 into that language and, if the Director has done so, the employer or recruiter shall also provide a copy of the translation to the foreign national.

## **Transition, employer's duty**

(4) If the foreign national is employed by the employer on the day subsection 8 (2) of Schedule I to the Stronger Workplaces for a Stronger Economy Act, 2014 comes into force, the employer shall give him or her a copy of the documents published by the Director under section 12 as soon after subsection 8 (2) of Schedule I to the Stronger Workplaces for a Stronger Economy Act, 2014 comes into force as is practicable.

## **Different categories**

(5) If the Director has prepared and published different documents for different categories of foreign nationals employed in Ontario or attempting to find employment in Ontario, and a foreign national who is employed by an employer or who contacts a recruiter is in a category for whom a document was prepared and published, the provisions of this section shall be applied as if they referred to the documents prepared and published for that category.

## ***Director's duty to publish documents***

12(1) The Director of Employment Standards shall prepare and publish documents providing such information as the Director considers appropriate about the rights and obligations under this Act of,

- (a) foreign nationals who are employed or who are attempting to find employment;
- (b) employers of foreign nationals; and
- (c) persons acting as recruiters in connection with the employment of foreign nationals.

## ***Rights under the Employment Standards Act, 2000***

(2) The Director shall prepare and publish a document providing such information about the rights and obligations of employees and employers under the Employment Standards Act, 2000 as the Director considers of particular relevance

to foreign nationals and their employers, and such other information as the Director considers appropriate.

### ***Different categories***

(3) If the Director considers it appropriate, he or she may prepare and publish different documents under this section for different categories of foreign nationals and their employers.

### ***If information out of date***

(4) If the Director believes that a document prepared under this section has become out of date, he or she shall prepare and publish a new document.

### ***Director's authority to publish names of offenders, etc.***

**13** (1) If a person, including an individual, is convicted of an offence under this Act, the Director of Employment Standards may publish or otherwise make available to the general public the name of the person, a description of the offence, the date of the conviction and the person's sentence.

### ***Internet publication***

(2) Authority to publish under subsection (1) includes authority to publish on the Internet. 2009, c. 32, s. 13 (2).

### ***Disclosure***

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

**Reference: O. Reg. 258/01: Exemptions, Special Rules and Establishment of Minimum Wage**

## **EXEMPTIONS REVARIOUS PARTS OF ACT**

### ***Exemptions from Parts VII to XI of Act***

[...]

**2** (2) Subject to sections 24, 25, 26 and 27 of this Regulation, Parts VII, VIII, IX, X and XI of the Act do not apply to a person employed on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, bison, rabbits, game birds, wild boar and cultured fish.

### ***Domestic workers***

19. (1) A householder shall provide the domestic worker with written particulars of employment respecting,  
(a) the regular hours of work, including the starting and finishing times; and  
(b) the hourly rate of pay.

(2) If the householder provides room or board to the domestic worker, the following are the amounts that shall be deemed to have been paid as wages for the purposes of determining whether the minimum wage has been paid:

1. For a private room, \$31.70 a week.

2. For a non-private room, \$0.00.

3. For board, \$2.55 a meal and not more than \$53.55 a week.

4. For both room and board, \$85.25 a week if the room is private and \$53.55 a week if the room is not private.

(3) The amount provided in subsection (2) in respect of a room shall be deemed to have been paid as wages only if the room is,

(a) reasonably furnished and reasonably fit for human habitation;

(b) supplied with clean bed linen and towels; and

(c) reasonably accessible to proper toilet and wash-basin facilities.

(4) Room or board shall not be deemed to have been paid by the householder to the domestic worker as wages unless the employee has received the meals or occupied the room.

## SPECIAL RULES RE FRUIT,VEGETABLE AND TOBACCO HARVESTERS

### **Application**

24. Sections 25, 26 and 27 apply to an employee who is employed on a farm to harvest fruit, vegetables or tobacco for marketing or storage.

### **Minimum wage**

25. (1) For each pay period, the employer shall pay to each employee an amount that is at least equal to the amount the employee would have earned at the minimum wage.

(2) The employer shall be deemed to comply with subsection (1) if employees are paid a piece work rate that is customarily and generally recognized in the area as having been set so that an employee exercising reasonable effort would, if paid such a rate, earn at least the minimum wage.

(3) Subsection (2) does not apply in respect of an employee described in paragraph 1 of subsection 5 (1).

(4) For the purposes of this section, "piece work rate" means a rate of pay calculated on the basis of a unit of work performed.

(5) If an employer provides room or board to an employee, the following are the amounts which shall be deemed to have been paid by the employer to the employee as wages for the purposes of determining whether the minimum wage has been paid:

1. For serviced housing accommodation, \$99.35 a week.

2. For housing accommodation, \$73.30 a week.

3. For room, \$31.70 a week if the room is private and \$15.85 a week if the room is not private.

4. For board, \$2.55 a meal and not more than \$53.55 a week.

5. For both room and board, \$85.25 a week if the room is private and \$69.40 a week if the room is not private.

(6) The amount provided in subsection (5) in respect of housing accommodation shall be deemed to have been paid as wages only if the accommodation,

(a) is reasonably fit for human habitation;

(b) includes a kitchen with cooking facilities;

(c) includes at least two bedrooms or a bedroom and a living room; and

(d) has its own private toilet and washing facilities.

(7) The amount provided in subsection (5) in respect of serviced housing accommodation shall be deemed to have been paid as wages only if,

(a) the accommodation complies with clauses (6) (a) to (d); and

(b) light, heat, fuel, water, gas or electricity are provided at the employer's expense.

(8) The amount provided in subsection (5) in respect of a room shall be deemed to have been paid as wages only if the room is,

(a) reasonably furnished and reasonably fit for human habitation;

(b) supplied with clean bed linen and towels; and

(c) reasonably accessible to proper toilet and wash-basin facilities.

(9) Room or board shall not be deemed to have been paid by the employer to an employee as wages unless the employee has received the meals or occupied the room.

### **Vacation or vacation pay**

26. (1) If an employee has been employed by the employer for 13 weeks or more, the employer shall, in accordance with Part XI of the Act,

(a) give the employee a vacation with pay; or

(b) pay the employee vacation pay.

(2) An employee entitled to vacation pay under subsection (1) earns vacation pay from the commencement of his or

her employment.

(3) Section 41 of the Act does not apply to the employee.

### **Public holidays**

27. (1) Part X of the Act applies to an employee who has been employed by an employer for a period of 13 weeks or more.

(2) For the purposes of this section, an employee shall be deemed to be employed in a continuous operation.

## **PRINCE EDWARD ISLAND**

**Reference: *Employment Standards Act, RSPEI 1988, c E-6.2***

### **APPLICATION**

2. (1) Except as otherwise expressly provided by this Act or the regulations, this Act and the regulations apply to all employers and employees.

(2) Notwithstanding subsection (1), only those provisions of this Act relating to the payment and protection of pay apply to the following employees:

- (a) salespersons whose income is derived primarily from commission on sales; and
- (b) farm labourers.

(3) Notwithstanding subsection (1), the provisions of sections 5 and 15 do not apply to

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

[...]

## **QUEBEC**

**Reference : *An Act Respecting Labour Standards, CQLR c N-1.1***

### **Definition of dependent contractor:**

**I (10)** “employee” means a person who works for an employer and who is entitled to a wage; this word also includes a worker who is a party to a contract, under which he or she

- i. undertakes to perform specified work for a person within the scope and in accordance with the methods and means determined by that person;
- ii. undertakes to furnish, for the carrying out of the contract, the material, equipment, raw materials or merchandise chosen by that person and to use them in the manner indicated by him or her; and
- iii. keeps, as remuneration, the amount remaining to him or her from the sum he has received in conformity with the contract, after deducting the expenses entailed in the performance of that contract;

### **Definition of domestic worker:**

**I (6)** “domestic” means an employee in the employ of a natural person whose main function is the performance of domestic duties in the dwelling of that person, including an employee whose main function is to take care of or provide care to a child or to a sick, handicapped or aged person and to perform domestic duties in the dwelling that are not directly related to the immediate needs of the person in question;

### **Room and board:**

**51.** The maximum amount that an employer may require for room and board from one of his employees is that which is fixed by regulation of the Government.

**51.0.1.** Notwithstanding section 51, an employer may not require an amount for room and board from a domestic who is housed or takes meals in the employer's residence.

### **Exclusions to normal work week**

**54.** The number of hours of the regular workweek determined in section 52 does not apply, as regards the computing of overtime hours for the purpose of the increase in the usual hourly wage, to the following employees:

(7) a farm worker;

### **Travel time**

**57.** An employee is deemed to be at work

(3) when travel is required by the employer;

### **Rest periods**

**78.** Subject to the application of paragraph 12 of section 39 or of section 53, an employee is entitled to a weekly minimum rest period of 32 consecutive hours.

In the case of a farm worker, that day of rest may be postponed to the following week if the employee consents thereto

### **Uniforms:**

**85.** An employer that requires the wearing of special clothing must supply it free of charge to an employee who is paid the minimum wage. In the case of an employee referred to in section 42.11 or 1019.4 of the Taxation Act ([chapter I-3](#)), the minimum wage is computed on the basis of the wages increased by the tips attributed under that section 42.11 or reported under that section 1019.4, and must at least be equivalent to the minimum wage that does not apply to a particular class of employees.

The employer cannot require an amount of money from an employee for the purchase, use or upkeep of special clothing if that would cause the employee to receive less than the minimum wage. In the case of an employee referred to in section 42.11 or 1019.4 of the Taxation Act, the minimum wage is computed on the basis of the wages increased by the tips attributed under that section 42.11 or reported under that section 1019.4, and the amount of money required from the employer cannot be such that the employee receives less than the minimum wage that does not apply to a particular class of employees.

