

Standing Committee on  
Social Development



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# Report on the Review of Bill 20: *An Act to Amend the Employment Standards Act*

19<sup>th</sup> Northwest Territories Legislative Assembly

Chair: Ms. Caitlin Cleveland

**MEMBERS OF THE STANDING COMMITTEE ON  
SOCIAL DEVELOPMENT**

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March 10, 2021

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Social Development is pleased to provide its *Report on the Review of Bill 20: An Act to Amend the Employment Standards Act* and recommends it to the House.



Ms. Caitlin Cleveland  
Chair, Standing Committee on  
Social Development

**STANDING COMMITTEE ON  
SOCIAL DEVELOPMENT**

**REPORT ON THE REVIEW OF BILL 20: AN ACT TO AMEND THE  
EMPLOYMENT STANDARDS ACT**

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## **STANDING COMMITTEE ON SOCIAL DEVELOPMENT**

### **REPORT ON THE REVIEW OF BILL 20: AN ACT TO AMEND THE EMPLOYMENT STANDARDS ACT**

#### **INTRODUCTION**

Bill 20; An Act to Amend the Employment Standards Act was introduced by the Minister of Education Culture and Employment. This Bill seeks to add two new provisions into the *Employment Standards Act*. The first provision is intended to provide protection to Northwest Territories workers by introducing Emergency Leave provisions that will allow workers to access unpaid leave when they are unable to perform their duties due to an emergency.

The second area is intended to provide flexibility to NWT employers by including an exception to the requirement for employers to provide a certain period of notice prior to a group termination.

Bill 20 *An Act to Amend the Employment Standards Act*, received second reading in the Legislative Assembly and was referred to the Standing Committee on Social Development on November 4, 2020. The public hearing with the Minister of Education Culture and Employment was held on February 10, 2021. The clause by-clause review was held on March 2, 2021.

With the Minister's agreement, a substantive motion to amend Bill 20 was passed during the clause-by-clause review. The work of the Committee on the review of this Bill including amendments are discussed below, along with stakeholder comments and recommended actions.

#### **PUBLIC REVIEW OF BILL 20**

The Standing Committee on Social Development undertook a four-month review of Bill 20; An Act to Amend the Employment Standards Act. This review provided the Standing Committee on Social Development a valuable opportunity to hear from community members, organized labor groups, groups representing the interests of vulnerable populations and law professionals outside of government.

Committee would like to thank these stakeholders for taking the time to provide their important feedback and for raising areas of great consideration regarding the potential impacts this Bill may have on the NWT, employees, and employers. Committee received three written submissions from stakeholders (attached appendix A).

- Status of Women Council of the NWT (“The Status of Women”)
- The Union of Northern Workers (“The UNW”)
- Marshall Law Barrister and Solicitor

Public input has been included in greater detail under the topic headings below.

## **EMERGENCY LEAVE**

Broadly speaking Committee members and stakeholders welcomed the introduction of Emergency Leave provisions into the *Employment Standards Act*. Committee recognizes the employees may need more than the current yearly minimum of five days of sick leave, without pay. With the addition of Emergency Leave, workers will have access to unpaid leave in the event of an emergency, such as the ongoing COVID-19 emergency, when they are unable to perform their duties.

## **EMERGENCY LEAVE - WHAT IT MEANS**

Employees will be entitled to unpaid “Emergency Leave” when a government agency has declared an emergency, defined as:

- a) a state of emergency declared under section 14 of the *Emergency Management Act* or a state of local emergency declared under section 18 of that Act;
- b) a state of public health emergency declared under section 32 of the *Public Health Act*;
- c) a direction or order of a public health officer, the Chief Public Health Officer or a Deputy Chief Public Health Officer provided or made under the *Public Health Act*;
- d) an emergency declared under the *Emergencies Act* (Canada);

## Emergency Leave - Employment Standards Regulations

Bill 20 allows the Department of Education Culture and Employment (“the Department”) to “prescribe” an emergency in the Employment Standards Regulations to access Emergency Leave when the state of emergency has ended. If there is an emergency affecting a family member of an employee, the employee is entitled to the leave when:

- a) the circumstance results in a situation where the family member of the employee requires care, childcare or assistance
- b) the employee is the person most reasonably able under the circumstances to provide the family member with the required care, childcare or assistance; and
- c) providing the required care, childcare or assistance to the family member has the effect of preventing the employee from performing the duties of their employment.

In their plain language summary explaining Emergency Leave amendments, the Department states; if an emergency exists due to a pandemic of a reportable disease, an employee will be able to access the leave when the employee is unable to work because:

- they are under medical investigation/supervision/treatment related to the reportable disease
- they are required to self-isolate or quarantine related to the reportable disease because of the direction of a health officer, health care professional or government agency
- they were directed by the employer not to work due to a concern that the employee could expose others to the reportable disease in the workplace
- they are required to care for a family member or dependent who is affected by the reportable disease; or
- they are directly affected by travel restrictions related to the emergency, depending on the circumstances.

Emergency Leave does not require an employee to have worked for an employer for any set amount of time to be eligible. The period of leave would end when the employee is no longer unable to work for the reasons above or when the emergency ends. Emergency Leave also does not require a doctor’s note.

## WHAT WE HEARD

### Emergency Leave – Unpaid

Submissions from the both the Status of Women Council and the UNW emphasize there are concerns for potential undue financial hardships caused by mandatory unpaid Emergency Leave. Both organizations support the use of government resources to provide *paid* Emergency Leave to employees. The Status of Women advise the need for paid Emergency Leave was very important for employees to able to continue to take care of their loved ones.

*“.....Employees need to be able to take paid sick leave to care for “individuals,” defined as an immediate family member, someone living with the employee, or someone with whom the employee has a relationship with an expectation of care. This is particularly impactful for LGBTQ workers and workers with a disability, who often have varied family forms and need paid leave that allows them to care for their loved ones.”*

The UNW provided examples from the COVID-19 pandemic stating, *“this situation illustrates very clearly the financial hardship many workers face when they are unable to work because of emergency measures such as mandatory self-isolation or quarantine ... especially when workers are unable to work for extended periods of time.”*

The UNW expressed concern that supporting documents suggested employees could access emergency federal benefits while on emergency leave, even though current benefits are set to expire September 2021. The UNW went on to suggest the Department undertake public consultation prior to the “prescribing” an emergency within the Employment Standards Regulations.

*“... it is important that the public and key stakeholders are given the opportunity to provide input in the development of any Regulations where the Department intends to “prescribe” an emergency under section 30.3.”*

### Emergency Leave - Too COVID-19 Specific

In their submission, Marshall Law Barrister and Solicitor commented that Emergency Leave criteria as set out in Bill 20 was too narrow and appeared to be specifically related to addressing COVID-19. They also suggested the Department provide scenarios for when employees are entitled to access Emergency Leave.



## COMMITTEE RESPONSE

Committee supports the recommendations received from stakeholders to have the Department investigate policy or program amendments intended to provide temporary unpaid leave supports to employees to reduce financial hardship. Committee also feels it is important for the Department to undertake public consultation and engagement regarding “prescribed” Emergency Leave regulations.

Accordingly, the Committee makes the following recommendations:

### **Recommendation 1**

*Standing Committee on Social Development recommends the Department of Education Culture and Employment undertake public consultation to develop of prescribed emergency provisions, including those that have already been defined in relevant sections of Bill 20.*

### **Recommendation 2**

*To address undue financial hardship as a result of mandated emergency leave requirements, the Standing Committee on Social Development recommends the Department of Education Culture and Employment undertake a review of territorial government programs and policies to allow financial resources to be made available while an employee is required to take unpaid emergency leave.*

## ADVANCED NOTICE OF GROUP TERMINATION

Committee recognizes and appreciates the number of challenges employers face when businesses are forced to shut down, especially in circumstances that are beyond their control. Committee is also aware employers face serious legal challenges when they do not meet their responsibilities under the Act to provide proper termination notice to employees when these circumstances arise. However, Committee members are concerned about the negative impacts on employees if legislation is too heavily in favour of the employer.

To address concerns, Committee moved a substantial motion requiring the Employment Standards Officer to provide a decision on waivers, and improved the vague language

first presented in the Bill that did not clearly interpret the Employment Standard Officers responsibilities. The motion ensures a copy of a decision is served, with the reasons for against approving a waiver, to an employer and any trade unions of which employees may be members. Committee's motion also included new clauses for employers to, without delay, make reasonable efforts, to provide a copy of notice to employees who will be terminated and to provide a copy of the notice to employees when it is not possible to post notice.

## **WAIVING ADVANCED NOTICE FOR GROUP TERMINATION – WHAT IT MEANS**

Bill 20 provides an exception clause permitting employers demonstrating an inability to provide group termination notice due to a significant unexpected event that prevents the employer from respecting the notice period in the Act. Under the existing Act the period of required notice ranges from 4 to 16 weeks, depending on the number of employees affected. In situations where employers do not follow this required period of notice may be guilty of an offence and liable or summary conviction.

Bill 20 provides exceptions that would only apply when an employer is required to terminate the employment of a group of employees as a result of a circumstance or event beyond their control, such as the destruction or major breakdown of machinery or equipment, climatic or economic conditions, or emergencies, including a public health emergency.

- The circumstances that prevented the employer from providing notice must have been truly beyond the employer's control;
- The employer must have exercised due diligence to foresee and avoid the cause of termination; and
- The cause of termination must prevent the employer from respecting the periods of notice set out in Act

Within the proposed Bill the employer is still required to provide notice of the group termination to the Employment Standards Officer, and to any trade union of which the employees may be members, as soon as possible. Once notice is received, the Employment Standards Officer determines if the exception applies to circumstances preventing employers from providing notice to employees within the periods of notice set out in the Act.

## WHAT WE HEARD

### Waiving Advanced Notice for Group Termination – Employment Standards Officer

In their submission to Committee on Bill 20, the UNW emphasize there is a lack of clear language within the proposed exemption clause. The UNW also felt the interpretation of this clause could be perceived as protecting the needs and rights of the employer over the rights of workers and their union representatives. Additionally, they stated the unclear language describing the broad interpretation exemption criteria provided the potential for abuse. They stated;

*“The UNW is struggling to understand the rationale for adding a clause specifically exempting employers from notifying designated authorities and workers’ unions when they intend to circumvent the advance notice requirements of a group termination. The employer is still obligated to notify its workers and the UNW fails to see how, in the age of electronic communication, notifying additional parties presents a burden or undue hardship. On the surface, this section appears to remove any government oversight from the process and strip collective agreement protections from unionized workers.”*

Committee expressed similar concerns upon their review of Bill 20. To increase legislative balance within Bill 20 for both employee’s and employers’ rights, Committee moved the several motions amending Bill 20. The motions can be found in appendix C.

