

CONSOLIDATION OF WAGES RECOVERY ACT

R.S.N.W.T. 1988,c.W-1

(Current to: October 17, 2012)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1995,c.11

AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2011,c.10,s.40

s.40 in force March 10, 2011

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Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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WAGES RECOVERY ACT

Definitions

1. In this Act,

"employee" means a person receiving or entitled to receive wages from an employer, whether or not the relationship of employee and employer has been terminated; (*employé*)

"employer" includes every person responsible for the payment of wages to an employee under any Act or law in Nunavut; (*employeur*)

"wages" means wages, salary, pay, commission or other compensation for labour or personal service, whether measured by time, job, piece or otherwise. (*salaires*)
S.Nu. 2011,c.10,s.40.

Application

2. This Act applies to every contract of personal service or hiring of labour that is performed or intended to be performed within the Nunavut, wherever the contract or hiring is made. S.Nu. 2011,c.10,s.40.

Contracts in writing

3. Every contract of personal service or hiring of labour for a period of more than one year must be in writing and signed by the contracting parties.

Laying of information by employee

4. An employee who has a cause of complaint against his or her employer for

- (a) the non-payment of wages earned by the employee in the course of his or her employment,
- (b) the non-payment of wages payable to the employee under a contract of personal service or hiring of labour, or
- (c) improper dismissal,

may lay an information in writing and under oath before a justice, stating the cause of the complaint and the amount of wages claimed.

Summons

5. (1) On receiving an information laid under section 4, the justice shall summon the employer to appear before the justice to answer the complaint of the employee at the time and place stated in the summons.

Service of summons

(2) A justice receiving an information shall arrange to have the summons served on the employer, unless the complainant undertakes to serve the employer.

Service on individual

(3) The summons and every subsequent document or writing pertaining to the proceedings may be served on the person to whom it is directed

- (a) by personal service; or
- (b) if the person cannot conveniently be found, by
 - (i) sending it to him or her by registered mail, or
 - (ii) leaving it with a person who appears to be at least 16 years of age, at the last known place of residence of the person being served or at the place where he or she carried or carries on business.

Service on corporation

(4) Where an employer is a corporation, the summons must be served by delivering it to the manager, secretary or other executive officer of the corporation or of a branch of the corporation.

Service on municipal corporation

(5) Where an employer is a municipality, the summons must be served by delivering it to the mayor, senior administrative officer or clerk of the municipality.

Proof of service

(6) Service of a summons may be proved by oral evidence given under oath by the person who served it or by the affidavit of that person made before a justice, notary public or commissioner for oaths.

Costs of adjournment

6. (1) A justice may allow an adjournment of the hearing of a complaint on payment by the employer to the employee of the amount of the costs of the employee in attending the hearing fixed by the justice, unless the justice is of the opinion that the adjournment has been made necessary by an act or omission of the employee.

Time of payment

(2) The employer shall pay the amount fixed under subsection (1) without delay, unless the justice dispenses with immediate payment.

Order

7. (1) On examining the matters alleged in a complaint made under paragraph 4(a) or (b), where the justice is satisfied that the cause of complaint is established, the justice shall order the employer to pay to the employee the amount of wages found to be due to the employee and may

- (a) order the employer to pay to the employee
 - (i) the amount of wages that would have been due to the employee to the time when the service of the employee could or would have been legally ended by notice from the employer or by the passage of time, and
 - (ii) the costs of prosecution; and
- (b) release the employee from his or her engagement if the term of his or her employment has not expired.

Maximum award

(2) The amount ordered to be paid under subsection (1), excluding the costs of prosecution, shall not exceed the lesser of six months wages and \$6,000.

Order

8. (1) On examining the matters alleged in a complaint made under paragraph 4(c), where the justice is satisfied that the cause of complaint is established, the justice, in addition to making an order under section 7, may order the employer to pay to the employee

- (a) the lesser of
 - (i) a further amount that the justice considers reasonable under the circumstances, not exceeding one month's wages,
 - (ii) an amount equal to the wages the employee would have earned between the date of the improper dismissal and the determination of the complaint by the justice, and
 - (iii) \$1,000; and
- (b) the costs of prosecution.

Maximum award

(2) An amount ordered to be paid under subsection (1) shall not exceed the amount by which \$6,000 exceeds the amount ordered to be paid under section 7, excluding the costs of prosecution.

Order

(3) On examining a complaint made under paragraph 4(c), where the justice is satisfied that

- (a) the employee was dismissed from the employment of the employer for good and sufficient cause, and
 - (b) wages are due to the employee,
- the justice may order the employer to pay the employee
- (c) the amount of the wages found to be due, not exceeding the lesser of six months wages and \$6,000, and
 - (d) the costs of prosecution.

Dispensing with payment of costs

9. (1) Where the justice before whom a complaint is made under this Act is satisfied that the complainant is unable to pay the costs of the proceedings, the justice may dispense with the payment of costs or extend the time for payment until after the determination of the proceedings.

Costs added to judgment

(2) Where the payment of costs is dispensed with or postponed under subsection (1) and an order is made in favour of the complainant, the costs, including other costs allowed to the complainant, shall be included in the amount ordered to be paid by the employer.

Set-off or counterclaim

10. (1) On hearing a complaint under section 7, where the justice is satisfied that the employer would be entitled in a civil action to a claim by way of set-off or counterclaim, the justice shall deduct from the wages or other amount found to be due to the employee the amount that, in the opinion of the justice, the employer would be entitled to by the set-off or counterclaim.

Dismissal of complaint

(2) If the amount established under subsection (1) that the employer would be entitled to by the set-off or counterclaim is equal to or greater than the amount determined to be due to the employee, the justice shall dismiss the complaint.

