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Labour & Employment Law in Québec

A Practical Guide

2021

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Introduction

In Québec as in other Canadian provinces, laws dealing with employment matters come within the jurisdiction of the local legislature (called the "National Assembly" of Québec), except where employment in a work or undertaking falls within one of the heads of federal legislative power of the Parliament of Canada. The latter include aeronautics, shipping and navigation, longshoring (stevedoring) activities, national railways, banking, inter-provincial and international bus and transport companies, radio and television broadcasting, cable TV and other forms of telecommunications, operations which are declared to be for the general advantage of Canada or two or more provinces (such as grain elevators and nuclear facilities) and any other business which is an integral and essential part of a federal work or undertaking.

The federal Parliament has exclusive jurisdiction over employment insurance benefits and bankruptcy, whereas workers' compensation is a provincial matter.

Distinct federal and provincial legislation and regulations exist governing minimum employment and labour standards, collective bargaining, occupational health and safety, human rights, collective dismissal, pay equity, protection of personal information, pension plans and successor rights and obligations, all of which provisions apply separately to federally and provincially-regulated employers.

Since this document provides only an overview of Québec's provincial legislation and regulations, employers operating in Québec, or contemplating carrying on business in Québec, should consult with their professional advisors to determine their specific rights and obligations under applicable statutes and regulations. Employers falling under federal jurisdiction should exercise particular care, as many of the statutes and regulations reviewed in this paper do not apply to them.

Employment Contracts

Individual Contracts of Employment

Individual contracts of employment are generally governed by the *Civil Code of Québec* (the "*Civil Code*"). A contract of employment, whether it be oral or in writing, is defined as a contract by which the employee undertakes to do work for remuneration, according to the instructions and under the direction or control of the employer. It is to be distinguished from a contract of services, under which the contractor or provider of services (often a consultant) is free to choose the means of performing the contract and under which no relationship of subordination exists between the contractor or the provider of services and the client.

Under a contract of employment, the employer is bound not only to allow for the performance of the work and to pay the remuneration agreed upon, but he must also take any measures consistent with the nature of the work to protect the health, safety and dignity of the employee.

The employee is bound not only to carry on his work prudently and diligently, but he must also act faithfully and honestly and not use any confidential information he may obtain in the course of his work.

The parties may stipulate in writing and in express terms that, even after the termination of the contract, the employee may neither compete with his employer nor participate, in any capacity whatsoever, in an enterprise which would then so compete. Such a stipulation must be limited, however, as to time, place and type of activity, to whatever is necessary for the protection of the legitimate interests of the employer. An employer may not avail himself of a non-competition covenant if he has terminated the contract without a serious reason (without cause) or if he has himself given the employee such a reason for terminating the contract (constructive dismissal).

Contracts of employment are either for a fixed term or an indeterminate term. A fixed-term contract will be tacitly renewed for an indeterminate term where the employee continues to carry on his work for five (5) days after the expiry of the term without objection by the employer.

Employees may be terminated for a serious reason (cause) without reasonable prior notice of cessation of employment or an indemnity in lieu thereof.

Subject to certain very important statutory exceptions, employees may be terminated without cause by giving prior notice of termination or paying a compensatory indemnity in lieu thereof. The notice of termination must be reasonable, taking into account, in particular, the nature of the employment, the special circumstances in which it is carried on and the duration of the period of work. Under a fixed-term contract, the notice requirement is usually the unexpired portion of the term in the event the contract is terminated prior to its expiry.

An employee may not renounce in advance his or her right to obtain compensation for any injury he or she suffers where insufficient notice of termination is given or where the manner of termination is abusive. Therefore, even though the length of notice may be stipulated in the contract of employment, a court may consider that the notice provided is insufficient and therefore, unreasonable.

There are no set guidelines to determine what constitutes a reasonable notice. However, Québec case law will often, as a rule of thumb, calculate the prior notice of cessation of employment or an indemnity in lieu thereof based on one (1) to four (4) weeks per year of service, with a usual maximum threshold of 24 months. Note also that notices usually range from one (1) to two (2) weeks per year of service for first line employees and from two (2) to four (4) weeks per year of service for managers.

The amount of reasonable notice that an employer must provide to an employee pursuant to the *Civil Code* is inclusive of the amount for the statutory notice provided by the *Act Respecting Labour Standards* ("*Labour Standards Act*").

Moreover, an employee whose employment has been terminated has an obligation to make reasonable efforts to obtain alternative employment in order to mitigate his damages. Any

income which an employee may derive or should have derived from alternative employment cannot be used to reduce the employer's mandatory minimum obligation under the *Labour Standards Act*, but may be used to reduce the employer's obligation to provide reasonable notice or pay in lieu of notice under the *Civil Code* or to reduce the employer's obligation to pay for an employee' loss of wages from a granted recourse under the *Labour Standards Act*.

In certain circumstances, the *Civil Code* also provides for the annulment or the reduction of any obligation arising from an abusive clause in an employment contract when the essential stipulations are imposed by the employer and are not negotiable by the employee.

Medical Testing

In Québec, an employer's right to require a medical exam is limited both by an employee's human rights and their right to privacy.

Employees have the obligation to work for their employer on a regular basis and to maintain a satisfactory level of performance. The employer therefore has the right to ensure that a candidate has the capacity to work consistently and efficiently and that the candidate has no medical condition that would prevent him or her from fulfilling his or her duties.

Employers have the obligation to take all necessary measures to ensure the health, safety and well-being of their employees pursuant to both the *Act respecting Occupational Health and Safety* ("*Health and Safety Act*") and article 2087 of the *Civil Code*. Employers may therefore ensure the candidate's performance of work will not compromise his or her health and safety or that of his or her colleagues.

Consequently, while pre-employment medical testing may be executed, the above two justifications only create limited opportunities to do so. Pre-employment medical tests may only be performed if the nature of the position sought or the position's anticipated medical risks clearly justify the measure. That is, there must be a rational link between the elements of the exam imposed by the employer and the job in question; otherwise, the medical exam would contravene the Québec *Charter of Human Rights* and Freedoms (the "**Québec Charter**").

In Québec, one cannot undermine a person's integrity without their free and liberal consent. Medical exams are considered to be such an interference. Consequently, employers should get the (written) consent of prospective employees, before conducting medical exams. In order to minimize exposure to discrimination complaints, pre-employment medical exams should only be undertaken after the candidate receives a formal offer of employment which is made conditional on the results of the exam. The employment offer letter should state which tests will be conducted, that further testing may be required, and explain that all medical information obtained would be held confidentially and used only as necessary to determine the candidate's suitability to perform the job sought.

The medical exam itself cannot serve as a reason to exclude candidates on the basis of their "handicap", a term which has been largely interpreted to include anatomical or psychological anomalies which would limit an individual in his or her ability to function normally, such as, for example, depression, drug addiction, agoraphobia, or alcohol dependency. If the medical exam indicates such a limitation, it could therefore not constitute a valid reason to exclude a candidate except if he or she could not, even with accommodation, satisfy the employment requirements. Additionally, employers may not refuse to hire applicants because they have disabilities, ailments, or physical anomalies that could be problematic in the future if they pose no problems at the time of hiring.

Drug Testing

In Québec, there are additional concerns imposed by statute which relate to employees' right to privacy, security, and equality. In particular, the *Civil Code* and the Québec Charter contain specific provisions relating to an employee's right to integrity and to the inviolability of their person.

Decisions specifically focusing on pre-employment drug testing are few and far between in Québec, and to our knowledge, there are a very limited number of cases which directly address this issue. However, in light of a recent Supreme Court of Canada judgment, relating to drug and alcohol testing during the course of employment, we believe that Québec Courts will adopt a restrictive view of pre-employment drug testing.

Screening Assessments

Québec employers occasionally screen potential employees by making them undergo pre-employment aptitude or psychological testing. In doing so, employers must tread carefully because of Québec's strict privacy and human rights laws.

Generally, employers may ask candidates to undergo pre-employment aptitude or psychological testing so long as they do not infringe on the applicant's privacy and human rights either in the testing process itself or the way in which the test results are managed.

Section 20 of the Québec Charter establishes a narrow exception to otherwise discriminatory employment practices, such as screening assessments. This section reads as follows:

> **20**. A distinction, exclusion or preference based on the aptitudes or qualifications required for an employment, or justified by the charitable, philanthropic, religions, political or educational nature of a non-profit institution or of an institution devoted exclusively to the well-being of an ethnic group, is deemed non-discriminatory.

According to this provision, a policy which is adopted honestly and with regard to the aptitudes or qualifications required by a position may affect the rights of an individual or of a group differently without being deemed to be discriminatory under the Québec Charter.

The aptitude requirements must be based upon the qualities and abilities objectively required of a certain profession or job and must be those common to all companies exercising the same type of business activities as the one in question. However, the professional characteristics required by the position cannot be justified by the subjective perception of what constitutes the clients' preference if these perceived preferences are themselves discriminatory. As section 20 of the Québec Charter is an exception to the general rule, it must be interpreted restrictively. Therefore, the duty to accommodate would still continue to be applicable to employers, as it pertains to screening assessments.

Background check

The information sought by an employer pursuant to a pre-employment credit check is clearly information that would fall within the scope of Québec privacy laws. Moreover, as opposed to the use of court records to conduct criminal background checks, credit records are not public by law.

Consequently, any credit background check conducted on prospective employees in Québec could be challenged on the basis of a guiding principle of Québec privacy law, which limits an employer's right to collect personal information to that which is necessary for the "object of the file" or, in other words, for the purposes of the employment relationship. As in the case of restrictions relating to criminal background checks, credit background checks should only be performed where an employee has freely consented to such a credit check and where the credit check is necessary for the conclusion or performance of the employment contract. In other words, Québec employers must be prepared to demonstrate the reasons for which credit background checks would be considered necessary.

In light of the foregoing, unless the nature of an employer's business is such that it may justify serious concerns linked with a prospective employee's financial status, requesting information on said prospective employee's credit history would likely constitute a breach of Québec privacy laws.

Moreover, the Québec Charter provides that the employer cannot dismiss, refuse to hire or otherwise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence. This does not prevent an employer from proceeding to criminal background checks, but restricts the use he can make of it. The objective connection between the offence and the employment sought, which is essentially contextual, must be proven by the employer.

Employee Handbook

The employer may also want to provide employees a handbook that details insured benefits plans and employer policies or rules governing probationary period, absences, safety, discipline, IT, social media, and so forth. Employee handbooks are quite common in Québec.

Should an employer decide to provide employees with an employee handbook, the provisions of the handbook should be stated as binding on the parties, subject to the employer's ability to change the policies. This approach will allow the employer to rely on the provisions included in the handbook, without having to enter into a separate written employment agreement with each individual employee. An acknowledgement of receipt of the handbook on the part of the employee will suffice. If the employer expressly reserves the right to modify the policies unilaterally, while it may in some circumstances be obligated to give advance, reasonable notice of such changes, such a reserved right maximizes the degree of flexibility the employer retains.

Employee Deductions / Employer Contributions

Income tax

Employers are required to make deductions at source from the earnings of their employees for taxes imposed under the federal and provincial income tax acts. They are also required to have employees complete separate TD1 and TP-1015.3 forms which provide the information that determines the status of an employee for income tax purposes.

Québec Pension Plan

The *Québec Pension Plan Act* provides retirement pensions for contributors as well as survivors' benefits for widows and dependent children of contributors who die. It also provides certain disability benefits. This pension plan is compulsory. Québec residents do not participate in the federal Canada Pension Plan. Employees, employers and self-employed individuals are required to contribute. For the year 2021, each employer must deduct and remit 5.90% of each employee's wages, to a maximum annual contribution of $3,427.90, and contribute an equal amount on its own behalf. The contribution rate and both the employer's and the employee's maximum contribution are subject to change on a yearly basis. The employer's contribution is deductible for income tax purposes as a normal business expense.

Québec Health Services Fund

Québec provides free, comprehensive health care to its residents. This includes coverage for doctors and hospital services. All employers in Québec are subject to an employer health tax. The employer health tax is levied at a rate up to 4.26% on the gross amount of wages and benefits (i.e. the gross remuneration) received by employees who either report for work at a permanent establishment in Québec or are paid from a permanent establishment in Québec. Starting in 2017, the health services fund contribution rate applicable to an employer whose gross remuneration for a given year is less than $5 million will be gradually reduced over a period of five years.

Employment Insurance

The *Employment Insurance Act* requires an employer to make contributions based on the earnings of all employees, subject to certain exceptions. The contributions are made to the Employment Insurance Account maintained by the Government of Canada, from which unemployed insured contributors may draw benefits. Generally, each employer must deduct and remit 1.18% of each employee's wages, up to a maximum annual premium of $664.34 (in 2021), and itself contribute an amount equal to 1.4 times the employee's premium for the pay period. The employer's contribution is deductible for income tax purposes as a normal business expense.

An employer's premium can be reduced when it maintains a wage-loss plan that reduces employment insurance benefits payable in respect of unemployment caused by illness or pregnancy.

Québec Parental Insurance Plan

The *Act Respecting Parental Insurance* provides maternity, parental, and adoption benefits for residents of Québec. This plan replaces similar benefits received by other provinces' residents under the *Employment Insurance Act*. The Québec Parental Insurance Plan ("**QPIP**") is set up to pay benefits to all eligible employees – who either report for work at an establishment located in Québec or, if they are not required to report to an establishment to work, receive wages from such an establishment situated in Québec – as well as self-employed individuals. Employees, employers and self-employed individuals are required to contribute at different rates. For 2021, each employer must deduct and remit 0.494% of each employee's wages, up to a maximum annual contribution of $412.49 per employee, and contribute on its own behalf 0.692% of each employee's wages, up to a maximum annual contribution of $577.82 per employee.