## CONCLUSION

Following the clause-by-clause review, a substantial motions was carried to report Bill 20; *An Act to Amend the Employment Standards Act*, to ensure there are emergency leave provisions for workers into the Act and provisions to waive advanced notice for group termination during circumstances beyond an employers control. This concludes the Standing Committee’s review of *Bill 20 An Act to Amend the Employment Standards Act*.

## **APPENDIX A: WRITTEN SUBMISSIONS**

December 18, 2020

Dear Stakeholder:

## **Changes to the *Employment Standards Act***

The Standing Committee on Social Development (Committee) is reviewing changes related to Emergency Leave and Group Termination for the *Employment Standards Act*. These changes were deemed necessary by the Department of Education, Culture and Employment during the onset of the COVID-19 pandemic.

### **Two proposed areas of change:**

1. Emergency Leave provisions for workers will be added into the *Act*.
2. Group Termination provisions will include an exception clause to give employers more flexibility for the required advance notice period an employer must provide to an employee, the employee's union and the Employment Standards Officer when the employer wishes to terminate 25 or more employees.

### **Emergency Leave Provision**

#### **Current Act**

Under the current *Act* workers do not have any unpaid "Emergency Leave" when they are unable to work if a government agency has declared an emergency.

The *Act* currently entitles an employee to a minimum of five days of sick leave, without pay in a 12-month period.

#### **Proposed changes**

The emergency leave amendments would provide job protection for workers required to be away from work for longer to self-isolate, or care for family members who must stay home due to illness or public health order.

.../2

The changes to the Act will also bring the Northwest Territories in line with the federal *Canada Emergency Response Benefit (CERB) Act* and allow workers to apply for federal income assistance funding.

## **Group Termination**

### **Current Act**

Section 41(2) of the current *Act* requires an employer to provide notice of termination to the Employment Standards Officer, and to any trade union of which the employees may be members, when an employer wishes to terminate 25 or more employees at one time.

The purpose of the required notice for group termination is to ensure that affected employees' union, if applicable, are aware of the group termination so that the adverse effects of the termination may be eased while the employees affected continue to be employed. In the NWT there are approximately:

- 250 businesses who employ 20-49 employees and would be subjected to 4 weeks notice.
- 78 businesses who employ 50-99 employees and would be subjected to 8 weeks notice.
- 25 businesses who employ 100-199 employees and would be subjected to 12 weeks notice.
- 15 businesses who employ more than 200 employees and would be subjected to 16 weeks notice.

### **Employer Limits**

If employers fail to provide the required period of notice of group termination, they are in violation of the *Act* and are guilty of an offence and liable on summary convictions (a) in the case of a corporation, to a fine not exceeding \$100,000; or (b) in the case of an individual, to a fine not exceeding \$50,000, to imprisonment for a term not exceeding one year, or to both.

### **Proposed changes**

Proposed changes to the *Act* would include an exception clause for circumstances that are deemed beyond the employer's control to provide group termination notice within the identified timeframe.

Changes will give flexibility to employers when unforeseen events or circumstances beyond their control arise that prohibit the employer from providing enough time to give a group termination notice.

Unforeseen events or circumstances include:

- the destruction or major breakdown of equipment,
- climatic or economic conditions,
- a state of emergency declaration,
- a state of public health declaration,
- a public health order under the *Public Health Act*, and
- an emergency declared under the *Emergencies Act (Canada)*.

### **Employment Standards Officer**

The Employment Standards Officer is appointed by the Minister to administer the *Act*.

If an employee disagrees with the Employment Standards Officer's decisions, complaints can be submitted to the Employment Standards Officer.

If the Employment Standards Officer decides to deny the complaint, the employee can appeal the decision to an Adjudicator in accordance with Section 71(1) of the *Act*.

### **Committee wants to hear what you think by January 22, 2021:**

The Committee wishes to hear your views on the proposed changes to the Bill. Committee values and welcomes your feedback, which will help the Committee respond to the Government about these important changes.

You can provide submissions in writing, or you can speak to Committee directly. Committee will be holding a public hearing on **February 10, 2021**. If you would like a plain language summary, one may be made available upon request.

**Please write your thoughts to:**

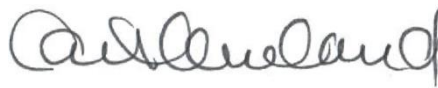
Mr. Gerry Burla  
Committee Clerk, Social Development  
Northwest Territories Legislative Assembly  
PO Box 1320  
4570-48<sup>th</sup> Street  
Yellowknife, NT X1A 2L9  
Or by email at [Gerry\\_Burla@ntassembly.ca](mailto:Gerry_Burla@ntassembly.ca)  
Or by fax at 867-873-0432

**If you want to make a presentation to committee in person, by phone, or by video, please contact:**

Mr. Gerry Burla  
Committee Clerk, Social Development  
  
by phone at 867-767-9130 ext. 12050  
  
or by email at [Gerry\\_Burla@ntassembly.ca](mailto:Gerry_Burla@ntassembly.ca)

**If you wish to make your presentation in an official language other than English, please contact Mr. Burla no later than February 1, 2021 so that he can arrange interpretation.**

Sincerely,



Caitlin Cleveland, Chair  
Standing Committee on Social Development



Mr. Gerry Burla  
Committee Clerk  
Standing Committee on Social Development  
Northwest Territories Legislative Assembly



*Status of Women Council  
of the NWT*

Dear Mr. Burla:

**RE: changes to the *Employment Standards Act***

The coronavirus pandemic has made evident the cracks in our economic system and has exacerbated persistent, long-standing gender inequalities, further eroding families' economic stability. As you recognize, one issue that has been front and center during the current crisis is the lack of meaningful, comprehensive paid emergency leave policies to support workers and public health during emergencies.

Before the pandemic, many workers had to rely on the discretionary benevolence of their employers to gain access to paid emergency leave. Low-wage workers and Indigenous workers are less likely than higher-wage and white workers to have access to this discretionary leave. This gap is particularly dangerous and harmful for women, who are disproportionately represented in front-line and low-wage industries where they face higher risks of exposure to the coronavirus.

Women are already feeling the economic fallout from the crisis, and inequality in access to critical workplace protections, such as paid emergency leave, only deepens the harm.

As GNWT policymakers now contemplate how to create permanent emergency leave laws that can address the diverse needs of workers, they must consider the lessons learned from recent experiences in order to design effective policies capable of dismantling inequities and adequately preparing workplaces and the territory for the future.

Reflecting the expansive economic impacts of the pandemic response across the country and in the territory, the Status of Women Council of the NWT recommends that changes to the *Employment Standards Act* relating to Emergency Leave be put to a robust GBA+ analysis, including a full accountability audit of that analysis one year in to ensure lessons learned are documented for future amendments to this and other legislative reviews impacting diverse, intersectional communities.

As this input request provides little specificity in detail, the Status of Women Council of the NWT encourages the following priorities be considered in the revisions to the *Employment Standards Act*. We hope to have continued opportunities to be involved in the consultation process, including an opportunity to provide future feedback into specific changes to the Act.

We encourage you to provide specifics for consideration in all future iterations of this request for input into changes to the Act.

### **1. Cover all workers**

Emergency paid leave laws should be expansive in covering many workers who are often excluded from accessing paid leave. Part-time workers and self-employed workers should be covered under the laws, and workers should not have to meet a tenure or minimum hours worked requirement to be eligible for emergency paid sick leave and emergency paid childcare leave. Covering part-time workers in a paid leave program is especially important to ensure the inclusion of women: Almost one-quarter of employed women work part time, often due to caregiving responsibilities.

Exclusion of any group of workers, based on employer size, occupation, or other eligibility requirements, limits who benefits from a paid leave program, harms vulnerable workers, and creates challenges during outreach and education to explain the program.

### **2. Include short- and long-term medical and caregiving leave**

Short-term paid sick leave and long-term paid family and medical leave are separate policies that are necessary parts of a continuum of care for workers to manage their own health and care for their loved ones.

The coronavirus pandemic has shown that workers need time away from work for many reasons: recovering from their own illness; quarantining if they have been exposed to COVID-19; caring for an individual who is sick or quarantining; or caring for their child whose school or place of care is closed or unavailable.

Extended care leave is critical. For example, some people experience debilitating coronavirus side effects for months after their initial illness and may develop lifelong disabilities, which can interfere with their ability to work. Workers who need to care for seriously ill family members or elderly relatives who have lost access to senior care during the pandemic need to be able to take long-term emergency paid leave.

In order to address the full spectrum of workers' medical and caregiving needs, especially for workers with disabilities and those with long-term coronavirus effects, policymakers must design two compatible permanent paid leave policies—short-term paid sick leave and long-term paid family and medical leave—that are comprehensive of all the reasons workers need leave.

### **3. Provide sufficient duration of leave and automatic triggers**

Emergency paid sick leave must include enough time to allow a worker to recover from COVID-19. And for parents who need to provide care for their children home from school or childcare

during the crisis, emergency childcare must be sufficient to meet their long-term caregiving needs, especially with some schools shifting to online learning.

Additionally, workers who have multiple reasons for needing paid leave must not be left without any options after they exhaust all their available time. For example, if an eligible employee used all two weeks of their emergency paid sick leave in May when they were sick with the coronavirus, they would be left with no paid leave to care for a spouse who became sick in July.

GNWT policymakers must design territorial, permanent paid leave policies with durations that are sufficient to meet workers' needs and that follow advice from public health experts. Policies should also be flexible and targeted to respond to the unique needs of a crisis by including automatic triggers in case of a future public health emergency. These triggers would allow for expanded benefits if another public health emergency is declared, such as extended duration or broadened purposes for taking leave.

#### **4. Ensure adequate wages across all types of leave**

For paid leave programs to help low-wage workers and address gender inequality, policymakers must ensure adequate wage replacement amounts—at the same level—for all types of leave.

#### **5. Allow workers to care for their family and loved ones**

The coronavirus pandemic has revealed the importance of caregiving relationships outside immediate families. When an individual lives far away from their family and becomes seriously sick with COVID-19, friends and chosen family can play a key role in their caregiving. Under any new emergency paid leave law, employees need to be able to take paid sick leave to care for “individuals,” defined as an immediate family member, someone living with the employee, or someone with whom the employee has a relationship with an expectation of care.

A broadly defined caregiving relationship demonstrates that paid leave laws can easily incorporate inclusive family definitions. This is particularly impactful for LGBTQ workers and workers with a disability, who often have varied family forms and need paid leave that allows them to care for their loved ones.