Time for payment

11. (1) A justice shall order payment to be made by an employer without delay, unless the employer satisfies the justice under oath that the employer

- (a) is unable to pay without delay the full amount ordered to be paid; and
- (b) intends to pay the full amount ordered to be paid within a specified time.

Security

(2) Where a justice does not order payment to be made without delay by an employer under subsection (1), the justice may order the security that the justice considers adequate as a condition of the postponement of payment.

Enforcement

12. (1) Where an amount ordered to be paid under this Act is not paid, a justice, on the application of the employee in whose favour the order was made, may issue a warrant for the distress and sale of any goods and chattels of the employer that are not exempt from seizure under the *Exemptions Act*.

Several claims

(2) A justice may issue one distress warrant for all amounts ordered to be paid by an employer where the justice

- (a) determines in one day the complaints of more than one employee of the same employer; and
- (b) orders the employer to pay amounts to more than one employee referred to in paragraph (a).

Proportionate share

(3) If a warrant issued under subsection (2) is realized, the employees referred to in subsection (2) shall share proportionately in the amount realized.

Enforcement

(4) The provisions of the *Criminal Code* for enforcing an order requiring payment of a sum of money do not apply to proceedings under this Act.

Filing of order

13. (1) An employee in whose favour an order is made under this Act for a sum exceeding \$25 may file in the office of the Clerk of the Nunavut Court of Justice a copy of the order, signed by the justice making the order.

Effect of filing

(2) An order filed under subsection (1) becomes an order of the Nunavut Court of Justice and may be enforced in the same manner as a judgment or order of the Nunavut Court of Justice for the recovery of a debt in the amount specified in the order.

Further proceedings

(3) Until a warrant issued under section 12 is returned showing the amount realized under the warrant, the employee shall not take further proceedings on an order filed under subsection (1). S.Nu. 2011,c.10,s.40.

Certified copy of order

14. (1) In case of the death, illness, absence or resignation of the justice who has heard and determined a complaint under this Act and made an order in favour of an employee for the payment of money, another justice who is satisfied of the fact of the order may issue a certified copy of the order making all necessary changes in the order.

Effect of certified copy

(2) A certified copy of an order made under subsection (1) has the same force and effect as if made by the justice who heard and determined the complaint and made the order.

Restriction on appeal

15. (1) Subject to subsection (2), no appeal lies from an order made under this Act.

Appeal

(2) An order made under this Act that releases an employee from his or her engagement or orders the payment of an amount of not less than \$200, excluding costs, may be appealed to a judge of the Nunavut Court of Justice.

Trial *de novo*

(3) An appeal under subsection (2) is by way of trial *de novo*.
S.Nu. 2011,c.10,s.40.

Notice

16. (1) A person appealing an order under subsection 15(2) shall, within 15 days after the making of the order, notify in writing the justice who made the order of his or her intention to appeal.

Extension of time

(2) If extenuating circumstances exist in the opinion of the judge hearing an appeal under subsection 15(2), the judge may, on an *ex parte* application, extend the time for giving notice under subsection (1), as the judge considers fair and just.

Notice to respondent

(3) As soon as possible after receiving notice under subsection (1), the justice shall

- (a) advise the respondent in writing of the intention of the appellant to appeal; and
- (b) forward to the Clerk of the Nunavut Court of Justice a copy of the order being appealed.

Notice to appellant

(4) The justice whose order is appealed from shall notify the appellant when notice of intention to appeal has been served on the respondent under subsection (3). S.Nu. 2011,c.10,s.40.

Hearing of appeal

17. (1) An appeal under subsection 15(2) shall be heard at the first sitting of the Nunavut Court of Justice held in the area in which the cause of complaint arose, after 20 days from service of the notice of intention to appeal under subsection 16(3).

Stay of proceedings

(2) An appeal operates as a stay of proceedings only in respect of the amount by which the award under the order being appealed exceeds \$1,000.

Power of appeal court

(3) On hearing an appeal under subsection 15(2), the judge may confirm, vary or reverse the order being appealed or make an order that the judge considers fit and just. S.Nu. 2011,c.10,s.40.

Other remedies

18. This Act does not affect any civil or other remedy for the recovery of wages or damages by an employee from his or her employer or for the recovery of damages by an employer from his or her employee, except insofar as a complaint made under this Act has been determined by any order made under this Act.

Limitation period

19. Proceedings may not be commenced under this Act after the later of

- (a) one year after the period of service or employment has ceased or been terminated; and
- (b) six months after the last instalment of wages under the contract of personal service or hiring of labour has become due.

Calculation of wages

20. Where no specific rate of wages has been expressly agreed on by the parties to a contract of personal service or hiring of labour, a justice may order payment of wages according to the rate that appears to the justice to be fair and reasonable, having regard to the current rate of wages being paid for similar work in the district.

Void term in contract or agreement

21. A term or provision of a contract or agreement, whether oral or written, expressed or implied, stating that this Act shall not apply or that the remedies provided by this Act shall not be available for the benefit of a party to the contract or agreement, is void.

Fees and allowances

22. (1) Subject to subsection (2), the fees and allowances that are allowed as costs in proceedings before a justice under this Act are the fees and allowances set out in the *Criminal Code* for proceedings before summary conviction courts and justices.

Solicitor's fees

(2) The costs of proceedings before a justice under this Act include, where applicable, the amounts that the justice may allow for solicitor's costs not exceeding

- (a) \$25, where the amount awarded does not exceed \$200;
- (b) \$50, where the amount awarded is over \$200 and under \$500; and
- (c) \$75, where the amount awarded is \$500 or more.