The employer cannot require an employee to pay for special clothing that identifies the employee as an employee of the employer's establishment. In addition, the employer cannot require an employee to purchase clothing or accessories that are items in the employer's trade.

### **Protection against reprisals:**

**122.** No employer or his agent may dismiss, suspend or transfer an employee, practise discrimination or take reprisals against him, or impose any other sanction upon him

(1) on the ground that such employee has exercised one of his rights, other than the right contemplated in section 84.1, under this Act or a regulation;

(1.1) on the ground that an inquiry is being conducted by the Commission in an establishment of the employer;

(2) on the ground that such employee has given information to the Commission or one of its representatives on the application of the labour standards or that he has given evidence in a proceeding related thereto;

(3) on the ground that a seizure of property in the hands of a third person has been or may be effected against such employee;



- (3.1) on the ground that such employee is a debtor of support subject to the Act to facilitate the payment of support ([chapter P-2.2](#));
- (4) on the ground that such employee is pregnant;
- (5) for the purpose of evading the application of this Act or a regulation;
- (6) on the ground that the employee has refused to work beyond his regular hours of work because his presence was required to fulfil obligations relating to the care, health or education of the employee's child or the child of the employee's spouse, or because of the state of health of the employee's spouse, father, mother, brother, sister or one of the employee's grandparents, even though he had taken the reasonable steps within his power to assume those obligations otherwise;
- (7) on the ground of a disclosure by an employee of a wrongdoing within the meaning of the Anti-Corruption Act ([chapter L-6.1](#)) or on the ground of an employee's cooperation in an audit or an investigation regarding such a wrongdoing;
- (8) on the ground that such employee has exercised a right arising from the Voluntary Retirement Savings Plans Act ([chapter R-17.0.1](#));
- (9) for the purpose of evading the application of the Voluntary Retirement Savings Plans Act; or
- (10) on the ground of a communication by an employee to the inspector general of Ville de Montréal or the employee's cooperation in an investigation conducted by the inspector general under Division VI.0.1 of Chapter II of the Charter of Ville de Montréal ([chapter C-11.4](#)).

An employer must of his own initiative transfer a pregnant employee if her conditions of employment are physically dangerous to her or her unborn child. The employee may refuse the transfer by presenting a medical certificate attesting that her conditions of employment are not dangerous as alleged.

#### **Protection against wrongful dismissals:**

**124.** An employee credited with two years of uninterrupted service in the same enterprise who believes that he has not been dismissed for a good and sufficient cause may present his complaint in writing to the Commission des normes, de l'équité, de la santé et de la sécurité du travail or mail it to the address of the Commission des normes, de l'équité, de la santé et de la sécurité du travail within 45 days of his dismissal, except where a remedial procedure, other than a recourse in damages, is provided elsewhere in this Act, in another Act or in an agreement.

If the complaint is filed with the Administrative Labour Tribunal within this period, failure to have presented it to the Commission des normes, de l'équité, de la santé et de la sécurité du travail cannot be set up against the complainant.

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#### **Reference: Regulation respecting labour standards, RLRQ, chapter N-1.1, r. 3**

**6.** Where the employer, because of the employee's working conditions, must provide meals or accommodation to the employee, or where the employer sees to it that accommodation is provided to the employee, no amount greater than the following may be charged to the employee:

- (1) [\\$2.15](#) per meal, up to [\\$28](#) per week;
- (2) [\\$26.93](#) per week for a room;
- (3) [\\$48.45](#) per week for a dwelling where the room accommodates 4 employees or less and [\\$32.32](#) where the room accommodates 5 employees or more.

For the purposes of this section,

(1) "room" means a room in a dwelling unit that has a bed and a chest of drawers for each employee who is accommodated and that allows access to a toilet and a shower or bath;

(2) "dwelling" means a dwelling unit that has at least one room and allows access to at least a washer and dryer as well as a kitchen with a refrigerator, a stove and a micro-wave oven.

No accommodation costs, other than the amounts provided for in the first paragraph, may be required from the employee, in particular for access to an additional room.

With each increase in the general rate of the minimum wage, the amounts provided for in section 6 are increased by the percentage corresponding to the increase in the general rate of the minimum wage, without exceeding the percentage corresponding to the Consumer Price Index.

The Consumer Price Index for a year is the yearly average computed on the basis of the monthly Consumer Price Index for Canada established by Statistics Canada under the Statistics Act (R.S.C. 1985, c. S-19), for the 12 months of the calendar year preceding the increase in the general rate of the minimum wage in relation to the 12 months of the calendar year prior to that year.

If the percentage computed under the fourth paragraph includes more than two decimals, only the first two decimals are retained and the second decimal is increased by 1 unit if the third decimal is equal to or greater than 5.

The Minister publishes the result of the increase in the *Gazette officielle du Québec*.

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## **Reference: Interpretation Guide for Act Respecting Labour Standards**

### **Section I: Interpretation**

- I. “domestic” means an employee in the employ of a natural person whose main function is the performance of domestic duties in the dwelling of that person, including an employee whose main function is to take care of or provide care to a child or to a sick, handicapped or aged person and to perform domestic duties in the dwelling that are not directly related to the immediate needs of the person in question;

#### **Interpretation:**

This means an employee in the employ of a natural person, which excludes all employees working for “a legal person” (corporations, joint stock companies) even if their duties may be similar to those of a domestic; they are therefore considered to be employees within the meaning of the Act respecting labour standards (ALS), and they do not have the status of domestics.

A domestic is a person who performs domestic duties in a dwelling for a natural person, even if in addition to these duties, he takes care of or provides care in that dwelling to a child, or to a sick, handicapped or aged person. In the latter case, the employee must perform domestic duties not directly related to the immediate needs of the person taken care of to be considered a domestic within the meaning of the Act.

The expression “provide care to” means providing a person with all the attention required and carrying out all the duties necessary to ensure his safety and well-being in general.

The immediate needs of a person depend on the state of that person and may vary from one individual to another. Therefore, washing the clothing of a young child is a task related to the “immediate needs” of that child.

Since June 26, 2003, a domestic who resides with his employer has benefited from the general minimum wage rate ([s. 3 RLS](#)) and a regular workweek of 40 hours ([s. 52 ALS](#)), following the repeal of [sections 5](#) and [8](#) of the Regulation respecting labour standards. Consequently, labour standards apply to domestics, regardless of whether or not they live with their employer.

## **Section 54: Application of Workweek**

The number of hours of the regular workweek determined in section 52 does not apply, as regards the computing of overtime hours for the purpose of the increase in the usual hourly wage, to the following employees:

7. a farm worker;

A farm worker is a person who performs farm-related tasks as part of a farming operation.

In the expression «farm worker», the dominant aspect is growing. The tasks for which he is hired must be of a farming nature. To be able to consider an employee a farm worker, he must participate in working the soil and the land with a view to producing plants or animals. An employee who devotes all of his work time in the fields to ornamental crops would be considered a farm worker. However, the proportion of time devoted to other duties may result in the exception related to a farm worker not being applicable.

To determine if you are in the presence of a farming operation, it is necessary to look for the goal, the main purpose of the operation in question. This analysis must be made according to the normal and usual activities of the undertaking.

The jurisprudence considers that the operation of a farm comprises not only the exploitation of the proceeds of the soil but also the raising of farm animals and the sale of cultivated products. When it is a corporation that operates the farm, this operation must be its main activity; otherwise the exclusion does not apply.

**APPENDIX D: Hours of work: Standard hours and maximum hours in each jurisdiction of study.<sup>380</sup>**

380 Partly taken from: J. Willows and S. Schetagne “Mapping Basic Working Conditions in Employment Standards Laws Across Canada — 2011/2012”, Canadian Labour of Congress, Research Report no 51, pp. 71-73

	<b>Standard Hours</b>	<b>Maximum hours</b>
<b>Federal</b>	8 hours per day; 40 hours per week (s. 169)	48 h/week (s. 171)
<b>Alberta</b>	8 hours per day; 44 hours per week (s.21)	Hours of work must be confined within a period of 12 consecutive hours in a work day (s.16(1)).
<b>British Columbia</b>	8 hours per day; 40 hours per week (s.35)	Employer cannot require or allow an employee to work excessive hours, or hours detrimental to the employee’s health or safety (s.39).
<b>Manitoba</b>	8 hours per day; 40 hours per week (s. 10)	Standard hours can be increased with approval from director (s.13).
<b>Newfoundland and Labrador</b>	40 hours per week (regulations, s.5(2)).	14 h in a day (the employee must have eight hours rest in 24-hour work day, plus two hours of breaks (ss. 22-23)
<b>Nova Scotia</b>	48 hours per week (minimum wage order, s.9).	N/A
<b>Ontario</b>	44 hours per week (s.17, s.22).	Eight hours per day, 48 hours per week, can be longer with approval (s.17(1)). At least 11 consecutive hours free from performing work each day (s.18(1)).
<b>Prince Edward Island</b>	48 hours per week (s.15(1)).	N/A
<b>Quebec</b>	40 hours per week, with some specific work weeks in the regulations (s.52).	N/A
<b>Northwest Territories</b>	8 hours per day; 40 hours per week (s. 7)	10 hours per day, 60 hours per week (s.8).
<b>Yukon Territory</b>	8 hours per day; 40 hours per week (S. 6)	80 hours in two weeks if under short week agreement (s.11(1)).

## APPENDIX E: Reporting pay for each jurisdiction under study<sup>381</sup>

Reporting pay is owed when a worker shows up for a scheduled shift or after being called in by their employer, and does not necessarily work part or any of the shift for reasons outside of the worker's control. In these circumstances, the employer must still pay a sum to the worker, the amount of which differs between jurisdictions.

