

PART XVI LIE DETECTORS

1. Definitions

68. In this Part, and for purposes of Part XVIII (Reprisal), section 74.12, Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions), Part XXVII (Regulations) and Part XXVIII (Transition, Amendment, Repeals, Commencement and Short Title), insofar as matters concerning this Part are concerned,

"employee" means an employee as defined in subsection 1 (1) and includes an applicant for employment, a police officer and a person who is an applicant to be a police officer; ("employé")

"employer" means an employer as defined in subsection 1 (1) and includes a prospective employer and a police governing body; ("employeur")

"lie detector test" means an analysis, examination, interrogation or test that is taken or performed,

(a) by means of or in conjunction with a device, instrument or machine, and

(b) for the purpose of assessing or purporting to assess the credibility of a person. ("test du détecteur de mensonges") 2000, c. 41, s. 68; 2009, c. 9, s. 2.

Right to refuse test

69. Subject to section 71, an employee has a right not to,

(a) take a lie detector test;

(b) be asked to take a lie detector test; or

(c) be required to take a lie detector test. 2000, c. 41, s. 69.

Prohibition: testing

70. (1) Subject to section 71, no person shall, directly or indirectly, require, request, enable or influence an employee to take a lie detector test. 2000, c. 41, s. 70 (1).

Prohibition: disclosure

(2) No person shall disclose to an employer that an employee has taken a lie detector test or disclose to an employer the results of a lie detector test taken by an employee. 2000, c. 41, s. 70 (2).

Consent to test by police

71. This Part shall not be interpreted to prevent a person from being asked by a police officer to take, consenting to take and taking a lie detector test administered on behalf of a police force in

Ontario or by a member of a police force in Ontario in the course of the investigation of an offence. 2000, c. 41, s. 71.

PART XVII RETAIL BUSINESS ESTABLISHMENTS

Application of Part

72. (1) This Part applies with respect to,

- (a) retail business establishments as defined in subsection 1 (1) of the *Retail Business Holidays Act*;
- (b) employees employed to work in those establishments; and
- (c) employers of those employees. 2000, c. 41, s. 72 (1).

Exception

(2) This Part does not apply with respect to retail business establishments in which the primary retail business is one that,

- (a) sells prepared meals;
- (b) rents living accommodations;
- (c) is open to the public for educational, recreational or amusement purposes; or
- (d) sells goods or services incidental to a business described in clause (a), (b) or (c) and is located in the same premises as that business. 2000, c. 41, s. 72 (2).

Right to refuse work

73. (1) An employee may refuse to work on a public holiday or a day declared by proclamation of the Lieutenant Governor to be a holiday for the purposes of the *Retail Business Holidays Act*. 2000, c. 41, s. 73 (1).

Same

(2) An employee may refuse to work on a Sunday. 2000, c. 41, s. 73 (2).

Notice of refusal

(3) An employee who agrees to work on a day referred to in subsection (1) or (2) may then decline to work on that day, but only if he or she gives the employer notice that he or she declines at least 48 hours before he or she was to commence work on that day. 2000, c. 41, s. 73 (3).

PART XVIII REPRISAL

Reprisal prohibited

74. (1) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so,

(a) because the employee,

(i) asks the employer to comply with this Act and the regulations,

(ii) makes inquiries about his or her rights under this Act,

(iii) files a complaint with the Ministry under this Act,

(iv) exercises or attempts to exercise a right under this Act,

(v) gives information to an employment standards officer,

(vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,

(vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the *Retail Business Holidays Act*,

(viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or

(b) because the employer is or may be required, because of a court order or garnishment, to pay to a third party an amount owing by the employer to the employee. 2000, c. 41, s. 74 (1).

Onus of proof

(2) Subject to subsection 122 (4), in any proceeding under this Act, the burden of proof that an employer did not contravene a provision set out in this section lies upon the employer. 2000, c. 41, s. 74 (2).

1. 104.

(1) If an employment standards officer finds a contravention of any of the following Parts with respect to an employee, the officer may order that the employee be compensated for any loss he or she incurred as a result of the contravention or that he or she be reinstated or that he or she be both compensated and reinstated:

1. Part XIV (Leaves of Absence).

2. Part XVI (Lie Detectors).

3. Part XVII (Retail Business Establishments).

4. Part XVIII (Reprisal). 2000, c. 41, s. 104 (1); 2009, c. 9, s. 7.