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# Employment Law in Quebec, Canada





## Introduction

The following provides a summary of aspects of Canadian law that may interest corporations considering doing business in Canada and specifically in Quebec. The information may also be of interest and useful to human resources professionals seeking an overview of Quebec employment-related law.

The Employment & Labour Relations group prepared this briefing, which is accurate at the time of writing. Readers are cautioned against making any decisions based on this material alone. This information does not constitute legal advice and any decisions should be made only after consultation with qualified professional advisors.

Only the laws of Quebec will be addressed in this summary. Information respecting the laws of Ontario, Alberta and British Columbia is available through McMillan's offices in Toronto, Calgary and Vancouver respectively.

The information in this brochure is current to July 2022.

## Federal and Provincial Jurisdiction

In Canada, the power to make laws is divided between the federal and provincial governments. In the area of employment law, the federal government only has jurisdiction over employment laws for specific works and undertakings within the exclusive federal constitutional jurisdiction, such as shipping, railways, broadcasting, airlines and banks. The vast majority of employment relationships, however, do not come within the exclusive federal jurisdiction and are governed by the laws of the province in which they are located.

The general rule, therefore, is that the provinces have jurisdiction over employment matters generally, while the federal government has jurisdiction only in exceptional cases, in respect of the specific works and undertakings. Only the laws of the Province of Quebec, the second most populous Canadian province and the only one having a civil law system and a majority of its population who is French-speaking, will be addressed in this summary.

## Minimum Standards of Employment

In Quebec, minimum standards of employment are defined by the *Act Respecting Labour Standards* (the "ALS"). Some of the minimum standards at the time of writing are set out below:

<b>Minimum wage</b>	\$14.25 per hour (or \$11.40 per hour for employees who receive gratuities or tips)
<b>Hours of work</b>	40 hours per week. Overtime over 40 hours per week (1.5 times regular wage)
<b>Public holidays</b>	8 paid statutory holidays (New Year's Day, Good Friday or Easter Monday at the employer's choice, the Monday preceding May 25th (National Patriots' Day), June 24th (Quebec National Holiday), Canada Day, Labour Day, Thanksgiving, and Christmas Day)
<b>Annual Leave (Vacation)</b>	When less than 1 year of service, one day for each month worked, for a total not exceeding 2 weeks (4% of wages as annual leave indemnity or vacation pay); After 1 year of service, 2 consecutive weeks (4% of wages as annual leave indemnity or vacation pay), plus 1 separate week unpaid leave if requested by the employee; After 3 years of service, 3 weeks (6% of wages as annual leave indemnity or vacation pay).
<b>Maternity Leave</b>	18 weeks of job-protected leave without pay. Since January 1st, 2006, employees are entitled to receive an allowance under the <i>Quebec Parental Insurance Plan</i>
<b>Paternity Leave</b>	5 weeks of job-protected leave without pay. Since January 1st, 2006, employees are entitled to receive an allowance under the <i>Quebec Parental Insurance Plan</i>
<b>Parental Leave</b>	65 weeks of job-protected leave without pay. This leave is in addition to the maternity or paternity leaves. Since January 1st, 2006, employees are entitled to receive an allowance under the <i>Quebec Parental Insurance Plan</i>
<b>Other Health and Family-Oriented Leaves</b>	<p>Short-term and extended job-protected absences or leaves owing to family or parental obligations, sickness, organ or tissue donation for transplant, accidents, domestic or sexual violence or family obligations are generally unpaid. Some of these leaves are detailed below:</p> <ul style="list-style-type: none"> <li>- 36 weeks over a period of 12 months due to a minor child's serious illness or accident (but up to 104 weeks over a period of 12 months due to serious bodily harm resulting from a criminal offence or due to serious and potentially mortal illness)</li> <li>- 16 weeks over a period of 12 months due to a relative's serious illness or accident (but up to 27 weeks over a period of 12 months due to a serious and potentially mortal illness)</li> <li>- 104 weeks due to the death or the disappearance of the employee's minor child</li> <li>- 104 weeks due to the suicide of the employee's spouse, father, mother or child of full age or due to the death of the employee's spouse or child of full age resulting from a criminal offence</li> </ul> <p>In addition, if the employee has more than 3 months of service, the first 2 days of the following absences are paid:</p> <ul style="list-style-type: none"> <li>- 26 weeks over a period of 12 months due to sickness, organ or tissue donation for transplant, accidents, domestic or sexual violence</li> <li>- 104 weeks over a period of 12 months due to serious bodily harm resulting from a criminal offence</li> <li>- 10 days per year to carry out obligations relating to the care, health or education of the employee's child or the child of a relative or of a person for whom the employee is a caregiver</li> </ul>

## The *Charter of the French Language* and the Quebec Market Place

Adopted on August 26th, 1977, the *Charter of the French Language* (the “French Language Charter”) declares French as the official language of the Province of Quebec. Among its manifold objectives, the French Language Charter aims to generalize the use of the French language in the Quebec labour market by, among other things, requiring that

- 1) offers of employment, transfer or promotion (including job postings),
- 2) all written communications addressed to employees, a portion of the workforce, an individual worker or an association of workers representing employees or a portion thereof (including all communications following the end of the employment relationship),
- 3) individual employment contracts entered into in writing and
- 4) application forms, documents relating to work conditions and/or training documents produced for employees be drawn up in French. However, individual employment contracts entered into in writing (if not adhesion contracts) may also be drawn up in a language other than French, at the request of the parties. Written communications addressed to an employee may be in a language other than French, if the employee has made such a request.