<b>FEDERAL</b>	Whether the employee works or not, if called into work, must be paid regular rate for three hours (s.11.1 regulations)
<b>ALBERTA</b>	If an employee is employed for less than three consecutive hours, the employer must pay for three hours at not less than the minimum wage (s.11(1)).
<b>BRITISH COLUMBIA</b>	'Employer must pay for a minimum of 2 hours at worker's regular wage even if the employee don't work, unless employee is unfit to work (s.34(1)).  If employer had scheduled the employee to work that day for more than 8 hours, must pay for 4 hours, unless the employee is unfit to work, or for 2 hours if work can't happen for reasons outside employer's control (s.34(2)).  If employee must work longer than 2 (or 4) hours, employer must pay for the entire period the employee is required to work (s.34(4))
<b>NEWFOUNDLAND AND LABRADOR</b>	If employees works less than three hours, either must be allowed to work for at least three, or must be paid for three at minimum wage, or overtime wage, whichever is appropriate (s.10).
<b>NOVA SCOTIA</b>	Where an employee is called in, must be paid for three hours at the minimum straight time rate even if less than three hours is worked (minimum wage order s.11).
<b>ONTARIO</b>	Three hours pay if the employee regularly works for more than three hours per day and reports for work, but works less than three hours, except where circumstances outside employer's control prevent work from happening (Ontario Reg. s.5(7)).
<b>PRINCE EDWARD ISLAND</b>	If required to report to work, employee shall be paid at regular rate for not less than three hours (s.17).  Mandatory call-in meetings must be compensated.
<b>QUEBEC</b>	Any work for fewer than three hours still gets three hours of pay at the prevailing rate, unless split shift (s.58). Paid as if working when available at workplace and required to wait for work (s.57).

381 Taken from: J. Willows and S. Schetagne "Mapping Basic Working Conditions in Employment Standards Laws Across Canada — 2011/2012", Canadian Labour of Congress, Research Report no 51, at 68.

**APPENDIX F: Deductions – room and board and uniforms (Alberta, British Columbia, Newfoundland and Labrador, Ontario, PEI, Quebec, Federal Sector)**

**Reporting pay is owed when a worker shows up for a scheduled shift or after being called in by their employer, and does not necessarily work part or any of the shift for reasons outside of the worker’s control. In these circumstances, the employer must still pay a sum to the worker, the amount of which differs between jurisdictions.**

	<b>Deductions – Room and Board</b>	<b>Deductions – Uniforms</b>
<b>FEDERAL</b>	Maximum for wage reductions for room and board are \$0.50 for each meal; and for living quarters, \$0.60 per day ( <i>Canada Labour Standards Regulations</i> (C.R.C., c. 986), s. 21).	N/A
<b>ALBERTA</b>	Minimum wage can be reduced by \$3.35/meal, and \$4.41/day for a room (Alberta Regulation 14/1997, s.12).	Cannot deduct below minimum wage for mandatory uniform and its cleaning (Alberta Regulation 14/1997, s.13). Can never charge employee more than what it costs the employer (Alberta Regulation 14/1997,s.14).
<b>BRITISH COLUMBIA</b>	Maximum room and board for domestics is \$325/ month (Employment Standards Regulation, B.C. Reg. 396/95, s.14)	‘Employer cannot take wages, and cannot charge employee for any business costs (ESA, s.21).  Required uniforms must be provided and cleaned without charge (ESA, s.25).
<b>NEWFOUNDLAND AND LABRADOR</b>	If employee is required to live on the employer’s property, employer can only charge “reasonable” rental charges ( <i>Labour Standards Act</i> , s.36(2)).	Cannot charge employee for a mandatory uniform that is unique to the business, with identifier of the business on it, and cannot be practically used after employment ( <i>Labour Standards Act</i> , s.36.1).
<b>ONTARIO</b>	No provision on room and board deduction	No provision on uniform deduction
<b>PRINCE EDWARD ISLAND</b>	Board and lodging maximum \$56/ week.  Board only, maximum \$45/week,  Lodging only, maximum \$25/week,  Single meals, maximum \$3.75/meal (Minimum Wage Order regulation, s.2).	No deducting for use of required uniform, or footwear that is supplied by employer and is unique to employer’s business (s.5.5(6)), but can require a maximum 25% deposit ( <i>Employment Standards Act</i> , s.5.5(7)).
<b>QUEBEC</b>	Employer cannot charge more than \$2.15/meal, or \$28.00/ week for food.  Employer cannot charge more than \$26.93 per week for a room and more than \$48.45 per week for a dwelling that accommodates 4 employees or less and \$32.32 for a room accommodating 5 employees or more (s.6, regulations).	Uniform must be supplied free for those who work for minimum wage. Any upkeep or charges for those who make more cannot end up bringing their pay to below minimum wage (s.85). Where uniform has company logo, etc., cannot be charged for it, nor can be charged for items in the employer’s trade (Quebec LSA , s.85).

APPENDIX G: Rest day, rest periods between shifts, meals and breaks in each jurisdiction of study<sup>382</sup>

	<b>Rest Day</b>	<b>Rest Periods Between Shifts</b>	<b>Meals and Breaks</b>
<b>Federal</b>	Each employee has at least one full day of rest per week, and wherever practicable, Sunday shall be the normal day of rest (s.173).	N/A	N/A
<b>Alberta</b>	One day of rest in each work week, two consecutive days for two consecutive work weeks, three for three, four for four (s.19(1)). Four consecutive days of rest must be given after each 24 consecutive work days (s.19(2)).	Must have eight hours free between shifts (s.17(2)).	During each shift over five consecutive hours, must have at least 30 minutes of rest, paid or unpaid (s.18), unless it is unreasonable to allow a rest period (s.18c).
<b>British Columbia</b>	Must have 32 consecutive hours free from work each week, or must pay 1.5 times the regular wage for time worked during that 32-hour period (s.36(1)).	Must have eight hours free between shifts (s.36(2)).	No more than five consecutive hours without a half hour meal break, unpaid unless the employee is required to be available for work (s.32).
<b>Newfoundland and Labrador</b>	Period of not less than 24 consecutive hours during each week, Sunday wherever possible (s.22).	Not less than eight consecutive hours of rest in each unbroken 24-hour period of work (s.23).	One hour unbroken break following each five consecutive hours of work (s.24).
<b>Nova Scotia</b>	24 consecutive hours in every seven-day period. If possible, day granted simultaneously to all employees and granted on Sunday (s.66(1)).	N/A	Half-hour breaks at intervals so that no employee is required to work longer than five hours without a break (s.66B). More than 10 hours consecutively worked must have one 30-minute break, and others totalling another 30 minutes (s.66B).
<b>Ontario</b>	At least 24 consecutive hours off every work week, or 48 consecutive hours in every period of two consecutive work weeks (s.18(4)).	Must have at least eight hours between shifts, unless time of successive shift does not exceed 13 hours, or the employee agrees to less breaks (s.18(3)).	No more than five consecutive hours without a 30-minute eating period, which is unpaid (s.21).
<b>Prince Edward Island</b>	Unpaid rest period of at least two consecutive days every seven days and where possible, period shall include Sunday (s.16(1)).	N/A	Unpaid break of at least one half hour at intervals so that employee won't work longer than five consecutive hours without a break (s.16(2)). Cannot be required to remain at workplace.
<b>Quebec</b>	Weekly rest of 32 consecutive hours (s.78).	N/A	For period of five consecutive hours of work, must provide 30 minutes of unpaid break (s.79). This break is paid if the employee cannot leave the work station.

382 Taken from: J. Willows and S. Schetagne "Mapping Basic Working Conditions in Employment Standards Laws Across Canada — 2011/2012", Canadian Labour of Congress, Research Report no 51, pp. 71-73

APPENDIX H: Overtime pay<sup>383</sup>

	1.5 regular wages for any time over standard <u>weekly</u> hours	1.5 regular wages for any time over standard <u>daily</u> hours	2x regular wages for any time over 12 hours on a day	1.5 <u>minimum wage</u> for any time over standard <u>weekly</u> hours
Federal	x	x		
British Columbia	x	x	x	
Alberta	x	x		
Saskatchewan	x	x		
Manitoba	x	x		
Ontario	x			
Québec	x			
New Brunswick				x
Nova Scotia				x
Prince Edward Island	x			
Newfoundland and Labrador				x
Yukon	x	x		
Northwest Territories	x	x		
Nunavut	x	x		

383 Taken from: J. Willows and S. Schetagne “Mapping Basic Working Conditions in Employment Standards Laws Across Canada — 2011/2012”, Canadian Labour of Congress, Research Report no 51, pp. 13



## APPENDIX I: Temporary Foreign Workers – Employment Contracts

### **EMPLOYMENT CONTRACT FOR WORKERS HIRED THROUGH THE SEASONAL AGRICULTURAL WORKER PROGRAM**

“Employers must complete and sign the employment contract entitled Agreement for the employment in Canada for SAWP and send it with the Labour Market Impact Assessment (LMIA) application to Service Canada. The employment contract also requires the signature of the liaison officer for the foreign government and the TFW identified on the LMIA application. In situations where the names of the TFWs have not been identified prior to their arrival in Canada, employers must ensure a copy of the employment contract is provided to them (in French or English and Spanish) for signature on the first day of employment.

The purpose of the employment contract is to specify each party’s rights and obligations, as well as to ensure that all parties understand and agree to the working conditions and their respective responsibilities. In the event that differences arise between the employer and the TFW, the contract will guide the resolution of disputes. In cases of demonstrable breaches of the employment contract, and where no resolution, including possible compensation, has been made, the TFW, the liaison officer or the employer can contact the Ministry of Labour in the province/territory where the work is being performed”.<sup>384</sup>

### **EMPLOYMENT CONTRACT FOR WORKERS HIRED THROUGH THE AGRICULTURAL STREAM**

“The employer must prepare and sign an employment contract. In the event that differences arise between the employer and the TFW, the contract will guide the resolution of disputes. In cases where the dispute cannot be resolved between the two parties, the employer or the TFW may contact the Ministry of Labour in the province/territory where the work is being performed.”<sup>385</sup>

### **EMPLOYMENT CONTRACT FOR IN-HOME CAREGIVERS**

“ALL employers of in-home caregivers must prepare and sign an employment contract. Although employers are not required to use the contract template provided, they must ensure that the contract used contains all of the mandatory information and clauses. For positions in the province of Quebec, the Ministère de l’Immigration, de la Diversité et de l’Inclusion (MIDI) has its own requirements concerning the employment contract between an employer and a worker providing in-home care.

