

CHAPTER NINETEEN

Mapping Labour Market Regulation

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I. Employment Regulation

- With regulatory standards, governments inject public policy into labour markets when market forces are producing unacceptable outcomes
- For as long as there has been 'employment', there has been regulation of employment. Employment is among most regulated relationships.
- Regulatory standards laws function by imposing mandatory rules that restrict freedom of contract
 - **Mandatory floor:** The minimum wage is an example — it says to employers and employees that they cannot agree to a wage less than the statutory minimum
 - **Mandatory ceiling:** An example is the maximum hours of work rules found in employment standards legislation
- Other regulatory standard laws impose positive obligations
 - Examples: Health and safety legislation requires employers to maintain 'safe workplace'; human rights statutes prohibit discriminatory practices

II. Jurisdiction: The Power to Regulate Work

- The *Constitution Act* divides the jurisdiction to legislate between the federal and provincial governments
- Understanding which level of government has authority to regulate employment is crucial in the law of work
- Approximately 92 percent of Canadian workers are subject to **provincial employment related legislation**
- The remaining 8 percent that fall within **federal jurisdiction** are part three categories:
 1. Employees of the federal government
 2. Employed by an employer that operates in an industry that is specifically assigned to federal jurisdiction by the Constitution
 3. Employed by a company whose ordinary business is to provide a “vital” or “integral” service to a federally regulated business

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III. The Process of Law-Making: Statutes and Regulations

- A **bill** is a draft proposal of a law. Ministers of the government introduce most bills that become law (government bills)
- The bill then goes through a series of “readings” in parliament, and is then sent to Committees for debate and sometimes changes.
- **Statutes** are bills that have been successfully enacted by provincial or federal Parliament
- A statute may grant a right to create **regulations** that fill in details of how the legislation will function and who it will cover
- Regulations can be amended quickly and periodically without going through the complex process of passing a new bill

Statute: Ontario Employment Standards Act

Regulation: Ontario Regulation 285/01 Exemptions, Special Rules, and Establishment of Minimum Wage

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IV. Expert Administrative Tribunals

- The regulatory standards model is mostly a complaint-based model
- Unresolved complaints may end up before an expert administrative tribunal
- Tribunals are created by a statute for the purpose of administering and enforcing the legislation
- Governments create expert administrative tribunals for two principal reasons
 1. To ensure that the people administering the legislation have expertise in the field
 2. To keep employment-related disputes from clogging up the courts
- The courts play a smaller role through a legal process known as judicial review, to ensure that tribunals do not exceed the jurisdiction
- **We are interested in this class with:** Ontario Labour Relations Board (authority over ESA) and Ontario Human Rights Tribunal