Quebec employees are entitled to carry on their activities in French and may not be dismissed or laid-off on the sole basis that they are exclusively French-speaking or have insufficient knowledge of a language other than French. Furthermore, an employer may not make the knowledge of a language other than French a condition of obtaining employment, unless the employer demonstrates that the performance of the duties requires such knowledge and that the employer first took all reasonable means to avoid imposing such a requirement.

“Reasonable means” means

- 1) assessing actual language needs associated with the duties,
- 2) ensuring that the language knowledge already required from other staff members is insufficient for the performance of those duties; and,
- 3) restricting as much as possible the number of positions involving duties whose performance requires knowledge or a specific level of knowledge of a language other than French. In addition, an employer who requires knowledge or a specific level of knowledge of a language other than French for a position within the organization must indicate the reasons for this requirement in its posting.

Also, in Quebec, every employee has a right to a work environment free of discrimination or harassment because the employee has no or little command of a language other than the official language or because the employee claims the possibility to express themselves in French. The employer must take reasonable means to prevent such conduct and, if such conduct is brought to the employer’s attention, to make it cease.

The French Language Charter applies to all corporations doing business in Quebec. In addition to its general requirements, the French Language Charter also contains specific requirements regarding “francization of enterprises” that apply to corporations with 50 or more employees in Quebec (as of June 1st, 2025, the francization will apply to corporations with 25 or more employees in Quebec). According to these requirements, corporations that employ 50 (or 25 as of June 1st, 2025) employees or more for a period of six (6) months must register with the *Office québécois de la langue française*

(the “OQLF”) and are obliged to conduct an analysis of their language situation with the assistance of the OQLF. If the OQLF concludes, after reviewing the corporation’s analysis, that the use of French is generalized at all levels of the corporation, it will issue a francization certificate. However, if the OQLF concludes that the use of French is not generalized, the corporation is required to submit a plan outlining how it intends to generalize the use of French within the corporation. Corporations with 100 employees or more are further required to form a francization committee whose mandate is to ensure that the use of French remains generalized within the enterprise. Refundable tax credits are available for eligible employers.

## Termination of Employment in Quebec

Termination of employment is one of the most significant areas of employment law. Usually, the analysis of a termination begins with an examination of whether there is a serious reason for the termination, followed by an assessment of the employer’s obligations in connection with the termination. The notion of “serious reason” is found in the *Civil Code of Quebec* (the “CCQ”) and is the equivalent of the common law notion of “cause”.

### Termination for Serious Reason

There is no employment “at will” in Canada. An employer is generally only entitled to dismiss an employee from employment without notice where it has a serious reason in law to do so.

There is no end to the various types or degrees of conduct or misconduct that can constitute a serious reason for termination of the employment. Single incidents of serious misconduct that constitute a serious reason do occur from time-to-time. For example, employees are sometimes caught stealing or misappropriating significant assets or resources from their employer. In such cases, where strong evidence of the theft or misappropriation is obtained, a serious reason for the termination of the employment may exist. However, such cases are relatively rare.

Normally, serious reason or potential serious reason cases arise in the context of much less serious conduct, such as attitude, attendance or job performance problems. A serious reason may exist in these cases, but usually only if the employee has continuously failed to meet the employer’s reasonable, expressed expectations, despite repeated warnings to the contrary. In that regard, the Courts (and other authorities of Quebec) generally require the employer to provide a series of progressive, clear, written warnings or other disciplinary measures to the employee regarding the employee’s unsatisfactory conduct and the need to improve or correct that conduct before terminating the employment relationship for a serious reason. The employee should be notified that the employment relationship is in jeopardy as a result of the maligned conduct, and should be given a reasonable opportunity to improve or correct the conduct before being dismissed for a serious reason.

As should be clear from the foregoing, termination of employment for a serious reason is considered exceptional, and a substantial burden is placed on an employer to establish that it has a serious reason to end the employment relationship without notice or pay in lieu of notice.

### Termination without a Serious Reason

In the absence of a serious reason for dismissal, employers must generally provide employees with working notice of termination of employment or pay in lieu of notice.

However, unlike other Canadian provinces, the Quebec legislature extended job protection measures to employees with two (2) or more years of uninterrupted services for the same employer, similar to the “grievance right” enjoyed by unionized employees. Once an employee reaches this benchmark

period, an employer cannot terminate him or her without a “good and sufficient cause”. Examples of good and sufficient cause include those related to the enterprise itself, such as a decline in business, reorganizations, implementation of a new technology, and sale of the enterprise. Other examples of good and sufficient cause may focus on the employee, and include misconduct, bad attitude, insufficient performance and incompetence. As such, in Quebec and unlike the other Canadian provinces, an employer cannot simply terminate an employee with over two (2) years service on a simple “without cause” basis. There needs to be good and sufficient cause to terminate and, unless the threshold of serious reason is also reached, there must also be notice or pay in lieu of notice.

