

## Québec adopts **Bill 59**: *An Act to modernize the occupational health and safety regime – The first reform in 40 years!*

On September 30, 2021, the Québec National Assembly enacted Bill 59, *An Act to modernize the occupational health and safety regime* (“**Bill 59**”).

This reform—the first of any significance in occupational health and safety in nearly 40 years—amends the *Act respecting occupational health and safety* (the “**AOHS**”) as well as the *Act respecting industrial accidents and occupational diseases* (the “**AIAOD**”).

This article discusses the most important changes to health and safety legislation so that employers can be aware of the main obligations that may affect the workplace.

Part 1 will present the changes in the area of prevention, while Part 2 will provide an overview of the changes in compensation for occupational injuries.

Note that Bill 59 will come into force progressively over a period of several years as of October 6, 2021.

### Part 1: Prevention

In force since October 6, 2021

Requirements	Description
Application of AOHS to telework (section 5.1 AOHS)	<ul style="list-style-type: none"> <li>It is now explicitly stated that the provisions of the AOHS apply to both the teleworking worker and his employer.</li> </ul>

<p><b>Rules governing the powers of an inspector in a telework context (section 179.1 AOHS)</b></p>	<ul style="list-style-type: none"> <li>• An inspector with the Commission des normes, de l'équité, de la santé et de la sécurité du travail (the "<b>CNESST</b>") may not, without the consent of the worker, enter a place where telework is carried on if that place is a dwelling house, unless the inspector has obtained an order from the Court of Québec.</li> </ul>
<p><b>Inclusion of the notion of mental health in the AOHS and AIAOD</b></p>	<ul style="list-style-type: none"> <li>• The objective of the Act is now the elimination at source of dangers to the health, safety, and physical and mental well-being of workers.</li> <li>• In other words, mental health is now added to the legislative provisions that previously dealt with physical health only.</li> <li>• The employer must now identify the risks of both physical and psychosocial dangers present in the workplace and take reasonable steps to eliminate them at the source (s. 51 AOHS).</li> </ul>
<p><b>Introduction of the employer's obligation to take measures against physical or psychological violence (section 51 (16) AOHS)</b></p>	<ul style="list-style-type: none"> <li>• The employers now has an obligation to take necessary measures to ensure the protection of a worker exposed to a situation of physical or psychological violence in the workplace and home (remote) workplace, including spousal, family or sexual violence.</li> </ul>
<p><b>Application of the AOHS to employment agencies (section 51.1.1 AOHS)</b></p>	<ul style="list-style-type: none"> <li>• The AOHS now provides that an employment agency, or any other employer who hires out or lends labour, cannot avoid its obligations under AOHS section 51.1 by transferring or limiting its legal obligations by contract or agreement.</li> <li>• In other words, both the employment agency and the client company must ensure that the employer obligations under the AOHS are met.</li> </ul>

In force as of April 6, 2022

Requirements	Description
<p><b>Introduction of an interim prevention plan (sections 288, 289, 290, 292, 293 of Bill 59)</b></p>	<ul style="list-style-type: none"> <li>• This is a transitional solution for prevention and worker participation until the adoption of the <i>Regulation respecting prevention mechanisms</i>, which will come into force at the same time as the relevant provisions of Bill 59.</li> <li>• More specifically, Bill 59 eliminates the concept of priority groups, in that all establishments with 20 or more workers will now have an obligation to set up a health and safety committee. As of April 6, 2022, establishments with 20 or more workers must:             <ul style="list-style-type: none"> <li>- record the identification and analysis of risks that may affect workers' health or safety;</li> <li>- set up a health and safety committee, whose function is limited to participating in the identification and analysis of risks that may affect the health and safety of the establishment's workers in order to make written recommendations to the employer;</li> <li>- designate at least one health and safety representative, whose powers are limited to inspecting workplaces, making the recommendations deemed appropriate to the health and safety committee, and submitting complaints to the CNESST.</li> </ul> </li> <li>• Establishments with fewer than 20 workers will have to:             <ul style="list-style-type: none"> <li>- record the identification and analysis of risks that may affect workers' health or safety;</li> <li>- designate a health and safety liaison officer.</li> </ul> </li> <li>• An employer having several establishments where activities of the same nature are carried on may, under certain conditions, develop a single prevention program for some or all of these establishments.</li> <li>• The employer will then have to do a risk identification and analysis based on all the activities carried on in those establishments.</li> <li>• A single health and safety committee must be formed and a single health and safety representative must be designated for all the grouped establishments.</li> <li>• The CNESST, if it deems appropriate, may require the development and implementation of a prevention program specific to each establishment it designates.</li> <li>• The employer and workers of these establishments may also agree to form other committees in addition to the health and safety committee formed for all the establishments, or to designate a greater number of health and safety representatives.</li> </ul>