In the event that differences arise between the employer and the TFW, the contract will guide the resolution of disputes. In cases where the dispute cannot be resolved between the two parties, the employer or the TFW may contact the Ministry of Labour in the province/territory where the work is being performed.

ESDC/Service Canada has no authority to intervene in the employer-employee relationship or to enforce the terms and conditions of the contract”.<sup>386</sup>

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384 Taken from: Government of Canada, “Hire a temporary worker through the Seasonal Agricultural Worker Program – Program requirements”: <https://www.canada.ca/en/employment-social-development/services/foreign-workers/hire/agricultural/seasonal-agricultural/requirements.html> (last modification: October 12, 2016).

385 Taken from: Government of Canada, “Hire a temporary foreign worker through the Agricultural Stream - Program requirements”: <https://www.canada.ca/en/employment-social-development/services/foreign-workers/hire/agricultural/agricultural/requirements.html> (last modification: January 06, 2017).

386 Taken from: Government of Canada, “Hire a temporary worker as an in-home caregiver - Program requirements”: <https://www.canada.ca/en/employment-social-development/services/foreign-workers/foreign-workers-hire-caregiver/requirements.html> (last modification: September 28, 2016).

## **EMPLOYMENT CONTRACT FOR WORKERS IN A LOW-WAGE POSITION**

“The employer must prepare and sign an employment contract outlining the:

- job duties;
- wages;
- working conditions (e.g. hours of work);
- terms and conditions related to:
  - transportation costs;
  - accommodation; and
  - health and workplace safety.

Although employers are not required to use the contract template provided, they must ensure that the contract used, contains all of the mandatory information and clauses.

In the event that differences arise between the employer and the TFW, the contract will guide the resolution of disputes. In cases where the dispute cannot be resolved between the two parties, the employer or the TFW may contact the Ministry of Labour in the province/territory where the work is being performed”<sup>387</sup>.

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<sup>387</sup> Taken from: Government of Canada, “Hire a temporary foreign worker in a low-wage position - Program requirements <https://www.canada.ca/en/employment-social-development/services/foreign-workers/hire/median-wage/low/requirements.html> (last modification: September 28, 2016).

## INSTRUCTIONS

### How to fill out the form

Answer all questions fully and clearly. If you lack space, finish your answer on a separate sheet on which you write the number of the form section to which it refers. Make sure to write your family and first names on the sheet.

### Who must fill out this form?

– The EMPLOYER and the EMPLOYEE

**N.B. It is important for the EMPLOYER and the EMPLOYEE to sign every page of the form. Otherwise, the file will be returned to the EMPLOYER.**

### Job description – Occupations covered by this contract

This contract must be completed only for jobs having the following codes in the 2006 National Occupational Classification (NOC):

- NOC code 6474 – Babysitters, Nannies and Parents' Helpers
- NOC code 3413 – Nurse Aides, Orderlies and Patient Service Associates
- NOC code 3233 – Licensed Practical Nurses
- NOC code 6471 – Visiting Homemakers, Housekeepers and Related Occupations

### Where to send the application

Send this duly completed and signed form, along with a copy of the federal forms (also duly completed and signed) and required documents, to the Direction du courrier, de l'encaissement et de l'évaluation comparative within the Ministère de l'Immigration, de la Diversité et de l'Inclusion (MIDI). Its address can be found at <http://www.immigration-quebec.gouv.qc.ca/en/reach/adresses-quebec.html>.

### Fee payable

The required fee must be paid when you submit your application or else your application will be returned. The Ministère accepts a variety of payment methods. For information on this subject, see the site [www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/temporary-workers/obtaining-authorizations/fees.html](http://www.immigration-quebec.gouv.qc.ca/en/immigrate-settle/temporary-workers/obtaining-authorizations/fees.html).

### Using the services of a paid individual

This form was designed to allow you to complete it without help. It is therefore not necessary to use the services of a paid individual to handle your process.

The Ministère does not give priority or special treatment to the files of applicants who retain the services of a paid individual. All applications are treated equally.

If you decide to retain the services of a paid individual, be advised that, to better protect applicants against dubious or illegal practices, the Ministère deals only with:

1. This employment contract complies with the requirements of labour laws applicable in Quebec, the Regulation respecting the selection of foreign nationals, Immigration and Refugee Protection Regulations and administrative standards of the Temporary Foreign Worker Program (TFWP).

- members in good standing of the Barreau du Québec or the Chambre des notaires du Québec;
- persons with a special authorization issued by the above organizations;
- immigration consultants recognized by the Ministère de l'Immigration, de la Diversité et de l'Inclusion and entered in the **Registre québécois des consultants en immigration**.

To find out if an immigration consultant is recognized by the Ministère, consult the register at [www.midi.gouv.qc.ca/consultants](http://www.midi.gouv.qc.ca/consultants).

If you use the services of an immigration consultant to advise, help or represent you in the framework of this application, you must notify the Ministère and identify this person. **Do not forget to give your personal residence address along with that of the person who advises, assists or represents you.**

**Power of attorney:** If you want someone to represent you in your dealings with the Ministère, you must send an original power of attorney, signed by you and this person, to the Direction du courrier, de l'encaissement et de l'évaluation comparative in the Ministère de l'Immigration, de la Diversité et de l'Inclusion. (See the Power of Attorney – Mandate form at <http://www.immigration-quebec.gouv.qc.ca/en/forms/search-title/power-attorney-represent.html>).

## **N.B.**

- The documents provided must be in French or English or be accompanied by a translation into French or English that is signed and authenticated by an authorized translator.
- Note that the documents enclosed with your application will not be returned to you. Make sure to have other copies for your work permit application.

## **DEFINITIONS**

### **Low-wage positions**

The stream for low-wage positions allows employers to hire temporary foreign workers (TFW) for full-time positions (minimum of 30 hours per week) where the wage being offered is below the median hourly wage of the province or territory.

EMPLOYER N° 1						
LAST NAME		FIRST NAME			SEX M <input type="checkbox"/> F <input type="checkbox"/>	
ADDRESS N°	ST.	APT.	CITY	POSTAL CODE		
TELEPHONE (HOME)		TELEPHONE (WORK)		FAX		
E-MAIL						

EMPLOYER N° 2 (if any)						
<b>Note: Employer information must be provided for each person who will contribute to wages paid to the in-home caregiver or who may be called upon to give her instructions.</b>						
LAST NAME		FIRST NAME			SEX M <input type="checkbox"/> F <input type="checkbox"/>	
ADDRESS N°	ST.	APT.	CITY	POSTAL CODE		
TELEPHONE (HOME)		TELEPHONE (WORK)		FAX		
E-MAIL						

IN-HOME CAREGIVER (EMPLOYEE)						
LAST NAME		FIRST NAME			SEX M <input type="checkbox"/> F <input type="checkbox"/>	
OTHER NAMES USED				DATE OF BIRTH YEAR MONTH DAY		
IF THE PERSON IS LIVING ABROAD: HOME ADDRESS ABROAD						
N°	ST.				APT.	
CITY		POSTAL CODE	COUNTRY			
IF THE PERSON IS LIVING IN QUÉBEC: MAILING ADDRESS IN QUÉBEC IF DIFFERENT FROM THAT OF THE EMPLOYER						
N°	ST.	APT.	CITY	POSTAL CODE		
TELEPHONE (HOME)		TELEPHONE (OTHER)		E-MAIL		

THE PARTIES AGREE AS FOLLOWS:	
<b>CONTRACT DURATION</b>	
1. This contract shall have a duration of _____ months from the date that the EMPLOYEE assumes her functions.	
<b>WORK PERMIT</b>	
2. Both parties agree that this employment contract is conditional upon the EMPLOYEE obtaining a work permit pursuant to the <i>Immigration and Refugee Protection Act</i> and its Regulations, and her entry into Canada under the lower skilled job stream of the Temporary Foreign Worker Program (TFWP).	
<b>EMPLOYEE'S PLACE OF WORK</b>	
3. Will the EMPLOYEE work at the EMPLOYER's residence in Québec? Yes <input type="checkbox"/> No <input type="checkbox"/>	
If no, state where the EMPLOYEE will work (i.e., the residence in Québec of the person receiving care):	
RESIDENCE ADDRESS N°	ST. APT. CITY POSTAL CODE
TELEPHONE	

1. This employment contract complies with the requirements of labour laws applicable in Quebec, the Regulation respecting the selection of foreign nationals, Immigration and Refugee Protection Regulations and administrative standards of the Temporary Foreign Worker Program (TFWP).

Signature of the employee

Signature of the employer

**DESCRIPTION OF THE RESIDENCE AND ITS OCCUPANTS (EMPLOYEE'S place of work)**

4. Total number of rooms: \_\_\_\_\_

5. Total number of bedrooms: \_\_\_\_\_

6. Identification of all household members (adults and minors):

LAST NAME	FIRST NAME	AGE

*If more space is required, add an annex to this contract and cross-reference.***JOB DESCRIPTION**

The EMPLOYEE agrees to work as (see work instructions) \_\_\_\_\_ and to perform the following tasks in the home of the person requiring care.