If an employee believes that he or she was dismissed without good and sufficient reason, the ALS entitles him or her to file a complaint, within 45 days of his or her dismissal, to the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (the “CNESST”). The complaint, if not resolved earlier, will be adjudicated by the Administrative Labour Tribunal (in French it is called the *Tribunal Administratif du travail*, and referred to as the “TAT”). Employees may use, without charge, the CNESST in-house lawyers throughout this process.

The TAT has broad discretion in deciding these cases. If the TAT concludes that the employee was dismissed without good and sufficient cause, it may order his or her reinstatement, order the employer to compensate him or her for the wages he or she would have earned had he or she not been dismissed, and/or render any other decision it believes to be fair and reasonable in the circumstances. The foregoing is not applicable to senior managerial personnel; that is, a person who participates actively in the strategic orientation of the company, who works closely with its direction personnel, etc. Furthermore, this recourse is not applicable when the dismissal was done for economic reasons.

In Quebec, an employee's entitlements on termination without a serious reason arise from three (3) potential sources:

- A. Minimum standards established in the ALS;
- B. The right to reasonable notice of termination provided for in the CCQ; and
- C. Termination provisions in an enforceable written employment contract.

Each of these is briefly discussed below.

## **A. The ALS**

The ALS sets out minimum standards for individual notice of termination and lay-offs for a period of more than six (6) months. This obligation is not applicable when the employee (i) has less than three (3) months of uninterrupted service, (ii) whose contract for a fixed term or for a specific undertaking expires, (iii) has committed a serious fault (which is a significantly higher threshold than good and sufficient cause), and (iv) for whom the termination of the layoff is a result of superior force.

### **(1) Notice of Termination**

The ALS provides minimum standards for individual notice of termination and collective dismissals.

An employer can comply with the notice requirements under the ALS by providing working notice, compensatory indemnity in lieu of notice or a combination of both. During the statutory notice period of

a collective dismissal, the employer must maintain group health and welfare benefits, whether or not the employer chooses to provide working notice or an indemnity in lieu of notice.

### Individual Notice

Period of employment	Length of notice
Less than three (3) months	No notice
Three (3) months or more, but less than one (1) year	One (1) week
One (1) year or more, but less than five (5) years	Two (2) weeks
Five (5) years or more, but less than ten (10) years	Four (4) weeks
Ten (10) years or more	Eight (8) weeks

Individual notice of termination requirements are based on the length of the employee's period of employment, as follows:

### Collective Dismissals

A different set of requirements must be complied with in the case of a collective dismissal. A collective dismissal occurs when an employer terminates the employment of 10 employees or more or lays-off at least 10 employees of the same establishment for more than six (6) months in the period of a two (2) consecutive months. Those requirements do not apply to (i) a layoff of employees for an indeterminate period, but in fact less than six (6) months, (ii) in respect of a business whose activities are seasonal or intermittent, and (iii) in respect of a business affected by a strike or lockout.

Depending on the number of employees dismissed within that period, the notice of collective dismissal requirements range from eight (8) weeks to sixteen (16) weeks for each employee (regardless of their period of employment). The individual notice and the notice of collective dismissal are not cumulative. If the employer provides no notice or insufficient notice, the employee is entitled to claim the higher of the indemnities paid in lieu of individual notice or collective dismissal.

An employer undertaking a collective dismissal must also comply with certain statutory obligations, including the filing of a notice of collective dismissal to the *Ministère du Travail, de l'Emploi et de la Solidarité sociale, Direction générale des mesures et services d'emploi*. This notice requires the employer to provide information about the collective dismissal, including the number of affected employees, the sector of activity of the business and the reason(s) for the collective dismissal.

## **B. The Common Law: Reasonable Notice**

The entitlements to notice of termination established by the ALS are minimum standards only: greater obligations may be imposed by the terms of an employment agreement or, in the absence of an agreement, by common law. In the Province of Quebec, the common law is found in the CCQ.

When an employer intends to terminate an employment contract with an indeterminate term without alleging a serious reason, it must provide the employee with reasonable notice of termination or an indemnity in lieu of notice, the delay of which is not established by the CCQ. Although an employment contract may contain provisions addressing the issues of the notice of termination and/or pay in lieu of

notice, the CCQ contains a public order provision (a provision to which parties cannot contract out of) that renders unenforceable any employee renunciation of the right to obtain compensation for damages suffered where insufficient notice of termination is given or where he or she is victim of an abusive termination. As a result, unless an employee freely consents to a release at the time of termination and declares himself or herself satisfied of the notice of termination or payment in lieu thereof, any provisions contained in an employment contract regarding notice or pay in lieu of notice may be challenged by the employee.