Territorial, permanent paid leave programs must inclusively define family in order to acknowledge various caregiving relationships, including chosen family.

#### **6. Ensure employment protections for workers who use paid leave**

Job and anti-retaliation protections are critical components of paid leave programs, allowing workers to feel secure in taking leave because they know they can return to their job and are protected from adverse employment actions such as being disciplined, demoted, or fired. Anti-retaliation protections are especially important to ensure that certain workers—such as

Indigenous workers and women—are not unfairly targeted because they need leave or discouraged from taking leave.

When making decisions about how best to address their family's or their own caregiving needs, workers should not have to worry about losing their jobs or derailing their careers simply because they choose to take leave. Having robust protections against these types of harmful outcomes should be articulated in any future paid leave law.

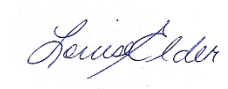
To promote racial, gender, and economic equity and encourage workers who most need access to paid leave the security to take it, GNWT policymakers must establish new guarantees for job protection and anti-retaliation protections in territorial, permanent paid leave laws.

### **7. Provide effective outreach, education, oversight, and enforcement**

Policymakers must take the lessons learned from the ineffective implementation of some of the national and territorial emergency paid leave laws and include specific funding and instruction around outreach and public education, as well as oversight and enforcement, in territorial, permanent paid leave laws.

Thank you for the opportunity to provide feedback on the proposed changes to the *Employment Standards Act*. Emergency paid leave can be an economic lifeline and lifesaver, for workers, especially women and their families; even more so in the midst of events like the coronavirus pandemic. Please feel free to contact us for more information or clarification. We respectfully request to be kept updated as to the actual changes that move forward for adoption.

Sincerely,



Louise Elder  
Executive Director  
Status of Women Council of the Northwest Territories



February 15, 2021

Via email: [Caitlin\\_Cleveland@ntassembly.ca](mailto:Caitlin_Cleveland@ntassembly.ca)  
[Gerry\\_Burla@ntassembly.ca](mailto:Gerry_Burla@ntassembly.ca)

Standing Committee on Social Development  
Legislative Assembly of the Northwest Territories  
Yellowknife NT  
Attention : Caitlin Cleveland, Chair

Dear Ms. Cleveland,

**Re: Bill 20, Amendments to the *Employment Standards Act***

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The UNW represents approximately 1,100 workers impacted by the provisions of the Employment Standards Act who have experienced firsthand the effects of Covid-19 on jobs and the economy. As such, our union has direct experience with the issues that Bill 20 – *An Act to Amend the Employment Standards Act* -is attempting to address.

During the Covid-19 pandemic, the voice of the NWT business community has been loud and constant, and the concerns of employers have been publicly and politically championed by various northern chambers of commerce and business associations. The voices of workers have not been as prominent and while the UNW officially represents unionized workers within our membership, we feel a strong sense of responsibility to publicly advocate for the rights and working conditions of all NWT workers – including those who lack the protections of organized membership.

The success of the NWT economy relies on a healthy and reliable workforce, and as a representative and advocate of those workers, the UNW appreciates the opportunity to provide input and seek clarity on the proposed changes presented in Bill 20.

### **Collective Agreements and Minimum Standards**

It is widely known across Canada that legislated employment standards represent the minimum standards. Employment contracts and collective agreements cannot legally provide employees less than those minimum standards. In cases where a collective agreement exists between workers and their employer, the collective agreement typically provides superior, legally protected rights and benefits to workers over and above the minimum standards provided by employment standards legislation like the NWT's *Employment Standards Act* (the Act). While the existing sections 4(1) - (3) of the Act speak to this, it could be clearer.

#### ***Recommendation 1:***

Insert language that specifically mentions contracts of employment and collective agreements.

## Emergency Leave

Broadly speaking, the UNW welcomes the proposed emergency leave clauses. However, we have identified some sections and omissions that may become problematic with regard to the implementation and the original intent of the legislation.

Subsections 30.3(3) and 30.3(4) describe emergency leave as leave *without* pay. The Covid-19 pandemic has illustrated very clearly the financial hardship many workers face when they are unable to work as a result of emergency measures such as mandatory self-isolation or quarantine.

While absolutely necessary for protecting public health, requiring entire households to self-isolate when any given household member is required to isolate can add to this hardship – especially in scenarios where individuals within a household receive separate directions to isolate for timeframes that occur in succession rather than simultaneously. This can result in all the wage earners in the household being unable to attend work for extended periods, resulting in a significant loss of income.

In the GNWT's *Bill 20 Summary Document*, the solution presented is that workers can access Federal Recovery Benefits while they are on emergency leave. These benefits are not guaranteed, come with a cumbersome set of prerequisites, require an applicant to reapply every two weeks where applicable, and are currently set to expire on September 25, 2021.

The language in Bill 20 suggests that the new legislation will be applicable during any non-Covid emergencies that may arise in the NWT. Therefore, this legislation should not rely on Federal government support to fill the gaps, especially funding that is temporary and specific to a singular event.

While the introduction of emergency leave is needed, the GNWT cannot depend on outside agencies to make up for income workers lose as a result of an emergency measure. It also appears that by making the emergency leave *unpaid* leave, the legislation favours employers over workers.

Businesses of any size – especially those receiving financial aid or incentives from government programs – bear a social responsibility to be good corporate citizens, which includes taking care of their workers and ensuring the employment they provide is sufficient and sustainable.

The UNW also thinks that it is important that the public and key stakeholders are given the opportunity to provide input in the development of any Regulations where the Department intends to “prescribe” an emergency under section 30.3.

### **Recommendation 2:**

Insert language that provides for some paid emergency leave for employees,

*OR:*

If it is determined that mandating *paid* emergency leave under the Act presents undue financial hardship for employers, the GNWT must establish and implement a territorial fund that would be available during an emergency defined by the proposed section 30.3 for the purpose of compensating workers for income lost due to said emergency.

## **Notice of Group Termination**

As written, the proposed subsection 41(2.1) strongly favours the rights of employers over the rights of workers and their union representatives. While the UNW recognizes that unforeseen circumstances often complicate existing processes, the proposed exemption conditions are vague and open to abuse or interpretations that go against the intent of the legislation. It also removes any onus on the employer to prove up front that they meet the requirements.

The UNW is not opposed in principle to legislation that provides exemptions for extenuating and unforeseen circumstances, however, we feel very strongly that the onus should be on the employer to make the case for an exemption prior to issuing termination notices, so that the union representing the employees has the opportunity to respond before a decision is made.

Subsection 41(2.1) undermines a union's power to protect workers by hampering its ability to question and provide input on whether or not the exemption criteria have been met prior to termination. Rather than eliminating employer responsibilities altogether, a clause that provides employers with an opportunity to formally request exemptions or waivers, and employees and unions with an opportunity to formally respond to those requests, would promote due diligence and accountability on the part of employers.

The federal government's approach to this issue is more balanced and the Committee should consider the federal legislation when crafting territorial legislation. For example, a positive piece in federal government standards is the requirement to form a Joint Planning Committee to mitigate the impacts of group termination on affected employees.

Additionally, the language in subsections 41(2.1) and 41(2.2) is vague and allows a broad interpretation of the exemption criteria that will be left to the discretion of the Employment Standards Officer. For example, subsection 41(2.1)(a)(ii) implies that an "unforeseen circumstance" resulting from financial mismanagement could be offered as a valid excuse for an exemption. The UNW also believes that the Minister should be the one who ultimately approves exceptions and exemptions, even if delegated to Employment Standards Officer.

Lastly, if subsection 41(2.1) was intended to provide exemptions and relief for employers facing unforeseen impacts of an emergency defined in section 30.3, then this should be specified in the relevant clauses. Otherwise, this legislation – as currently written – provides an unfair advantage for employers to circumvent the advance notice requirements by granting them significant leeway in how they may justify their eligibility for an exemption.

The UNW is struggling to understand the rationale for adding a clause specifically exempting employers from notifying designated authorities and workers' unions when they intend to circumvent the advance notice requirements of a group termination. The employer is still obligated to notify its workers and the UNW fails to see how, in the age of electronic communication, notifying additional parties presents a burden or undue hardship. On the surface, subsection 41(2.1) appears to remove any government oversight from the process and strip collective agreement protections from unionized workers. The UNW would like clarification on whether or not this was the original intent of this clause.

**Recommendation #3:**

Examine the Federal legislation governing timelines for group termination notice, and consider territorial legislation that mirrors federal law.

**Recommendation #4:**

Provide a more prescriptive list of exemption criteria and add a clause specifying that subsection 41(2.1) is only applicable during an emergency defined by section 30.3.

In closing, though the new provisions introduced in Bill 20 were designed in response to the Covid-19 pandemic, the UNW is concerned that some clauses fail to properly take into account how they may be applied to future scenarios outside of the specific Covid-19 event.

The UNW is also concerned about how these amendments – particularly subsection 41(2.1) – may be interpreted or implemented, and how they will be enforced to ensure the rights of workers are protected.

We respectfully ask that the Standing Committee on Social Development consider all perspectives in their review of this Bill, and develop legislation that values the wellbeing of workers as equal to the financial interests of employers. An economy is only as strong as its workforce, and those voices must be heard and represented in the laws that govern our territory.

Sincerely,



Todd Parsons

President, Union of Northern Workers

Cc: Lesa Semmler, Deputy Chair  
Gerry Burla, Committee Clerk



## Gerry Burla

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**Subject:** Standing Committee on Social Development - Review of Employment Standards Act

---

**From:** Austin Marshall

**Sent:** March 2, 2021 9:59 AM

**To:** 'Gerry Burla' <Gerry\_Burla@ntassembly.ca>

**Cc:** Caitlin Cleveland <Caitlin\_Cleveland@ntassembly.ca>; Christopher Buchanan <cbuchanan@mross.com>

**Subject:** RE: Standing Committee on Social Development - Review of Employment Standards Act

Gerry,

Thank you for allowing me an opportunity to make a submission.

Caitlin Cleveland's letter of December 18, 2020 sets out the parameters for the proposed changes to the ESA. I understand them to be:

1. Emergency Leave provisions. These will be aimed at entitling an employee to unpaid leave when the employee is unable to work due to emergency health circumstances.
2. Group Termination. The amendments will enact an exception to the present notice requirements for group layoffs.

Emergency Leave Provisions.

The proposal is a welcome amendment to the ESA, It will provide a standard for a host of case by case situations where an employee is unable to work due to emergency health problems that are beyond the employee's control.