7. Information on the person(s) requiring care:

LAST NAME	FIRST NAME	AGE	RECIPIENT OF CARE
			CHILD <input type="checkbox"/> ELDERLY <input type="checkbox"/> DISABLED <input type="checkbox"/>
			CHILD <input type="checkbox"/> ELDERLY <input type="checkbox"/> DISABLED <input type="checkbox"/>
			CHILD <input type="checkbox"/> ELDERLY <input type="checkbox"/> DISABLED <input type="checkbox"/>
			CHILD <input type="checkbox"/> ELDERLY <input type="checkbox"/> DISABLED <input type="checkbox"/>
			CHILD <input type="checkbox"/> ELDERLY <input type="checkbox"/> DISABLED <input type="checkbox"/>

8. Describe the duties and responsibilities involved in the care given by the employee (If insufficient space is provided, attach an annex to this contract and give a cross-reference):

**WAGE AND WORKING HOURS**

The Québec government sets the wage to which the EMPLOYEE is entitled and the Commission des normes du travail oversees its application. No benefit having a monetary value (car, lodging, transportation, etc. provided by the EMPLOYER) may cause the EMPLOYEE to receive less than the minimum wage. Overtime hours (more than 40 hours a week) must be paid at a rate increased by 50% (time and a half) of the EMPLOYEE's usual wage. The EMPLOYER may, at the request of the EMPLOYEE, substitute the payment of overtime hours by time off. The duration of this time off must equal the number of overtime hours worked, raised by 50%. It must be taken within 12 months after the overtime hours were worked and at a date agreed upon by the EMPLOYER and the EMPLOYEE.

Refer to the following link to determine the wage to pay the employee: [www.immigration-quebec.gouv.qc.ca/fr/employeurs/embaucher-temporaire/salaire.html](http://www.immigration-quebec.gouv.qc.ca/fr/employeurs/embaucher-temporaire/salaire.html)

9. The EMPLOYER agrees to pay the EMPLOYEE, for her work, an hourly rate of \$ \_\_\_\_\_ an hour. It shall be paid to her at intervals of \_\_\_\_\_.

10. Does the EMPLOYER require a minimum number of years of work experience? If so, state the number of years required \_\_\_\_\_.

11. The EMPLOYEE shall work \_\_\_\_\_ hours per week.

The work day shall begin at \_\_\_\_\_ and end at \_\_\_\_\_. If the work schedule varies from day to day, specify work hours:

12. The EMPLOYEE shall be entitled to \_\_\_\_\_ day(s) off per week, on \_\_\_\_\_.

13. The EMPLOYEE is entitled to \_\_\_\_\_ weeks of annual paid vacation, the equivalent of 4% of the annual wage.

14. The EMPLOYER agrees to facilitate the EMPLOYEE'S access to French language classes outside normal working hours.

\_\_\_\_\_  
Signature of the employee\_\_\_\_\_  
Signature of the employer

**OTHER CONDITIONS**

Note : After a period of five consecutive hours, the EMPLOYEE shall be entitled to a 30 minute (unpaid) meal break. This break shall be paid if the EMPLOYEE is not authorized to leave her work.

15. The EMPLOYER shall grant the EMPLOYEE a rest period of at least 32 consecutive hours each week, during which time she is not required to live at the EMPLOYER's residence, if applicable.
16. The EMPLOYER agrees to grant the EMPLOYEE the following fringe benefits:  
(Check the appropriate box if applicable)
- Coffee break  Specify: \_\_\_\_\_
  - Insurance premiums  Specify: \_\_\_\_\_
  - Sick leave  Specify: \_\_\_\_\_
  - Pension fund  Specify: \_\_\_\_\_
  - Other Specify  Specify: \_\_\_\_\_

**ACCOMMODATION (applies only if the caregiver lives and works in the same private residence)**

N.B. The option to live in the employer's residence must be agreed between the EMPLOYEE and the EMPLOYER. If the EMPLOYEE does not live at the EMPLOYER'S home, the EMPLOYER agrees to help the EMPLOYEE find an affordable and convenient dwelling.

17. Have the EMPLOYEE and the EMPLOYER agreed that the EMPLOYEE will live at the residence of the person who will receive care in Québec?  
Yes  No  (if no, go to the next section)
18. The EMPLOYER agrees to provide the EMPLOYEE, at her place of work, with meals and a clean private room that is properly heated, ventilated and furnished. These shall be provided free of charge. The door of the room shall be equipped with a lock and a safety bolt.
19. The EMPLOYER agrees to give the EMPLOYEE the key to her room (and/or the security code) free of charge, if applicable.
20. The EMPLOYER must guarantee the EMPLOYEE unrestricted access to the residence and give her the key (and/or the security code).
21. The EMPLOYER agrees to provide the EMPLOYEE with:  
If yes, check
- Telephone  Radio  Private bathroom  Television  Internet  Other Specify: \_\_\_\_\_

**TRANSPORTATION COSTS\***

Note : Fill out the part that corresponds to your situation (22 or 23).

Transportation costs include the price of tickets for the EMPLOYEE to travel from her country of permanent residence or current residence to her place of work in Québec by plane, train, boat or bus. If the EMPLOYEE is already in Canada, the transportation costs should cover the cost of travel to her new place of work. The mode of transportation chosen must be the most convenient for the EMPLOYEE in terms of travel time and expenses incurred. Transportation costs do not include hotel or meal costs or miscellaneous expenses.

22. If THE EMPLOYEE lives outside Canada:  
The EMPLOYER agrees to pay all transportation costs for one-way travel from the EMPLOYEE's country of permanent residence or current residence to her place of work in Québec, specifically from \_\_\_\_\_ (country of permanent residence or current residence) to \_\_\_\_\_ (place of work in Québec) and to not recover these expenses from the EMPLOYEE.
23. If the EMPLOYEE lives in Canada:  
The EMPLOYER agrees to pay all transportation costs of the EMPLOYEE from her current place of residence in Canada to the new place of work in Québec, specifically from \_\_\_\_\_ (place of residence in Canada) to \_\_\_\_\_ (new place of work in Québec) and to not recover these expenses from the EMPLOYEE.

**HEALTH CARE INSURANCE\***

24. The EMPLOYER agrees to provide the EMPLOYEE with health care insurance of coverage equal to that of the Régie de l'assurance maladie du Québec (RAMQ), at no cost to the EMPLOYEE, until such time as she becomes eligible for RAMQ benefits.
25. The EMPLOYER agrees to make no deduction from the EMPLOYEE's wages for this purpose.

**WORKPLACE ACCIDENTS (worker's compensation)**

26. The EMPLOYER undertakes to register the EMPLOYEE with the Commission de la santé et de la sécurité au travail du Québec.
27. The EMPLOYER agrees to make the contributions required in order for the EMPLOYEE to benefit from the protection granted by the Act respecting industrial accidents and occupational diseases to the extent that it is provided.

\* These provisions fall under the administrative requirements of the federal government in effect since April 1, 2010.

\_\_\_\_\_  
Signature of employee

\_\_\_\_\_  
Signature of employer

**RECRUITMENT FEES\***

28. The EMPLOYER agrees to not recover from the EMPLOYEE, through payroll deductions or any other means, the fees paid to a third party recruiter to hire or retain the EMPLOYEE.

**NOTICE OF RESIGNATION**

29. An EMPLOYEE who wishes to terminate this contract shall give the EMPLOYER written notice at least one week in advance and to inform the Ministère de l'Immigration et des Communautés culturelles.

**NOTICE OF TERMINATION OF EMPLOYMENT**

30. The EMPLOYER must give written notice before terminating the contract of an EMPLOYEE who has completed three months of uninterrupted service with the EMPLOYER and whose employment contract is not about to expire. This notice must be given one week in advance if the EMPLOYEE has completed less than one year of uninterrupted service and two weeks in advance if she has completed between one and five years of uninterrupted service.

***The EMPLOYER is obligated to abide by the standards set out in the Act respecting Labour Standards, in particular the standards with respect to how wages are paid, how overtime is calculated, meal periods, statutory holidays, annual vacation leave, family leave, benefits and recourse under this Act. Any terms of this employment contract that are less favorable than the standards stipulated in this Act are null and void.***

WITNESS WHEREOF, the parties, having read and accepted all terms and conditions set forth in this contract, have duly signed in duplicate or triplicate as follows:

Signed at: \_\_\_\_\_ and at: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF EMPLOYER N° 1

\_\_\_\_\_  
SIGNATURE OF EMPLOYEE

DATE |      YEAR      |      MONTH      |      DAY      |

DATE |      YEAR      |      MONTH      |      DAY      |

\_\_\_\_\_  
SIGNATURE OF EMPLOYER N° 2

DATE |      YEAR      |      MONTH      |      DAY      |

**PROTECTION AND COMMUNICATION OF PERSONAL INFORMATION**

To process your application, the Ministère de l'Immigration, de la Diversité et de l'Inclusion relies on the personal information that you provide on this form and in the documents that you submit. This information is used for purposes of the Act respecting immigration to Québec, the Regulation respecting the selection of foreign national, the Regulation respecting immigration consultants and related administrative rules. It can also be used by the Ministère to conduct studies, establish statistics, evaluate programs or convey to you any information that might affect your application.

The personal information that you provide to the Ministère is collected, used, communicated and stored in conformity with the Act respecting Access to documents held by public bodies and the Protection of personal information. Subject to exceptions provided in the Act, personal information concerning you is confidential and may not be disclosed without your consent. Under certain conditions, the Act allows the communication of personal information without consent if this communication is necessary for:

- the application of an Act in Québec;
- the exercise of the rights and powers of a body of the government of Québec or Canada, including Canadian immigration authorities;
- the provision of a service of the Ministère de l'Immigration, de la Diversité et de l'Inclusion and the inclusion or execution of a service contract awarded by the Ministère;
- the prosecution of an offence against an Act applicable in Québec, or because of the urgency of a situation.

Within the Ministère, access to this information is restricted to personnel who are qualified to receive personal information where such information is necessary for the discharge of their duties.