Reasonable notice provided for in the CCQ is usually greater than statutory entitlements to notice. The determination of reasonable notice varies from case-to-case, and is dependent upon a number of factors, including the following:

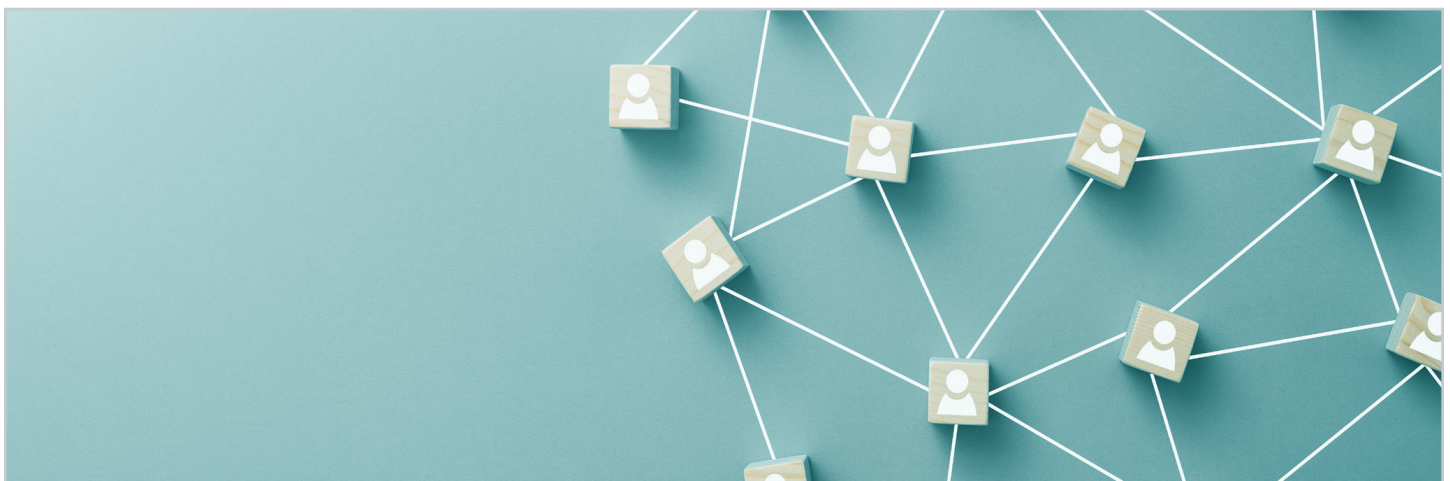
- the employee's age;
- the position and responsibilities held by the employee;
- the length of the employee's service;
- the quantum of the employee's remuneration; and
- the availability of replacement employment.

A rough rule of thumb in respect of reasonable notice is that a managerial or professional employee is entitled to a month of notice, or pay in lieu of notice, for each year of service. This, however, is a very rough rule, and some courts have expressly disapproved of the use of it.

When dealing with non-managerial or non-professional employees, the common law entitlement to notice may be in the range of two (2) to three (3) weeks per year of service, although it may vary from that range.

Is there a "maximum" notice entitlement at common law? A 24-month "cap" on notice has been acknowledged by some courts, and is rarely exceeded. This level of award is generally reserved for employees of very long service who are at a professional or managerial level.

It is sometimes said that determining reasonable notice for employees is more of an art than a science. Employers are encouraged to avoid formulaic approaches to assessing notice obligations, but rather to obtain legal advice on a case-by-case basis.





A claim for damages brought pursuant to the CCQ in connection with the failure to provide reasonable notice includes claims for all compensation that should have been provided during the period of notice, less any income from alternative employment (or self-employment) earned during the notice period. An employee has a duty to mitigate his or her damages and must therefore attempt to find new sources of revenue. Failure to comply with said duty may induce courts to reduce the quantum of the amount granted. However, employees are entitled, at a minimum, to the notice, or compensatory indemnity in lieu of notice, provided for in the ALS, regardless of whether they have mitigated the loss of their employment.

Reasonable notice of termination at common law is inclusive of minimum statutory notice under the ALS. Again, the common law notice entitlement can be satisfied by way of working notice, pay in lieu of notice or a combination of both.

It should be noted that the common law principle of reasonable notice does not apply to unionized employees. A unionized employee's entitlements on termination are derived from only two sources: the right to notice provided for in the ALS, and any rights contained in an applicable collective agreement.

Courts in Quebec have also recognized that employers are held to a duty of good faith and fair dealing when terminating a person's employment. At a minimum, employers are expected to be fair, candid and compassionate in the manner of dismissal and not, for example, to allege a serious reason for the termination without such reason. Failure to do so may result in an award that will translate into a lengthened reasonable notice period. The legal source of this award derives from the obligation to exercise civil rights in good faith, codified in the CCQ, rather than the employee's right to a reasonable notice of termination. Furthermore, in such situations, courts may (and usually do) also grant moral damages. Punitive damages may be awarded where there is evidence that the employer, in terminating an employee, intended to interfere with one or more of the employee's rights under the Quebec *Charter of Human Rights and Freedoms* (the "Charter").

### **C. Contract**

The parties to every employment relationship have an employment contract with one another, whether they realize it or not. An employment contract or agreement need not be in writing but may in fact be oral or implied. The terms of the employment agreement may provide for such matters as the length of the employment relationship, and the obligations arising in connection with the termination of the relationship. It is generally advisable, if possible, to enter into properly drafted written agreements with employees.