In my view there are a number of considerations for what the amendments should contain:

1. The amendment appears to be Covid-19 driven. It should be broad enough to cover any situation that connects with an order of the Chief Public Health Officer.
2. The scenarios that entitle the employee to access to the leave should be identified. These would include a positive diagnosis; a quarantine or self-isolation requirement; an employer direction not to report for work; the need to provide care to another person.
3. The length of the leave period. It should be as long as the employee needs to resolve the underlying circumstances for the leave.
4. Proof of the circumstances that entitle the employee to the leave. Persons trained in fact finding will be required. The employee's privacy rights to his or her medical information may affect what information can be demanded or expected from the employee.
5. Standard of proof. A balancing of adequate proof of the need for the leave with not making it too difficult for the employee to access the leave must be struck.

The Standing Committee is probably aware that other jurisdictions have legislation in place that applies to the problem.

Group Termination.

The present notice periods for group terminations should not apply to emergency situations. The emergency leave provisions should take precedence.

I hope this is helpful. Please let me know if you have any questions.

Regards,

Austin F. Marshall

Marshall Law  
Barrister and Solicitor  
Suite 203, 5204 50<sup>th</sup> Avenue  
Box 1236  
Yellowknife, NT X1A 2N9

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**From:** Gerry Burla <[Gerry\\_Burla@ntassembly.ca](mailto:Gerry_Burla@ntassembly.ca)>

**Sent:** February 22, 2021 11:19 AM

**To:** Austin Marshall <[amarshall@marshallyk.com](mailto:amarshall@marshallyk.com)>

**Cc:** Caitlin Cleveland <[Caitlin\\_Cleveland@ntassembly.ca](mailto:Caitlin_Cleveland@ntassembly.ca)>; Christopher Buchanan <[cbuchanan@mross.com](mailto:cbuchanan@mross.com)>

**Subject:** RE: Standing Committee on Social Development - Review of Employment Standards Act

Mr. Marshall,

There is still an opportunity to address the Standing Committee regarding Bill 20-19(2): *An Act to Amend the Employment Standards Act*. The public meeting has already taken place, however, the clause-by-clause review is still to come.

You may email the correspondence to me directly at: [Gerry\\_Burla@ntassembly.ca](mailto:Gerry_Burla@ntassembly.ca)

The clause-by-clause review is to be scheduled soon, so it would be appropriate to send your feedback as soon as possible.

If you have any other questions or concerns, please feel free to contact me.

Thank you,  
Gerry

Mársı | Kinanāskomitin | Thank you | Merci | Hąjı' | Quana | Qujannamiik | Quyanainni | Máhsı | Máhsı | Mahsi

Gerry Burla

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Northwest Territories Legislative Assembly | Assemblée législative des Territoires du Nord-Ouest

PO Box 1320 | C. P. 1320

Yellowknife NT X1A 2L9

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Fax | Téléc. : 867-873-0207

[NTASSEMBLY.CA](http://NTASSEMBLY.CA)  
[NTASSEMBLY.CA/FR](http://NTASSEMBLY.CA/FR)

---

**From:** Austin Marshall [<mailto:amarshall@marshallyk.com>]  
**Sent:** February 19, 2021 3:04 PM  
**To:** Gerry Burla  
**Cc:** Caitlin Cleveland; Christopher Buchanan  
**Subject:** FW: Standing Committee on Social Development - Review of Employment Standards Act

**EXTERNAL:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender's name and email address and know the content is safe.

Gerry,

I am forwarding the e-mail I sent to Caitlin Cleveland with a copy to you. I had the wrong e-mail address for you.

My apologies.

Austin

Austin F. Marshall

Marshall Law  
Barrister and Solicitor  
Suite 203, 5204 50<sup>th</sup> Avenue  
Box 1236  
Yellowknife, NT X1A 2N9

Ph.: (867) 873-4969 ext. 224  
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---

**From:** Austin Marshall  
**Sent:** February 19, 2021 2:53 PM  
**To:** Caitlin Cleveland <[Caitlin\\_Cleveland@ntassembly.ca](mailto:Caitlin_Cleveland@ntassembly.ca)>  
**Cc:** Gerry Burla <[Gerry\\_Burla@gov.nt.ca](mailto:Gerry_Burla@gov.nt.ca)>; Christopher Buchanan <[cbuchanan@mross.com](mailto:cbuchanan@mross.com)>  
**Subject:** Standing Committee on Social Development - Review of Employment Standards Act

Hi Caitlin,

I have a copy of your letter of December 18, 2020 concerning proposed changes to the Employment Standards Act. The Labour and Employment Section of the CBA circulated it to section members.

I sent the Section my comments. I understand they may have been forwarded on to your Committee. The Section tells me it didn't make a submission at the Committee's February 10<sup>th</sup> meeting.

I've had an opportunity to look into the proposals a little further. I've also spoken with a few of my colleagues in other jurisdictions. There have been legislative initiatives in a few of them.

May I make a submission to your Committee? I would be happy to do it as a written submission of course. If so, please let me know your time frame.

Thanks.

Austin

Austin F. Marshall

Marshall Law  
Barrister and Solicitor  
Suite 203, 5204 50<sup>th</sup> Avenue  
Box 1236  
Yellowknife, NT X1A 2N9

Ph.: (867) 873-4969 ext. 224  
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# **APPENDIX B: PLAIN LANGUAGE SUMMARY**



## Bill 20: An Act to Amend the Employment Standards Act

### What is Bill 20 about?

Bill 20 seeks to amend the *Employment Standards Act* to include two provisions that will a) provide protection to NWT workers and b) provide flexibility to employers during the COVID-19 pandemic and any future emergency.

The first provision, Emergency Leave, provides job protection to NWT workers in the event of an emergency situation, such as the ongoing COVID-19 public health emergency, by allowing workers to access unpaid leave when they are unable to perform their duties because of an emergency.

This provision will not only encourage workers to comply with public health best practices, but will also allow the NWT to meet its commitments to the Government of Canada under the Safe Restart Agreement and allow NWT workers to access the recovery benefits under the Government of Canada's *COVID-19 Response Measures Act*.

The second provision will provide flexibility to NWT employers, removing an additional hurdle in an already difficult time, by including an exception to the legislated requirement to provide notice of group termination in the case of an unforeseeable event or circumstance. Employees will retain their entitlement to individual termination notice or pay in lieu of notice.

### Emergency Leave

#### What are the proposed amendments?

The Emergency Leave provisions will provide two additional means of enhanced worker protection in the event of an emergency such as the COVID-19 pandemic.

Firstly, employees will be entitled to unpaid "Emergency Leave" when they are unable to work because a government agency has declared an emergency. This would include the following situations:

- a) a state of emergency declared under section 14 of the *Emergency Management Act* or a state of local emergency declared under section 18 of that Act;
- b) a state of public health emergency declared under section 32 of the *Public Health Act*;
- c) a direction or order of a public health officer, the Chief Public Health Officer or a Deputy Chief Public Health Officer provided or made under the *Public Health Act*;
- d) an emergency declared under the *Emergencies Act* (Canada);
- e) an order of a quarantine officer made under the *Quarantine Act* (Canada),



The amendments will also allow the Department to “prescribe” an emergency in the Employment Standards Regulations so that employees will still be able to access Emergency Leave when the state of emergency has ended. For example, the Department will prescribe COVID-19 as an emergency under the Regulations. That way, if the GNWT did not continue to extend the territory-wide Public Health Emergency under the *Public Health Act*, NWT workers could still access Emergency Leave if there continued to be a need for people to self-isolate for various reasons.

If the emergency affects a family member of an employee, the employee is entitled to the leave when:

- a) the circumstance results in a situation where the family member of the employee requires care, child care or assistance;
- b) the employee is the person most reasonably able under the circumstances to provide the family member with the required care, child care or assistance; and
- c) providing the required care, child care or assistance to the family member has the effect of preventing the employee from performing the duties of their employment.

If an emergency exists due to a pandemic of a reportable disease, an employee will be able to access the leave when the employee is unable to work because:

- they are under medical investigation/supervision/treatment related to the reportable disease;
- they are required to self-isolate or quarantine related to the reportable disease as a result of the direction of a health officer, health care professional or government agency;
- they were directed by the employer not to work due to a concern that the employee could expose others to the reportable disease in the workplace;
- they are required to care for a family member or dependent who is affected by the reportable disease; or
- they are directly affected by travel restrictions related to the emergency, depending on the circumstances.

Emergency Leave would not require an employee to have worked for an employer for any set amount of time in order to be eligible for leave. The period of leave would end when the employee is no longer unable to work for the reasons above or when the emergency ends.

Secondly, employees applying for this new form of Emergency Leave will not be required to submit a doctor’s note. Medical certificates will continue to be required for other forms of leave in the Act, where applicable.

### **Why are these changes necessary?**

On March 18, 2020, the NWT declared a public health emergency and is requiring residents in specific situations to self-isolate for a period of 14 days. There are currently no leave provisions in



the Act that would allow an employee to take time away from work to comply with these requirements.

The Act currently entitles an employee to a minimum of five days of sick leave, without pay, in a 12 month period. The Act also states that if the duration of sick leave exceeds three consecutive days and if requested by the employer, the employee must provide the employer with a medical certificate stating that the employee is incapable of working because of an illness or injury.

The purpose of adding Emergency Leave provisions to the Act is to accommodate and protect workers unable to report to work in an emergency – for example, when required to self-isolate as a result of the ongoing public health emergency – and allow the NWT to meet its commitments to the Government of Canada under the Safe Restart Agreement, in the case of COVID-19.

## Group Termination Notice

### What is currently in the Act?

Section 41(2) of the Act currently requires an employer to provide notice of termination to the Employment Standards Officer, and to any trade union of which the employees may be members, when an employer wishes to terminate 25 or more employees at one time. The period of required notice ranges from four to 16 weeks, depending on the number of employees affected.

Individual notice of termination given to employees may coincide with the notice of group termination to the Employment Standards Officer. For example, if an employer is required to provide an individual employee with two weeks' notice of termination and provide four weeks' notice of group termination to the Employment Standards Officer, the notices can be provided at the same time, and the total period of notice would be four weeks.

The purpose of group termination notice under Section 41 of the Act is to ensure that the Employment Standards Officer and the affected employees' union, if applicable, are aware of the group termination so that the adverse effects of the termination may be mitigated while the affected employees continue to be employed.

The Act does not entitle employees to pay in lieu of notice for group terminations; however, it prohibits an employer from terminating the employment of any employee for which notice of group termination is required before the required period of notice has expired.

