

# BILL 59 –THE ACT TO MODERNIZE THE OCCUPATIONAL HEALTH AND SAFETY REGIME IN QUEBEC

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On October 6, 2021, the *Act to Modernize the occupational health and safety regime* (Bill 59) received Royal Assent in Quebec. However, most of the amendments proposed by Bill 59 will only enter into force in 2022 or even later, which will give employers time to ensure that they are compliant. Bill 59 is the first major update of the *Act respecting occupational health and safety* (AOHS) and the *Act respecting industrial accidents and occupational diseases* (AIAOD) since their respective adoptions in 1979 and 1985. This bulletin will highlight some of the significant changes which will have an impact on employers.

## 1. Imminent changes requiring immediate employer action

As of April 6, 2022, employers will be required to do the following: (i) implement a prevention program, (ii) form a health and safety committee; and (iii) elect a health and safety representative.

### *i. The Prevention Program*

The prevention program is a preventative action plan that is specific to each establishment and must comply with the provisions of the AOHS, the *Regulation respecting prevention programs and various other applicable regulations*. While there is no template prevention program provided by the government, the prevention program must at least include the following:

- the main sources of risk in the establishment;
- the measures to be taken to eliminate or, if that is not possible, to reduce and control the risks identified through the prioritization of prevention measures;
- the measures to be taken to ensure that the corrective measures are sustainable and effective, so that the risks are eliminated or controlled permanently;
- the schedule for carrying out the corrective measures and the names of the persons responsible for doing so;
- the monitoring, evaluation, maintenance and follow-up measures to verify that the identified risks are eliminated or controlled;
- the identification of the individual protective means and equipment which are both in compliance with

the regulations and best adapted to meet the needs of the establishment's workers;

- occupational health and safety training and information programs;
- the establishment and maintenance of a list of hazardous materials used in the facility and contaminants that may be emitted from the facility; and
- maintaining an adequate first aid service to respond to emergencies.

#### *ii. Health and Safety Committee*

Prior to Bill 59, only companies with more than 20 workers in certain industries were required to form a health and safety committee if requested by either party. Bill 59 provides that all establishments with 20 or more workers must establish a health and safety committee. The obligations of the health and safety committee are determined by agreement between the employer, the certified association and the workers.

The health and safety committee shall include at least 2 members: (a) one member representing the workers; and (b) one member representing the employer, if the company's establishment employs from 20 to 50 workers. If the establishment employs more than 50 workers, and depending on the total number of workers in the establishment, more worker representatives must be added to the committee, up to a maximum of 11 members.

Where there is a certified association in the workplace, it is the association that appoints the workers to the committee based on the Regulation respecting health and safety committees. Otherwise, the employer must notify the workers of: (a) the intention to create a health and safety committee; (b) the role and mandate of the committee; (c) the profile of individuals sought; (d) the selection process for the committee; and (e) the obligation for the workers to select one health and safety representative.

#### *iii. Health and Safety Representative*

As soon as a health and safety committee is created in an establishment, a health and safety representative must be designated by the workers. The representative's duties include but are not limited to: inspecting the workplace; receiving notices of accidents and investigating events that have or could have caused an accident and informing the health and safety committee; filing complaints with the CNESST; participating in the identification and analysis of risks that may affect the health and safety of workers in the establishment and in the identification of hazardous materials in the workplace.

## **2. Other relevant amendments for employers**

#### *i. Right to reinstatement*

The new section 170.3 of the AIAOD provides for a presumption by which an employer may reinstate workers

who suffered an employment injury who once again become able to carry on their employment, an equivalent employment, or a suitable employment available with their employer, even after the expiry of the period for exercising their right to return to work. To rebut this presumption, an employer must prove the existence of undue hardship related to this reinstatement.

*ii. Violence prevention*

Bill 59 now sets out an obligation for the employer to take the necessary measures in the workplace to ensure the protection of a worker exposed to physical or psychological violence, including spousal or sexual violence.

*iii. Telework*

Bill 59 explicitly states that the AOHS applies to teleworking, subject to any inconsistent provisions.

**Conclusion**

The provisions of Bill 59 will slowly enter into force between 2022 and January 1, 2024. As the provisions come into force, we will continue to provide updates on the various obligations for employers. For now, it is important that employers incorporate the measures described in section 1 above as soon as possible in order to ensure compliance with their upcoming obligations.

If you need assistance in drafting your prevention program or if you wish to obtain any other information, do not hesitate to contact a member of our Labour and Employment Group.

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**A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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