However, unlike the common law provinces, the benefits of a properly drafted employment agreement in Quebec are more limited. As explained earlier, in Quebec, an employee cannot renounce the right to obtain compensation for any damages suffered where insufficient notice of termination is given or when he or she is a victim of an abusive termination. In fact, clauses that purport to limit an employee's entitlement upon termination to less than reasonable notice are unenforceable. Accordingly, if the employee is terminated without cause, to the extent that the employee would be entitled to less than the amount set out in the agreement when applying the above-mentioned factors, the employee would be entitled to receive the indemnity provided for in the agreement in lieu of notice. On the contrary, if at the time of the employee's termination without cause, an analysis of the relevant factors reveals that the employee would be entitled to more than such amount, this provision would be unenforceable.

In addition, provisions of an employment contract may be declared null and void if a court concludes that the provisions are abusive and the contract was a "contract of adhesion", that is, a contract in which the essential provisions were imposed or drawn up by one of the parties and were not negotiable. Note that

the parties to an individual employment contract that is a contract of adhesion may be bound only by its version in a language other than French if, after examining its French version, such is their express wish.

Finally, employment contracts in Quebec (that are not adhesion contracts) may be drawn up in English at the request of the parties. As such, and given the French Language Charter, it is good practice to insert a language clause pursuant to which both parties to the contract expressly acknowledge that they have required and consented that the contract be prepared in a language other than French.

Employers are advised to consult with employment law counsel when preparing employment agreements.

## Discrimination and the Charter

Prior to the introduction of human rights legislation in Canada, freedom of contract reigned supreme. The notion of discrimination in contract, employment, housing or services was historically rebutted at common law. In response, comprehensive human rights statutes were introduced in Canadian jurisdictions as early as 1962.

On June 27th, 1975, the Quebec National Assembly adopted the Charter, which came into force on June 28th, 1976. The Charter is inspired by the *Universal Declaration of Human Rights*, the United Nations' *International Covenant on Civil and Political Rights* and the United Nations' *International Covenant on Economic, Social and Cultural Rights*. Unlike other Canadian provinces, in addition to fundamental civil and political rights, the Charter also covers social and economic rights, such as the right to free public education, to information, to financial assistance, to fair and reasonable conditions of employment and to a healthy environment. However, unlike the other civil and political rights protected by the Charter, the social and economic rights do not take precedence over the other laws and regulations adopted by the Quebec National Assembly.

In Quebec, employers subject to provincial law must abide by the provisions of the Charter. Employers operating out of other provinces or who are subject to federal law must abide by the provisions of the human rights legislation in those jurisdictions, which, for the most part, are based on the same principles as Quebec's Charter.

### Purpose of the Charter

The Charter is a provincial law that sets out the civil, political, social and economical rights of Quebec citizens and confers equal rights and opportunities without discrimination in specific areas such as jobs, housing and services.

### Prohibited Grounds of Discrimination

The Charter, subject to numerous exceptions and qualifications, prohibits numerous "grounds of discrimination." The list of prohibited grounds of discrimination in Quebec is considerably more extensive than in other comparable legislation in North America. Fourteen prohibited grounds of discrimination, all applicable in the employment context, are listed in the Charter: race, colour, sex, pregnancy, sexual orientation, civil status, age (except as provided by law), religion, political convictions, language, ethnic or national origin, social condition, a handicap and the use of any means to palliate a handicap. Harassment in the workplace based on any of these grounds is equally prohibited.

The right to "equal treatment with respect to employment" covers things such as applying for a job, being

recruited, training, transfers, promotions, terms of apprenticeship, dismissal and layoffs. It also covers rates of pay, overtime, hours of work, holidays, benefits, shift work, discipline and performance evaluations.

## Direct and Indirect Discrimination

Both direct and indirect discrimination are prohibited under the Charter. Direct discrimination arises where a requirement or qualification is on its face discriminatory. “ABC Co. looking for strong men for yard work” is a clear example of direct discrimination as it excludes women from the selection process, and thus constitutes discrimination based on sex.

Indirect discrimination arises when a requirement or qualification, although not discriminatory on its face, has an adverse effect on a person identified by any one (1) of the prohibited grounds of discrimination. “ABC Employer seeks applicants for great position. Applicants must have perfect vision.” The requirement of “perfect vision” would have an adverse effect on the visually challenged, and therefore could constitute discrimination on the basis of handicap.

## Bona Fide Occupational Requirement and Duty to Accommodate

A discriminatory standard, requirement or qualification may be justified in certain circumstances, but only if it can be established that the discriminatory standard, requirement or qualification:

- (a) is rationally connected to the function being performed;
- (b) was adopted in an honest and good faith belief that it was necessary to the fulfilment of that purpose; and
- (c) the individual cannot be accommodated without causing undue hardship to the employer, taking into account factors such as cost, financial assistance, if any, and health and safety concerns, if any.

## Complaint and Adjudication Process

An individual who has reason to believe that he or she has been discriminated against can pursue the matter by filing a complaint with Quebec’s *Commission des droits de la personne et des droits de la jeunesse* (the “Commission”), setting out the particulars of the allegation. They may also institute legal proceedings in civil courts (which is a longer and more costly process). In a unionized environment, the arbitrator of grievances has the exclusive jurisdiction to adjudicate discrimination complaints that relate to the interpretation or the application of a collective agreement.