If an employer fails to provide the required period of notice of group termination, they would be in contravention of the Act and, in accordance with Section 97 of the Act, guilty of an offence and liable on summary conviction to:

- a) in the case of a corporation, a fine not exceeding \$100,000; or
- b) in the case of an individual, a fine not exceeding \$50,000, to imprisonment for a term not exceeding one year, or to both.





### What are the proposed amendments?

The Government of the Northwest Territories recognizes that an employer, who is forced to permanently cease operations as a result of a situation beyond their control, may not be able to meet the requirement to provide group termination notice and would be considered in contravention of the Act.

The proposed amendment provides an exception where an employer's inability to provide group termination notice is permissible **when a significant unexpected event or circumstance occurs** that prevents the employer from respecting the notice period in the Act.

The exception would only apply when an employer is required to terminate the employment of a group of employees as a result of a circumstance or event beyond their control, such as the destruction or major breakdown of machinery or equipment, climatic or economic conditions, or emergencies, including a public health emergency. In order for the exception to apply:

- The circumstances that prevented the employer from providing notice must have been truly beyond the employer's control;
- The employer must have exercised due diligence to foresee and avoid the cause of termination; and
- The cause of termination must prevent the employer from respecting the periods of notice set out in Act.

In order for the exception to apply to terminations as a result of COVID-19, a business closure or reduction in staffing must be directly related to COVID-19.

An employer would still be required to provide notice of the group termination to the Employment Standards Officer, and to any trade union of which the employees may be members, as soon as possible. Upon receipt of the notice, the Employment Standards Officer would determine whether the exception applies by verifying that the circumstances that prevented the employer from providing notice were truly beyond the employer's control, that the employer exercised due diligence to foresee and avoid the cause of termination, and that the cause of termination prevented the employer from respecting the periods of notice set out in Act.

The Employment Standards Officer would request information and evidence from the employer, consult case law, and apply a reasonableness standard in making a determination in this regard.

If the Employment Standards Officer found that the exception was not applicable to a situation, the employer would be prohibited from terminating the affected employees before the required period of notice expired. If an employer proceeded with terminating the employees prior to the notice period expiring, they would be in contravention of the Act and, in accordance with Section 97 of the Act, guilty of an offence and liable on summary conviction to fines up to \$50,000 in the case of an individual or \$100,000 in the case of a corporation.



An employer will still be required to provide affected employees with individual notice of termination or pay in lieu of notice under the *Employment Standards Act*.

If an employee disagrees with the Employment Standards Officer's determination, they could submit a complaint to the Employment Standards Officer. If the Employment Standards Officer decided to deny such a complaint, the employee could appeal the decision to an Adjudicator in accordance with Section 71(1) of the Act.

### **Why are these changes necessary?**

Under some circumstances, the group termination provisions in the Act may impose unrealistic conditions on an employer who, as a result of an unforeseeable event, such as the destruction of a worksite, is forced to permanently cease operations and terminate the contracts of its employees immediately.

With the exception of Nunavut, all other Canadian jurisdictions have legislation allowing for some type of exemption to the requirement for notice of termination due to an unforeseeable event, and some Canadian jurisdictions have passed amendments to their legislation removing the employer requirement to provide group termination notice during the public health emergency period related to COVID-19.

The proposed provisions recognize that situations beyond an employer's control may arise that prohibit the employer from providing adequate group termination notice. At present, the *Employment Standards Act* provides no flexibility in this regard.

## **APPENDIX C: MOTION**

MOTION

AN ACT TO AMEND THE EMPLOYMENT  
STANDARDS ACT

**That Bill 20 be amended**

- (a) by deleting subclause 11(1); and
- (b) in subclause 11(3), by adding the following after proposed subclause 41(5):

Waiver of  
subsection (2)

(6) The Employment Standards Officer may, by order, waive the application of subsection (2) if the Officer is satisfied that

- (a) the employer is required to terminate the employment of the employees because of an unforeseen event or circumstance beyond the control of the employer, including
  - (i) the destruction or major breakdown of machinery or equipment,
  - (ii) climatic or economic conditions,
  - (iii) a state of emergency declared under section 14 of the *Emergency Management Act* or a state of local emergency declared under section 18 of that Act,
  - (iv) a state of public health emergency declared under section 32 of the *Public Health Act*,
  - (v) a direction or order of a public health officer, the Chief Public Health Officer or a Deputy Chief Public Health Officer provided or made under the *Public Health Act*, and
  - (vi) an emergency declared under the *Emergencies Act* (Canada);
- (b) the employer has exercised due diligence to foresee and avoid the cause of termination; and
- (c) the cause of termination prevents the employer from respecting the period of notice required under subsection (2).

MOTION

LOI MODIFIANT LA LOI SUR  
LES NORMES D'EMPLOI

**Il est proposé que le projet de loi 20 soit modifié :**

- a) par suppression du paragraphe 11(1);
- b) au paragraphe 11(3), par adjonction de ce qui suit après le paragraphe 41(5) proposé :

(6) L'agent des normes d'emploi peut, par ordonnance, renoncer à l'application du paragraphe (2) s'il est convaincu que les conditions suivantes sont réunies :

Renonciation  
à l'application  
du  
paragraphe (2)

- a) l'employeur est tenu de mettre fin à l'emploi des employés en raison d'un événement ou d'une circonstance imprévisible hors de son contrôle, notamment :
  - (i) la destruction ou le bris majeur de machines ou d'équipement,
  - (ii) les conditions climatiques ou économiques,
  - (iii) l'état d'urgence proclamé en vertu de l'article 14 de la *Loi sur la gestion des urgences* ou l'état d'urgence locale proclamé en vertu de l'article 18 de cette loi,
  - (iv) l'état d'urgence sanitaire publique déclaré en vertu de l'article 32 de la *Loi sur la santé publique*,
  - (v) une directive ou un ordre d'un administrateur de la santé publique, de l'administrateur en chef de la santé publique ou d'un sous-administrateur en chef de la santé publique au titre de la *Loi sur la santé publique*,
  - (vi) une situation de crise déclarée en vertu de la *Loi sur les mesures d'urgence* (Canada);
- b) l'employeur a exercé la diligence raisonnable pour prévoir et éviter la

- cause de la cessation d'emploi;
- c) la cause de la cessation d'emploi empêche l'employeur de respecter le délai d'avis prévu au paragraphe (2).

Period for making decision or order	(7) A decision or order made under subsection (6) must be made as soon as reasonably possible after the Employment Standards Officer is satisfied that they have sufficient information to make a decision or order.	(7) La décision ou l'ordonnance au titre du paragraphe (6) doit être rendue dès que raisonnablement possible une fois que l'agent des normes d'emploi est convaincu qu'il a suffisamment d'information pour rendre une décision ou une ordonnance.	Délai
Details of order	(8) An order made under subsection (6) (a) must require that the copies of the notice of termination referred to in subsection (1) be given by a date specified in the order; and (b) may be made subject to any terms or conditions that the Employment Standards Officer considers appropriate.	(8) Toute ordonnance rendue en vertu du paragraphe (6) : a) doit exiger que les copies de l'avis de cessation visé au paragraphe (1) soient remises au plus tard à la date prévue dans l'ordonnance; b) peut faire l'objet de toute condition qui, selon l'agent des normes d'emploi, est indiquée.	Précisions
Service of decision or order	(9) A copy of a decision or order made under subsection (6) must be served, together with the reasons for ordering or not ordering the waiver, on (a) the employer to whom the decision or order relates; and (b) any trade union of which the employees to be terminated may be members.	(9) Toute copie d'une décision ou d'une ordonnance rendue en vertu du paragraphe (6) doit être signifiée, accompagnée des motifs justifiant d'accorder ou non la renonciation, aux personnes suivantes : a) l'employeur visé par la décision ou l'ordonnance; b) tout syndicat dont les employés visés par une cessation d'emploi pourraient être membres.	Signification de la décision ou de l'ordonnance
Non-application	(10) Subsection 69(3) does not apply in respect of an order made under subsection (6).	(10) Le paragraphe 69(3) ne s'applique pas à l'égard de toute ordonnance rendue en vertu du paragraphe (6).	Non-application
Right of appeal	(11) A trade union referred to in paragraph (9)(b) is deemed to be a person affected by the decision or order for the purpose of commencing an appeal under subsection 71(1).	(11) Le syndicat visé à l'alinéa (9)b) est réputé être une personne touchée par la décision ou l'ordonnance aux fins de l'interjection d'un appel en vertu du paragraphe 71(1).	Appel
Public notice	(12) The Employment Standards Officer shall, without delay, ensure that notice of any decision or order made under subsection (6) is published on a website maintained by the Government of the Northwest Territories relating to its employment standards office.	(12) L'agent des normes d'emploi veille sans tarder à ce que l'avis de la décision ou de l'ordonnance au titre du paragraphe (6) soit publié sur un site Web qui est géré par le gouvernement des Territoires du Nord-Ouest et qui concerne le bureau des normes d'emploi.	Avis public
Contents of notice	(13) The notice published under subsection (12) must include (a) the date on which the decision or order was made; (b) the name of the employer to whom the decision or order relates; and	(13) L'avis publié en vertu du paragraphe (12) doit comprendre ce qui suit : a) la date à laquelle la décision ou l'ordonnance a été rendue; b) le nom de l'employeur visé par la décision ou l'ordonnance;	Contenu de l'avis

(c) the reasons for ordering or not ordering the waiver.

c) les motifs justifiant d'accorder ou non la renonciation.

Notice not to include names

(14) The notice published under subsection (12) must not include the names of any of the employees to be terminated.

(14) L'avis publié en vertu du paragraphe (12) doit exclure les noms des employés devant être congédiés.

Avis excluant les noms

Duty to post notice

(15) The employer shall, where possible and without delay, post a copy of the notice published under subsection (12) in a conspicuous place on the premises where work is performed by the employees to be terminated and shall keep the notice posted for such period of time as the Employment Standards Officer specifies.

(15) L'employeur affiche, dans la mesure du possible et sans tarder, une copie de l'avis publié en vertu du paragraphe (12) dans un endroit bien en vue du lieu de travail des travailleurs devant être congédiés et la maintient affichée pour une période déterminée par l'agent des normes d'emploi.

Obligation d'afficher l'avis

Copy of notice to certain employees

(16) The employer shall, without delay, make reasonable efforts,

- (a) where the notice is posted under subsection (15), to give a copy of the notice to any of the employees to be terminated who are not likely to see the notice when or shortly after it is posted; or
- (b) where it is not possible to post the notice under subsection (15), to give a copy of the notice to each of the employees to be terminated.