Contribution related to Labour Standards

The *Labour Standards Act* provides that employers subject to contribution obligations are required to pay a contribution for the financing of labour standards. This contribution is equal to 0.07% of the total remuneration paid to their employees. For 2021, any portion of the total remuneration in excess of $83,500 is not subject to contribution. Since this contribution requires no withholding, the employer must calculate and remit the amount before the statutory deadline. Such payment can be made online, by mail, at a financial institution or by automated banking machine.

Workforce Skills Development and Recognition Fund

The *Act to promote workforce skills development and recognition* provides that every employer whose total payroll exceeds $2 million is required to participate in workforce skills development for the year, by allotting an amount representing at least 1% of its total payroll to eligible training expenditures. Should an employer fail to do so, it will be required to pay a contribution equal to the difference between 1% of its total payroll and the amount of its eligible training expenditures. This contribution will be payable to the Workforce Skills Development and Recognition Fund. Since this contribution requires no withholding, the employer must calculate and remit the amount before the statutory deadline. Such payment can be made online, by mail, at a financial institution or by automated banking machine.

Social Insurance Card

All persons 18 years of age or over who are employed in pensionable employment must obtain a Social Insurance Number (“S.I.N.”) from Service Canada for the purpose of, among other things, contributing to either the Québec or the Canada Pension Plan. Even though Service Canada now issues S.I.N.s via a confirmation of S.I.N. letter, plastic S.I.N. cards that are not expired and are currently in circulation can still be used.

Every employer who employs an employee in pensionable employment shall require the employee to produce his S.I.N. within 30 days of the start of his pensionable employment.

Every employer must maintain a record of the S.I.N. of each employee.

Minimum Labour Standards

The *Act Respecting Labour Standards ("Labour Standards Act")* sets out the minimum working conditions in Québec. Naturally, a collective agreement or individual contract of employment may provide for better working conditions. This law is of public order and any agreement contrary to its provisions or providing for inferior working conditions is null and void. To provide for the funding of the administration of the Act, every employer is required to pay the Minister of Revenue an annual contribution of 0.07% of all the wages subject to contribution which he pays or is deemed to pay in respect of a calendar year. The following is a summary of the minimum working conditions under the ***Labour Standards Act***.

Minimum wage

The minimum hourly wage in Québec has been set at $13.50 effective May 1, 2021. Employees in the restaurant and hotel sector who usually receive gratuities are entitled to a minimum rate of $10.80 per hour, effective May 1, 2021. It should be noted that the minimum wage does not apply to an apprentice who participates in an apprenticeship program nor to an employee remunerated entirely on commission who works outside the employer's place of business and whose working hours cannot be controlled.

Equal wage rate for employees performing the same tasks

It is prohibited to remunerate an employee at a lower rate of wage than that granted to other employees performing the same tasks in the same establishment solely because of the employee's employment status, and in particular because the employee usually works fewer hours each week.

Payment of salary

Wages must be paid in cash in a sealed envelope, by cheque or by bank transfer. Wages must be paid at intervals of not more than 16 days, or one (1) month in the case of managerial personnel.

However, any bonus or overtime earned during the week preceding payment of the wages may be paid with the subsequent payment.

Pay sheet

The employer must remit to the employee, together with his salary, a pay sheet which must include:

- the name of the employer;
- the surname and given name of the employee;
- the identification of the employee's occupation;
- the date of the payment and the work period corresponding to the payment;
- the number of hours paid at the prevailing rate;
- the number of hours of overtime paid or replaced by leave with the applicable premium;
- the nature and the amount of the bonuses, indemnities, allowances or commissions that are being paid;
- the wage rate;
- the amount of wages before deductions;
- the nature and the amount of the deductions made;
- the amount of the net wages paid to the employee;
- the amount of the tips reported by the employee; and
- the amount of the tips the employer has attributed to the employee.

Register

The employer must maintain a register indicating the name, surname, residence, social insurance number, occupation and date of hiring of each employee, as well as the following particulars for each pay period:

- the number of hours worked per day;
- the total number of hours worked per week;
- the number of overtime hours paid or compensated for by a day off with the applicable premium;
- the number of days worked per week;
- the wage rate;
- the nature and the amount of the bonuses, indemnities, allowances or commissions that are being paid;
- the amount of the gross wages;
- the nature and amount of the deductions made;
- the amount of the net wages paid to the employee;
- the work period corresponding to payment;
- the date of payment;
- the reference year;
- the duration of the annual vacation;
- the departure date of the annual vacation with pay;
- the date on which was entitled to a general holiday with pay or to another day of holiday, including the compensatory holidays for general holidays with pay;
- the amount of the tips reported by the employee;
- the amount of the tips attributed to the employee by the employer; and
- in the case of an employee under 18 years of age, his date of birth.

The register for each year must be kept for at least three (3) years.

Deductions from wages

The employer may not make deductions from wages unless he is required to do so pursuant to an act, a regulation, a court order, a collective agreement, an order or decree or a mandatory supplemental pension plan. The employer may make deductions from wages if he is authorized to do so by the employee, in writing, and for a specific purpose. The employee may at any time revoke that authorization except where it pertains to membership in a group insurance plan or a supplemental pension plan.

Gratuities

Any gratuity paid directly or indirectly by an employer to an employee in the hotel and restaurant business belongs to the employee and does not form part of the wages that are otherwise due to him or her. The employer must pay at least the prescribed minimum wage to the employee without taking into account any gratuities or tips the employee receives. Nevertheless, minimum call-in pay, statutory holiday, vacation, leaves for family events, notice of termination of employment or layoff and benefits under the *Employment Insurance Act* are to be computed on the basis of wages, increased by the amount of tips attributed or reported pursuant to the *Taxation Act*.

Overtime

Except for security guards, employees working in a sawmill or forestry operation and employees working in a remote area, the regular work week is 40 hours. Any work performed beyond 40 hours is considered overtime work and must be remunerated at time and a half. Overtime is not payable to all employees; for example, managers or employees who work outside the establishment and whose working hours cannot be controlled are not entitled to overtime. The employer may, at the request of the employee or in the cases provided for by a collective agreement or a decree, replace the overtime by a paid leave equivalent to the overtime worked plus 50% (for example, if an employee has worked two (2) hours of overtime, he may be entitled to a three-hour paid leave). The leave must be taken within the 12 months following the overtime at a date agreed upon between the employer and the employee; otherwise the overtime must be paid.

The *Labour Standards Act* does, however, set limits on the amount of overtime hours you may require an employee to work. An employee may refuse to work more than two (2) hours beyond his or her regular work day, or for more than 14 hours in a 24-hour period, whichever period is shorter. If an employee works flexible or non-continuous hours, the employee may refuse to work more than 12 hours in a 24-hour period.

The *Labour Standards Act* also allows an employee to refuse to work more than 50 hours in a week.

As an employer, however, you may nonetheless require an employee to work hours in excess of these limits in emergency situations, such as where there is a danger to the life, health or safety of the employees or the population, where there is a risk of destruction or serious deterioration of movable or immovable property or in any other case of superior force, or if the refusal is inconsistent with the employee's professional code of ethics.

Upon obtaining the authorization of the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (the "**CNESST**"), an employer may stagger the working hours of employees such that employees work on a basis other than a weekly basis.

Hours of Work

An employer and an employee may agree to stagger working hours on a basis other than weekly without obtaining the CNESST's authorization. The agreement thereof must be evidenced in writing and can only allow the hours to be staggered over a period of four (4) weeks at most. The work week cannot exceed 50 hours and either the employee or the employer can resiliate the agreement with notice of at least two weeks before the expected end of the staggering period agreed upon.

Minimum call-in pay

An employee who reports for work at the express demand of his employer or in the regular course of his employment and works fewer than three (3) consecutive hours is entitled to an indemnity equal to three (3) hours' pay, except in case of superior force, where the nature of the job is such that it is normally completed within three (3) hours or where the nature of the work requires the employee to be present several times in the same day (e.g. school crossing guard or bus driver.).

Presumption that employee is at work

An employee is deemed to be at work when he or she is available to the employer at the place of employment and is required to wait for work to be assigned, as well as during the break periods granted by the employer, when travel is required by the employer or during any trial period or training required by the employer.

Statutory holidays

The following days are statutory holidays:

- January 1 (New Year's Day);
- Good Friday or Easter Monday, at the option of the employer;
- the Monday preceding May 25 (Victoria Day);
- July 1 or July 2 if July 1 falls on a Sunday (Canada Day);
- the first Monday in September (Labour Day);
- the second Monday in October (Thanksgiving Day); and
- December 25 (Christmas Day).

An employee required to work on a statutory holiday is entitled to be paid a compensatory indemnity equal to 1/20 of the wages earned during the four (4) complete weeks of pay preceding the week of the holiday, excluding overtime. If an employee is remunerated on commission, the indemnity must be equal to 1/60 of the wages earned during the 12 complete weeks of pay preceding the week of the holiday.

Should an employee be required to work on a statutory holiday, the employee is entitled to receive, in addition to his or her regular pay, the indemnity mentioned above or to be granted a compensatory day off at a date agreed to by the employer and the employee, which must be taken within the three (3) weeks preceding or following the holiday, unless a collective agreement or a decree provides for a longer period.

If the employee is on vacation on a statutory holiday, or that such day does not coincide with his normal work schedule, the employer must pay him or her the above-mentioned indemnity or give the employee a compensatory day off at a date agreed upon by both parties.

In general, employees qualify for statutory holidays as soon as they commence employment. However, in order to be entitled to a holiday, the employee must not be absent from work without the employer's authorization or without valid cause on the day preceding or following the holiday.

June 24, Québec National Holiday

With regard to June 24, different rules apply, as it falls under the *National Holiday Act*. If June 24 falls on a Sunday, the National Holiday will be held on June 25. The employer must pay the employee a compensatory indemnity equal to 1/20 of the wages earned during the four complete weeks of pay preceding the week of the holiday, excluding overtime. If an employee is remunerated on commission, the indemnity must be equal to 1/60 of the wages earned during the 12 complete weeks of pay preceding the week of the holiday. For the National Holiday, employees are automatically entitled to holiday pay for that day.

In any establishment or service where, by reason of the nature of its activities, work is not interrupted on June 24, the employer, in addition to paying to the employee working on June 24 the wages for the work done, must pay the above indemnity or grant the employee a compensatory holiday, which must be taken on the working day preceding or following June 24. If June 24 falls on a day which is not a regular working day for the employee, the employer must pay the above indemnity or grant a compensatory holiday which must be taken on the working day preceding or following June 24. If June 24 falls during the vacation of an employee, he is entitled to a compensatory holiday, which must be taken at a date agreed upon between the employee and the employer.

Vacation

An employee progressively accrues vacation entitlements during a reference year. In Québec, unless there is an agreement between the employer and the employee fixing a different starting date, the reference year extends from May 1 of the preceding year to April 30 of the current year.

The *Labour Standards Act* provides that the employee who is hired at any given time of the year must wait until the end of the reference year to take a vacation.

If, at the end of the reference year, the employee has less than one (1) year of uninterrupted service with the employer, he is entitled to an uninterrupted leave for a duration of one (1) day per month of service up to a maximum of two (2) weeks.

The employee who at the end of a reference year has more than one (1) year but less than three (3) years of service with the employer is entitled to a minimum of two (2) consecutive weeks of vacation. Employees with over three (3) years of service are entitled to three (3) weeks of vacation. In addition, the employee may apply for an additional leave without pay equal to the number of days required to increase his annual leave to three (3) weeks, if he is only entitled to two (2) weeks.

However, any employer who, before March 29, 1995, closed his establishment for the period of annual vacation, may divide the vacation of such an employee into two (2) periods, one being the closing period. One (1) of those periods must, however, last for a minimum of two (2) consecutive weeks.

Vacation must be taken during the 12 months following the end of the reference year. The employer may, at the request of the employee, allow him or her to take the annual leave, or part of it, during the reference year. Furthermore, if at the end of the 12 months following the end of a reference year, the employee is absent due to sickness, an organ or tissue donation for transplant, an accident or a criminal offense or is absent or on leave for personal or family reasons, the employer may, at the employee's request, defer the annual leave to the following year. If it is not deferred, the employee must be paid the indemnity to which he or she is entitled.

The vacation may be divided into two (2) periods at the request of the employee. However, the employer may refuse the request if he closes his establishment for a period equal to or greater than that of the employee's vacation. The employee cannot divide his or her vacation into more than two (2) periods without the employer's consent. A leave not exceeding one (1) week cannot be divided.

The employer determines the date of the employee's vacation. However, the employer must let the employee know his or her vacation dates at least four (4) weeks in advance.

It is prohibited to replace a vacation by a compensatory indemnity. In other words, employees must take their vacations. However, the third week of vacation may, at the request of the employee, be replaced by a compensatory indemnity if the establishment closes for two (2) weeks on the occasion of the annual vacation.

The indemnity relating to the vacation is equal to 4% of the gross wages earned by the employee during the reference year if the employee has less than three (3) years of service, or 6% of the gross wages if he or she has three (3) years of service or more at the end of the reference year.

The vacation indemnity must be paid to the employee in a lump sum prior to the beginning of the vacation or in the manner applicable for the regular payment of his wages.

If employment is terminated before the employee is able to benefit from all the days of vacation to which he or she is entitled, the employer must pay to the employee an indemnity equivalent to 4% or 6%, as the case may be, relating to the fraction of the vacation that he or she did not take, plus 4% or 6% of the gross wages earned during the current reference year.