In force as of January 1, 2023

Requirements	Description
<p><b>Creation of a standard protocol for the preventive re-assignment of pregnant or breastfeeding workers (sections 40, 40.1, 42.1, 46, 48.1 and 48.2 AOHS)</b></p>	<ul style="list-style-type: none"> <li>• The preventive withdrawal process will be standardized starting in January 2023. The public health director (the “PHD”) will participate in the development of protocols for the identification of dangers and associated working conditions for the purpose of ensuring the right of pregnant or breast-feeding workers to protective re-assignment.<sup>1</sup> These protocols will be transmitted to the CNESST and published on its website, which will allow employers to progressively have access to the dangers identified in their industry.</li> <li>• To make a request for protective re-assignment, the pregnant or breast-feeding worker may apply for the <i>For a Safe Maternity Experience Program</i> by obtaining a certificate for protective withdrawal and re-assignment from the professional who provides pregnancy care (or who provides postnatal care, depending on the type of request submitted).</li> <li>• If, however, the dangers and associated working conditions are not identified by a protocol, the professional must, before issuing the certificate, consult with a physician in charge of occupational health or, failing that, the PHD (or designate) of the region in which the employer’s establishment is located.</li> </ul>

In force as of other dates to be determined by the government<sup>2</sup>

Requirements	Description
<p><b>Rules governing the obligation to develop a prevention program (sections 58, 59 and 60 AOHS)</b></p>	<ul style="list-style-type: none"> <li>• A prevention program must be developed and implemented in all establishments with 20 or more workers in a year. Employers newly subject to the law will benefit from a grace period to facilitate this implementation.</li> <li>• The program must then be updated annually.</li> <li>• In determining the number of workers, the employer must also consider workers whose services are lent or hired out (for example, workers from an employment agency or temporary foreign workers).</li> <li>• When the number of workers in an establishment falls below 20 in a given year, the employer must keep the prevention program in effect until December 31 of the following year.</li> <li>• The prevention program must include the identification and analysis of risks that may affect the health and safety of the establishment’s workers, measures or priorities to address these risks, supervision measures, methods of identifying individual protective equipment, training programs, medical examinations prior to and during employment as required by regulation, updating of a list of dangerous substances used and contaminants that may be emitted, as well maintaining of adequate first-aid services.</li> <li>• Every three years, the employer must complete and submit a CNESST form reporting on the action priorities determined as part of its prevention program, the progress made on the planned measures, and details on the follow-up of measures established to help eliminate and control the risks identified for these priorities.</li> </ul>

<sup>1</sup> Sections 40, 41, 46 and 47 AOHS

<sup>2</sup> Dates may not be later than October 6, 2025

<p><b>Introduction of multi-establishment prevention program (section 58.1 AOHS)</b></p>	<ul style="list-style-type: none"> <li>• An employer who employs workers in more than one establishment where activities of the same nature are carried on may prepare and implement a single prevention program for all or part of these establishments (“<b>multi-establishment prevention program</b>”).</li> <li>• Such a program must take into account all the activities carried on in these establishments and apply for at least three years.</li> <li>• The CNESST, if it deems appropriate, may require the preparation and implementation of a prevention program specific to each establishment it designates.</li> </ul>
<p><b>Rules governing the obligation to set up a health and safety committee (sections 68, 68.1, 68.2, 70, 74 and 78.1 AOHS)</b></p>	<ul style="list-style-type: none"> <li>• A health and safety committee (“<b>OHS committee</b>”) must be formed in all establishments that have 20 or more workers for at least 21 days during the year.</li> <li>• This includes workers whose services are lent or hired out.</li> <li>• When the number of workers in an establishment falls below 20 in a given year, the employer must maintain the OHS committee until December 31 of the following year.</li> <li>• The CNESST, if it deems appropriate, may require the formation of an OHS committee regardless of the number of workers in the establishment.</li> <li>• The number of workers forming the OHS committee is determined by agreement between the employer, the certified association and the workers not represented by a certified association.</li> <li>• Rules of operation and other details regarding the OHS committee are determined by agreement among the committee members.</li> <li>• OHS committee members must complete theoretical training approved by the CNESST.</li> <li>• The functions of the OHS committee are as they were under the former regime, except that it will now collaborate in the development of the prevention program rather than to simply take cognizance of it.</li> <li>• When a multi-establishment prevention program is implemented, the employer will have to form an OHS committee for all the establishments covered by it (“<b>multi-establishment OHS committee</b>”).</li> </ul>
<p><b>Designation of a health and safety representative (sections 87, 87.1, 87.2, 88.1 and 91 AOHS)</b></p>	<ul style="list-style-type: none"> <li>• Where an OHS committee exists in an establishment, at least one health and safety representative (“<b>OHS representative</b>”) must be designated from among the workers in that establishment. The OHS representative is by virtue of office, a member of the OHS committee.</li> <li>• The CNESST may also require the designation of an OHS representative in an establishment with no OHS committee when it deems it appropriate to protect the workers’ health or ensure their safety and physical or mental well-being.</li> <li>• When a multi-establishment OHS committee is formed to act for the establishments covered by a multi-establishment prevention program, at least one OHS representative is designated for those establishments.</li> <li>• The functions of the OHS representative are as they were under the former regime, except that the OHS representative will now collaborate in the development and implementation of the prevention program or action plan rather than simply identifying risks that may affect worker health and safety.</li> <li>• The OHS representative will be required to complete CNESST-approved theoretical training.</li> </ul>