(16) L'employeur déploie sans tarder les efforts raisonnables afin de, selon le cas :

- a) lorsque l'avis est affiché en vertu du paragraphe (15), donner une copie de l'avis à tout employé devant être congédié et qui est susceptible de ne pas voir l'avis au moment où il est affiché ou peu après qu'il l'a été;
- b) lorsqu'il est impossible d'afficher l'avis en vertu du paragraphe (15), donner une copie de l'avis à tout employé devant être congédié.

Copie de l'avis remise à certains employés

## **APPENDIX D: BILL 20**

SECOND SESSION,  
NINETEENTH LEGISLATIVE ASSEMBLY  
OF THE NORTHWEST TERRITORIES

DEUXIÈME SESSION,  
DIX-NEUVIÈME ASSEMBLÉE LÉGISLATIVE  
DES TERRITOIRES DU NORD-OUEST

BILL 20

PROJET DE LOI 20

AN ACT TO AMEND THE EMPLOYMENT  
STANDARDS ACT

LOI MODIFIANT LA LOI SUR LES  
NORMES D'EMPLOI

DISPOSITION

Date of Notice Date de l'avis	1st Reading 1 <sup>re</sup> lecture	2nd Reading 2 <sup>e</sup> lecture	To Committee Au Comité	Chairperson Président	Reported Rapport	3rd Reading 3 <sup>e</sup> lecture	Date of Assent Date de sanction



## Summary

This Bill amends the *Employment Standards Act* to

- provide an entitlement to unpaid emergency leave for employees who are unable to perform their duties because of an emergency;
- add definitions that apply in respect of emergency leave, and extend the definition "care" to apply in respect of emergency leave;
- establish regulation-making authorities in respect of emergency leave, and provide that regulations made under those authorities may have retroactive effect;
- establish confidentiality requirements in relation to leave;
- provide an exception to the periods of notice required for group terminations that applies in the case of an unforeseeable event or circumstance;
- clarify that a notice of termination for a group termination may be given concurrently with an individual notice of termination; and
- correct inconsistencies and errors identified in the Act.

## Résumé

Le présent projet de loi modifie la *Loi sur les normes d'emploi* aux fins suivantes :

- prévoir le droit à un congé en raison d'une situation d'urgence, non payé, pour les employés qui sont incapables d'exercer leurs fonctions à cause de la situation d'urgence;
- ajouter des définitions qui s'appliquent au congé en raison d'une situation d'urgence, et élargir la définition de «soins» pour qu'elle s'applique au congé en raison d'une situation d'urgence;
- créer des pouvoirs réglementaires concernant le congé en raison d'une situation d'urgence, et prévoir que les règlements pris en vertu de ces pouvoirs peuvent avoir un effet rétroactif;
- établir des exigences de confidentialité relativement au congé;
- prévoir une exception aux délais d'avis exigés applicables à la cessation d'emploi de groupe qui s'applique dans le cas d'un événement ou d'une circonstance imprévisible;
- préciser que l'avis de cessation d'emploi de groupe peut être donné en même temps que l'avis de cessation d'emploi individuel;
- corriger les incohérences et les erreurs identifiées dans la loi.

BILL 20

AN ACT TO AMEND THE EMPLOYMENT  
STANDARDS ACT

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

**1. The *Employment Standards Act* is amended by this Act.**

**2. Section 1 is amended in the definition "care", by striking out "sections 30 and 30.2" and substituting "sections 30, 30.1 and 30.3".**

**3. (1) Subsection 23(5) is repealed and the following is substituted:**

Holiday pay  
during leave

(5) An employee is entitled to be paid holiday pay while on

- (a) sick leave;
- (b) family violence leave not exceeding five days;
- (c) emergency leave not exceeding 14 days;
- (d) bereavement leave; or
- (e) court leave not exceeding 10 days.

**(2) Paragraphs 23(6)(d) to (g) are repealed and the following is substituted:**

- (d) family caregiver leave;
- (e) family violence leave exceeding five days;
- (f) emergency leave exceeding 14 days;
- (g) court leave exceeding 10 days; or
- (h) reservist leave.

**4. Paragraph 26(2)(a) is amended by striking out "the prescribed length of time" and substituting "at least the prescribed length of time".**

**5. Subsection 30.2(13) is repealed and the following is substituted:**

PROJET DE LOI 20

LOI MODIFIANT LA LOI SUR LES  
NORMES D'EMPLOI

La commissaire des Territoires du Nord-Ouest, sur l'avis et avec le consentement de l'Assemblée législative, édicte :

**1. La *Loi sur les normes d'emploi* est modifiée par la présente loi.**

**2. La définition de «soins» à l'article 1 est modifiée par suppression de «articles 30 et 30.2» et par substitution de «articles 30, 30.1 et 30.3».**

**3. (1) Le paragraphe 23(5) est abrogé et remplacé par ce qui suit :**

(5) L'employé a droit à l'indemnité de jour férié alors qu'il est, selon le cas :

Indemnité de  
jour férié

- a) en congé de maladie;
- b) en congé en raison de violence familiale d'une durée maximale de cinq jours;
- c) en congé en raison d'une situation d'urgence d'une durée maximale de 14 jours;
- d) en congé de décès;
- e) en congé de service judiciaire d'une durée maximale de 10 jours.

**(2) Les alinéas 23(6)d) à g) sont abrogés et remplacés par ce qui suit :**

- d) en congé familial pour les aidants naturels;
- e) en congé en raison de violence familiale d'une durée de plus de cinq jours;
- f) en congé en raison d'une situation d'urgence d'une durée de plus de 14 jours;
- g) en congé de service judiciaire d'une durée de plus de 10 jours;
- h) en congé accordé aux réservistes.

**4. L'alinéa 26(2)a) est modifié par suppression de «pendant une durée réglementaire» et par substitution de «pendant au moins la durée réglementaire».**

**5. Le paragraphe 30.2(13) est abrogé et remplacé par ce qui suit :**

Disclosure permitted

(13) Nothing in subsection (12) prevents an employer from disclosing a record if the disclosure is in compliance with paragraph 34.1(1)(b).

**6. The following is added after section 30.2:**

Emergency Leave

Definitions

30.3. (1) In this section,

"child care" means the provision of supervision to, and attention to the needs of, a child; (*soins aux enfants*)

"emergency" means one or more of the following circumstances that has the effect of preventing an employee from performing the duties of their employment:

- (a) a state of emergency declared under section 14 of the *Emergency Management Act* or a state of local emergency declared under section 18 of that Act,
- (b) a state of public health emergency declared under section 32 of the *Public Health Act*,
- (c) a direction or order of a public health officer, the Chief Public Health Officer or a Deputy Chief Public Health Officer provided or made under the *Public Health Act*,
- (d) an emergency declared under the *Emergencies Act* (Canada),
- (e) an order of a quarantine officer made under the *Quarantine Act* (Canada),
- (f) a prescribed circumstance,
- (g) a circumstance referred to in subsection (2); (*situation d'urgence*)

"health care professional" means a person who is entitled to practice as a physician, registered nurse or nurse practitioner under the laws of the jurisdiction in which health care is provided to an employee or an employee's family member; (*professionnel de la santé*)

"health officer" means

- (a) a public health officer, the Chief Public Health Officer or a Deputy Chief Public Health Officer, as defined in the *Public Health Act*, or

Divulgateion permise

(13) Le paragraphe (12) n'a pas pour effet d'empêcher l'employeur de divulguer un dossier si la divulgation est faite conformément à l'alinéa 34.1(1)b).

**6. La même loi est modifiée par insertion, après l'article 30.2, de ce qui suit :**

Congé en raison d'une situation d'urgence

30.3. (1) Les définitions suivantes s'appliquent au présent article. Définitions

«agent de soins de santé» Selon le cas :

- a) un administrateur de la santé publique, l'administrateur en chef de la santé publique ou un sous-administrateur en chef de la santé publique au sens de la *Loi sur la santé publique*;
- b) un responsable de la santé publique du gouvernement du Canada. (*health officer*)

«maladie à déclaration obligatoire» Maladie à déclaration obligatoire prévue par règlement en vertu de l'alinéa 50(1)r) de la *Loi sur la santé publique*. (*reportable disease*)

«professionnel de la santé» Toute personne qui a le droit d'exercer comme médecin, infirmier autorisé ou infirmier praticien en vertu des lois du lieu où les soins de santé sont fournis à un employé ou un membre de sa famille. (*health care professional*)

«situation d'urgence» Une ou plusieurs des circonstances suivantes ayant pour effet d'empêcher tout employé d'exercer les fonctions de son emploi :

- a) l'état d'urgence proclamé en vertu de l'article 14 de la *Loi sur la gestion des urgences* ou l'état d'urgence locale proclamé en vertu de l'article 18 de cette loi;
- b) l'état d'urgence sanitaire publique déclaré en vertu de l'article 32 de la *Loi sur la santé publique*;
- c) une directive ou un ordre d'un administrateur de la santé publique, de l'administrateur en chef de la santé publique ou d'un sous-administrateur en chef de la santé publique au titre de la *Loi sur la santé publique*;
- d) une situation de crise déclarée en vertu de la *Loi sur les mesures d'urgence*

(b) a public health official of the Government of Canada; (*agent de soins de santé*)

"prescribed emergency" means an emergency prescribed for the purposes of paragraph (f) of the definition "emergency" in this subsection; (*situation d'urgence prévue par règlement*)

"reportable disease" means a reportable disease prescribed under paragraph 50(1)(r) of the *Public Health Act*. (*maladie à déclaration obligatoire*)

Emergency affecting family member

(2) For the purposes of this section, an emergency includes a circumstance referred to in paragraphs (a) to (f) of the definition "emergency" in subsection (1) that affects a family member of an employee if

- (a) the declaration, direction, order or other circumstance results in a situation where the family member of the employee requires care, child care or assistance;
- (b) the employee is the person most reasonably able under the circumstances to provide the family member with the required care, child care or assistance; and
- (c) providing the required care, child care or assistance to the family member has the effect of preventing the employee from performing the duties of their employment.

Entitlement to leave

(3) In an emergency, an employee is entitled to emergency leave, without pay, during any period when the employee is unable to perform the duties of their employment because of the emergency.