Rest periods

The employee is entitled to a minimum weekly rest period of 32 consecutive hours.

The employee is entitled, after five (5) consecutive hours of work, to a meal period of 30 minutes without pay. That period must be remunerated if the employee is not authorized to leave his or her work station.

Temporary leave in the case of an event

An employee is entitled to the following leaves:

Leave	Duration of leave
Marriage or Civil Union	
On the employee's wedding day or civil union	1 paid day
On the wedding day or civil union of the employee's child, parent, sibling and spouse's child	1 day without pay
Family Care Leave	
Short Term	
a) to fulfill obligations related to the care, health or education of their child or their spouse's child or because of the state of health of a relative or a person for whom the employee acts as a caregiver; or	10 days off each year, including 2 paid days for employees with three months of service or more
b) due to a serious illness or a serious accident suffered by a relative or a person for whom the employee acts as a caregiver. (no seniority required)	up to 16 weeks of leave without pay per year
Extended (no seniority required),	

Leave	Duration of leave
a) if their minor child suffers from a serious and potentially mortal illness;	up to 104 weeks of leave without pay
b) to care for a minor child who suffers serious bodily injuries as a result of a crime that renders the child unable to carry on regular activities	up to 104 weeks of leave without pay
Death of Spouse or Child as a Result from a Criminal Offence	up to 104 weeks
Disappearance or Death of Minor Child	up to 104 weeks If the child is found alive, the employee must return to work by the 11th day that follows the day on which the child is found
Suicide of Spouse or Child	up to 104 weeks
Pregnancy, Birth and Adoption	
Medical examination related to pregnancy, or examination by midwife	without pay (no maximum number of days)
Birth of a child or adoption of a child or where there is a termination of pregnancy in or after the twentieth week of pregnancy	2 days with pay and an additional 3 days without pay
Death or funeral	
Death or funeral of spouse, child, spouse's child, parent, sibling	2 paid days plus 3 additional days without pay
Death or funeral of son-in-law, daughter-in-law, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law	1 day without pay
Absences of Reservists - Canadian Forces	
a) operation outside of Canada (if the employee is credited with 12 months of uninterrupted employment);	up to 18 months without pay
b) operation within Canada (provide assistance in the case of a major disaster; aid the civil power; intervene in any other emergency situation designated by the Government); annual training, or any other operation of the Canadian Forces (no length of employment requirement)	unlimited leave without pay

Leave	Duration of leave
Absences owing to sickness, an organ or tissue donation, an accident, domestic violence, sexual violence or criminal offence	
	Up to 26 weeks of leave without pay per year
Leave owing to: • sickness; • donating an organ or tissue; or • victim of an accident; or • victim of domestic violence or sexual violence	Up to 104 weeks of leave without pay, if the employee suffers serious bodily injury during or resulting directly from a criminal offence that renders the employee unable to hold his regular position.
Maternity Leave	
A pregnant employee	Up to 18 consecutive weeks following the birth of her child (can be extended under exceptional circumstances)
Where there is a termination of pregnancy before the beginning of the twentieth week preceding the expected date of delivery	Up to 3 weeks, unless a medical certificate attests to an extended leave.
Where there is a termination of pregnancy after the twentieth week	Up to 18 consecutive weeks beginning from the week of the event
Paternity Leave	Up to 5 consecutive weeks following the birth of his child
Parental	
An employee who is the parent of a newborn child or who adopts a child	Up to 65 consecutive weeks (over and above maternity and paternity leave) (at the request of the employee, shall be divided under exceptional circumstances or with the employer's conscent, and may be suspended and extended under exceptional circumstances)

Maternity and Paternity leave

A pregnant employee is entitled to a maternity leave without pay of not more than 18 consecutive weeks unless the employer consents to the employee's request of a longer period of leave. Normally, the leave may not start before the 16th week preceding the expected date of delivery (note that there are exceptions, in particular where there is a risk

of miscarriage and shall not end later than 20 weeks after the week of delivery). The employee may spread the maternity leave as she wishes before or after the expected date of delivery. However, where the maternity leave begins on the week of delivery, that week shall not be taken into account in calculating the maximum period of 18 consecutive weeks.

During the time an employee is on maternity leave, she may request an extension of her absence. The request must be granted if a medical certificate, submitted to the employer before the end of the maternity leave, attests that the state of health of the employee or her new-born child requires an extension of the maternity leave. In that case, the leave is extended by the duration indicated in the certificate. Where the child is hospitalized during the maternity leave, the leave may be suspended during the hospitalization, following an agreement between the employer and the employee.

Where there is a termination of pregnancy before the beginning of the twentieth week preceding the expected date of delivery, the employee is entitled to a special maternity leave, without pay, for a period of no longer than three (3) weeks, unless a medical certificate attests that the employee needs an extended leave. If it occurs in or after the twentieth week, she is entitled to maternity leave without pay for a maximum of 18 consecutive weeks beginning from the week of the event.

An employee is entitled to a paternity leave of not more than five (5) consecutive weeks, without pay, on the birth of his child. The paternity leave shall not begin before the week of the child's birth and shall not end later than 78 weeks after the week of the birth. This paternity leave is separate from the maternity leave and cannot be transferred to the mother.

At the end of the maternity or paternity leave, the employer must reinstate the employees concerned in their former positions with all the rights to which they would have been entitled if they had continued to work. If such a position no longer exists when the employee returns to work, the employer must recognize all the rights and privileges to which the employee would have been entitled if he or she had been at work at the time the position was closed.

See section 7 for information concerning Québec's Parental Insurance Plan which provides parents with benefits during maternity, paternity and parental leaves.

Parental leave

The parents of a newborn or a newly adopted child are entitled to a parental leave without pay of no more than 65 consecutive weeks. This leave is in addition to the 18 weeks of maternity leave and the five (5) weeks of paternity leave.

The parental leave may not begin before the child is born or, if adopted, before the child is entrusted to the employee. It must end no later than 78 weeks after the birth or day on which the child is entrusted to the employee.

At the end of a parental leave, the employer must reinstate the employee in his or her former position with the same benefits. If the position no longer exists when the employee returns to work, the employer must recognize all the rights and privileges to which he or she would have been entitled if he or she had been at work at the time the position was closed.

Absences owing to sickness, accident or a criminal offence

Subject to an employer's general duty to accommodate, an employee may take up to 26 weeks of leave over a period of 12 months, due to sickness, an organ or tissue donation for transplant, an accident other than an occupational injury, domestic violence or sexual violence of which the employee has been a victim. The employee must inform the employer of such absence, and the reasons for it, as soon as possible. The first two (2) days are remunerated.

Upon the return of such employees, the employer must reinstate them in their former positions, with all the rights to which they would have been entitled if they had continued to work. If any such position no longer exists when the employee concerned returns to work, the employer must recognize all the rights and privileges to which the employee would have been entitled if he or she had been at work at the time the position was closed.

Employees may be absent from work for a period of not more than 104 weeks if they suffer serious bodily injury during or resulting directly from a criminal offence that renders them unable to hold their regular positions. In that case, the period of absence shall not begin before the date on which the criminal offence was committed, or before the expiry of the period provided for in the first paragraph, where applicable, and shall not end later than 104 weeks after the commission of the criminal offence.

Other family or parental leaves

An employee may be absent from work, without pay, for 10 days per year, of which the first two (2) days may be remunerated, to fulfill obligations relating to the care, health or education of his or her child or spouse's child, or because of the state of health of the employee's relative or a person for whom the employee acts as a caregiver. This leave is extended to 16 weeks without pay to care for one of these people who have suffered a serious illness or serious accident. Where the relative or person is a minor child, the period of absence is not more than 36 weeks.

The leave may be divided into days, which, with the employer's consent, may also be divided. The employee must take reasonable steps to reduce the duration of the leave, as well as the need to take it. The employer must be informed as soon as possible of the employee's absence. In the case of a serious accident or serious illness of a relative, if it is warranted by the duration of the absence or its repetitive nature, the employer may request a document attesting to those reasons.

If the employee's child has a serious and potentially mortal illness, the employee is entitled to an extension of the absence, of up to a total of 104 weeks, upon presentation of a medical certificate.

As in the case of absences due to the employee's own illness or accident, employees, upon returning to work, must be reinstated in the same position as they would have filled had they not taken the time off.

Absences for Jury Duty

Under the Québec *Jurors Act*, no employer may dismiss, suspend or transfer an employee, practice discrimination or take reprisals against an employee or impose any other sanctions on the grounds that the employee is summoned to act or has acted as a juror. That being said, there is no requirement to pay employees their regular wages for time away from work for the purposes of jury duty.

Uniforms (Dress Code)

The *Labour Standards Act* contains specific provisions which relate to employees who are required to wear "special clothing" by their employers. In this regard, "special clothing" is defined under the *Labour Standards Act* to be more broad than simply the notion of a "uniform". An employer who requires the wearing of this "special clothing" must supply it free of charge to the employee paid at the minimum wage; he cannot require from the employee an amount of money for the purchase, use or upkeep of this clothing that would cause the employee to receive less than the minimum wage. Nevertheless, a Québec employer cannot require that its employees pay for special clothing that identifies the employer's establishment (e.g. store) or require that an employee purchase clothing or accessories sold by the employer, regardless of the wage earned by the employee.

In Québec, there is currently no legislation that would impact on a standard dress code for a retail establishment. Under human rights legislation, a dress code requiring women to wear sexually revealing uniforms, which male employees are not required to wear, has been found to be discriminatory.

Psychological harassment

The *Labour Standards Act* specifically provides a specific recourse against psychological harassment in the workplace. This recourse is separate from any internal harassment complaint process which can be found within an organisation. The recourse under the *Labour Standards Act* and a company's internal harassment complaint process are not mutually exclusive.

For the purposes of the *Labour Standards Act*, "psychological harassment" means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal

comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment for the employee. For greater certainty, psychological harassment includes such behaviour in the form of such verbal comments, actions or gestures of a sexual nature.

A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

An employee who believes that he has been the victim of psychological harassment may file a complaint in writing before the CNESST within 2 years of the last occurrence of the offending behaviour.

The CNESST will investigate any such complaint and may, with the consent of the parties, request that a mediator be appointed to help settle the dispute. It is recommended that all efforts be made to resolve a harassment complaint during either of the two mediation opportunities provided, first with the CNESST and second with the *Tribunal administratif du travail* ("**Administrative Labour Tribunal**"), as the adjudication of such a complaint is costly and long. Furthermore, there are significant disruptions to an employer's business as other employees will often be called to prepare for and testify before the Administrative Labour Tribunal on these matters.

If mediation fails, the CNESST will refer the matter before the Administrative Labour Tribunal. An individual may also request that his complaint be referred to the Administrative Labour Tribunal if the CNESST refuses to do so following its investigation into the matter.

The burden of proof rests with the employee and he must demonstrate that he has been the victim of psychological harassment. The Administrative Labour Tribunal will evaluate whether a reasonable person, under the same circumstances, would have also determined that he was the victim of harassment.

The Administrative Labour Tribunal can order several remedies including ordering:

- the reinstatement of the employee;
- that the employer pay an indemnity to the employee (up to a maximum equivalent to wages lost);
- that the employer take reasonable steps to stop the harassment;
- that the employer pay punitive and moral damages;
- that the employer pay an indemnity for loss of employment;
- that the employer pay for the psychological support needed by the employee for a reasonable period of time; and
- that the disciplinary record of the employee be modified.

Psychological Harassment Policy

All employers with employees in Québec must adopt and make available to their employees a psychological harassment prevention and complaint policy that includes, in particular, a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature. Such policy must namely prohibit psychological harassment, define it, and provide for a complaint process.

Other recourses against psychological harassment

If an employee believes he is the victim of harassment based on one of the grounds of discrimination enumerated in the Québec Charter, he may file a complaint with the Québec Human Rights and Youth Rights Commission (*Commission des droits de la personne et de la jeunesse).*

Finally, an employee also has a civil recourse under section 2087 of the *Civil Code*, which stipulates that an employer is bound by duty to take any measures to protect the health, safety and dignity of its employees.

Notice of termination of employment or layoff

Should the employer terminate the employment of an employee or lay him or her off for a period of six (6) months or more, the employer must notify the employee in writing at least:

- one (1) week in advance, if the employee has between three (3) months and less than one (1) year of uninterrupted service;
- two (2) weeks in advance, if the employee has one (1) year to five (5) years of uninterrupted service;
- four (4) weeks in advance, if the employee has five (5) years to ten (10) years of uninterrupted service;or
- eight (8) weeks in advance, if the employee has ten (10) years or more of uninterrupted service.

Instead of providing the employee with a written notice, the employer may pay the employee an indemnity in lieu thereof equal to the employee's regular wages, excluding overtime, for the period or remaining period of notice to which the employee is entitled.

No notice is required if the employee:

- has less than three (3) months of uninterrupted service;
- is terminated at the end of a fixed term contract;
- has committed a serious fault (the notion of serious fault has been very narrowly construed by the courts);

- is terminated or laid off as a result of a fortuitous event or “superior force” (e.g. closure of the plant as a result of a fire).

The indemnity must be paid:

- at the time of termination or layoff, if the layoff is expected to last more than six (6) months; or
- at the end of the six (6)-month period after a layoff of indeterminate lenght, or a layoff expected to last less than six (6) months but which exceeded that period.

If the employee is paid mainly by commission, the indemnity is based on the average of the employee’s weekly remuneration in the three (3) months preceding the termination or layoff.