<p><b>Designation of a liaison officer (sections 97.1, 97.2, 97.3, 97.5 AOHS)</b></p>	<ul style="list-style-type: none"> <li>• A liaison officer must be trained in all establishments with fewer than 20 workers.</li> <li>• The liaison officer must be designated by agreement between the certified association and the workers not represented by a certified association.</li> <li>• The liaison officer may make recommendations to the employer and submit complaints to the CNESST if the recommendations are not implemented.</li> <li>• The liaison officer will be required to complete CNESST-approved theoretical training.</li> </ul>
<p><b>Development of a prevention action plan (sections 61.1 and 61.2 AOHS)</b></p>	<ul style="list-style-type: none"> <li>• In all establishments with fewer than 20 workers, the employer must develop and implement an action plan to reduce or eliminate risks at source.</li> <li>• This plan has the same objectives as the prevention program for establishments with 20 or more workers in terms of risk identification, priority and monitoring measures, identification of individual protective equipment, and training programs.</li> </ul>
<p><b>Creation of a contaminants and hazardous materials register (section 52 AOHS)</b></p>	<ul style="list-style-type: none"> <li>• The register of job risks provided for in section 52 of the AOHS will be replaced by a register of contaminants and dangerous substances.</li> </ul>

## Part 2: Compensation

In force since October 6, 2021

Requirements	Description
<p><b>Adoption of the <i>Regulation respecting occupational diseases</i> to replace Schedule I of the AIAOD</b></p>	<ul style="list-style-type: none"> <li>• This regulation replaces the old AIAOD schedules, which listed the diseases referred to in AIAOD section 29 along with the eligibility criteria.</li> <li>• Illnesses such as post-traumatic stress disorder are added to the list, and a section on oncological diseases adds several types of cancer to the list, such as kidney, bladder, larynx, skin and prostate cancer.</li> <li>• Specific conditions related to hearing impairment caused by noise are specified, these conditions and criteria being currently specified in the caselaw. The worker must “have carried on work involving exposure to excessive noise.”</li> <li>• The regulation includes eight (8) categories:               <ol style="list-style-type: none"> <li>1. Diseases caused by chemical agents</li> <li>2. Biological agents and infectious or parasitic diseases</li> <li>3. Skin diseases</li> <li>4. Diseases caused by physical agents</li> <li>5. Respiratory system diseases</li> <li>6. Musculoskeletal disorders</li> <li>7. Mental disorders</li> <li>8. Oncological diseases</li> </ol> </li> </ul>
<p><b>Funding and charges – Broadening of circumstances under which cases can be charged to all employers (section 327 AIAOD)</b></p>	<ul style="list-style-type: none"> <li>• The new version of section 327 of the AIAOD allows new circumstances in which costs will be imputed to employers of all the units, i.e., the costs of an injury or illness that occurred as a result of a worker’s gross or willful negligence.</li> </ul>