Retroactive entitlement to leave: prescribed emergency

(4) In a prescribed emergency, an employee is entitled to emergency leave, without pay, during any period beginning on or after the date specified in the regulations, which date may be earlier than the day on which the regulations are made, when

- (a) the employee is unable to perform the duties of their employment because of a prescribed reason related to the emergency; and

(Canada);

e) un ordre d'un agent de quarantaine au titre de la *Loi sur la mise en quarantaine* (Canada);

f) une circonstance prévue par règlement;

g) une circonstance visée au paragraphe (2). (*emergency*)

«situation d'urgence prévue par règlement» Situation d'urgence prévue par règlement pour l'application de l'alinéa f) de la définition de «situation d'urgence» au présent paragraphe. (*prescribed emergency*)

«soins aux enfants» Surveillance d'un enfant, et l'attention accordée à ses besoins. (*child care*)

(2) Pour l'application du présent article, toute situation d'urgence comprend l'une ou l'autre des circonstances visées aux alinéas a) à f) de la définition de «situation d'urgence» au paragraphe (1) qui touche un membre de la famille de l'employé si, à la fois :

- a) la proclamation ou déclaration, la directive, l'ordre ou l'autre circonstance fait en sorte que le membre de la famille a besoin de soins ou d'une aide ou des soins aux enfants;
- b) l'employé est la personne la plus raisonnablement capable, dans les circonstances, de fournir les soins ou l'aide au membre de la famille ou les soins aux enfants;
- c) le fait de fournir les soins ou l'aide au membre de la famille ou les soins aux enfants empêche l'employé d'exercer les fonctions de son emploi.

Situation d'urgence touchant les membres de la famille

(3) En situation d'urgence, l'employé a droit au congé en raison d'une situation d'urgence, non payé, pendant la période où il est incapable d'exercer les fonctions de son emploi à cause de la situation d'urgence.

Droit au congé

(4) En situation d'urgence prévue par règlement, l'employé a droit au congé en raison d'une situation d'urgence, non payé, pendant la période qui commence à la date fixée dans le règlement ou postérieurement, laquelle peut être antérieure à la prise du règlement, dans les cas suivants :

- a) l'employé est incapable d'exercer les fonctions de son emploi pour un motif prévu par règlement en lien avec la situation d'urgence;

Droit au congé rétroactif : urgence prévue par règlement

- (b) if the date specified in the regulations is earlier than the day on which the regulations are made, the employee is deemed under the regulations to have been entitled to emergency leave.

- b) si la date fixée dans le règlement est antérieure à la date de prise du règlement, l'employé est réputé en vertu du règlement avoir eu droit au congé en raison d'une situation d'urgence.

Limitation

(5) For greater certainty, if an employee is on emergency leave to provide care, child care or assistance to a family member, no other employee may take emergency leave under this section in respect of the same family member before the end of the leave taken by the first-mentioned employee.

(5) Il est entendu que si un employé est en congé en raison d'une situation d'urgence afin de fournir des soins ou de l'aide à un membre de la famille ou des soins aux enfants, aucun autre employé ne peut prendre de congé en raison d'une situation d'urgence aux termes du présent article relativement au même membre de la famille avant la fin du congé pris par ce premier employé.

Limite

Reportable disease emergency

(6) For greater certainty, if an emergency exists due to an epidemic or pandemic of a reportable disease, subsection (3) applies in respect of an employee who will not be performing the duties of their employment because the employee

- (a) is under individual medical investigation, supervision or treatment related to the reportable disease;
- (b) is in isolation or quarantine, or is subject to a control measure, including self-isolation, if the isolation, quarantine or control measure was implemented as a result of directions or recommendations related to the reportable disease provided to the employee or the public by a health officer, a health care professional, NWT HealthNet, the Government of the Northwest Territories or the Government of Canada;
- (c) is under a direction given by the employer in response to a concern of the employer that the employee may expose other persons in the workplace to the reportable disease;
- (d) is providing care or child care to a family member in accordance with subsection (2) because of a situation related to the reportable disease, including a school or day care closure; or
- (e) is directly affected by travel restrictions related to the emergency and in the circumstances cannot reasonably be expected to travel to their workplace.

(6) Il est entendu que si une situation d'urgence existe en raison de l'épidémie ou la pandémie d'une maladie à déclaration obligatoire, le paragraphe (3) s'applique à l'égard de l'employé qui n'exercera pas les fonctions de son emploi pour l'une ou l'autre des raisons suivantes :

- a) il fait l'objet d'une enquête, d'une surveillance ou d'un traitement de nature médicale lié à la maladie à déclaration obligatoire;
- b) il est en isolement ou en quarantaine, ou est assujéti à une mesure de contrôle, notamment l'auto-isolement, si l'isolement, la quarantaine ou la mesure de contrôle a été mis en place à la suite de directives ou de recommandations liées à la maladie à déclaration obligatoire fournies à l'employé ou au public par un agent de soins de santé, un professionnel de la santé, SantéNet TNO, le gouvernement des Territoires du Nord-Ouest ou le gouvernement du Canada;
- c) il est assujéti à une directive que lui a donnée son employeur en raison de son inquiétude face au risque que l'employé expose d'autres personnes dans son lieu de travail à la maladie à déclaration obligatoire;
- d) il fournit à un membre de la famille des soins ou des soins aux enfants conformément au paragraphe (2) en raison d'une situation liée à la maladie à déclaration obligatoire, notamment la fermeture d'une école ou d'une garderie;
- e) il est directement touché par des restrictions concernant les déplacements

Situation d'urgence liée à une maladie à déclaration obligatoire

liées à la situation d'urgence et, dans les circonstances, il n'est pas raisonnable de s'attendre à ce qu'il se rende à son lieu de travail.

Notice to employer	(7) An employee who intends to take emergency leave under this section shall advise the employer that the employee will be doing so, and shall advise the employer before commencing the leave where possible.	(7) L'employé qui a l'intention de prendre le congé en raison d'une situation d'urgence en vertu du présent article en avise son employeur et ce, avant de débiter son congé, si possible.	Avis à l'employeur
Verification of entitlement to leave	(8) Subject to subsection (9), an employee who takes emergency leave under this section shall provide, within a period of time that is reasonable in the circumstances, if requested by the employer, reasonable verification of the employee's entitlement to the leave that meets the requirements, if any, specified in the regulations.	(8) Sous réserve du paragraphe (9), l'employé qui prend un congé en raison d'une situation d'urgence en vertu du présent article fournit, dans un délai raisonnable dans les circonstances, à la demande de l'employeur, la preuve raisonnable de son droit au congé, lequel remplit les exigences prévues par règlement, le cas échéant.	Preuve du droit au congé
No medical certificate in reportable disease emergency	(9) If an employee takes emergency leave under this section as a result of an emergency that exists due to an epidemic or pandemic of a reportable disease or prescribed communicable disease, the employee is not required to provide, and the employer shall not request, a medical certificate for the purposes of subsection (8).	(9) S'il prend un congé en raison d'une situation d'urgence en vertu du présent article à la suite d'une situation d'urgence attribuable à l'épidémie ou la pandémie d'une maladie à déclaration obligatoire ou d'une maladie transmissible prévue par règlement, l'employé n'est pas tenu de fournir un certificat médical, et l'employeur ne lui en demande aucun, pour l'application du paragraphe (8).	Aucun certificat médical lors d'une urgence en raison d'une maladie à déclaration obligatoire
Duration of emergency leave	(10) For greater certainty, any emergency leave taken under this section may be taken for as long as the emergency continues and prevents the employee from performing the duties of their employment.	(10) Il est entendu que le congé en raison d'une situation d'urgence pris en vertu du présent article peut durer aussi longtemps que la situation d'urgence existe et qu'elle empêche l'employé d'exercer les fonctions de son emploi.	Durée du congé lors d'une situation d'urgence
No required length of employment	(11) An employee is not required to have been employed by the employer for any minimum length of time to be eligible for emergency leave under this section.	(11) Pour être admissible au congé en raison d'une situation d'urgence en vertu du présent article, il n'est pas nécessaire que l'employé ait été employé par l'employeur pendant une durée minimale.	Aucune durée minimale requise
Regulations	(12) The Commissioner, on the recommendation of the Minister, may make regulations (a) providing that an employee who does not perform the duties of their employment because of a prescribed reason is deemed to be unable to perform those duties because of an emergency; and (b) notwithstanding anything in this section, prescribing reasons for which an employee is unable to perform the duties of their employment because of an emergency that do not entitle the employee to emergency leave under this section.	(12) Le commissaire, sur la recommandation du ministre, peut, par règlement : a) prévoir que l'employé qui n'exerce pas les fonctions de son emploi pour un motif prévu par règlement est réputé être incapable d'exercer ses fonctions en raison d'une situation d'urgence; b) malgré les autres dispositions du présent article, prévoir certains motifs pour lesquels l'employé est incapable d'exercer les fonctions de son emploi en raison d'une situation d'urgence qui ne lui confèrent pas le droit au congé en raison d'une situation d'urgence que prévoit le présent article.	Règlements

**7. Subsection 32.1(4) is amended by striking out "subsection (4)" and substituting "subsection (3)".**

**8. The following is added after section 34:**

Confidentiality 34.1. (1) An employer shall

- (a) maintain confidentiality in respect of all matters that come to the employer's knowledge in relation to a leave taken by an employee under this Part; and
- (b) not disclose information relating to the leave to any person except where
  - (i) the employee has consented to the disclosure,
  - (ii) the disclosure is made to an officer, employee, consultant or agent of the employer who needs the information in the performance of their duties, or
  - (iii) the disclosure is authorized or required by law.

Restriction on further disclosure (2) A person to whom information is disclosed under paragraph (1)(b) shall not disclose that information to any other person unless it is to be used for the purpose for which it was originally disclosed or for a different purpose authorized by paragraph (1)(b).

**9. Paragraph 35(1)(f) is repealed and the following is substituted:**

- (f) emergency leave;
- (g) reservist leave.

**10. Subparagraphs 36(1)(c)(iii) to (ix) are repealed and the following is substituted:**

- (iii) sick leave,
- (iv) compassionate leave,
- (v) family caregiver leave,
- (vi) family violence leave,
- (vii) emergency leave,
- (viii) bereavement leave,
- (ix) court leave, or
- (x) reservist leave.

**7. Le paragraphe 32.1(4) est modifié par suppression de «paragraphe (4)» et par substitution de «paragraphe (3)».**

**8. La même loi est modifiée par insertion, après l'article 34, de ce qui suit :**

Confidentialité 34.1. (1) L'employeur, à la fois :

- a) préserve la confidentialité quant aux questions portées à sa connaissance en lien avec le congé pris par l'employé en vertu de la présente partie;
- b) ne divulgue à personne les renseignements concernant le congé, sauf dans l'un ou l'autre des cas suivants :
  - (i) l'employé y a consenti,
  - (ii) la divulgation est faite à tout dirigeant, employé, expert-conseil ou mandataire de l'employeur qui requiert ces renseignements dans l'exercice de ses fonctions,
  - (iii) la divulgation est autorisée ou requise légalement.