It should be noted that there are special provisions with regard to the timing of the payment where a collective agreement exists. Furthermore, the termination notice or compensatory indemnity provided for under the *Labour Standards Act* are deemed to be minimum requirements only: a right to longer notice or greater compensation may arise at civil law, depending on the circumstances. It should also be noted that the labour standards termination entitlement referred to above is included in the reasonable notice under the *Civil Code* and is not in addition to it.

Collective dismissal

An employer who terminates ten (10) employees or more of the same establishment within a two (2)-month period must abide by the collective dismissal rules provided for in the *Labour Standards Act*. However, certain individuals are not considered employees for the purposes of the collective dismissal rules, including:

- an employee with less than three (3) months of continuous service;
- an employee whose contract for a fixed term has expired;
- an employee who has committed a serious fault;
- a senior manager or other person to whom the labour standards provisions do not apply;
- a person occupying a position that the Treasury Board has exempted, for reasons of urgency or of public interest, or for practical reasons.

These rules do not apply to the layoff of employees for an indeterminate period which does not in fact extend to more than six (6) months, nor to seasonal or intermittent activities. Finally, they do not apply to an establishment affected by a strike or lock-out.

In other words, any layoff in excess of six (6) months will be considered a termination for those purposes, unless you can show that the layoff is due to the seasonal nature of your business. This might be the case for employers in the agri-food business or even in certain retail situations.

If a layoff of more than ten (10) employees begins as a temporary layoff but extends beyond six (6) months, it will become a collective dismissal and be subject to these provisions.

The employer must notify the Minister of Employment and Social Solidarity of the collective dismissal within the following minimum time periods. A copy of the notice should also be sent to the CNESST and the union representing the employees, if any. A copy must also be posted in a conspicuous place in the affected establishment.

Where the number of employees affected is:	The minimum notice period is:
At least ten (10) and less than 100	Eight (8) weeks
At least 100 and less than 300	12 weeks
At least 300	16 weeks

If the layoffs occur due to "superior force" (e.g. a major storm) or an unforeseeable event, the notice must be given as soon as the employer is in a position to do so. Under normal circumstances, however, it will be very difficult for an employer to rely on these exceptions.

If the employer does not give the notice prescribed by the *Labour Standards Act* or gives insufficient notice, he must pay to each dismissed employee an indemnity equal to the employee's regular wages, excluding overtime, for a period equal to the time period or the remainder of the time period within which he was required to give notice.

The indemnity must be paid at the time of the dismissal or at the end of a period of six (6) months after a layoff of indeterminate length or a layoff expected to last less than six (6) months but which exceeds that period.

Also, if the employer does not give the layoff notice required by the *Labour Standards Act*, or if he gives insufficient notice, he could be found guilty of an offence and be liable to a fine of $1,500 for each week or part of a week of failure to comply or late compliance.

The employer may not change the employees' wages or group insurance or pension plans during the notice period.

When more than 50 employees are affected, the Minister may require the employer and the union to participate in the establishment of a reclassification assistance committee, whose purpose is to minimize the impact of the dismissal and facilitate the maintenance or re-entry on the labour market of those employees. The employer shall reach an agreement with the Minister as to the extent of the employer's contribution to defray the operating costs of the committee or, failing an agreement, make the contribution determined by regulation.

Work certificate

At the expiry of his or her contract of employment, an employee may require the employer to issue to him or her a work certificate containing the following information: the nature and duration of his or her employment, the dates on which the employment began and ceased and the name and address of the employer. This certificate must not contain any mention of the quality of the employee's work or the conduct.

The above provision does not, however, prevent the employer from giving the employee a letter of reference if warranted.

Retirement

Employees are entitled to continue to work notwithstanding the fact that they have reached or passed the retirement age.

It is prohibited to dismiss, suspend or retire an employee on the ground that he or she has reached or exceeded the retirement age.

An employee who is otherwise dismissed, suspended or retired may file complaints with the CNESST, asking to be reinstated, and will benefit from a legal presumption that those measures were imposed because of their age. The burden will be on the employer to show another good and sufficient cause. The CNESST may represent, free of charge, an employee who does not belong to a bargaining unit. Note that the employee may also file a complaint of discrimination based on age with the *Commission des droits de la personne et de la jeunesse.* (see Section 13 below).

Alienation of an undertaking

The sale or concession of a business, in whole or in part, does not affect the continuity of the application of the labour standards nor an employee's civil claims which are not paid at the time of the sale or concession.

Recourse against prohibited practices

Sections 122 and 122.1 of the *Labour Standards Act* provides for special protection, up to and including reinstatement in the case where an employee is dismissed, suspended, transferred, or is a victim of discrimination or reprisals for several reasons, including:

- the employee has exercised a right under the *Labour Standards Act* (such as asking for or taking any of the leaves described above);
- the employee has provided information to the CNESST;
- the employee is subject to a salary seizure by a third party (e.g. court ordered alimony)
- the employee is pregnant;

- the employee has reached or passed the age of the number of years of service at which he should retire pursuant to the law, retirement plan, or employer practice;
- the employer is trying to evade the application of the *Labour Standards Act* (e.g. terminating an employee close to his meeting the two (2) years of employment threshold in order to avoid a recourse under section 124 of the *Labour Standards Act*);
- the employee refused to work beyond his or her regular working hours because the employee's presence was required to fulfil obligations relating to the care, health or education of his or her child or spouse's child, or because of the state of health of a relative or a person for whom the employee acts as a caregiver; and
- on the ground that an investigation of the employer is being conducted by the CNESST (e.g. following a complaint made by an employee);

An employee who believes that he has been a victim of discrimination, reprisals or sanctions may file a complaint with the CNESST. Furthermore, the employee will benefit from the legal presumption that the sanction was imposed as a result of him or her exercising a right under the *Labour Standards Act* or for one of the other reasons listed above. The burden will be upon the employer to show that the reprisal or sanction was instead imposed for another good and sufficient cause.

An employee can be represented, free of charge, by an attorney from the CNESSTs legal department, should the complaint be accepted by the CNESST.

Senior managerial personnel

The *Labour Standards Act* applies to all employees except senior managerial personnel. Although there is no definition of "senior managerial personnel", the statute and its regulations are intended to exclude only those persons who exercise substantial influence in the administration of the business and have a high degree of decision-making power. Nevertheless, certain provisions of the *Labour Standards Act* still apply to senior managerial personnel: i.e., the provisions with respect to retirement; maternity leave; parental leave; leave for the birth or adoption of a child; leave to fulfil obligations relating to the care, health or education of a minor child; and leave to undergo medical examination related to the pregnancy. The recourse against psychological harassment is also available for senior managerial personnel.

Hiring an Employee under a certain age

The *Labour Standards Act* contains particular provisions regulating work done by children (anyone under the age of 18) as well as additional rules regarding children under the age of 16 and 14. Employers employing children are required to keep their date of birth in the company register for a period of three (3) years.

Employers may not have a child carry out work that exceeds his or her capacity or that risks compromising his or her education or that adversely affects his or her health or physical or moral development.

Employers may not have work performed by a child during school hours if the child is under 16 years of age and does not have his or her high school diploma from the Québec Ministry of Education. If the employer employs such a child, the employer must ensure that the child's work is scheduled so that he or she is able to attend school during school hours. Specifically, a child cannot work during school hours if he or she is 16 years of age during the school year. In this case, under the Québec *Education Act*, the child must attend school until the last day of the school year.

Employers cannot have a child work between 11 p.m. and 6 a.m., unless the child is no longer required to attend school. Additionally, employers must ensure that the child's work schedule allows the child to be at his or her family residence between 11 p.m. and 6 a.m. except in the case of a child who is no longer required to attend school.

If the employer employs a child under the age of 14, the employer must obtain the written consent of the holder of parental authority or the tutor and must preserve the written consent in the company registry.

Differences in Treatment

It is prohibited to discriminate against employees based solely on their hiring date, in relation to salary and pension plans or other employee benefits.

An employee who feels he or she is being discriminated on the basis of their hiring date may file a written complaint to the CNESST within 12 months of becoming aware of this difference in treatment.

Dismissal without good and sufficient cause

Section 124 of the *Labour Standards Act* provides recourse for employees having two (2) or more years of uninterrupted service who have been terminated without just and sufficient cause. Employers should therefore be cognisant that once it terminates the employment of an employee with at least two (2) years of service, it will need to justify the termination by a just and sufficient cause since the payment of severance pay may not be sufficient.

An important factor, and sometimes a surprising factor for persons not familiar with Québec employment law, is that an employee who files a complaint under section 124 can be represented, free of charge, by an attorney from the CNESST's legal department.

Prior to the hearing before the Administrative Labour Tribunal, the parties have an opportunity of participating in two mediation processes, one organised by the CNESST and the second with a conciliator at the Administrative Labour Tribunalin order to try settling the complaint.

This recourse is heard before an Administrative Labour Tribunal judge whose powers include the power to reinstate the employee. Such hearing before an Administrative Labour Tribunal judge generally takes place within nine (12) months after the filling of the complaint and the decision of the administrative judge, which must be rendered in writing, is final. There is a possibility for judicial or administrative review but it will only be granted if the administrative judge's decision was patently unreasonable.

Indeed an employee who has been terminated without just and sufficient cause can be reinstated and compensated for his loss of salary since the termination date (back pay). An administrative judge could not order reinstatement in cases where relations between the parties are particularly tenuous and is much less likely to order reinstatement in the cases where the terminated employee held a managerial position.

Section 124 complaints are the most common recourse undertaken by employees in the province of Québec. This recourse is similar to a grievance under a collective agreement, where arbitrators request the employer to apply progressive discipline before terminating an employee.

The other powers conferred unto the Administrative Labour Tribunal by section 128 of the *Labour Standards Act* is to order the employer to pay to the employee an indemnity up to a maximum equivalent to the wage he would normally have earned had he not been dismissed and render any other decision he believes fair and reasonable.

It is important to note that this recourse is not open to senior managerial personnel. As mentioned above, although there is no definition of "senior managerial personnel", the *Labour Standards Act* and its regulations are really intended to exclude only those persons who exercise substantial influence in the administration of the business and have a high degree of decision-making power.

The recourse is also not open to employees who have been laid off (e.g. job elimination), however an employee could file a complaint under section 124 allowed by arguing that his lay off was actually a pretext to terminate his employment without good and sufficient cause. The employer will need to demonstrate that the layoff was the result of economic or operational reasons. Furthermore, an employer should be able to demonstrate that the employee that was laid off was chosen by the employer for reasons that were neither arbitrary nor discriminatory and was based on objective criteria (i.e. seniority).

The recourse under the *Labour Standards Act* is certainly more expedient than recourse before Québec's civil courts, as parties usually have a hearing date within nine (12) months of the lodging of the complaint and a judgement is usually rendered within 24 to 36 months following the dismissal. It cannot be denied that such a recourse permits awards which are often more generous for terminated employees.

Indeed, and as previously mentioned, the fact that an employer provided an employee with reasonable notice under section 2091 of the *Civil Code*, does not preclude an employee from obtaining back pay and/or an indemnity in lieu of reinstatement, in the event the dismissal is determined to have been made without just and sufficient cause. A concrete example is that while a 30 year old receptionist with four (4) years of service may be entitled to one (1) month of notice under section 2091 of the *Civil Code*, this same employee could be awarded 18 months of back pay pursuant to a successful complaint under section 124 of the *Labour Standards Act*.

Parental Insurance

The QPIP provides for the payment of financial benefits to all eligible workers – salaried or self-employed – who take maternity leave, paternity leave, parental leave, or adoption leave. Since January 1, 2006, the QPIP has replaced the maternity benefits, parental benefits, and adoption benefits previously available to new Québec parents under federal Employment Insurance. The QPIP is an income replacement plan, meaning that applicants must have received insurable income to qualify for benefits.

Eligibility

To qualify for benefits under the QPIP, parents must meet all of the following conditions:

- be the parent of a child born or adopted on or after January 1, 2006;
- reside in Québec at the start of the benefit period and on December 31 of the year preceding the start date of the benefit period;
- have stopped working or seen a reduction of at least 40% in their usual employment income (salary);
- have at least $2,000 in insurable income (income taken into account for benefit calculation purposes) during the reference period (the period during which the income the parent earned is considered in determining the benefit amount; this period is usually 52 weeks), regardless of the number of hours worked; and
- be required to pay premiums under the QPIP.

Benefits

Four (4) types of benefits are offered under the QPIP: maternity benefits, paternity benefits, parental benefits and adoption benefits.

Parents must choose between two (2) options: the basic plan or the special plan. In so doing, they

decide the duration of their leave as well as their income replacement rate. The choice of plan is determined by the first parent to receive benefits and cannot be modified. As a result, this decision binds the other parent, even in the event of joint custody.

The following table indicates the maximum number of benefit weeks and the percentage of average weekly income for each type of benefits, depending on the plan chosen.

Types of benefits		Basic plan		Special plan	
		Maximum number of benefit weeks	Percentage of average weekly income	Maximum number of benefit weeks	Percentage of average weekly income
Maternity		18	70%	15	75%
Paternity		5	70%	3	75%
Parental	Sharable parental benefits	7	70%	25	75%
		25	55%		
	Sharable additional parental benefits	4 *once each of the parents uses 8 weeks of shareable parental benefits	55%	3 *once each of the parents uses 6 weeks of shareable parental benefits	75%
	Exclusive multiple parental benefits	5 *after the birth of more than one child following the same pregnancy	70%	3 *after the birth of more than one child following the same pregnancy	75%
Adoption	Exclusive adoption benefits	5	70%	3	75%
	Exclusive multiple adoption benefits	5 *after the adoption of more than one child at the same time	70%	3 *after the adoption of more than one child at the same time	75%
	Sharable Welcome and Support benefits	13	70%	12	75%
	Sharable adoption benefits	7	70%	25	75%
		25 (7+25=32)	55%		
	Sharable additional adoption benefits	4 *once each of the parents uses 8 weeks of shareable adoption benefits	55%	3 *once each of the parents uses 6 weeks of shareable adoption benefits	75%

Parents may apply for benefits online or by telephone.

