



BILL NO. 221

Government Bill

*2nd Session, 63rd General Assembly
Nova Scotia
69 Elizabeth II, 2020*

An Act to Amend Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code

CHAPTER 14
ACTS OF 2020

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MARCH 10, 2020**

The Honourable Labi Kousoulis
Minister of Labour and Advanced Education

*Halifax, Nova Scotia
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An Act to Amend Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code

Be it enacted by the Governor and Assembly as follows:

1 Section 7 of Chapter 246 of the Revised Statutes, 1989, the *Labour Standards Code*, as amended by Chapter 14 of the Acts of 1991, Chapter 4 of the Acts of 2003 (Second Session), Chapters 10 and 13 of the Acts of 2006, Chapter 18 of the Acts of 2009, Chapter 37 of the Acts of 2010, Chapter 19 of the Acts of 2011, Chapter 11 of the Acts of 2013, Chapter 11 of the Acts of 2016 and Chapters 13 and 36 of the Acts of 2018, is further amended by adding immediately after clause (a) the following clauses:

(aa) prescribe a characteristic of an employee for the purpose of the requirement to provide equal pay, in accordance with clause (b) of subsection (1A) of Section 57;

(ab) prescribe the manner of the service of documents;

2 Chapter 246 is further amended by adding immediately after Section 7 the following Section:

7A The Governor in Council may make regulations respecting the establishment and administration of a system of administrative penalties and, without restricting the generality of this power, may

(a) establish penalty amounts and ranges, including maximum amounts and different penalties, ranges or maximum amounts for different types of contravention of this Act or the regulations or different types of orders issued by the Director;

(b) establish different methods of determining the penalties or ranges of penalties referred to in clause (a), including methods based on the nature or frequency of the contravention of this Act or the regulations or the type of order issued by the Director;

(c) specify that different penalties, ranges or methods of determining a penalty or range apply to individuals and corporations;

(d) prescribe the conditions for the issuance of an administrative penalty and the criteria the Director is required or permitted to consider when imposing a penalty;

(e) specify a provision of this Act or the regulations, a breach of which may result in the issuance of an administrative penalty;

(f) specify the notice required of an administrative penalty and the content of the notice;

(g) specify upon whom an administrative penalty may be served and the means by which it may be served;

(h) specify the manner in which an administrative penalty may be paid and to whom;

(i) specify the dates by which an administrative penalty must be paid;

(j) specify the circumstances under which an administrative penalty becomes a debt due to Her Majesty in right of the Province;

(k) establish that further proceedings are not permitted where an administrative penalty is paid as and when due as required by the regulations;

(l) allow for the publication of details of a notice of administrative penalty, and establish criteria for, and restrictions on, publication;

(m) allow for the collection of unpaid administrative penalties by garnishment, including specifying

(i) the conditions under which a garnishment order may be made by the Director,

(ii) who may be served with an order to make a payment,

(iii) to whom payment must be made,

(iv) the period for compliance with a garnishment order,

(v) respecting the effect on third parties of a garnishment order,

(vi) how a garnishment order may be collected and enforced, and

(vii) the issuance of a receipt for payment by the Director and the effect of a receipt issued by the Director;

(n) allow for liens and charges to be placed on real and personal property for the amount of an unpaid administrative penalty, including specifying

(i) the effect at law of a lien or charge so placed, including its priority relative to other liens, charges or mortgages, and

(ii) how a lien or charge so placed may be registered, enforced and removed;

(o) allow for entering an order for payment of an administrative penalty with the prothonotary as if it were an order of the Supreme Court of Nova Scotia and enforceable as such;

(p) establish a system for the review of administrative penalties by the Board, including

(i) the circumstances under which a review may be requested,

(ii) the time in which a review may be requested,

(iii) the manner in which a review may be requested,

(iv) the parties to a review,

(v) respecting the circumstances in which an administrative penalty or the underlying contravention of the order is, or may be, stayed pending the results of the review, and

(vi) the powers and procedures of the Board with respect to a review, including

- (A) the remedies available to the Board,
- (B) the provision of notice of a decision or order of the Board made in the course of a review, and
- (C) the effect at law of a final decision of the Board.

3 Subsection 15(2) of Chapter 246, as enacted by Chapter 19 of the Acts of 2011, is amended by striking out “three years” in the third line of clause (a) and substituting “thirty-six months”.

4 Subsection 21(3) of Chapter 246 as amended by Chapter 14 of the Acts of 1991, Chapter 7 of the Acts of 2003 (Second Session), Chapter 37 of the Acts of 2010 and Chapter 19 of the Acts of 2011, is further amended by adding immediately after clause (a) the following clause:

- (aa) pay an administrative penalty in accordance with the regulations;

5 Subsection 30(1) of Chapter 246, as enacted by Chapter 42 of the Acts of 2015, is amended by adding immediately after clause (h) the following clause:

- (ha) that person has discussed or disclosed information within the workplace about that person’s wages or the wages of another employee as permitted by this Act;

6 (1) Subsection 57(1) of Chapter 246 is repealed and the following subsections substituted:

(1) In this Section and Section 58,

(a) “substantially the same work” means substantially the same work performed in the same establishment, the performance of which requires substantially equal skill, effort and responsibility, and that is performed under similar working conditions;

(b) “gender”, with respect to an employee, includes

- (i) a female employee,
- (ii) a male employee, and
- (iii) an employee who does not identify exclusively, or at all, with the gender binary of female and male.