<b>Funding and charges – Hearing impairment caused by noise not resulting from an industrial accident (section 328 AIAOD)</b>	<ul style="list-style-type: none"><li>• A subsection will be added to section 328 AIAOD to provide that noise-induced hearing loss that is not the result of an industrial accident will be imputed to one or more groups of units, determined on the basis of the nature of the work that most contributed to the occurrence of the hearing loss, or to all employers when such imputation/determination cannot be made.</li><li>• Consequently, the cost of deafness as an occupational disease will now be charged to all employers or to one or more groups of employers.</li></ul>
<b>Revision of fines under AIAOD (sections 458 to 467 AIAOD)</b>	<ul style="list-style-type: none"><li>• Fines for non-compliance with the AIAOD have increased significantly.</li><li>• Specifically, the fines now range from \$1,000 to \$10,000 for natural persons and from \$2,000 to \$20,000 for other cases (including legal persons), if a person acts to obtain a benefit to which they know they are not entitled, makes a false declaration, impedes or attempts to impede an inquiry, inspection or examination by the CNESST or refuses to comply with an order (s. 464 AIAOD).</li><li>• If there is no specific section of the AIAOD dealing with the offence committed, then the fine ranges from \$500 to \$1,000 for a natural person and \$1,000 to \$2,000 for other cases (including legal person) (s. 465 AIAOD).</li><li>• The minimum and maximum fine thresholds are doubled for the second offence and tripled for a subsequent offence (467 AIAOD).</li></ul>

It should also be noted that several amendments originally included in the bill<sup>3</sup> regarding cost sharing and transfers were withdrawn. For example, the rules applicable to section 329 of the AIAOD regarding cost-sharing claims when a worker is already disabled at the time of employment injury will remain unchanged. The rules applicable to transfer of costs under AIAOD section 326 also remain the same.

<sup>3</sup> See our article *An act to modernize the occupational health and safety regime*, Thursday, January 12, 2021: <https://www.blg.com/en/insights/2021/01/an-act-to-modernize-the-occupational-health-and-safety-regime>.



In force as of April 6, 2022

Requirements	Description
Death benefit (section 91.1 AIAOD)	<ul style="list-style-type: none"> <li>From now on, the right to a death benefit will be prescribed seven (7) years following the date of the worker's death.</li> <li>No limitation period was provided for in the previous legislation.</li> </ul>

In force as of October 6, 2022

Requirements	Description
Granting rehabilitation measures to the worker before consolidation of employment injury (sections 145 and following AIAOD)	<ul style="list-style-type: none"> <li>Section 145 AIAOD will be replaced by a section entitled "Rehabilitation measures before consolidation".</li> <li>As soon as a claim for an employment injury is admissible and before the injury is consolidated, the CNESST may grant the worker rehabilitation measures that are adapted to the worker's state of health and favour his vocational reintegration, in the cases and under the conditions provided for in the Act.</li> <li>The CNESST may, in collaboration with the worker and employer, implement measures that favour the worker's reinstatement, in particular by developing the worker's capacity to gradually resume the tasks involved in his employment.</li> <li>Prior to granting or implementing such a rehabilitation measure, the CNESST will submit it to the physician in charge of the worker, unless the measure has no effect on the state of the worker's health.</li> <li>When the employer temporarily assigns work during the completion of rehabilitation measures before consolidation, only the measures that compromise the temporary assignment must be interrupted.</li> </ul>
Rules governing the duty to accommodate to facilitate a return to work (section 170 to 170.4 AIAOD)	<ul style="list-style-type: none"> <li>Section 170 of the AIAOD is amended to incorporate the principles elaborated in the Supreme Court of Canada decision in <i>Caron</i><sup>4</sup> with respect to the duty of reasonable accommodation imposed on employers by the <i>Charter of Human Rights and Freedoms</i> in the context of the application of the Act and, in particular, of rehabilitation measures (right to return to work, rehabilitation, etc.).</li> <li>Such accommodation may include adjusted tasks and changes to the work schedule or work organization, provided they do not alter the nature of the job.</li> <li>The CNESST alone will determine whether reasonable accommodation is needed to enable the worker to carry on a suitable employment (section 170.1 AIAOD).</li> <li>The employer must collaborate with the CNESST in implementing accommodation measures, unless able to prove the existence of undue hardship (section 170.2 AIAOD).</li> <li>An employer who refuses to comply or reinstate a worker may be subject to a monetary administrative penalty equivalent to the cost of the benefits to which the worker could have been entitled during the period in which the employer failed his obligations (section 170.4 AIAOD).</li> </ul>

4 *CNESST v Caron*, 2018 SCC 3.