Labour Climate in Québec

Labour relations in Québec have been generally stable over the last decade. Employers and unions are collaborating to stimulate the economy and, as a result, there are very few strikes and wage settlements are fair.

In 2018, 38.4% of workers in Québec were unionized. However, the unionization rate for the private sector was 46% in 2018. 54% of unionized workers in Québec work in the public sector.[1]

In 2018, 21,747 unionized works were involved in work stoppages. 8,805 were from the public sector and 12,947 were from the private sector. It represents a total of 223 strikes or lockouts for one year and 378 125 lost hours. From 2014 to 2016, 374 strikes or lockouts occurred in Québec, public and private sectors combined. This means there were on average 124 incidents per year. This is significantly lower than what we can observe in 2018.[2]

1 Portrait de l'emploi syndiqué et de la présence syndicale au Québec, *Institut de la statistiques du Québec*, Marc-André Demers).

2 Source: *Government of Québec*

Union Certification

The ***Québec Labour Code*** (“**Code**”) is primarily concerned with the recognition, certification, rights and obligations of unions. It is not significantly different from other Canadian jurisdictions’ legislation and regulations with respect to the fundamental principles involved, such as the exclusive right of a certified union to represent an appropriate bargaining unit, the obligation for both employer and union to bargain diligently and in good faith and the submission to final and binding arbitration of any disagreement respecting the interpretation or application of a collective agreement.

What it takes to obtain certification

The *Code* sets out rules governing the union certification process. In order to obtain certification, a union must obtain the membership of more than 50% of the employees included in the bargaining unit. Where between 35% and 50% of the employees have signed a union membership card, a labour relations officer must hold a vote and the union will be certified if it obtains the support of an absolute majority (i.e. 50% plus one (1)) of the employees included in the bargaining unit. However, when signed membership cards of more than 50% of the targeted employees are filed by the union, no vote is required.

Contestation by the employer

One of the objectives of the *Code* is to render union certification easily accessible. As a result, no employer or person acting for an employer or an association of employers may seek to dominate, hinder or finance the formation or the activities of an association of employees in any manner, or participate therein.

Furthermore, the *Code* forbids the use of intimidation or threats to induce anyone to become, refrain from becoming or cease to be a member of an association of employees.

In addition, no employer or any person acting for an employer may refuse to employ any person because that person exercises a right arising from the *Code*. Freedom of association is further guaranteed by the *Canadian Charter of Rights and Freedoms* and the Québec Charter and is a constitutional right according to the Supreme Court of Canada.

Working conditions pending certification

Unless it obtains the written consent of the union, the employer may not modify the conditions of employment of his employees from the date of the filing of a petition for certification until the right to strike or to lock out is exercised.

Employer communication

Within the context of a union organization drive, an employer's freedom of expression is limited by the freedom of association held by its own employees, as recognized in the *Code*. When confronted with a union organization campaign, employers must be cautious and prudent in how they deal, both directly and indirectly, with their employees. Québec courts have outlined examples of unlawful employer conduct in this regard, which include:

- threatening to shut down a business, should a union drive succeed;
- asking the employees how they intend to vote;
- making statements or actions that might show preference to a non-union employee;
- declaring that the employer will not deal with a union if it is certified;
- stating that unionization will take away benefits and privileges presently enjoyed by employees, or that the employer would have to proceed to lay-offs;
- making anti-union statements;
- during the course of negotiations with the union, sending emails to union members in view of presenting to them the employer's demands and thereby bypassing the union.

An employer's message to its employees must rely heavily on facts and must not be seen to be threatening or coercive in nature. Employers are entitled to tell employees that they are free to join or not to join a union, and that once certified the union will represent

all employees in the bargaining unit. Upon being specifically asked by its employees, an employer may also inform its employees of the obligations they would assume once unionized. For example, dues, initial fees, loss of income when on strike, and exclusive representation by the union.

Employers also remain free to correct any misleading or untrue statements made by union organizers. However, employers must do so in accurate and cautious terms. Employers may also inform employees that union members might attempt to solicit them at their homes.

Strike, lockout and anti-scab rules

The right to strike or lockout is acquired 90 days after the receipt by the union or employer of the bargaining notice given by one party to the other for the purpose of concluding a collective agreement. No strike may be declared unless it has been authorized by secret ballot decided by the majority vote of the members of the certified association who exercise their right to vote. During a strike or lockout, the employer is prohibited from using the services of certain persons to perform the tasks of an employee who is a member of the union on strike or locked out.

During the term of a collective agreement, it is strictly prohibited to declare a strike or lockout. In the event of an illegal strike, the employer may file a petition for a back-to-work order before the Administrative Labour Tribunal to force the striking employees back to work. There are also severe penalties for declaring or instigating an illegal strike or lockout.

First collective agreement

In the event the union and the employer fail to conclude a first collective agreement, either party may ask for the intervention of a conciliator. When conciliation is unsuccessful, either party may then ask the Minister of Labour to submit the dispute to arbitration. The arbitrator has the power to determine the content of the first collective agreement (including wages). If a strike or lockout is in progress at that time, it must end upon the arbitrator informing the parties that he has deemed it necessary to determine the content of the collective agreement in order to settle the dispute. Conditions of employment must be maintained throughout the arbitration process from the time the arbitrator has deemed it necessary to determine the content of the agreement.

Term of a collective agreement

A collective agreement must be for a duration of no less than one (1) year. In the case of a first collective agreement, the term may not exceed three (3) years.

Prohibited practices

An employee who is dismissed, suspended or on whom the employer imposes any disciplinary sanction because he or she has exercised a right provided under the Code (e.g. signing a union membership card) is afforded special protection under the *Code*. The employee may file a complaint with the Administrative Labour Tribunal within 30 days of the sanction complained of, and, if applicable, seek reinstatement.

If it is established that the employee exercised a right under the *Code*, there is a legal presumption in the employee's favour that the sanction was imposed because of the exercise of that right, and the employer then has the burden to prove that the sanction was applied for another good and sufficient cause.

Successor rights

The alienation or operation by another of an undertaking, in whole or in part, does not invalidate any union certification, any collective agreement or any proceedings for the securing of certification or for the making or carrying out of a collective agreement, save for certain exceptions in the case of subcontracting, which is defined in the code as "the transfer of part of the operations of an undertaking where such transfer does not entail the transfer to the transferee, in addition to the functions or the right to operate, of most of the elements that characterize the part of the undertaking involved."

The employer may give the union a notice indicating the date on which it intends to alienate or transfer the operation of all or any part of his undertaking. Once the alienation or transfer is completed, the association may present a motion to the Administrative Labour Tribunal for it to decide if the new employer is bound by both the certification and the collective agreement and becomes a party to any proceedings relating thereto in the place and stead of the former employer.

It is also important to note that where the operation of part of an undertaking is transferred to a new employer (i.e. subcontracting), the collective agreement that has not expired on the effective date of the transfer is deemed to expire on the day the transfer becomes effective. The Administrative Labour Tribunal may, however, determine that the new employer remains bound by the certification and/or by the collective agreement until the date of its expiry, if it considers that the transfer was made for the purpose of dividing a bargaining unit or interfering with the power of representation of an association of employees.

Finally, following a transfer of operation of part of an undertaking, the new employer will not be bound by the certification or the collective agreement where a special agreement with the union specifies that the parties elect not to apply to the Administrative Labour Tribunal to request that successor rights apply.

Decertification

A certification may be revoked by the Administrative Labour Tribunal within certain time periods specified under the *Code*. This includes if the association either ceased to exist or no longer comprises the absolute majority of the employees of the bargaining unit for which it was certified. The revocation of a certification prevents the renewal of the collective agreement made by the decertified association and automatically deprives it of its rights and advantages thereunder. Although an employee included in a bargaining unit or an interested employee association are considered to be “interested parties” in representation matters, an employer may request that the Administrative Labour Tribunal determine whether an association still exists or whether it still has majority support. However, an employer is denied any right to lead evidence on the issue of employee support for the union.

Collective Agreement Decrees

Pursuant to *An Act Respecting Collective Agreement Decrees*, the Government may order that a collective agreement respecting any trade, industry, commerce or occupation also bind all the employees and professional employers in the Province of Québec or in a region of Québec, within the scope determined in such decree.

Where a decree is issued, the parties to the collective agreement must form a parity committee responsible for overseeing and ascertaining compliance with the decree, unless the Government orders an already-existing committee or the CNESST to assume that responsibility. A parity committee may impose a registration and reporting system upon professional employers and levy the sums required for the carrying out of the decree, up to a maximum equivalent to 0.5% of the employees' remuneration and 0.5% of the professional employer's payroll.

The principal decrees currently in force extend to the following trades:

Automotive Services Industry
Building Materials Industry
Building Service Employees
Cartage Industry (common carriers)
Hairdressers
Non-Structural Metalwork
Petroleum Equipment Installation
Security Guards
Solid Waste Removal

The trades affected by decrees are subject to change on a regular basis.

Charter of Human Rights and Freedoms

The Québec Charter contains a number of provisions which relate both directly and indirectly to employment and labour relations. They can be summarized as follows:

- guarantee of freedom of expression, freedom of peaceful assembly and freedom of association;
- safeguard of one's dignity, honour and reputation;
- prohibition against discrimination and harassment based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap;
- prohibition against discrimination in hiring and other employment practices (e.g. promotion, transfer, dismissal, conditions of employment, etc.);
- prohibition against requiring an applicant to give information on any of the forbidden grounds of discrimination unless such information is useful for the application of an occupational requirement or the implementation of an affirmative action program;
- prohibition against dismissing, refusing to hire or otherwise penalizing a person in his employment for having been convicted of an offence not connected with such employment;

- obligation for employers to grant equal salary for equivalent work; and
- guarantee of the right of every person who works, in accordance with the law, to fair and reasonable conditions of employment, having regard to his health, safety and physical well-being.

The duty to accommodate is not a legal requirement protected by the Québec Charter. This duty was however developed by the courts and tribunals. The duty to accommodate requires employers to identify and eliminate rules that have a discriminatory impact.

Accommodation includes changing the rules or practices to incorporate alternative arrangements that eliminate the discriminatory barriers. The duty to accommodate is most often applied in situations involving persons with disabilities and with religious beliefs and practices.

The duty to accommodate ceases where it creates “undue hardship” for the employer. Québec case law has identified different factors contributing to “undue hardship”: the size of the business, its financial resources, the cost of the accommodation measure, the effect of the accommodation measure on the other employees and on the productivity of the business, etc. The scope of the employer’s duties is not clearly defined as of this date, even though a majority of decisions indicate that the employer definitely must accept a financial burden to comply with its duty to accommodate its employees.

Reputation, Privacy & Protection of Personal Information

In addition to the recourse for psychological harassment under the *Labour Standards Act*, pursuant to both the *Civil Code* and the Québec *Charter*, employers have an obligation to provide employees with a harassment free work environment and to deal with harassment when it occurs. The Québec *Charter* provides specifically that no one may harass a person based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Under the Act respecting the Protection of Personal Information in the Private Sector (*Private Sector Act*), a person (e.g. an employer) collecting personal information for the purpose of establishing a file on another person or entering information in such a file can collect only information that is necessary to attain the object of the file. No information can be collected from any person other than the person concerned, unless that person consents to collection from a third person, unless the law so authorizes, or unless, in certain circumstances, the person collecting the information has a serious and legitimate reason for collecting it from a third person.

Persons operating an enterprise are required by the *Private Sector Act* to ensure that any personal information on others that they hold or use remains confidential. Communication of the information to third persons without the consent of the person concerned is forbidden, except in exceptional cases set out in the *Private Sector Act*. The *Private Sector Act* authorizes, in certain circumstances, the communication of a "nominative list" (i.e. containing names, addresses and telephone numbers) for purposes of commercial or philanthropic prospection, subject to the right of each person on the list to require that information concerning him or her be deleted from the list. The use of personal information for purposes that are not relevant to the object of the file in which it is kept is prohibited, except with the consent of the person concerned.

In order to be valid, the consent to the communication or use of personal information must be manifest, free, enlightened and given for specific purposes. Consent is valid only for the length of time necessary to achieve the purposes for which it was requested.

The *Private Sector Act* establishes the conditions and procedure according to which a person may consult and rectify a file established on him by a person operating an enterprise. It is possible for any interested person to submit a request for the examination of a disagreement to the *Commission d'accès à l'information* ("**Access to Information Board**") in relation to the application of a legislative provision concerning access to, or rectification of, personal information, or that person's right to have personal information concerning him deleted from a nominative list. The Access to Information Board's decision in such matters is final as to issues of fact, but may be appealed from to the Court of Québec on issues of law or jurisdiction.

The Access to Information Board, on its own initiative or following a complaint from an interested person, has the power to inquire into, or entrust another person with inquiring into, any matter relating to the protection of personal information and the methods used by a person operating an enterprise and who collects, holds or uses personal information or communicates it to third persons. Following an inquiry, the Access to Information Board has the power to recommend or order the application of remedial measures to ensure the protection of personal information. The order may be appealed by a person having a direct interest in the matter.

The *Private Sector Act* establishes specific rules with respect to personal information agents who establish files on other persons on a commercial basis and prepare and communicate credit reports to third persons. Such agents are required to register with the Access to Information Board and make their activities known to the public by means of notices published periodically in the press.