The Commission has the power to refuse or to cease to act for the complainant on preliminary grounds (e.g. the complaint is frivolous, made in bad faith, etc.). If, on its face, the complaint appears to be warranted, the Commission will conduct an investigation and advise all the interested parties accordingly. The Commission does not adjudicate complaints and may, during or after the investigation, refuse to pursue the complaint.

If, after investigation, the Commission concludes that the complainant was a victim of discrimination and no settlement is reached between the interested parties, the Commission will refer the complaint to the *Tribunal des droits de la personne* (the “Tribunal”), which is the administrative tribunal responsible for adjudicating human rights complaints under the Charter. The Commission acts, without charge, for the complainant in the proceedings before the Tribunal.

## Potential Remedies/Damages

If the Tribunal finds that there has been a breach of the Charter, it may exercise its broad remedial powers. For instance, it can order:

- (a) reinstatement of employment;
- (b) compensation for past wage losses or compensation in lieu of reinstatement;
- (c) compensation for other lost employment benefits such as pension or medical benefits;
- (d) compensation for moral damages (injury to dignity, feelings and self-respect);
- (e) the award of punitive damages where the employer interfered intentionally with one or more of the employee's rights protected by the Charter;
- (f) the implementation of an anti-discrimination policy;
- (g) other more general measures designed to prevent future discriminatory practices; and
- (h) other decision the Tribunal believes fair and reasonable.

It is public policy in Quebec to preserve and recognize the inherent dignity and self-worth of every individual regardless of the individual's colour, sex, etc. Employers are well advised to take human rights into consideration when defining and developing hiring, recruitment and promotional practices, and other employment policies.



# An Act Respecting Industrial Accidents and Occupational Diseases

Most employers in Quebec are covered under the *Act Respecting Industrial Accidents and Occupational Diseases* (the “AIA”), which is the provincial mandatory, no-fault compensation insurance scheme for worker injuries arising out of, or in the course of, employment.

As the product of historical bargaining between workers and employers, the AIA provides for benefits to workers injured in the course of employment or disabled by specified industrial diseases. In exchange, workers relinquish their rights to commence civil actions against employers for negligence causing bodily or other types of harm if their AIA claims are covered under the insurance plan.

## Administration

Administration of the AIA rests with the CNESST. The CNESST adjudicates claims, dispenses benefits, manages early and safe return to work programs and generally mediates and adjudicates disputes between employers and workers concerning workers’ compensation and their rights and obligations under the AIA.

Employers or workers discontent with a decision of the CNESST may request a review from the CNESST or have a right of appeal to the TAT. Reviews and Appeals must be filed within prescribed time limits.

## Who Is Covered?

As noted, the vast majority of employers in Quebec are covered under the AIA. In fact, every employer that has an establishment in Quebec in which at least one (1) employee is working must register with the CNESST. Sole proprietors, partners, independent contractors and directors of a company, who are generally not subject to the AIA, may also voluntarily elect coverage.

## Registration

Employers subject to the AIA must register their businesses within 60 days after the beginning of their activities and, at that time, inform the CNESST of the nature of their activities. Failure to do so could lead to a prosecution under the AIA and, if convicted, a fine. Furthermore, non-compliant employers are required to pay retroactively the premiums they should have paid to CNESST, with interest.

## Premiums

Employers collectively fund the AIA insurance program by way of premiums. An employer who comes within the scope of the AIA is required to contribute, while others who are not may elect to do so. Different costs, rights and protections apply to those who do not come within the scope of the AIA but nonetheless elect for coverage.

For administrative purposes, employers are divided into industry classes and subclasses, depending on their hazard potential. Premiums are based on regular assessments, which take into account factors such as payroll, industry classification (i.e. hazards) and experience ratings. Thus, employers judged more likely to cause compensable injuries contribute a proportionally greater share to the accident fund.

## Compensable Injuries

Not all injuries, illnesses or accidents are compensable under the insurance plan. A worker (or his or her beneficiary, as the case may be) who is injured or dies as a result of a work-related accident, or suffers a work-related illness, generally qualifies for benefits. Entitlement, however, may be denied if the injury is due solely to wilful misconduct, unless it results in severe injury or death.

## Claims

A worker who sustains an injury or becomes ill as a result of being exposed to hazardous substances in the workplace must notify his or her employer as soon as possible to begin the claim process. Upon learning of a workplace injury or illness, the employer must submit the prescribed form to the CNESST two (2) days after the date on which the worker returns to work if he or she does so within 14 days, or two (2) days after 14 days after the beginning of the worker's inability to return to work, if he or she has not returned to work at the end of that period.

Depending on the nature and gravity of the accident, employers are required to report workplace accidents or fatalities to committees, representatives and the CNESST within prescribed time periods. These periods range from 24 hours to 16 days.

In any event, workers must submit their claims for benefits within a period of six (6) months from the date of the accident or learning of their illness. The CNESST may in some circumstances extend the timeframe.