<p><b>NESST job search support and assistance (section 173 AIAOD)</b></p>	<ul style="list-style-type: none"> <li>• The CNESST will provide job search support services to a worker who has suffered an employment injury where he is unable, as a result of his injury, to carry on his employment and where he becomes able to carry on a suitable employment that is not available.</li> <li>• These services will also be provided to a worker who has suffered an employment injury, whether or not he sustained permanent physical or mental impairment, where he is again able to carry on his employment after the period for exercising his right to return to work has expired and where his employer does not reinstate him in his employment or in an equivalent employment.</li> </ul>
<p><b>Introduction of a form prescribed by the CNESST for temporary assignments (section 179 AIAOD)</b></p>	<ul style="list-style-type: none"> <li>• Section 179 AIAOD will be amended to provide that the employer must use the form prescribed by the CNESST for temporary assignments.</li> <li>• The physician in charge of the worker shall now indicate on the form his findings regarding the worker's temporary functional limitations resulting from his injury.</li> <li>• The employer will be required to forward the duly completed form to the CNESST whether or not the assignment has been authorized by the physician in charge.</li> </ul>
<p><b>Employer's collaboration in a temporary assignment (section 180 AIAOD)</b></p>	<ul style="list-style-type: none"> <li>• Section 180 of the AIAOD will be amended to provide that if a worker is assigned work that involves fewer hours than are usually performed in the course of employment, the employer will be required to indicate on the form which wage or salary payment option the worker chooses.</li> <li>• The employer must specify whether it will pay the worker (1) the same salary or wages and benefits to which the worker is normally entitled or (2) salary or wages and benefits only for the hours of work involved in the temporary assignment. The employer will be able to change the option chosen only once for the same employment injury.</li> </ul>
<p><b>Removal of discretionary authority of the Bureau d'évaluation médicale ("BEM") (medical assessment board) (section 221 AIAOD)</b></p>	<ul style="list-style-type: none"> <li>• The BEM member will now be required to rule on items 4 (permanent impairment) and 5 (functional limitations) when the BEM deems the occupational injury to be consolidated, unless there are medical reasons for not doing so.</li> </ul>

In force as of April 6, 2023

Requirements	Description
<b>Time limit for contesting a decision before the Administrative Labour Tribunal (section 359.1 AIAOD)</b>	<ul style="list-style-type: none"> <li>The period for challenging a decision made by the CNESST's Direction de la révision administrative (DRA) (administrative review department) will be increased from 45 to 60 days.</li> </ul>
<b>Contestation of a CNESST decision directly before the Administrative Labour Tribunal (section 360 AIAOD)</b>	<ul style="list-style-type: none"> <li>In some cases, a person may be able to apply directly to the Administrative Labour Tribunal for a review of a CNESST decision (without going through a review request to the DRA).</li> <li>The challenge may relate to: (i) the opinion of the BEM, (ii) the opinion of the special committee on occupational lung diseases, (iii) the opinion of the committee on occupational oncological diseases, or (iv) a funding decision.</li> </ul>

In force as of other dates to be determined by the government

Requirements	Description
<b>Creation of a committee on occupational oncological diseases (sections 233.1 et seq.)<sup>5</sup></b>	<ul style="list-style-type: none"> <li>If a worker claims to have an occupational oncological disease, the case will be referred to this committee.</li> <li>The committee will review the file and issue a written report to the CNESST within 40 days. This report will include an opinion on the link between the occupational disease and the particular characteristics or risks of the work performed by the worker.</li> <li>The CNESST will be bound by the diagnosis and other findings of the committee (section 233.7 AIAOD).</li> </ul>
<b>Creation of a scientific committee on occupational diseases (sections 348.1 et seq., AIAOD)<sup>6</sup></b>	<ul style="list-style-type: none"> <li>The scientific committee will be tasked with making recommendations on occupational diseases to the Québec Minister of Labour, Employment and Social Solidarity and to the CNESST.</li> <li>Recommendations will include scientific monitoring (research and studies on occupational diseases), analyses of the cause-and-effect relationship between contaminants and specific risks, and the production of written opinions.</li> </ul>

<sup>5</sup> These provisions will come into force 60 days after the date on which all members of the first committee on occupational oncological diseases have been appointed.

<sup>6</sup> These provisions will be in force once all members of the committee have been appointed.

# Next step

BLG will be posting more specific articles about the new requirements under Bill 59 to help employers comply with the new obligations. Stay tuned for our upcoming articles.

For any questions you may have about the legal framework governing the occupational health and safety regime in Québec, please reach out to your BLG lawyer or one of the key contacts below from our Labour & Employment Group.

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