With the exception of optional sections, any refusal to answer a question or any omission may result in the rejection of your application or may delay its processing.

You have the right to know what information the Ministère holds about you and, if necessary, you may make a written request to correct it.

Contact the departmental officer responsible for the protection of personal information at this address:

Secrétariat général  
Ministère de l'Immigration, de la Diversité et de l'Inclusion  
360, rue McGill, 4<sup>e</sup> étage  
Montréal (Québec) H2Y 2E9

\* These provisions fall under the administrative requirements of the federal government in effect since April 1, 2010.

\_\_\_\_\_  
Signature of employee

\_\_\_\_\_  
Signature of employer



# **AGREEMENT FOR THE EMPLOYMENT IN CANADA OF SEASONAL AGRICULTURAL WORKERS FROM MEXICO - 2017**

WHEREAS the Government of Canada and the Government of the United Mexican States are desirous that employment of a seasonal nature be arranged for Mexican Agricultural Workers in Canada where Canada determines that such workers are needed to satisfy the requirements of the Canadian agricultural labour market; and,

WHEREAS the Government of Canada and the Government of the United Mexican States have signed a Memorandum of Understanding to give effect to this joint desire; and,

WHEREAS the Government of Canada and the Government of the United Mexican States agree that an Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico be signed by each participating employer and worker; and,

WHEREAS the Government of Canada and the Government of the United Mexican States agree that an agent for the Government of the United Mexican States known as the "GOVERNMENT AGENT" shall be stationed in Canada to assist in the administration of the program;

THEREFORE, the following Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico is made in duplicate this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

## **I SCOPE AND PERIOD OF EMPLOYMENT**

The EMPLOYER agrees to:

1. Employ the WORKER(S) assigned to them by the Government of the United Mexican States under the Seasonal Agricultural Workers Program and to accept the terms and conditions hereunder as forming part of the employment Agreement between them and such referred WORKER(S). The number of WORKERS to be employed shall be as set out in the attached clearance order.
2. The PARTIES agree as follows:
  - a. Subject to compliance with the terms and the conditions found in this Agreement, the EMPLOYER agrees to hire the WORKER(S) as a \_\_\_\_\_ for a term of employment of not less than 240 hours in a term of six (6) weeks or less, nor longer than eight (8) months with the expected completion of the period of employment to be the \_\_\_\_\_ day of \_\_\_\_\_, 2017.
  - b. the EMPLOYER needs to respect the duration of the Employment Agreement signed with the WORKER(S) and their return to the country of origin by no later than December 15th with the exception of extraordinary circumstances (e.g. medical emergencies).
3. The standard working day is expected to be eight (8) hours, however, to accommodate the cyclical demands of the agricultural industry, the EMPLOYER may request of the WORKER

**Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico - 2017**

and the WORKER may agree to extend their hours when the situation requires it, and where the conditions of employment involve a unit of pay. EMPLOYEES must not be required to work excessive hours that would be detrimental to their health or safety. Requests for additional hours of work shall be in accordance with the customs of the district and the spirit of the program, giving the same rights to Mexican workers as given to Canadian workers. The urgent working day should not be more than twelve (12) hours daily.

4. To give the WORKER a trial period of fourteen (14) actual working days from the date of their arrival at the place of employment. The EMPLOYER shall not discharge the WORKER except for sufficient cause or refusal to work during that trial period.
5. The EMPLOYER shall provide the WORKER and the GOVERNMENT AGENT with a copy of rules of conduct, safety discipline and care and maintenance of property so that the WORKER may be aware of and observe such rules.
6. On arrival at the place of employment, the WORKER agrees to provide to the EMPLOYER a copy of the Agreement for the employment in Canada of Seasonal Agricultural Workers from Mexico signed by the WORKER and the GOVERNMENT AGENT. The EMPLOYER agrees to sign the Agreement and return it to the WORKER. The WORKER further agrees that the EMPLOYER may make and keep copies of the signed Agreement.

## **II LODGING, MEALS AND REST PERIODS**

### **PART A: LODGING**

The WORKER agrees:

1. That they:
  - a. shall maintain living quarters furnished to them by the EMPLOYER or their agent in the same safe, hygienic and functional state in which the WORKER received them; and
  - b. realizes that the EMPLOYER may, with the approval in writing of the GOVERNMENT AGENT, recover from their wages the cost to the EMPLOYER to maintain the quarters in a safe, hygienic and functional state.

### **For provinces and territories EXCEPT British Columbia:**

The EMPLOYER agrees:

2. To provide suitable accommodation to the WORKER, without cost. Such accommodation must meet with the annual approval of the appropriate government authority responsible for health and living conditions in the province/territory where the WORKER is employed. In the absence of such authority, accommodation must meet with the approval of the GOVERNMENT AGENT.

The WORKER agrees

3. That the EMPLOYER may deduct from the WORKER'S wages an amount to reflect utility costs in relation to the employment of the WORKER in the provinces of Alberta, Saskatchewan\*, Manitoba, Ontario, New Brunswick, Nova Scotia and Prince Edward Island only. The amount of the deduction is to be \$2.25 Canadian dollars per working day. This amount is adjusted annually beginning January 1, by the consumer price index increase for the months of January to June from 2015 to 2016 in the provinces allowing the deductions. A working day for the purpose of this deduction is to be such that a WORKER completes a minimum of four (4) hours of work in a given day. Said costs deduction withheld under this provision are to be made for the current pay period only.

\*In Saskatchewan, WORKERS employed by greenhouses and nurseries are exempted from this deduction.

**For British Columbia ONLY:**

The EMPLOYER agrees:

4. To provide suitable accommodation to the WORKER. Such accommodation must meet the annual approval of the appropriate government authority responsible for health and living conditions in British Columbia or with the approval of a private housing inspector licensed by the province of British Columbia. In the absence of such authority, accommodation must meet with the approval of the GOVERNMENT AGENT.
5. To ensure that reasonable and suitable accommodation is affordably available for the WORKER in the community. If the WORKERS's accommodation is not on the farm, the EMPLOYER will pay any costs for transporting the WORKER to the worksite.
6. That costs related to accommodation will be paid by the WORKER at a rate of 5.36 per working day\* of the WORKER'S pay from the first day of full employment. The amount paid for accommodation during the WORKER'S stay in Canada is not to exceed \$826.00.

\* A working day for the purpose of this deduction is to be such that a WORKER completes a minimum of four (4) hours of work in a given day.

**PART B: MEALS**

**For provinces and territories EXCEPT British Columbia:**

7. Where the WORKER and the EMPLOYER agree that the latter provides meals to the WORKER:

The EMPLOYER agrees:

- a. to provide reasonable and proper meals for the WORKER

The WORKER agrees:

- b. that the EMPLOYER may deduct from the WORKER'S wages a sum not to exceed \$6.50 per day for the cost of meals provided to the WORKER, provided the WORKER agrees to receive this service from the EMPLOYER, to which end the WORKER must state in writing their agreement, prior to making the first deduction.
8. Where the WORKER prepares their own meals, the EMPLOYER agrees to furnish cooking utensils, fuel, and facilities without cost to the WORKER, and to provide a minimum of thirty (30) minutes for meal breaks.

**For British Columbia ONLY**

9. Where the WORKER and the EMPLOYER agree that the latter provides meals to the WORKER:

The EMPLOYER agrees:

- a. to provide reasonable and proper meals for the WORKER.

The WORKER agrees:

- b. the EMPLOYER will charge the WORKER the sum of \$6.00 per day for one meal, \$9.00 per day for two meals and \$12.00 per day for the cost of three meals provided to the WORKER as long as the meals are prepared by an unrelated third party catering company and the meal plan is reviewed and approved by a qualified nutritionist. The WORKER will have the right, prior or during their employment, to accept or refuse the payroll deduction for this service.
10. Where the WORKER prepares their own meals, the EMPLOYER will furnish cooking utensils, fuel, and facilities, without cost to the WORKER, and to provide a minimum of thirty (30) minutes for meal breaks.

**PART C: REST PERIODS**

The EMPLOYER agrees to:

- 11. Provide the WORKER with at least two (2) rest periods of ten (10) minutes duration, one such period to be held midmorning and the other midafternoon, paid or not paid, in accordance with provincial/territorial labour legislation.
- 12. For each six (6) consecutive days of work, the WORKER will be entitled to one (1) day of rest, but where the urgency to finish farm work cannot be delayed the EMPLOYER may request the WORKER'S consent to postpone that day until a mutually agreeable date.

### **III PAYMENT OF WAGES**

The GOVERNMENT AGENT and both PARTIES agree:

1. That in the event the EMPLOYER is unable to locate the WORKER because of the absence or death of the WORKER, the EMPLOYER shall pay any monies owing to the WORKER to the GOVERNMENT AGENT. This money shall be held in trust by the GOVERNMENT AGENT for the benefit of the WORKER. The GOVERNMENT AGENT shall take any or all steps necessary to locate and pay the money to the WORKER or, in the case of death of the WORKER, the WORKER'S lawful heirs.

The EMPLOYER agrees:

2. To allow EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA (ESDC)/SERVICE CANADA or its designate access to all information and records necessary to ensure contract compliance.
3. That the average minimum work week shall be forty (40) hours; and
  - a. that, if circumstances prevent fulfilment of Section III, clause 3, the average weekly income paid to the WORKER over the period of employment is as set out in Section III, clause 3 at the hourly minimum rate; and
  - b. that where, for any reason whatsoever, no actual work is possible, the WORKER, shall receive an advance with a receipt signed by the WORKER to cover personal expenses, the EMPLOYER shall be entitled to deduct said advance from the WORKER'S pay prior to the departure of the WORKER.