## Compensation Benefits

If the CNESST approves a claim, the worker may be eligible for any of the following benefits depending on the circumstances and nature of the injury/illness:

<b>Income Replacement Indemnity</b>	Workplace insurance presently pays workers 90% of their net income, up to a maximum insurable coverage of \$88,000 per year (as of January 1st, 2022). The CNESST regularly revises the threshold of insurable earnings.
<b>Compensation for Bodily Injury</b>	Workers who suffer a permanent physical or psychological impairment are entitled to receive compensation for bodily injury that takes into account the anatomophysiological deficit, the disfigurement resulting from the impairment and the suffering and loss of enjoyment of life resulting from the deficit or the disfigurement.
<b>Healthcare</b>	Costs for healthcare services may be paid by workplace insurance (e.g. doctor's or chiropractor's visits, prescription drugs, etc.).
<b>Return to Work Assistance</b>	The CNESST assists workers and employers in facilitating workers' early and safe return to work following injuries or illnesses. Employers are required to reinstate certain workers back into their employment. When an employer is incapable of re-employing a worker after an injury or illness, the CNESST may provide programs to help the worker re-enter the workforce in another job or business.
<b>Survivor Benefits</b>	The CNESST provides three (3) types of benefits to the survivors of a worker who dies as a result of a workplace accident or injury:  A. Survivor Payments to the widowed spouse (lump sum up to \$264,000) and, in some circumstances, to his children or other dependants;  B. Funeral and transportation costs; and  C. A general indemnity of \$2,338.

## Retaliation

A worker who has sustained a workplace injury or illness and is receiving or has received benefits as a result is entitled to be free from retaliation from the employer.

## Bar Against Civil Actions

AIA benefits replace and preclude a worker's right to commence a civil action against the employer, save and except for prescribed exceptions.

It should also be noted that the AIA confers various rights and duties to both workers and employers. It is therefore always important to refer the AIA in employment relationships.

## An Act Respecting Occupational Health and Safety

Employers and employees both have a vested interest in workplace health and safety. Accordingly, occupational health and safety legislation across Canada generally places reciprocal rights and obligations on management and employees in an effort to ensure that Canadian workplaces are safe and healthy environments.

In Quebec, occupational health and safety is regulated by *An Act Respecting Occupational Health and Safety* (the "AHSA"). Like most other occupational health and safety legislation in Canada, the AHSA sets out a comprehensive code of conduct for both management and employees, all in the interest of health and safety in the workplace.

The AHSA sets out the rights and duties of management and workers generally, while the Regulations enacted under the AHSA prescribe specific rights and obligations applicable to a variety of different workplaces, industries and a number of toxic substances. The AHSA may not apply to certain workplaces, and thus reference to the statute is always recommended.

## Administration and Enforcement

As with the AIA, the CNESST also administers the AHSA. Inspectors are nominated under the AHSA to enforce its provisions, to inspect workplaces for compliance and to investigate serious accidents or workplace fatalities.

Quebec workplaces are subject to routine compliance inspections and investigations. Inspectors possess extensive statutory powers, including, among others, the authority to: enter any workplace, question any individual, handle, use or test any equipment or machinery, inspect documents, take photographs and issue compliance orders.

## General Rights and Duties

The AHSA attempts to balance the general right of management to direct its workforce and control its production process with workers' legitimate concerns for health and safety. Aside from the multitude of specific duties imposed on employers in the Regulations enacted under the AHSA, employers are guided by an all-encompassing duty to take all reasonable precautions to protect the health and safety of workers. This general duty is also found in the CCQ. Further, the Charter provides that workers have a right, in accordance with the law, to conditions of employment that have proper regard to their health, safety and physical well-being.

Recognizing that responsibility for health and safety in the workplace does not solely rest with employers, the AHSA is guided by four basic, two-pronged tenets: (1) the right to participate; (2) the right to know; (3) the right to refuse work; and (4) the right to stop work.



## The Right to Participate

As noted above, employers and workers share mutual obligations and rights for health and safety in the workplace. Thus, although liability for health and safety in the workplace may ultimately rest with employers (and owners, corporate directors and officers, contractors and suppliers of equipment, etc.), workers also have extensive roles in ensuring safe and healthy workplaces.

Worker participation is generally done through a joint health and safety committee or by a safety representative, a health and safety representative or a health and safety liaison officer. The committee/representative/officer works alongside the employer to oversee and enforce health and safety procedures in the workplace. Specifically, some of their responsibilities include:

2. identifying workplace hazards;
3. keeping registers of work accidents, occupational diseases and incidents that could have caused them;
4. making recommendations on ways to improve workplace health and safety; and
5. investigating accidents.

The AHSA places a general duty on employers to cooperate with and assist joint health and safety committees representatives or officers to carry out their statutory obligations. However, not all workplaces are required to have joint health and safety committees representatives or officers. The AHSA (and an *An Act to modernize the occupational health and safety regime* until the date fixed by order of Government) sets out specific thresholds as to when committees representatives and officers are required, and further defines rules respecting appointment of workers in joint health and safety committees and its formation.





## The Right to Know

Workers have the right to know about any potential or real hazards to which they may be exposed. This extends to a right to be trained and to have access to information on machinery, equipment, working conditions, processes and hazardous substances.