Equal Opportunity/Affirmative Action Programs

The Québec Charter reaffirms the principle of equal pay for equivalent work. Moreover, it also empowers the Québec Human Rights and Youth Rights Commission, after an investigation reveals the existence of a discriminatory practice in employment, especially with regards to women, members of cultural communities, the handicapped and native people, to propose the implementation of an affirmative action program to attain greater representation of target group members within such time as it may fix. If its proposal is not followed, the Québec Human Rights and Youth Rights Commission may apply to the court and obtain an order to devise and implement an affirmative action program.

Note also that *Emploi-Québec* (of the Ministry of Employment and Social Solidarity) grants subsidies to employers to adapt job openings to the capacities of handicapped persons or to otherwise promote their employment.

Whistleblower Protection

Until recently, employees who, as whistleblowers, denounced their employer to the authorities on grounds that the employer had breached a law or a regulation, were liable to disciplinary measures or termination by their employer for their lack of loyalty or for breach of trust.

Amendments to the Canadian *Criminal Code*, which took effect on September 15, 2004, however, now make it illegal for an employer, or a person acting on his behalf, to take or threaten to take any sanctions or reprisals against an employee who provides information to authorities concerning an offence that is (or that the employee thinks is) being committed by the employer contrary to any federal or provincial act or regulation.

Employers found guilty of this offence are liable to imprisonment for a term not exceeding five (5) years.

Section 122 of the *Labour Standards Act* also provides protection in the case where an employee is dismissed, suspended, transferred, or is a victim of discrimination or reprisals, more particularly on the ground of a disclosure by an employee of a wrongdoing within the meaning of the *Anti-Corruption Act* or on the ground of a communication by an employee to the inspector general of Ville de Montréal or the employee's cooperation in an investigation conducted by the inspector general under Division VI.0.1 of Chapter II of the *Charter of Ville de Montréal*.

Sexual and Other Forms of Harassment

In addition to the recourse for psychological harassment under the *Labour Standards Act*, pursuant to both the *Civil Code* and the Québec *Charter*, employers have an obligation to provide employees with a harassment free work environment and to deal with harassment when it occurs. The Québec *Charter* provides specifically that no one may harass a person based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Prohibited forms of harassment could possibly be broader than the above, since employers have an obligation to provide fair and reasonable conditions of employment which pay proper regard to the health, safety, physical well-being and dignity of their employees.

Employers are now required by law to adopt and make available to their employees a psychological harassment prevention and complaint processing policy that includes, in particular, a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature.

Pay Equity

The *Pay Equity Act* is designed to eliminate any salary gap existing due to systemic gender discrimination suffered by persons holding positions in predominantly female job classes.

It applies to every employer whose business employs ten (10) or more employees, although the conditions of application vary and become more onerous as employers cross the 50 and 100-employee thresholds. Only Québec-based employees need to be considered.

The *Pay Equity Act* requires every employer whose business employs ten (10) or more but fewer than 50 employees to determine the adjustments in compensation required to afford the same remuneration, for work of equal value, to employees holding positions in predominantly female job classes as to employees holding positions in predominantly male job classes receive.

Contrary to the situation facing employers with 50 or more or 100 or more employees, the *Pay Equity Act* does not prescribe a specific process to determine the adjustments.

Employers with 50 or more but fewer than 100 employees must establish, in accordance with the *Pay Equity Act*, a pay equity plan applicable throughout their business.

Employers with 100 or more employees must also establish a plan, except that they must do so in collaboration with their employees through a pay equity committee.

He must, in addition, at the request of a union representing employees in the business, establish a separate plan applicable to those employees.

An employer whose business employs 100 or more employees is further required, in order to enable his employees to participate in the establishment of the pay equity plan, to set up a pay equity committee which includes employee representatives. Recent legislative changes have impacted on employer's obligation to file a pay equity plan. We recommend obtaining in-depth legal advice to ensure compliance with the *Pay Equity Act* since the deadline for determination of compensation adjustments or for completion of a pay equity plan will vary depending on the date when the employer started doing business in Québec and/or when it started to employ ten (10) or more employees.

Charter of the French Language

Under the *Charter of the French Language*, French is both the official language of Québec and the normal language of work (employees have a right to carry on their activities in French) and commerce (consumers of goods and services have a right to be informed and served in French).

Business names

Business names must be in French. However, a business name may be accompanied by a version in a language other than French, provided that the French version of the business name appears at least as prominently. The *Charter of the French Language* provides various rules on writing and formulation with respect to business names.

In addition, in texts or documents drafted only in a language other than French, a business name may appear in the other language only.

When the company's name is displayed, it must be in French. If a version in another language is used, the French version must be clearly predominant. When the company's name is mentioned on printed labels, commercial or printed labelling, it must be in French. If a version in another language is used, the rule of equivalence applies.

Commercial publications

Catalogues, brochures, folders and commercial directories may be in two (2) separate versions: one exclusively in French, the other exclusively in another language, provided that the material presentation of the French version is available under no less favourable conditions of accessibility and quality than the version in the other language. They can also be published in both French and another language, provided that the French text is at least as prominent as any other language.

In the case of application forms for employment, invoices, receipts, order forms and releases, the general rule provides that these documents may be drafted in French only or in both French and in another language.

Contracts pre-determined by one party and contracts including printed standard provisions must be drawn up in French. They may also be drawn up in another language at the express wish of the parties.

Business cards can be unilingual, bilingual or printed with a different language on either side, whichever choice makes the most business sense.

Websites

Advertising documentation through a website, whether interactive or not, available to the public by a company with an establishment in Québec, must be in French. Commercial advertising carried by a website can be made in another language than French provided it has an equal value.

In addition, companies with 50 employees or more are covered by francization programs which also apply to information technology. Therefore, the absence of French on the website could lead to withdrawal or suspension of the francization certificate.

Public signs, posters and commercial advertising

Public signs, posters and commercial advertising must be in French. One or several other languages may be added but the law requires that French be markedly predominant, meaning that French is to have a much greater impact than the text in the other language or languages (i.e. French be twice as visible as any other language or there be twice as many signs in French containing the same text).

Product labelling

Product labelling must be in French and the use of one or more other languages is optional. No inscription in another language may be given greater prominence than that in French.

Computer software

All computer software, including game software and operating systems, whether installed or uninstalled, must be available in French, unless no French version exists. Software can also be available in languages other than French, provided that the French version can be obtained on terms (except price, where it reflects higher production or distribution costs) that are no less favourable and that it has technical characteristics that are at least equivalent.

Some employees may express a preference for the English version of a computer software, if the employer agrees to make it available to them. However, these individual choices should not undermine the widespread use of French in the company. In practice, the Office of the French Language ("**Office**") will request that the French version be available in first on all workstations or by default.

Language in the workplace

All written communications from an employer to its staff must be in French or bilingual. Collective agreements must be drafted in French, although there can be an unofficial English version.

It is forbidden for an employer to require the knowledge of a language other than French for a position, unless it is shown that the nature of the duties of this particular position necessitates the knowledge of another language. It is also illegal for an employer to dismiss, lay off, transfer or demote an employee for the sole reason that he speaks only French or does not have an adequate knowledge of another language. Any violation of these provisions constitutes an offence and gives a person the right to file a complaint before a labour commissioner or an arbitrator, if he is governed by a collective agreement.

Penalties provided for in the *Charter of the French Language*

For a first offence, fines now range from $1,500 to $20,000 in the case of a legal person, and from $600 to $6,000 in the case of an individual. The fines are doubled for a subsequent offence.

Moreover, if a person is convicted of an offence, a judge may impose on the offender, in addition to any other penalty, a further fine equal to the financial gain the offender realized or derived from the offence, even if the maximum fine has also been imposed.

Francization program and certificate

Employers having 50 employees or more are required to implement a francization program, if the use of French is not generalized at all levels of their business, in order to obtain a francization certificate.

A francization program is intended to attain such an objective through various measures such as: the knowledge of French on the part of management and other members of the personnel; an increase, where necessary, in the number of persons having a good knowledge of French at all levels of the business; the use of French as the language of work and as the language of internal communication; the use of French in manuals, catalogues and other working documents of the business; the use of French in communications with the civil administration, clients, suppliers, the public and shareholders; the use of French terminology; the use of French in public signs and posters and commercial advertising; appropriate policies for hiring, promotion or transfer; and the use of French in information technologies.

Critical path leading to the issuance of a francization certificate

1. Every business employing 50 employees or more for a period of six (6) months must register with the Office within six (6) months from the end of that period. In addition, businesses employing 100 or more persons must form a francization committee composed of six (6) persons or more (at least one-third of whom shall be representatives of the employees).
2. The Office will then issue a certificate of registration to the business. The employer must keep its employees informed of the application of the steps outlined in the certificate.
3. Within six (6) months of the date on which the certificate of registration is issued, the business must transmit to the Office an analysis of its linguistic situation.
4. If the Office considers that the use of French is generalized at all levels of the business, it will issue a francization certificate.
5. If the Office considers that the use of French is not generalized at all levels of the business, it will notify the business that it must adopt a francization program to be submitted for approval within the next six (6) months of the date on which the notice is received.
6. Once a francization program is approved, the Office issues an attestation of implementation in respect of the program.

7. The business is then required to submit reports on the implementation of its program every 24 months in the case of a business employing fewer than 100 employees, and every 12 months in the case of a business employing 100 or more employees.
8. Where the business has completed the implementation of its francization program and the Office considers that the use of French is generalized at all levels of the business, the Office will then issue a francization certificate.
9. Every business holding a francization certificate is required to ensure that the use of French remains generalized at all levels and must submit to the Office, every three (3) years, a report on the progress of the use of French in the business.

Industrial Accidents and Occupational Diseases

The *Act Respecting Industrial Accidents and Occupational Diseases* ("**Industrial Accidents Act**") provides compensation for employment injuries by creating a no-fault mandatory state-run insurance plan for employees injured in the workplace. The Industrial Accidents Act is designed to provide compensation and rehabilitation benefits to workers who suffer an injury at work or contract an occupational disease. No action lies against the employer of an employee who has suffered an employment injury resulting from an industrial accident or an occupational disease.

Employer declarations

Within 60 days after the beginning of its activities, the employer must provide the CNESST, for each of its establishments, the following information:

- information pertaining to incorporation of the company;
- the nature of the activities carried on in each establishment;
- an estimate of the gross wages that it expects to pay to its workers until the following December 31.

Then, before March 15 of every year, the employer must transmit to the CNESST a statement indicating the following particulars for each of its establishments:

- the amount of the actual gross wages earned by its workers during the preceding calendar year;
- an estimate of the gross wages it expects to pay to its workers during the current calendar year.

Assessment

Workers' compensation assessments are levied each year and are based on risk and/or experience. The assessment rules provide that an employer, depending on the size of its insurable payroll, will be assessed in accordance either with the rate applicable to the unit under which it is classified, a personalized rate of assessment, or the retrospective adjustment plan.

Generally speaking:

- the unit rate assessment (i.e. the rate applicable to the relevant unit of classification times each $100 of payroll) is for small businesses, i.e. with an annual assessment of less than $9,000;
- the personalized rate of assessment, which corresponds to the applicable unit rate adjusted to the experience of the employer, is available to medium and large-size employers with an annual assessment between $9,000 and $400,000 and with a risk experience of at least four (4) years before the year of assessment;
- the retrospective adjustment plan is applicable to very large employers with an annual assessment in excess of $400,000 and with risk experience of at least four (4) years before the year of assessment;
- under the retrospective plan, the assessment of the employer is adjusted taking into account the actual cost of the employment injuries and the limit of the assumption of the cost of benefits chosen by the employer.

Employers who are not already covered under the retrospective adjustment plan, however, may, if certain conditions are met, form a safety group to potentially benefit from lower assessment rates (see subsection "Safety groups" following).

Safety groups

The *Industrial Accidents Act* empowers the CNESST to make an agreement with a group of employers it considers appropriate (i.e. a "safety group") determining, in particular, the special conditions governing the application to such employers of personalized rates or retrospective adjustments of their assessments.

Safety groups are designed as an incentive system to promote and reward safe working conditions and to allow member employers to potentially achieve lower assessment rates than they could otherwise obtain as individual employers.

Notice of accident

Workers and employers must notify the CNESST in the event of an accident or occupational disease. Employees have six (6) months after the injury to file a claim. Employers must pay workers, who become unable to carry on their employment by reason of an injury or an occupational disease, 90% of their net salary, up to the insurable maximum amount, for each day or part of a day the workers would normally have worked, for 14 days following the beginning of their disability. This amount is later reimbursed by the CNESST to the employer. The CNESST takes over the payment of benefits beyond 14 days. Most decisions of the CNESST may be reviewed. After giving the parties an opportunity to present observations, the CNESST will make a decision on the basis of the information contained in the file. It may confirm, quash or amend the initial decision and, if appropriate, make the decision that should, in its opinion, have been made initially.

Within 30 days of being notified of the decision, a person who believes he or she has been wronged by a decision of the CNESST may apply for review at an administrative level at the CNESST. Then, within 45 days of being notified of said reviewed decision, a person who believes he or she has been wronged by such decision may contest it before the Administrative Labour Tribunal.

Right to return to work

Workers who are absent from work as a result of employment injuries continue to accumulate seniority and to benefit from the pension and insurance plans offered in the workplace (provided they pay their share of the required contributions).

Workers who become able to carry on their employment are entitled to be reinstated in preference to others in their jobs, in the establishment where they were working, or else to be reassigned to equivalent jobs in any of their employer's establishments.