#### **For provinces and territories EXCEPT British Columbia:**

The EMPLOYER agrees:

4. That a recognition payment of \$4.00 per week to a maximum of \$128.00 will be paid to WORKERS with five (5) or more consecutive years of employment with the same EMPLOYER, and ONLY where no provincial/territorial vacation pay is applicable. Said recognition payment is payable to eligible WORKERS at the completion of the contract.
5. To pay the WORKER at their place of employment weekly wages in lawful money of Canada at a rate at least equal to the following, whichever is the greatest:
  - a. the minimum wage for WORKERS provided by law in the province in which the WORKER is employed;
  - b. the rate determined annually by ESDC to be the prevailing wage rate for the type of agricultural work being carried out by the WORKER in the province in which the work will be done; or
  - c. the rate being paid by the EMPLOYER to the Canadian workers performing the same type of agricultural work.

6. In the case of piecework, the WORKERS shall be paid wages at least equivalent to one hour of employment for every hour worked on the harvest.

#### **For British Columbia ONLY**

The EMPLOYER agrees:

7. In the case of piecework, the WORKER shall be paid wages at least equivalent to one hour of employment for every hour worked on the harvest.
  - a. The EMPLOYER shall pay the WORKER the approved piece work rate as set out in the "Minimum Piece Rates - Hand harvested crops" published by the B.C. Ministry of Jobs, Tourism and Skills Training for harvesting.
  - b. The EMPLOYER shall pay the WORKER \_\_\_\_\_ per hour for any period spent performing duties other than harvesting. (This hourly rate shall be no less than the most current minimum wage).

#### **IV DEDUCTIONS OF WAGES**

The WORKER agrees that the EMPLOYER:

1. Will make deductions from the wages payable to the WORKER only for the following:
  - a. those employer deductions required to be made under law;
  - b. all other deductions as required pursuant to this agreement.

#### **V HEALTH AND SAFETY OF WORKERS**

The EMPLOYER agrees to:

1. Comply with all laws, regulations and by-laws respecting conditions set by competent authority and, in addition, in the absence of any laws providing for payment of compensation to WORKERS for personal injuries received or disease contracted as a result of the employment, shall obtain insurance acceptable to the GOVERNMENT AGENT providing such compensation to the WORKER.
2. Report to the GOVERNMENT AGENT within forty-eight (48) hours all injuries sustained by the WORKER which require medical attention.

The WORKER agrees that:

3. The EMPLOYER can deduct the cost of non-occupational medical coverage by way of regular payroll deduction at a premium rate of \$0.94 per day per WORKER.
4. The EMPLOYER shall remit on a monthly basis directly to the insurance company engaged by the Government of Mexico the total amount of insurance premium as invoiced by the insuring company. Such amount will be recovered by the EMPLOYER with the deduction made to the WORKER'S wages according to Section V, clause 1. In the case where the

WORKER leaves Canada before the employment agreement has expired, the EMPLOYER will be entitled to recover any unused portion of the insurance premium from the insurance company.

5. The WORKER will report to the EMPLOYER and the GOVERNMENT AGENT, within forty-eight (48) hours, all injuries sustained which require medical attention.
6. The coverage for insurance shall include:
  - a. the expenses for non-occupational medical insurance which include accident, sickness, hospitalization and death benefits;
  - b. any other expenses that might be looked upon under the agreement between the Government of Mexico and the insurance company to be of benefit to the WORKER.
7. If the WORKER dies during the period of employment, the EMPLOYER shall notify the GOVERNMENT AGENT and, if the WORKER's life insurance policy does not cover burial and/or repatriation of the body, upon receipt of instructions from the GOVERNMENT AGENT, either:
  - a. provide suitable burial; or
  - b. remit to the GOVERNMENT AGENT a sum of money which shall represent the costs that the EMPLOYER would have incurred under Section V, clause 7a, in order that such monies be applied towards the costs undertaken by the Government of Mexico in having the WORKER returned to their relatives in Mexico.

## **VI MAINTENANCE OF WORK RECORDS AND STATEMENT OF EARNINGS**

The EMPLOYER agrees to:

1. Maintain and forward to the GOVERNMENT AGENT proper and accurate records of hours worked and wages paid.
2. Provide to the WORKER a clear statement of earnings and deductions with each pay.

The WORKER agrees that:

3. The EMPLOYER may pay the WORKER in advance so the WORKER can purchase food and/or personal items. The EMPLOYER and WORKER must agree to this pay advance in writing, and the EMPLOYER must make payroll deductions according to federal and provincial legislation. The EMPLOYER can recover the net pay advanced during the first six (6) weeks of employment. In the event the WORKER leaves the place of employment prior to completing six (6) weeks of work, the EMPLOYER shall deduct the full remaining balance from the WORKER'S final pay. These deductions will be reflected on the WORKER'S pay stub.

## VII TRAVEL AND RECEPTION ARRANGEMENTS

The EMPLOYER agrees to:

1. Pay to the travel agent the cost of two-way air transportation of the WORKER for travel from Mexico City to Canada by the most economical means.
2. Make arrangements:
  - a. to meet or have the worker's agent meet and transport the WORKER from the point of arrival in Canada to the place of employment and, upon termination of their employment to transport the WORKER to the starting point of their air travel to depart Canada; and
  - b. to inform and obtain the consent of the GOVERNMENT AGENT to the transportation arrangements required in Section VII, clause 2a.

The contracting PARTIES agree:

3. In the event that at the time of departure a named worker is unavailable to travel the EMPLOYER agrees, unless otherwise stipulated in writing on the request form, to accept a substitute WORKER.
4. That the WORKER will pay the cost of the work permit processing fee directly to Immigration, Refugees and Citizenship Canada. The EMPLOYER may not recover any costs related to the work permit fee.

**For provinces and territories EXCEPT British Columbia:**

The WORKER agrees to:

5. Pay to the EMPLOYER costs related to air travel as follows:
  - a. The EMPLOYER may deduct up to 50% of the actual cost of air travel (i.e. from Mexico City to Canada and back) over the period of employment only and is not to exceed the maximum amounts set out in the chart below:

<b>Airport / City / Province</b>	<b>Maximum amount that can be deducted</b>
<b>Charlottetown, PEI</b>	\$ 617.00
<b>Halifax, NS</b>	\$ 617.00
<b>Fredericton, Moncton or St-John, NB</b>	\$ 617.00
<b>St. John's, NL</b>	\$ 653.00
<b>Montreal, QC</b>	\$ 646.00
<b>Ottawa, ON</b>	\$ 548.00
<b>Toronto, ON</b>	\$ 543.00
<b>Winnipeg, MB</b>	\$ 795.77



<b>Calgary, AB</b>	\$ 631.24
<b>Regina / Saskatoon, SK</b>	\$ 651.24

- b. Costs related to air travel will be recovered by way of regular payroll deductions at a rate of ten (10) percent of the WORKER'S gross pay from the first day of full employment.
  - c. The employer will provide the worker with a receipt for the cost of travel, and will reimburse the worker if the worker has paid in excess of 50% of the airfare.
6. Where a federal/provincial/territorial agreement on the selection of foreign workers exists with associated cost recovery fees, the cost of such provincial/territorial fees will be reimbursed to the EMPLOYER from the WORKER'S final vacation pay cheque.

**For British Columbia ONLY:**

The EMPLOYER agrees:

- 7. To pay to the travel agent the cost of two-way air transportation of the WORKER for travel from Mexico City to Canada by the most economical means. The EMPLOYER is responsible for the cost of two-way airfare for the WORKER, regardless of any early termination of the contract, whether by EMPLOYER or WORKER, and for any reason.

**VIII OBLIGATIONS OF THE EMPLOYER**

The EMPLOYER agrees and acknowledges:

- 1. That the WORKER shall not be moved to another area of employment or transferred or loaned to another EMPLOYER without the consent of the WORKER and the prior approval in writing of ESDC/SERVICE CANADA and the GOVERNMENT AGENT.
- 2. That the WORKERS approved under the Seasonal Agricultural Workers Program are authorized by their work permit only to perform agricultural labour for the EMPLOYER to whom they are assigned. Any person who knowingly induces or aids a foreign worker, without the authorization of ESDC/SERVICE CANADA, to perform work for another person or to perform non-agricultural work, is liable on conviction to a penalty up to \$50,000 or two (2) years imprisonment or both under the *Immigration and Refugee Protection Act* S 124(1)(C) and 125.
- 3. To provide:
  - a. WORKER with a uniform for work, when required by the EMPLOYER, and, where permitted by provincial/territorial Labour Standards, the cost will be shared at 50% between the EMPLOYER and the WORKER.
  - b. WORKERS handling chemicals and/or pesticides with protective gear/equipment at no cost to the WORKER; and where required by law, will receive appropriate formal or informal training and supervision, at no cost to the WORKER.

4. That according to the approved guidelines in the province/territory where the WORKER is employed the EMPLOYER shall take the WORKER to obtain health coverage according to provincial/territorial regulations.
5. The EMPLOYER agrees to provide existing housing at no cost to the WORKER during the time in which the WORKER must wait in Canada between the end of the WORKER's employment contract and the day of the WORKER's return flight to Mexico.
6. To be responsible for transportation to and from a hospital or clinic whenever the WORKER needs medical attention. The Consulate will work in partnership with the employer to ensure proper medical attention is provided to the WORKER in a timely fashion.

**For British Columbia ONLY**

7. To provide the WORKER with a uniform for work, when required by the EMPLOYER, at no cost to the WORKER.

**IX OBLIGATIONS OF THE WORKER**

The WORKER agrees:

1. To work at all times during the term of employment under the supervision and direction of the EMPLOYER and to perform the duties of the agricultural work requested in an efficient manner.
2. To obey and comply with all rules set down by the EMPLOYER relating to the safety, discipline, care and maintenance of property.
3. To not work for any other person without the approval of ESDC/SERVICE CANADA, the GOVERNMENT AGENT and the EMPLOYER, except in situations arising by reason of the EMPLOYER'S breach of this agreement and where alternative arrangements for employment are made under Section X, clause 5.
4. To return promptly to Mexico upon completion of the authorized work period.
5. To submit/file their tax return. For that purpose, the GOVERNMENT AGENT shall provide information on the adequate options to meet this obligation.