As a corollary to this right, employers are required under the AHSA to, among other things:

1. instruct, inform and supervise workers to protect their health and safety;
2. ensure that the organization of the work and the working procedures and techniques do not adversely affect the safety or health of the worker; and
3. comply with all prescribed duties, i.e.:
  - A. provide and maintain in good condition any prescribed equipment, materials and protective devices;
  - B. in accordance with the regulations, keep and maintain a register of risks related to certain jobs; and
  - C. give to interested parties, including employees, the health and safety committee and the CNESST, the list of the dangerous substances used in the establishment and of the contaminants that may be emitted;
4. take the measures to ensure the protection of a worker exposed to physical or psychological violence, including spousal, family or sexual violence, in the workplace. In a situation of spousal or family violence, the employer is required to take the measures if the employer knows or ought reasonably to know that the worker is exposed to such violence.

Finally, the AHSA also imposes various duties and obligations on owners, corporate officers and directors, contractors and suppliers who service equipment or machinery.

## The Right to Refuse Work

Workers are entitled to refuse work or to refuse to work with machinery or equipment if they believe it is dangerous to either their own health and safety or the health and safety of another person. If a worker refuses work, the worker must immediately inform the worker's supervisor or employer, without retaliation by the employer.

The AHSA sets out specific procedures that must be followed in the event of a work refusal. In short, the AHSA mandates an internal investigation process, which involves the worker and any one of the following: a safety representative or another worker. If the investigation does not resolve the work refusal, then either the employer or worker must require the intervention of a CNESST inspector to investigate and resolve the work refusal.

The ASHA spells out in great detail the worker's and employer's rights and obligations during a work refusal. Reference should be made to the AHSA should a work refusal arise.

## The Right to Stop Work

In exceptional circumstances, an inspector may order a work stoppage or the complete or partial shut-down of a workplace if he or she considers that a worker's health, safety or physical well-being may be in jeopardy.

## The Right to Protective Re-Assignment

An employee may request to be re-assigned to other duties if he or she provides a certificate attesting that, by being exposed to a contaminant during his or her work, in view of the fact that his or her health shows sign of deterioration, exposure to the contaminant endangers his or her well-being. If the employer is not in a position to offer new duties to the employee that do not endanger his or her health, the employee, during his or her job protected leave, will receive for a period of no more than one (1) year an income replacement indemnity as if he or she had been subject to a work accident or occupational disease. The costs of this leave are imputed to the employer as for a normal work accident or occupational disease.

## Preventive Leaves for Pregnant Workers or Workers Who Are Breast-Feeding

A pregnant worker or a worker who is breastfeeding who provides to her employer a certificate attesting that her working conditions may be dangerous to her unborn child or to herself by reason of her pregnancy, or to her child who she is breastfeeding, may request re-assignment to other duties involving no such danger. If the employer is not in a position to offer new duties to the employee, the employee, during her job protected leave, will receive an income replacement indemnity as if she had been subject to a work accident or occupational disease, but those indemnities will cease to be paid to her from the fourth week before the week of the expected date of delivery if she is eligible for benefits under the *Act Respecting Parental Insurance*. Unlike the right to protective re-assignment for dangers related to contaminants, the costs of the income replacement indemnity in these cases are imputed to all employers.

## Reporting Obligations

Depending on the nature and gravity of the accident, employers are required to report workplace accidents or fatalities to committees, representatives and the CNESST within prescribed time periods, which range from 24 hours to 16 days.

## Offences and Penalties

The AHSA can be enforced against anyone who has any degree of control over a workplace, materials or equipment found in a workplace, or control over the direction of the workforce.

If the internal self-enforcement mechanism of the AHSA fails to adequately address any health and safety issues in a workplace, or if the AHSA or Regulations are not complied with, the CNESST has the authority to enforce the law.

The CNESST may prosecute any person for a violation of the AHSA or its Regulations, or for failing to comply with an order that is rendered by an inspector or any other person pursuant to the AHSA.

Presently, if prosecuted and convicted of an offence under the AHSA, an individual (i.e. supervisors, directors and officers) can be fined up to \$3,000 for a first offence. The maximum fine for the first offence of a corporation is currently \$60,000.

In addition, Canada's *Criminal Code* contains provisions that could expose supervisors and other employees to criminal liability in the case of a workplace accident. The *Criminal Code* provides that anyone who directs an individual to do work, or has the authority to do so, has a legal duty to take reasonable steps to prevent bodily harm. A supervisor could be charged criminally if that legal duty is not upheld, resulting in a fine, imprisonment, or both.

### A cautionary note:

The foregoing provides a summary of aspects of Canadian law that may interest companies considering doing business in Canada, specifically in Quebec. A group of McMillan lawyers prepared this information, which is accurate at the time of writing. Readers are cautioned against making decisions based on this material alone. Rather, any proposal to do business in Canada should most definitely be discussed with qualified professional advisers.

Information respecting the laws of Ontario, Alberta and British Columbia is available through McMillan's offices in Toronto, Calgary and Vancouver respectively. For any questions regarding this and our other publications, please contact a member of McMillan's Employment & Labour Relations group.





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