

# Introducing the Québec Labour Standards Reform Bill

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On March 20, 2018, the National Assembly introduced Bill 176 entitled *An Act to amend the Act respecting labour standards and other legislative provisions primarily mainly to facilitate family-work balance* (the “Bill”).

## Highlights of the Bill

As its title indicates, the Bill amends namely the *Act Respecting Labour Standards*<sup>1</sup> (the “Act”), thus modernizing a structure that has remained mostly unchanged since the last reform in 2002. Every business with employees in Québec, whether unionized or non-unionized, is susceptible to be impacted by these changes to some extent.

More specifically, the Bill introduces or amends fundamental provisions such as those relating to wages, hours of work, statutory holidays, annual leave with pay, absences owing to sickness, family or parental leave and absences, psychological harassment, differences in treatment, personnel placement and temporary foreign workers and penal provisions.

This article aims to provide an overview of the most significant legislative changes for employers.

### a. Wages

First of all, the Bill provides that a personnel placement agency may not remunerate its employees at a lower rate of pay than that granted to the employees of the client business who perform the same tasks in the same establishment.

### b. Hours of Work

With regard to hours of work, the employer and the employee may agree to stagger working hours on a basis other than weekly basis without obtaining the authorization of the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (the Québec Labour Standards Commission, hereinafter the “Commission”), as is currently the case (section 53 of the Act). However, such agreement shall be entered into for a maximum term of six months, the hours must be staggered over a maximum period of four weeks and one work week may not exceed the standard by more than ten hours.

In addition, the Bill reduces the number of overtime hours the employee will be required to work to two from four and will allow the employee to refuse to work if he or she has not been informed at least five days before he or she is required to work (section 59.0.1 of the Act).

### c. Statutory Holidays

According to the Bill, an employee will be entitled to an indemnity not only when he or she is on annual leave during a statutory holiday, but also when a statutory holiday does not coincide with the employee's regular work schedule (section 64 of the Act).

### d. Annual Leave with Pay

Currently, employees with five years or more of service are entitled to a third week of paid vacation. The Bill provides for the acquisition of the third paid vacation week after three

years of uninterrupted service, reducing the threshold for the acquisition of this additional week (section 69 of the Act).

**e. Absences Owing to Sickness**

The Bill grants two paid sick days annually to an employee who is credited with three months of uninterrupted service (section 79.2 of the Act). Currently, the Act only provides for absence without pay.

**f. Family or Parental Leave and Absences**

The Bill provides that two of the ten days per year granted in the event of absence to fulfill family responsibilities will be paid if the employee is credited with three months of uninterrupted service (sections 79.7 and 79.16 of the Act). This is in line with the respective standards in Ontario, with one distinction. In fact, the *Employment Standards Act* of Ontario provides for two paid days of leave and eight additional unpaid days, but employees are eligible after one week of service, which is significantly shorter than the three months provided by the Bill.

The Bill also contains a provision whereby the employer may request that the employee furnish a document attesting to the reasons for the absence.

It should be noted that the employer is not required to pay more than two days in total for absences from work owing to sickness or to fulfill family responsibilities.

The duration of the absence to care for a relative or a person for whom the employee acts as a caregiver because of a serious illness or accident increases from 12 to 16 weeks over a period of 12 months (section 79.8 of the Act). When the relative or person is a minor child, the period of absence will be 36 weeks over a 12-month period.

In addition, the Bill provides for an absence from work to care for a relative other than a minor child or a person for whom the employee acts as a caregiver because of a serious and potentially mortal illness of 27 weeks over a 12-month period.

The Bill increases the entitled 52 weeks of unpaid leave to 104 weeks in the event of the disappearance of a minor child or if a spouse, father, mother or child of full age commits suicide (sections 79.10 and 79.11 of the Act). The death of a minor child will grant the related employee the right to an absence from work for a period of 104 weeks. The maximum duration of a period of absence for these reasons will be 104 weeks (section 79.15 of the Act).

For the reason of a death or funeral, an employee may be absent from work for two days instead of one without reduction of wages and for three instead of four without pay (section 80 of the Act).

Two of the five days for birth or adoption leave will be remunerated, irrespective of the length of service of the employee (section 81.1 of the Act).

**g. Psychological Harassment**

The Bill specifies that the definition of psychological harassment includes verbal comments, actions or gestures of a sexual nature (section 81.18 of the Act). In addition, adopting and making available to employees a policy dealing with psychological harassment prevention and the processing of complaints will be one of the reasonable actions required of employers in preventing psychological harassment (section 81.19 of the Act). The exact manner in which employers should make such a policy available in order to comply with their obligation under this new provision is not specified in the Bill.

In the event of a psychological harassment complaint, the employer must immediately notify the *Commission des droits de la personne et des droits de la jeunesse* where the complaint concerns behaviour of a sexual nature (section 123.6 of the Act).

#### **h. Differences in Treatment**

The Bill adds that any distinction made solely on the basis of a hiring date in relation to pension plans or other employee benefits will be prohibited (section 87.1 of the Act). This new provision follows a decision of the Québec Court of Appeal<sup>2</sup> which established that section 87.1 of the Act did not apply to benefits and pension plans. The legislator has responded to this interpretation by introducing a specific provision to that effect. The Bill attempts to deal with the injustice caused by the Court of Appeal's decision.

The Bill also introduces a new section on recourses against certain differences in treatment. An employee who believes he or she has been the victim of a difference in treatment may file a complaint in writing with the Commission within 90 days of the distinction becoming known to the employee.

#### **i. Personnel Placement and Temporary Foreign Workers**

The Bill adopts new rules specific to personnel placement agencies and recruitment agencies for temporary foreign workers (the "Agencies"). In fact, the Agencies will be required to hold a licence issued by the Commission in order to operate. A business who is a client of such an agency will be prohibited from knowingly retaining the services of an Agency which does not hold such a licence. Agencies and client businesses which use an employee's services will be solidarily liable for the pecuniary obligations towards that employee.

Furthermore, the Bill adds a penal provision which provides for a fine of \$600 to \$12,000 for any person who contravenes these personnel placement obligations.

Also, pursuant to the Bill, employers hiring temporary foreign workers will have to inform the Commission of the workers' date of arrival, the term of their contracts and, if their departure date does not coincide with the end of the contract, the reasons for their departure. The Bill also introduces a prohibition for employers to require temporary foreign workers to entrust them with custody of personal documents or belongings.

#### **j. Penal Provisions**

The director or officer will be presumed to have committed the offence charged against the legal person, partnership or association, unless they can establish that they exercised due diligence by taking all necessary precautions to prevent the offence (section 142 of the Act). Currently, this provision provides that an officer, director, employee or agent is deemed to be a party to the offence if he or she has prescribed, authorized, agreed or was a party thereto the perpetration of the offence.

### **Takeaways for Employers**

These proposed amendments will have considerable effects on employers' costs, particularly in terms of speeding up their employees' acquisition of the third week of annual leave and by adding remunerated absences for sickness and family responsibilities. Additionally, the compensatory indemnity for employees not normally working on a statutory holiday and the new paid leaves will have a measurable impact on payroll. Updating policies and handbooks will also incur costs for employers, but such costs will prevent further expenses in claims in the future.

Although the Bill has not yet been adopted, the date of coming into force is scheduled for January 1, 2019, with respect to the following provisions: maximum hours of work (section

59.01.1 of the Act), annual leave with pay (section 69 Act), absences owing to sickness (section 79.2 of the Act), absences for family responsibilities (section 79.7 of the Act), absences for the reason of death or funeral (section 80 of the Act), absences for birth and adoption (section 81.1 of the Act) and the obligation to adopt and distribute a harassment prevention policy (section 81.19 of the Act).

As for the other provisions of the Bill, the date of coming into force remains unknown at this time but should be announced shortly, given the imminence of the provincial elections. It is highly probable that the Bill will be passed without major amendments.

BLG's Labour and Employment Law Group will keep you informed of developments related to the adoption of the Bill and its coming into force. Nevertheless, we recommend that employers be prepared to respond quickly to these legislative changes.

<sup>1</sup> RLRQ, c N-1.1.

<sup>2</sup>*Syndicat des employées et employés professionnels et de bureau, section locale 574, SEPB, CTC-FTQ c. Groupe Pages jaunes Cie, 2015 QCCA 918.*

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