Workers who were employed for fixed terms are entitled to be reinstated and to remain in their positions until the date of expiry of their contracts. If the employer is bound by a collective agreement and does not reinstate such a worker on the ground that the worker would have been transferred, suspended or dismissed, or would have lost his or her job otherwise if he or she had been at work, the relevant provisions of the collective agreement apply as if the worker had been at work at the time of the transfer, suspension, dismissal or loss of employment.

Workers who are unable to return to their regular jobs, but become able to carry on suitable employment, are entitled to hold the first suitable employment that becomes available in any establishment of their employers. This right is subject, however, to the rules respecting seniority prescribed by the collective agreement applicable to such workers.

Subject to the employer's general duty to accommodate, the right to return to work may be exercised only:

- within one (1) year following the beginning of the period of continuous absence of any such workers, if the establishment where they were working had 20 or fewer employees at the beginning of the period;
- within two (2) years following the beginning of the period of continuous absence of any such workers, if the establishment where they were working had more than 20 employees at the beginning of the period.

Illegal dismissal and prohibited practices

It is prohibited to dismiss, suspend or transfer workers or practise discrimination or take reprisals against them, or impose any other sanction, because they have suffered employment injuries or exercised their rights under the Industrial Accidents Act.

A worker may file a complaint with the CNESST (or file a grievance if unionized). The CNESST may attempt to reconcile the parties if the worker consents to it. Otherwise, or if no settlement is reached, the CNESST, after hearing the parties, may order the reinstatement of the worker and/or award damages.

There is a legal presumption in favour of the worker that received the sanction if said sanction was imposed within six (6) months of the date on which he or she suffered an employment injury or the date on which he or she exercised a right under the Industrial Accidents Act. Once the presumption is established, the employer must prove that the sanction was imposed or the action taken in respect of the worker for another good and sufficient cause.

Occupational Health and Safety

Objective

The objective of the *Act Respecting Occupational Health and Safety (''Health and Safety Act")*is to eliminate the dangers to the health, safety and physical well-being of workers.

This legislation and its regulations are quite exhaustive. They provide for rights and obligations of both workers and employers. Note also that there are regulations governing the quality of the work environment.

Refusal to work

The *Health and Safety Act* establishes the right of workers to refuse to perform any particular work if they have reasonable grounds to believe that the performance of that work would endanger their health, safety or physical well-being, or would expose another person to a similar danger.

No worker may, however, exercise his right to refuse work if his refusal to perform the work puts the life, health, safety or physical well-being of another person in immediate danger or if the conditions under which the work is to be performed are ordinary conditions in his kind of work.

Protective reassignment

Workers have a right to refuse to work if they are exposed to a contaminant which entails danger to them and may request to be reassigned to another job that does not entail exposure to that contaminant. The worker concerned must, however, first obtain a medical certificate attesting to the danger for his or her health.

A pregnant woman may also ask for reassignment, provided she furnishes a certificate attesting that her working conditions may be physically dangerous to the unborn child or to herself.

Health and safety committee

The employer may also establish a health and safety committee with the mutual consent of the workers or the bargaining agent (e.g. by the collective agreement). In such a case, the number of members of the committee, the terms and conditions for appointing its members and its rules of operation may be determined by the committee or, in the case of establisments of a category identifed by regulation, by the Regulation respecting occupational health and safety committees.

Prevention program

Every employer who has an establishment of a category identified by regulation must implement a prevention program for each establishment under his authority, taking into account the responsibilities of the health and safety committee, if any. The object of a prevention program is to eliminate at the source the risks to the health, safety and physical well-being of the workers.

Workplace Hazardous Materials Information System

The *Health and Safety Act* provides for a comprehensive set of measures to ensure effective dissemination of information regarding hazardous materials in the workplace. It also contains a host of other provisions dealing with the rights of workers to safe conditions in the workplace.

Illegal dismissal and prohibited practices

It is prohibited to dismiss, suspend, transfer or impose any sanction on workers for exercising their rights or functions under the *Health and Safety Act* or its regulations. A worker who believes he or she has been a victim of such a sanction may file a grievance under the collective agreement or submit a complaint to the CNESST. If the sanction was imposed within six (6) months of the date on which the employee exercised a right under the *Health*

and Safety Act, there is a legal presumption in his or her favour that the sanction was imposed illegally. Once the presumption is established, the employer then has the burden to prove that the sanction was imposed for another good and sufficient cause.

First aid

Where there are 50 workers or less in an establishment, the employer must ensure at all times during the working hours and during a shift that a first aid worker is present. The number of first aid workers increases by one for every 100 additional workers or fraction thereof on a shift. The employer must provide a sufficient number of first aid kits (the contents of which is determined by regulation). It must post a notice indicating where the kits are located, where the communication system is located and the names of the first aid workers, their job titles and locations.

Penal and criminal sanctions

Employers who contravene the provisions of the *Health and Safety Act* or a regulation or refuse to conform to, or incite a person not to conform to, a decision or order rendered under this Act or the regulations are guilty of an offence and are liable to a fine of not less than $1,500 nor more than $3,000 for a first offence, a fine of not less than $3,000 nor more than $6,000 for a second offence, and a fine of not less than $6,000 nor more than $12,000 for a third or subsequent offence.

Employers who, by an act or omission, do anything that directly and seriously compromises the health, safety or physical well-being of a worker are guilty of an offence and are liable to a fine of not less than $15,000 nor more than $60,000 for a first offence, a fine of not less than $30,000 nor more than $150,000 for a second offence, and a fine of not less than $60,000 nor more than $300,000 for a third or subsequent offence.

Also, since March 31, 2004, new provisions under the Canadian *Criminal Code* have made it easier to charge and prosecute employers who compromise the health and safety of their workers or who do not take appropriate steps to protect their health and safety. These new criminal provisions have a long reach, and agents, employees, associates, managers, officers and directors of negligent employers could face criminal sanctions for their failure to take appropriate measures to protect the health and safety of employees.

Private Pension Plans

Private pension plans are governed by the *Supplemental Pension Plans Act* ("**Pension Act**") which establishes rules for the establishment, operation and administration of pension plans, prescribes a set of basic rights granted to plan members and provides for measures of control and supervision of pension plans.

Private pension plans must be administered by a pension committee, which must include plan members or representatives of plan members and an independent third party who is not a plan member.

Where member contributions are required under a defined benefit plan, the employer is required to pay at least 50% of the value of any pension benefit to which the member or beneficiary will eventually be entitled.

Any matter relating to the allocation of a surplus of assets determined upon the total termination of a pension plan must be submitted to arbitration.

Retraite Québec is entrusted with the responsibility to ensure that private pension plans are administered and operated according to law. Retraite Québec has entered into agreements with government agencies in other jurisdictions to determine to what extent the *Pension Act* applies to a plan where it is governed both by the *Pension Act* and by an act of a legislative body other than the Québec National Assembly.

Voluntary retirement savings plan

Recently, the Government of Québec adopted the *Voluntary Retirement Savings Plan Act*, making it mandatory for employers with at least 5 employees to offer a Voluntary retirement savings plan ("**VRSP**") to its employees when a registered retirement savings plan (RRSP) or tax-free savings account (TFSA) for which source deductions could be made, or a registered pension plan, is not already being offered. Employers must also automatically sign up eligible employees and deduct contributions of 4% as of January 1, 2019.

The deadline to implement such plan differs on the number of employees. It is to be noted that such plan wil be managed by a legal person holding an authorization granted by the *Autorité des marchés financiers* to act as administrator of a VRSP and the employer does not have the obligation to contribute.

Simplified pension plans

The *Pension Act* allows for the establishment of simplified pension plans, i.e. a defined contribution pension plan with certain conditions that make it easier to administer. The most significant change from the traditional defined contribution pension plan registered in Québec lies in the responsibility for plan administration, which is entrusted to a financial institution instead of a pension committee.

Phased retirement and enhanced early retirement options

Provisions also exist in Québec allowing for the phased retirement of employees and an enhanced early retirement option under the *Pension Act*. Phased retirement permits employees close to retirement to reduce their hours of work, to continue to accrue rights under the pension plan at the level of unreduced earnings and to receive a pension benefit to offset the reduction in income. An employee wishing to opt for phased retirement must have a written agreement with his or her employer. It is to be noted that the latter cannot be compelled to introduce phased retirement provisions into the pension plan.

Enhanced early retirement permits plan members retiring before the normal retirement age under the pension plan to receive a temporary pension to age 65 or, in certain circumstances, to receive the commuted value of the entire accrued pension benefit.

For both the phased retirement and the enhanced early retirement provisions, any benefit payable to the individual before age 65 is provided at the expense of lifetime retirement benefits payable after age 65. Consequently, such provisions are cost-neutral to the employer and do not provide additional benefits to the employee beyond the existing accrued benefits.

Certain terms of savings plans for retirement purposes also exist (e.g. group Registered retirement Saving Plan "**RRSP**"), but are not covered by the *Pension Act*.

Mandatory Prescription Drug Insurance

Québec has a mandatory basic prescription drug insurance plan for every eligible person who is a resident of the province. The basic plan covers the cost of pharmaceutical services required to fill or renew a prescription and of medications included on a list drawn up by the Minister of Health and Social Services, provided such prescription is dispensed in Québec.

Eligibility

Coverage under the basic plan is provided by the *Régie de l'assurance maladie du Québec* ("Québec Health Insurance Board"), or by the private sector where there exists either a group insurance contract or an employee benefit plan applicable to current or former employees, in accordance with the following criteria:

Québec residents under age 65

- Current or former employees under age 65 who are not eligible to participate in an employer's group insurance program or benefit plan due to their employment status (e.g. part-time employees, contractual employees, retirees, etc.) and who are not insured under another drug insurance plan (e.g. their spouse's plan) must register with the Québec

Health Insurance Board and must also register their dependants[3] if they are not covered by another drug insurance plan.

- Current or former employees under age 65 who have not yet completed the waiting period to become eligible to participate in an employer's group insurance program or benefit plan and who are not insured under another drug insurance plan (e.g. their spouse's plan) must register with the Québec Health Insurance Board, together with their dependants (if they are not covered by another drug insurance plan) until they become eligible to participate in such group insurance program or benefit plan.
- Current or former employees under age 65 who are eligible to participate in an employer's group insurance program or benefit plan and are not insured under another drug insurance plan (e.g. their spouse's plan) are required to join such group insurance program or benefit plan together with their dependants (unless the latter are covered by another drug insurance plan).
- Current and former employees under age 65 who are covered under an employer's group insurance program or benefit plan, or under their spouse's plan, meet the legal requirements. They must, however, enrol their dependants if they are not already insured under another drug insurance plan.

Québec residents aged 65 years or over

- Current and former employees aged 65 years or over who are not eligible to participate in an employer's group insurance program or benefit plan due to their employment status and who are not insured under another drug insurance plan are covered by the Québec Health Insurance Board, together with their dependants, if the latter are not beneficiaries under another drug insurance plan.
- Current and former employees aged 65 years or over who are eligible to participate in an employer's group insurance program or benefit plan and who are not insured under another drug insurance plan have the choice, as regards the basic prescription drug insurance plan, to either participate in such group insurance program (or benefit plan) or be covered by the Québec Health Insurance Board, together with their dependants who are not beneficiaries under another drug insurance plan. The annual cost of belonging to the Québec Health Insurance Board varies between $0 and $710.00, depending on the situation and net family income of the participant. This amount will be collected when the individual files his annual Québec income tax return. Generally speaking, experience has shown that the cost per participant in a group insurance program or benefit plan does increase significantly if eligible persons aged 65 years or over do not join the Québec Health Insurance Board plan. Since such increased costs are likely to result in additional

3 Dependants include a spouse (legally married or at common law or have an adopted child), children under 18 years of age, or 25 years of age or under if they are full-time students and unmarried, and any unmarried member of the household with a functional deficiency who is aged 18 years or over. It is to be noted that a spouse aged 65 years or over may apply for coverage directly with the Québec Health Insurance Board.

premiums or assessments or taxable benefit in an amount far greater than the $710.00 (2021) associated with belonging to the Québec Health Insurance Board plan, it is therefore in the best interest of those individuals to maintain membership in the Québec Health Insurance Board plan.

Application of the basic plan in the private sector

Employers who offer group insurance protection or a benefit plan providing coverage for the cost of pharmaceutical services and medications in case of illness, accident or disability are required to provide at least the basic prescription drug coverage.

No one may, as regards the part of coverage corresponding to the basic plan, refuse to allow a person to become a member of a group insurance contract or employee benefit plan on the grounds of the specific risk associated with the age, sex or state of health of such person, of that person's spouse or child, or of another individual suffering from a functional impairment who is domiciled with that person. In summary, insurers or benefit plan administrators must, as regards the basic plan coverage, accept the membership of every eligible person under 65 years of age and of every eligible person 65 years of age or over who applies therefore, if not already covered under another drug insurance plan. Insurers or plan administrators must also provide coverage to such eligible person's dependants who are not covered under another drug insurance plan.

It is to be noted that for the purposes of the basic plan, no person may, with respect to group insurance or an employee benefit plan, determine a group on the basis of the age, sex or state of health of plan members. However, other criteria can be used as a basis for setting up distinct groups (e.g. non-unionized and unionized employees, active and retired employees, etc.).