(1A) Subject to subsection (2), with respect to employees who perform substantially the same work, an employer and any person acting on the employer’s behalf shall not

- (a) pay an employee of any gender a different rate of wages from an employee of the employer of any other gender; or

(b) pay an employee who possesses a characteristic prescribed in the regulations a different rate of wages from any other employee of the employer who does not possess the characteristic.

(2) Subsection 57(2) of Chapter 246, as enacted by Chapter 14 of the Acts of 1991, is amended by

(a) repealing clause (d) and substituting the following clause:

(d) another differential based on a factor other than gender or a characteristic prescribed by the regulations.

(b) striking out “a male and a female employee” in the thirteenth and fourteenth lines and substituting “any two employees who are performing substantially the same work”.

(3) Section 57 of Chapter 246, as amended by Chapter 14 of the Acts of 1991, is further amended by adding immediately after subsection (4) the following subsections:

(5) Notwithstanding any provision of this Section, an employer may not compel an employee to identify the gender or a characteristic prescribed in the regulations of the employee or another employee.

(6) An employer may rely on information acquired from its employees for the purpose of meeting its duties under this Section.

(7) For greater certainty, nothing in this Section limits any protection provided to an employee under the *Human Rights Act*.

7 Chapter 246 is further amended by adding immediately after Section 57 the following Sections:

57A (1) A prospective employer shall not

(a) request that a prospective employee provide the prospective employee’s wage history;

(b) request that a prospective employee’s current or former employer provide the prospective employee’s wage history; or

(c) require that a prospective employee’s wage history meet any criteria, including maximum or minimum levels, set by the prospective employer.

(2) Notwithstanding subsection (1), a prospective employer may confirm a prospective employee’s wage history if the prospective employee

(a) voluntarily discloses the prospective employee’s wage history to the prospective employer;

(b) provides written authorization to the prospective employer to obtain the confirmation; and

(c) acknowledges in the written authorization that the prospective employee has determined that it is beneficial to the prospective employee to disclose the prospective employee’s wage history to the prospective employer.

(3) Subsections (1) and (2) apply or continue to apply, as the case may be, to an employer and an employee of the employer.

57B (1) Subject to subsection (2), no employer shall prohibit, as a condition of employment, an employee from discussing or disclosing information within the workplace about the employee's wages or the wages of another employee.

(2) An employer or an employee whose job functions relate directly to the employer's finances or human resources may not disclose information relating to the wages of any employee of the employer unless

- (a) the employee provides written authorization for the release of that employee's wage information;
- (b) the wage information is a matter of public record;
- (c) the disclosure is within the course of the job functions of the employer or a finance or human resources employee of the employer; or
- (d) the wage information is required to be disclosed by law.

8 Section 58 of Chapter 246 is repealed and the following Section substituted:

58 (1) An employee

(a) who is denied equal pay to which the employee is entitled pursuant to Section 57; or

(b) who is compelled by the employee's employer to identify the gender or a characteristic prescribed in the regulations of the employee or another employee contrary to subsection (5) of Section 57,

may make a complaint to the Director in accordance with Section 21.

(2) A prospective employee whose wage history is

(a) requested by a prospective employer in contravention of clause (a) or (b) of subsection (1) of Section 57A; or

(b) required to meet any criteria, including maximum or minimum levels set by the prospective employer, in contravention of clause (c) of subsection (1) of Section 57A,

may make a complaint to the Director in accordance with Section 21.

(3) An employee

(a) whose wage history is requested by an employer in contravention of subsection (3) of Section 57A;

(b) who is prevented by an employer from discussing or disclosing information about wages as permitted by subsection (1) of Section 57B; or

(c) whose wages have been disclosed contrary to subsection (2) of Section 57B,

may make a complaint to the Director in accordance with Section 21.

(4) A person who has made a complaint to the Director pursuant to this Section and who is not satisfied with the result may make a complaint to the Board in accordance with Section 23.

9 (1) Subsection 85(1) of Chapter 246, as enacted by Chapter 19 of the Acts of 2011 and amended by Chapter 13 of the Acts of 2018, is further amended by striking out “personally or by registered mail” in the sixteenth and seventeenth lines.

(2) Subsection 85(3A) of Chapter 246, as enacted by Chapter 14 of the Acts of 1991 and amended by Chapter 37 of the Acts of 2010 and Chapter 19 of the Acts of 2011, is further amended by striking out “Board” in the last line of clause (a) and in the last line of clause (d) and substituting in each case “Director”.

(3) Subsection 85(4) of Chapter 246, as amended by Chapter 37 of the Acts of 2010, is further amended by striking out “Board” in the second and in the fifth lines and substituting in each case “Director”.

(4) Subsection 85(5) of Chapter 246, as amended by Chapter 37 of the Acts of 2010, is further amended by

(a) striking out “Board” in the first, in the second and in the eleventh lines and substituting in each case “Director”; and

(b) striking out “it” in the twelfth line and substituting “the Director”.