Restriction quant à la divulgation ultérieure (2) La personne à qui les renseignements sont divulgués en application de l'alinéa (1)b) ne peut les divulguer à toute autre personne, sauf si les renseignements doivent servir à la fin que visait leur divulgation initiale ou à une autre fin autorisée par l'alinéa (1)b).

**9. L'alinéa 35(1)f) est abrogé et remplacé par ce qui suit :**

- f) le congé en raison d'une situation d'urgence;
- g) le congé accordé aux réservistes.

**10. Les sous-alinéas 36(1)c)(iii) à (ix) sont abrogés et remplacés par ce qui suit :**

- (iii) un congé de maladie,
- (iv) un congé pour raisons familiales,
- (v) un congé familial pour les aidants naturels,
- (vi) un congé en raison de violence familiale,
- (vii) un congé en raison d'une situation d'urgence,
- (viii) un congé de décès,
- (ix) un congé de service judiciaire,
- (x) un congé accordé aux réservistes.

**11. (1) The following is added after subsection 41(2):**

Exception

- (2.1) Subsection (2) does not apply if
- (a) the employer is required to terminate the employment of the employees because of an unforeseen event or circumstance beyond the control of the employer, including
    - (i) the destruction or major breakdown of machinery or equipment,
    - (ii) climatic or economic conditions,
    - (iii) a state of emergency declared under section 14 of the *Emergency Management Act* or a state of local emergency declared under section 18 of that Act,
    - (iv) a state of public health emergency declared under section 32 of the *Public Health Act*,
    - (v) a direction or order of a public health officer, the Chief Public Health Officer or a Deputy Chief Public Health Officer provided or made under the *Public Health Act*, and
    - (vi) an emergency declared under the *Emergencies Act (Canada)*;
  - (b) the employer has exercised due diligence to foresee and avoid the cause of termination; and
  - (c) the cause of termination prevents the employer from respecting the periods of notice set out in subsection (2).

Notice period if subsection (2.1) applies

(2.2) If subsection (2.1) applies, the copies of the notice of termination referred to in subsection (1) must be given as soon as possible.

**(2) Subsection 41(4) is amended by striking out "section 38" and substituting "sections 37 and 38".**

**(3) The following is added after subsection 41(4):**

Notice may be concurrent

(5) For greater certainty, subsection (4) does not prevent an employer from giving a notice of termination required under subsection (1) concurrently

**11. (1) La même loi est modifiée par insertion, après le paragraphe 41(2), de ce qui suit :**

Exception

- (2.1) Le paragraphe (2) ne s'applique pas si les conditions suivantes sont réunies :
- a) l'employeur est tenu de mettre fin à l'emploi des employés en raison d'un événement ou d'une circonstance imprévisible hors de son contrôle, notamment :
    - (i) la destruction ou le bris majeur de machines ou d'équipement,
    - (ii) les conditions climatiques ou économiques,
    - (iii) l'état d'urgence proclamé en vertu de l'article 14 de la *Loi sur la gestion des urgences* ou l'état d'urgence locale proclamé en vertu de l'article 18 de cette loi,
    - (iv) l'état d'urgence sanitaire publique déclaré en vertu de l'article 32 de la *Loi sur la santé publique*,
    - (v) une directive ou un ordre d'un administrateur de la santé publique, de l'administrateur en chef de la santé publique ou d'un sous-administrateur en chef de la santé publique au titre de la *Loi sur la santé publique*,
    - (vi) une situation de crise déclarée en vertu de la *Loi sur les mesures d'urgence (Canada)*;
  - b) l'employeur a exercé la diligence raisonnable pour prévoir et éviter la cause de la cessation d'emploi;
  - c) la cause de la cessation d'emploi empêche l'employeur de respecter les délais d'avis prévus au paragraphe (2).

(2.2) Si le paragraphe (2.1) s'applique, les copies de l'avis de cessation d'emploi visé au paragraphe (1) doivent être remises dès que possible.

**(2) Le paragraphe 41(4) est modifié par suppression de «de l'article 38» et par substitution de «des articles 37 et 38».**

**(3) La même loi est modifiée par adjonction, après le paragraphe 41(4), de ce qui suit :**

Délai d'avis

(5) Il est entendu que le paragraphe (4), n'empêche pas l'employeur de remettre l'avis de cessation d'emploi requis en vertu du paragraphe (1)

Remise simultanée de l'avis



with a notice of termination required under paragraph 37(1)(a), provided that the employer complies with the periods of notice required under both this section and subsection 38(2).

**12. The following is added after paragraph 59(h.1):**

- (h.2) in respect of emergency leave under section 30.3,
  - (i) prescribing circumstances that constitute an emergency for the purposes of paragraph (f) of the definition "emergency" in subsection 30.3(1),
  - (ii) prescribing the requirements for verification of an employee's entitlement to emergency leave under subsection 30.3(8),
  - (iii) prescribing communicable diseases for the purposes of subsection 30.3(9),
  - (iv) prescribing reasons for the purposes of paragraph 30.3(12)(a), and
  - (v) providing for any transitional matters that the Commissioner considers necessary or advisable in connection with the implementation of section 30.3;
- (h.3) in respect of emergency leave for an emergency prescribed for the purposes of paragraph (f) of the definition "emergency" in subsection 30.3(1),
  - (i) specifying a date and prescribing reasons for the purposes of subsection 30.3(4),
  - (ii) providing that an employee who is unable to perform the duties of their employment because of a prescribed reason related to the emergency during any period beginning on or after the date specified under subparagraph (i) is deemed to have been entitled to and to have taken emergency leave under subsection 30.3(4) during that period,
  - (iii) providing that one or more provisions of this Act respecting emergency leave are deemed to apply, with any necessary modifications, in respect of a deemed leave described in

en même temps que l'avis de cessation d'emploi requis en vertu de l'alinéa 37(1)a), pourvu que l'employeur se conforme aux délais d'avis exigés en vertu du présent article et du paragraphe 38(2).

**12. (1) La même loi est modifiée par insertion, après l'alinéa 59h.1), de ce qui suit :**

- h.2) dans le cas du congé en raison d'une situation d'urgence prévu à l'article 30.3 :
  - (i) prévoir les circonstances qui constituent une situation d'urgence pour l'application de l'alinéa f) de la définition de «situation d'urgence» au paragraphe 30.3(1),
  - (ii) prévoir les exigences relatives à la preuve du droit de l'employé au congé en raison d'une situation d'urgence prévue au paragraphe 30.3(8),
  - (iii) prévoir les maladies transmissibles pour l'application du paragraphe 30.3(9),
  - (iv) prévoir les motifs pour l'application de l'alinéa 30.3(12)a),
  - (v) prévoir les questions transitoires que le commissaire estime nécessaires ou souhaitables relativement à la mise en œuvre de l'article 30.3;
- h.3) dans le cas du congé en raison d'une situation d'urgence prévue par règlement pour l'application de l'alinéa f) de la définition de «situation d'urgence» au paragraphe 30.3(1) :
  - (i) préciser la date et prévoir les motifs pour l'application du paragraphe 30.3(4),
  - (ii) prévoir que l'employé qui est incapable d'exercer les fonctions de son emploi pour tout motif prévu par règlement en lien avec la situation d'urgence pendant une période commençant à la date mentionnée au sous-alinéa (i) ou ultérieurement est réputé avoir eu droit au congé en raison d'une situation d'urgence, et l'avoir pris, en vertu du paragraphe 30.3(4) pendant cette période,
  - (iii) prévoir qu'une ou plusieurs dispositions de la présente loi

- subparagraph (ii), and  
(iv) respecting the deeming of a suspension, layoff or termination of employment as an emergency leave taken under subsection 30.3(4);

- concernant le congé en raison d'une situation d'urgence sont réputées s'appliquer, avec les adaptations nécessaires, relativement au congé réputé prévu au sous-alinéa (ii),  
(iv) régir la présomption de suspension, mise à pied ou cessation d'emploi comme étant un congé en raison d'une situation d'urgence visé au paragraphe 30.3(4);

**13. The following is added after section 59:**

**13. La même loi est modifiée par insertion, après l'article 59, de ce qui suit :**

Retroactive regulations

59.1. Regulations made under any of the following provisions may provide that the regulations come into force on a date earlier than the day on which the regulations are made:

- (a) paragraph 30.3(12)(a);
- (b) subparagraph 59(h.2)(i), (iv) or (v);
- (c) paragraph 59(h.3).

59.1. Les règlements pris en application de l'une ou l'autre des dispositions suivantes peuvent prévoir qu'ils entrent en vigueur à une date antérieure à celle à laquelle ils ont été pris :

- a) l'alinéa 30.3(12)a);
- b) le sous-alinéa 59h.2)(i), (iv) ou (v);
- c) l'alinéa 59h.3).

Effet rétroactif

**14. Subsection 61(1) is amended**

**(a) by adding the following after paragraph (a):**

- (a.1) the employer failed to reinstate the employee to the position the employee occupied on the day on which they commenced a leave or to a comparable position as required under section 35;

**(b) in paragraph (b), by striking out "section 37" and substituting "section 36 or 37".**

**14. Le paragraphe 61(1) est modifié :**

**a) par insertion, après l'alinéa a), de ce qui suit :**

- a.1) l'employeur a fait défaut de réintégrer l'employé ou de l'affecter à un poste comparable à celui qu'il occupait au début de son congé en violation de l'article 35;

**b) par suppression de «à l'article 37», à l'alinéa b), et par substitution de «à l'article 36 ou 37».**

**15. Paragraph 66(3)(c) is repealed and the following is substituted:**

- (c) the employer failed to reinstate the employee to the position the employee occupied on the day on which they commenced a leave or to a comparable position as required under section 35.

**15. L'alinéa 66(3)c) est abrogé et remplacé par ce qui suit :**

- c) l'employeur a fait défaut de réintégrer l'employé ou de l'affecter à un poste comparable à celui qu'il occupait au début de son congé en violation de l'article 35.

**16. (1) The English version of subsection 70(1) is amended by striking out "declaration made" and substituting "determination made".**

**(2) The English version of subsections 70(2) and (5) are each amended by striking out "order or declaration" wherever it appears and substituting "order or determination".**

**16. (1) La version anglaise du paragraphe 70(1) est modifiée par suppression de «declaration made» et par substitution de «determination made».**

**(2) La version anglaise des paragraphes 70(2) et (5) est modifiée par suppression de «order or declaration» et par substitution de «order or determination».**

Commence-  
ment

**17. This Act or any provision of this Act comes into force on a day or days to be fixed by order of the Commissioner.**

**17. La présente loi ou telle de ses dispositions entre en vigueur à la date fixée par décret du commissaire.**

Entrée en  
vigueur