Premium, deductible, coinsurance and maximum contribution

The premium pertaining to the basic plan coverage in a group insurance contract or employee benefit plan and any contribution required thereunder in the form of a deductible or coinsurance payment must be negotiated or agreed to by the interested parties. They may be different, depending on the type of coverage (e.g. single, single parent, couple, family) and category of eligible participants (e.g. retirees under age 65, retirees aged 65 years or older). However, the coinsurance percentage to be borne by an eligible person may not exceed 37% of the cost of pharmaceutical services and medications, nor may the maximum annual contribution (comprised of the aggregate of the coinsurance percentage/payment and deductible, but exclusive of the premium) exceed $1,117 per adult (including any amount paid by such adult as a deductible and coinsurance percentage/payment for a child or a person suffering from a functional impairment who is domiciled with that adult).[4]

4 The coinsurance percentage and annual maximal contribution are revised on the 1st of July of each year. The maximum annual contribution is from $0 to $613.53 for persons 65 years or older who receive a certain fraction of the monthly guaranteed income supplement under the Old Age Security Act (R.S.C. 1985, c. 0-9).

This means that in the case of single coverage, a person is entitled to be covered for at least 75% of eligible expenses under the basic plan, provided that out-of pocket costs, combined with any deductible, do not exceed $1,117 in a calendar year. In the case of family coverage, each adult is entitled to be covered for at least 75% of eligible expenses under the basic plan, provided that out-of-pocket costs, combined with any deductible claimed, do not exceed $1,117 in a calendar year. Moreover, the parent paying for the family coverage may combine the eligible out-of-pocket expenses incurred for his children (and, if applicable, for a person suffering from a functional impairment) to satisfy the maximum annual contribution of $1,117.

Construction Industry

The construction industry is heavily regulated and unionized in the Province of Québec as provided by *An Act respecting labour relations, vocational training and workforce management in the construction industry* and the related regulations, which have come into force. Detailed information can be provided on request.

Successor Rights and Obligations

The *Civil Code* and several other statutes contain provisions which, in certain circumstances, may impose on the purchaser of a business or a sub-contractor the individual contracts of employment, collective agreements, pending proceedings, financial obligations and other liabilities attaching to the business.

The type of transactions which may trigger the application of successor rights and obligations and the extent of the liabilities deriving therefrom may vary from one statute to the other. A careful analysis with the assistance of counsel should be carried out as part of the due diligence process in order to identify and quantify the liabilities which could be transferred to the purchaser (or other contracting party).

Business Hours

Business hours of retail establishments are governed by *An Act Respecting Hours and Days of Admission to Commercial Establishments.*

The public may be admitted to a commercial establishment only between the hours of:

8:00 a.m. and 9:00 p.m. from Monday to Friday,

8:00 a.m. and 5:00 p.m. on Saturdays and Sundays,

8:00 a.m. and 5:00 p.m. on December 24 and 31,

1:00 p.m. and 9:00 p.m. on December 26 where it falls from Monday to Friday,

1:00 p.m. and 5:00 p.m. on December 26 where it falls on a Saturday or a Sunday.

The public may not be admitted to a commercial establishment on January 1, January 2, Easter Sunday, June 24, July 1, Labour Day, or December 25.

The public may be admitted to a grocery store only between the hours of:

8:00 a.m. and 8:00 p.m. on Saturdays and Sundays, and 8:00 a.m. and 9:00 p.m. on other days of the week;

8:00 a.m. and 5:00 p.m. on December 24 and 31; and

1:00 p.m. and 8:00 p.m. on December 26, if it is a Saturday or a Sunday, or 1:00 p.m. and 9:00 p.m., if it is another day of the week

Nevertheless, the public may be admitted to commercial establishments outside the hours and on the days mentioned above in certain circumstances. The main exceptions are comprised of the following:

- restaurants, bars, gasoline stations, newsstands, libraries, tobacco shops, art galleries, handicrafts shops, florists, garden centers, antique shops;
- grocery, convenience, drug and liquor stores provided that no more than 4 persons attend to the operation of the establishment outside the hours and on the days listed above;
- commercial establishments in designated tourist areas or in designated local municipalities situated near the territorial limits of the Province of Québec; and
- approved special events such as festivals, fairs, shows or exhibitions.

Elections and Voting

Québec provincial elections

Every employer must, upon written request, grant a leave without pay to an employee who is a candidate or intends to become one, or who acts as the official agent of a candidate. Such employees are entitled, throughout their leave, to all the benefits attached to their employment, except their remuneration; as regards benefit plans, they may continue to benefit from all the plans in which they participate, provided they pay the totality of the premiums, including the employer's contribution.

At the expiry of the leave, the employer must reinstate the employee under no less favourable conditions of employment than those prevailing before the beginning of his or her leave.

The employer may not dismiss, lay off, suspend, demote or transfer employees, by reason of such leave, or give them less favourable conditions of employment than they are entitled to or diminish any benefit attached to their employment, nor subtract the duration of the leave from the employees' vacation. Any dispute regarding the above may be submitted for adjudication either to the Administrative Labour Tribunal or to a grievance arbitrator where the employee is governed by a collective agreement.

Employers are required to give to employees who are qualified to vote at least four (4) consecutive hours for voting, not counting the time normally allowed for meals. This four (4)-hour period needs to be taken while the polls are open and does not necessarily have to correspond to four (4) hours during the employee's working schedule. For example, if the working day ends at 5:00 p.m. and the polls close at 8:00 p.m., it is sufficient to let the employees go at 4:00 p.m. and pay for the period of 4:00 p.m. to 5:00 p.m. An employee who believes he or she has been wronged as a result of a contravention to that requirement may submit a complaint to the Administrative Labour Tribunal or the CNESST.

The polling hours for a provincial election held in the Province of Québec are between 9:30 a.m. and 8:00 p.m.

Federal elections in Québec

Every employee qualified to vote in a federal election is entitled to three (3) consecutive hours for the purpose of casting his or her vote and, if the hours of employment do not allow for those three (3) consecutive hours, the employer must allow the employee, at the convenience of the employer, such additional time for voting as may be necessary to provide those three (3) consecutive hours. An employer cannot make a deduction from the employee's pay by reason of his or her absence during the consecutive hours that the employer is required to allow for voting.

The polling hours for a federal election held in the Province of Québec are between 9:30 a.m. and 9:30 p.m.

Work Permits for Foreign Nationals

In Québec, immigration matters and work permit applications come under the joint jurisdictions of the federal and provincial governments.

General rule

As a general rule, foreign workers who wish to work in the Province of Québec (or, for that matter, in any other Canadian province or territory) must obtain a work permit. In principle, a work permit will only be delivered if the prospective employer succeeds in first obtaining a confirmation of job offer approved by an officer of Employment and Social Development Canada ("**ESDC**") and a Québec Acceptance Certificate from an officer of the Québec Ministry of Immigration, Frenchisation and Integration ("**MIFI**"). A confirmation of job offer in support of a work permit will only be issued if the ESDC and MIFI officers confirm that, in their opinion, the employment of the foreign worker meets the needs of the labour market of Québec.

On June 16, 2019, Bill 9, entitled *Loi visant à accroître la prospérité socio-économique du Québec et à répondre adéquatement aux besoins du marché du travail par une intégration réussie des personnes immigrantes* (Bill 9), was passed by l'Assemblée nationale du Québec. The purpose of this Bill is to address Quebec's labour needs.

The passage of Bill 9 will allow the MIFI to favour applicants for permanent residency who speak French or have specific, in-demand skills and qualifications, the view being that the new criteria will better facilitate their integration into the Québec labour market, and society in general.

The reform of the selection process for foreign nationals will need the applicants to obtain a Certificate of Selection from Québec (CSQ) in order to better align it with the Québec labour market's needs. Indeed, they will now need to submit a Declaration of Interest through the new Arrima portal, after which, if they meet the selection criteria devised by MIFI – they will be issued an invitation to submit an official application for obtaining a CSQ under the Regular Skilled Worker Program. According to the MIFI, the delays for the selection and treatment of applications will be significantly reduced, from three years to six months.

Bill 9 will also allow the implementation of a new self-service employer portal, through which Québec employers will be able to directly access the Declarations of Interest of potential candidates and contact them directly to make an offer of employment, therefore facilitating their arrival in Québec.

Finally, Bill 9 sets the stage for new regulations to be passed in the future, including new conditions associated with permanent residency that may seriously affect all foreign nationals who want to apply for a CSQ, as well as all employers who want to hire foreign nationals. For instance, amendments were recently made to the Québec immigration regulations regarding the Québec experience program (the Programme de l'expérience québécoise - "PEQ") and the conditions for selection that apply, as of July 22, 2020, to applications submitted under the PEQ. These changes affect Québec workers and student who already speak French and who have been working or studying in Québec for at least a year in the past 2 years.

Employers would be well advised to identify any foreign workers that might be impacted by the passage of Bill 9 and prepare for further delays in the treatment of applications while the changes brought by Bill 9 are being implemented.

Exemptions

First, some foreign nationals may work in Québec without having to obtain a work permit. This exception extends in particular to certain sales representatives, guest speakers and employees of related companies abroad seeking entry to consult with local employees. Further exceptions can be found in the Canadian Immigration and Refugee Protection Regulations, 2002 and in the Business Visitor provisions of the *Canada-United States-Mexico Agreement* ("**CUSMA**"), formerly the *North American Free Trade Agreement* ("**NAFTA**") and the *General Agreement on Trade in Services* ("**GATS**").

Second, some other foreign nationals can be employed in Québec by obtaining a work permit without the necessity of a confirmation of job offer. As a matter of fact, a significant number of work permits being delivered do not require that the prospective employer go through the confirmation of job offer process.

For instance, to name only a few of the most common, work permit applications for certain intra-company transferees and professionals processed under the provisions of the CUMSA and GATS do not require the approval of either the ESDC or MIFI officers. A similar exemption also extends to other key personnel and self-employed individuals wishing to obtain a work permit and whose employment will create or maintain significant employment, benefits or opportunities for Canadian citizens or permanent residents. Finally, there exist other confirmations of job offer exemptions for working spouses and other dependants.

Intra-company transferees

The exemption for intra-company transferees, commonly known as Code C-12, is available to a person of any national origin who is employed in a senior executive or managerial category by a branch, subsidiary or parent of the Canadian entity and who is temporarily transferred to Québec to hold an identical senior executive or managerial position with a Canadian entity.

Applications by other intra-company transferees who possess the required type of specialized knowledge and meet the requirements of the CUMSA, GATS or Code C-12, can be processed under either one of these Agreements, taking into consideration the important differences between them.

Professionals

Applications by professionals can also be processed under either one of CUMSA or GATS, having consideration for the differences between the two (2) Agreements.

Other key personnel

Other key personnel who do not qualify for other exemptions (e.g. highly skilled individuals who do not have prior employment history with a related company abroad), and whose employment will result in significant employment, benefits or opportunities for Canadian citizens or permanent residents can obtain an employment authorization under the Code C-10, but such application needs to be carefully prepared as immigration officers are increasingly reluctant to use their discretionary powers, unless the facts strongly support the application.

Self-employed individuals

An individual whose services are retained on an independent contractor basis, as opposed to an employee, and where such services will result in significant employment, benefits or opportunities for Canadian citizens or permanent residents, can obtain an employment authorization under the Code C-11 exemption.

Working spouses

The spouse of a work permit holder can also obtain a work permit under the Code C-41 confirmation of job offer exemption. This exemption applies in circumstances where the principal applicant received a work permit in an occupation requiring a sufficiently high level of expertise to be considered a skilled worker, namely if a work permit was obtained to perform work in a Skill Level 0, A or B occupation listed in the National Occupation Classification ("**NOC**") system.

Placement of Temporary Foreign Workers and Personnel

New rules specific to personnel placement agencies and temporary foreign worker recruitment agencies (the "agencies") came into force on January 1, 2020 under the Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers and under new provisions of the *Labour Standards Act.*

Agencies now have to hold a licence issued by the CNESST, which draws up a list of all agencies holding theses licences, and make it available to the public. A client company cannot retain anymore the services of an agency that does not hold such a permit. Contravening to these obligations can lead to fines ranging from $600 to $12,000.

Additionally, an agency whose licence is suspended, revoked or not renewed, or on which an administrative measure is imposed, will have a recourse before the Administrative Labour Tribunal.

Finally, any employer who hires temporary foreign workers will now have to inform the CNESST without delay of the workers' date of arrival, the duration of their contract, and, if their departure date does not coincide with the end of the contract, the reasons for their departure. It should be noted that the employer cannot require temporary foreign workers to entrust the employer with custody of personal documents or belongings.

“Team Plan Nord”

In May 2011, the Government of Québec (“Government”) announced the *Plan Nord*, a sustainable development project that will develop the northern part of the Province of Québec’s territory. The *Plan Nord* will be carried out over a period of 25 years and will lead to over $80 billion in investments. This initiative is expected to create 20,000 jobs a year for 25 years. The *Plan Nord* covers 1.2 million square kilometres of Québec’s territory north of the 49th parallel and north of the St. Lawrence River and the Gulf of St. Lawrence. The area has enormous hydroelectricity potential, inestimable mineral resources, and is likely to face a growing tourist industry.

The Government is inviting world-class businesses and foreign corporations to invest in developing Northern Québec. In order to respond to the contemplated northern business model, transportation, housing, energy and telecommunications infrastructure will need to be created. Resource accessibility is a challenge that will be overcome when the main actors start developing roads, hospitals and housing capacities.

Our Labour and Employment Group have the expertise to guide international businesses through the legal challenges faced during the implementation of the *Plan Nord*. With experience in both labour and employment laws, the Group already works with a wide range of businesses and industries and offer a hands-on approach in carrying out their legal services. BLG is experienced in all aspects of labour and employment law, including the specific issues that are to be addressed in the context of such a project. BLG is serious about ensuring your success with the *Plan Nord*.

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