**For provinces and territories EXCEPT British Columbia**

The WORKER agrees:

6. To work and reside at the place of employment or at such other place as the EMPLOYER, with the approval of the GOVERNMENT AGENT, may require.

## **For British Columbia ONLY**

The WORKER agrees:

7. To work at the place of employment.

## **X EARLY CESSATION OF EMPLOYMENT**

1. If the WORKER has to return to Mexico due to medical reasons, which are verified by a Canadian doctor, the EMPLOYER shall pay reasonable transportation and subsistence expenses. Where the WORKER's return home is necessary due to a physical or medical condition which was present prior to the WORKER'S arrival in Canada, the Government of Mexico will pay the full cost of the WORKER'S return.

### **For provinces and territories EXCEPT British Columbia**

2. Following completion of the trial period of employment by the WORKER, the EMPLOYER, after consultation with the GOVERNMENT AGENT, shall be entitled for non-compliance, refusal to work, or any other sufficient reason stated in this agreement, to prematurely cease the WORKER'S employment. Failing any attempts to transfer the WORKER as per section XI, and at the WORKER's request to return home, the cost of the WORKER's return trip to Mexico shall be paid as follows:
  - a. if the WORKER was requested by name by the EMPLOYER, the full cost of return shall be paid by the EMPLOYER;
  - b. if the WORKER was selected by the Government of Mexico and 50% or more of the term of the contract has been completed, the full cost of returning the WORKER will be the responsibility of the WORKER;
  - c. if the WORKER was selected by the Government of Mexico and less than 50% of the term of the contract has been completed, the full cost of the returning flight will be the responsibility of the WORKER. In the event of insolvency of the WORKER, the Government of Mexico, through the GOVERNMENT AGENT will reimburse the EMPLOYER for the unpaid amount less any amounts collected under Section VII, clause 4.
3. The parties agree that:
  - a. If it is the opinion of the GOVERNMENT AGENT that personal and/or domestic circumstances of the WORKER in the home country warrant, the WORKER is responsible for the full cost of their return to Mexico.
  - b. If the WORKER wants to return to Canada to finish their contract after attending the personal circumstances in Mexico, with previous authorization from the EMPLOYER and

the GOVERNMENT AGENT, it is considered a DOUBLE ARRIVAL and the WORKER is responsible for the full cost of his return to Canada.

- c. If the EMPLOYER, in agreement with the WORKER and the GOVERNMENT AGENT arrange a DOUBLE ARRIVAL for operational needs of the farm, the EMPLOYER is responsible for the full cost of the return ticket Canada-Mexico-Canada for the WORKER.
4. The EMPLOYER cannot continue recovering the costs incurred through the cheques issued to the WORKERS by the insurance companies.
5. That if it is determined by the GOVERNMENT AGENT, after consultation with ESDC/SERVICE CANADA that the EMPLOYER has not satisfied their obligations under this agreement, the agreement will be rescinded by the GOVERNMENT AGENT on behalf of the WORKER, and if alternative agricultural employment cannot be arranged through ESDC/SERVICE CANADA for the WORKER in that area of Canada, the EMPLOYER shall be responsible for the full costs of returning the WORKER to Mexico City, Mexico; and if the term of employment as specified in Section I, clause 1, is not completed and employment is terminated under Section X, clause 5, the WORKER shall receive from the EMPLOYER a payment to ensure that the total wages paid to the WORKER is not less than that which the WORKER would have received if the minimum period of employment had been completed.

## **XI TRANSFER OF WORKERS**

In the case of transferred workers, the TRANSFERRING EMPLOYER and RECEIVING EMPLOYER agree that:

1. For a WORKER transfer to take place:
  - a. The WORKER does not need to seek a new work permit, provided the WORKER has a valid work permit and has not completed eight (8) months of employment.
  - b. The RECEIVING EMPLOYER must be a SAWP EMPLOYER with a positive LMIA received in writing from ESDC/SERVICE CANADA prior to the transfer of the WORKER.
  - c. All parties, including the WORKER, TRANSFERRING EMPLOYER, RECEIVING EMPLOYER and GOVERNMENT AGENT in Canada must agree to the transfer.
2. In the case of a TRANSFERRED WORKER, the term of employment shall consist of a cumulative term of not less than 240 hours.
3. The RECEIVING EMPLOYER shall be provided by the SENDING EMPLOYER at the time of transfer an accurate record of earnings and deductions to the date of transfer, noting that the record needs to clearly state what, if any, deductions can still be recovered from the WORKER.
4. Following completion of the seven (7) day trial period and no later than ten (10) days of employment, the RECEIVING EMPLOYER will provide the GOVERNMENT AGENT with written confirmation of the name(s), identity code(s), actual date of transfer and anticipated

end date of employment for all TRANSFERRED WORKERS. EMPLOYERS in Ontario, Quebec, and Atlantic Canada will provide this information to their designated Third Party.

5. The GOVERNMENT AGENT is responsible for notifying the supplementary medical insurance company of the worker transfer.

**For provinces and territories EXCEPT British Columbia**

6. The airfare and visa costs may be deducted from the WORKER one time only. The transfer of a WORKER does not give rise to a double deduction for these items.
7. An EMPLOYER shall, upon requesting the transfer of a WORKER, give a trial period of seven (7) actual working days from the date of the WORKER's arrival at the place of employment. Effective the eight (8th) working day, such a WORKER shall be deemed to be a "NAMED WORKER" and Section X, clause 2a will apply.
8. If a TRANSFERRED WORKER is not suitable to perform the duties assigned by the RECEIVING EMPLOYER within the seven (7) days trial period, the EMPLOYER shall return the WORKER to the previous EMPLOYER and that EMPLOYER will be responsible for the repatriation cost of the WORKER.
9. In the case of a TRANSFERRED WORKER, the RECEIVING EMPLOYER agrees to pay the travel agent in advance the cost of one-way air transportation of the WORKER between Canada and Mexico by the most economical means as expressed in the Memorandum of Understanding.
10. In the case of a TRANSFERRED WORKER, the second EMPLOYER may continue to make deductions in expenses associated with the program, starting from the aggregate amount deducted by the first EMPLOYER, without exceeding the amounts indicated in Section VII, clause 5.

**For British Columbia ONLY**

11. An EMPLOYER shall, upon requesting the transfer of a WORKER, give a trial period of seven (7) actual working days from the date of the WORKER's arrival at the place of employment. Effective the eight (8th) working day, such a WORKER shall be deemed to be an employee of that EMPLOYER.
12. Where the WORKER becomes a TRANSFER WORKER, within the meaning of Section I, clause 4, the second EMPLOYER is responsible for the return airfare of the WORKER.
13. In the case of a TRANSFERRED WORKER, the second EMPLOYER may continue to make deductions in expenses associated with the program, starting from the aggregate amount deducted by the first EMPLOYER, without exceeding the amounts indicated in Section II.

## **XII MISCELLANEOUS**

- 1.** In the event of fire, the EMPLOYER will bear 1/3 of the replacement cost of the WORKER'S personal property, up to a maximum of \$650.00. The Government of Mexico shall assist the worker for the remaining cost, up to 1/3 of the replacement of the WORKER'S property, in accordance with Mexican legislation.
- 2.** The WORKER and the EMPLOYER agree that any personal information held by the Federal Government of Canada and the Government of the Province/Territory in which the work is performed may be released to ESDC/SERVICE CANADA, to Immigration, Refugees and Citizenship Canada, to the GOVERNMENT AGENT of Secretaria del Trabajo y Prevision Social and Secretaria de Relaciones Exteriores, to the Foreign Agricultural Resource Management Service (FARMS), to the Fondation des entreprises en recrutement de main-d'oeuvre agricole étrangère (FERME), to the Western Agriculture Labour Initiative (WALI) and to the Insurance Company designated by the GOVERNMENT AGENT. Information shared must be necessary to facilitate the operation of the Seasonal Agricultural Workers Program.

The consent of the WORKER to the release of information includes, but is not restricted to:

- a.** information held under the Employment Insurance Act, (including the WORKER'S Social Insurance Number);
  - b.** any health, social service or accident compensation related information held by the government of the province/territory in which the work is performed, including any unique alpha-numerical identifier used by any province/territory;
  - c.** Medical and health information and records which may be released to Immigration, Refugees and Citizenship Canada as well as the Insurance Company designated by the GOVERNMENT AGENT.
- 3.** That the agreement shall be governed by the laws of Canada and of the province/territory in which the WORKER is employed. French, English and Spanish versions of this contract have equal force.
  - 4.** This contract may be executed in any number of counterparts, in the language of the signatory's choice, with the same effect as if all the PARTIES signed the same document. All counterparts shall be construed together, and shall constitute one and the same contract.
  - 5.** The PARTIES agree that no term or condition of this agreement shall be superseded, suspended, modified or otherwise amended, in any way, without the express written permission of the competent Canadian and Mexican authorities, as well as the EMPLOYER and the WORKER.

**For provinces and territories EXCEPT British Columbia**

6. Upon request of the WORKER, the GOVERNMENT AGENT agrees to assist the WORKER and the EMPLOYER with the completion of the necessary parental benefit forms.

DATE:

EMPLOYEE'S SIGNATURE:

NAME OF EMPLOYEE:

EMPLOYER'S SIGNATURE:

WITNESS:

NAME OF EMPLOYER:

ADDRESS

CORPORATE NAME

TELEPHONE

FAX:

PLACE OF EMPLOYMENT OF WORKER  
IF DIFFERENT FROM ABOVE:

GOVERNMENT AGENT'S SIGNATURE:

WITNESS: