

Significant Changes to the Act Respecting Labour Standards Now In Effect

Friday, June 22, 2018

On June 12, 2018, Bill 176, *An Act to Amend the Act Respecting Labour Standards and Other Legislative Provisions Mainly to Facilitate Family-Work Balance* (the “Bill”), was adopted and assented to shortly after having been introduced in the Québec National Assembly.

The Bill modifies a number of provisions in the *Act Respecting Labour Standards* (the “Act”). Most of these new provisions came into force simultaneously with the Bill’s assent. The majority of the changes we describe here are therefore effective immediately, meaning that knowledge of items discussed in the present summary is critical.

We previously outlined the amendments to the Act that were being proposed by the Bill in our [March 26 bulletin](#). However, as the Bill under review by the parliamentary commission, certain additional amendments to the Bill were suggested and subsequently adopted.

On the one hand, this article aims to identify the important amendments to the Bill that were adopted at the parliamentary commission, while on the other hand, in light of the final text of the Bill, it aims to provide a comprehensive picture of the primary legislative changes being brought to the Act.

Important Changes to the Bill

We would like to highlight the following changes to the Bill which were adopted during its study in parliamentary commission:

- **Types of Protected Leaves of Absence:** An absence caused by sexual violence is now protected by the Act in the same manner as an absence due to illness, organ/tissue donation, accident, domestic violence or a criminal offence.
- **Psychological Harassment Policy:** Not only do employers now have a legal obligation to adopt a policy preventing psychological harassment and the internal handling of complaints, this policy must also include a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature.
- **Recourse in Cases of Psychological Harassment:** The time frame for filing a complaint with the “*Commission des normes, de l’équité, de la santé et de la sécurité du travail*” (the “CNESST”), has been extended from 90 days to 2 years.
- **Transmission of a Complaint to the “*Commission des droits de la personne et des droits de la jeunesse*”:** The Bill previously indicated that in cases where a complaint is filed concerning behaviour of a sexual nature, the CNESST must immediately advise the “*Commission des droits de la personne et des droits de la jeunesse*” (the “CDPDJ”). This provision was modified, and now provides that when a complaint concerns discriminatory behaviour, it will be sent to the CDPDJ with the employee’s consent, under the terms of an agreement to be entered into between the two organizations, including co-operative arrangements, to be approved by the minister.

- **Recourse in Cases of Salary Discrimination:** The time frame to file a complaint with the CNESST has been extended from 90 days to 12 months.
- **Licence Required for All Personnel Placement Agencies:** The CNESST will make available to the public a list of all licence holders. It will be responsible for creating and maintaining this list. A transitional measure expressly provides for any personnel placement agency that will be carrying on its activities on the date of the coming into force of the provisions dealing with personnel placement agencies and that has applied for a licence within the prescribed period.

Primary Legislative Changes Brought to the Act ¹

In order to facilitate the reader's understanding, we have summarized below the principal legislative changes brought to the Act, as reflected in the Bill's final text which has been adopted and assented to.

1. Wages

A personnel placement agency can no longer remunerate its employees at a lower rate of pay than that granted to employees of the client business who performs the same tasks in the same establishment.

2. 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, as was previously required by article 53 of the Act. However, the agreement must be evidenced in writing and can only allow the hours to be staggered over a period of four weeks at most. Moreover, the work week may not exceed the normal work week established in the Act by more than 10 hours. It should be noted that both the employer and the employee may terminate such an agreement with at least two weeks' notice before the expected end of the staggering period agreed upon. We don't view this provision as being significantly helpful to employers.

Furthermore, the Bill reduces the number of overtime hours an 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 (article 59.01 of the Act). These modifications will only come into force on January 1, 2019.

3. Statutory Holidays

An employee is now 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 (article 64 of the Act).

4. Annual Leave with Pay

The Bill accelerates the acquisition of the third week of annual leave by providing that an employee with three years of continuous service will be entitled to take three weeks of vacation per year. This modification will come into force on January 1, 2019. Note that the Act currently provides that an employee must be credited with a minimum of five years of uninterrupted service in order to take three weeks of vacation per year (section 69 of the Act).

5. Absences Due to Illness, Organ/Tissue Donation, Accident, Domestic Violence or Sexual Violence

The Act has long provided that employees have the right to a protected absence of up to 26 weeks over a 12-month period for an absence related to illness, organ/tissue donation for transplant or an accident. Moving forward, absences related to domestic violence or sexual

violence will also be protected under the same conditions (article 79.1 of the Act). Absence due to domestic violence or sexual violence is therefore protected by the Act in the same way as the other types of absences historically provided for in the Act.

These types of absences have always been without pay. However, an employee who has at least three months of uninterrupted service and who is absent for one of the reasons mentioned above will now benefit from two paid sick days per year, starting January 1, 2019.

6. Absences Due to Parental or Family Obligations

The Act provides that any employee may be absent from work for ten days per year to fulfill obligations relating to the care, health or education of the employee's child, or the child of the employee's spouse, or due to the state of health of the employee's spouse, father, mother, sibling, or grandparent (article 79.7 of the Act). Historically, this absence has always been without pay. However, the Bill establishes that the two first sick days taken each year will be paid as soon as the employee is credited with three months of uninterrupted service. This provision takes effect on January 1, 2019.

It should be noted that the employer will not be obliged to pay more than two days per year when an employee is absent from work for family and parental reasons (article 79.1 of the Act), and for any other reason protected by the Act over the course of the same year.

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

In regards to the duration of the absence to care for an ill child, spouse, sibling, grandparent or a person for whom the employee acts as a caregiver because of a serious illness or accident, the protected absence has been increased from 12 to 16 weeks over a period of one year (articles 79.8 of the Act). Where the relative or person is a minor child, the period of absence is now 36 weeks over a 12-month period.

Furthermore, the Act introduces a new type of absence for any employee who must care for a relative, other than a minor child or a person for whom the employee acts as a caregiver, because of a potentially fatal illness. This protected absence is for 27 weeks over a 12-month period.

An absence caused by the disappearance of a minor child or by the death of a father, mother, adult child or spouse by suicide increases from 52 to 104 weeks (articles 79.10 and 79.11 of the Act). The death of the minor child triggers the right to an absence for a period of 104 weeks. The maximum period of absence for these absences is 104 weeks (section 79.15 of the Act).

Following a death or a funeral, an employee will be entitled to be absent for two days as opposed to one, without reduction of wages. An employee will also be entitled to be absent for three days, as opposed to four, without pay (article 80 of the Act). This modification will come into force as of January 1, 2019.

Finally, and again as of January 1, 2019, two of the five days granted for an absence on the occasion of a birth or adoption will be remunerated for all employees, irrespective of the length of their continuous service with the employer (section 81.1 of the Act).

7. Psychological Harassment

The definition of psychological harassment now includes verbal comments, actions or gestures of a sexual nature (article 81.18 of the Act)

Among the reasonable measures that the employer will have to take to prevent psychological harassment, the Bill adds that the employer will have to adopt, and make available to the employees, a policy regarding the prevention of psychological harassment

and the internal handling of complaints. This policy will also have to include a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature. However, the exact manner in which employers should make such a policy available has not been specified by the Bill.

As for the employees' recourse in cases of psychological harassment, they now have two years following the last incident of psychological harassment, to file their complaint with the CNESST. This delay has been considerably lengthened, considering it was only 90 days prior to this amendment (article 123.7 of the Act).

Moreover, the Act now provides that when a complaint concerns discriminatory behaviour, the CNESST will send that complaint to the CDPDJ, with the employee's consent and within the framework of an agreement to be entered into between the two organizations, concerning, among other things, co-operative arrangements to ensure any delay in sending the complaint is not prejudicial to the employee (123.6 of the Act). It will be interesting to see how this new process and the terms of the arrangement, which could lead to an increase in the number of claims, develops over the coming months.

Finally, moving forward, when the Administrative Labour Tribunal will consider a complaint of psychological harassment, the Act now expressly provides that it may take into account all the circumstances of the case, including the discriminatory nature of the conduct (section 123.15 of the Act).

8. Differences in Treatment

The Bill added a new prohibition against discrimination based solely on the basis of a hiring date in relation to pension plans or other employee benefits (section 87.1 of the Act). This new provision stems from a decision of the Québec Court of Appeal which established that section 87.1 of the Act did not apply to benefits and pension plans. The legislator has therefore responded to this interpretation by introducing a specific provision to that effect.

A new recourse has also been introduced for any employee who believes he or she is the victim of a difference in treatment. In such cases, the employee may file a written complaint to the Commission within 12 months of becoming aware of the treatment that he or she wishes to contest.

9. Placement of temporary foreign workers and personnel

It is now expressly provided for that agencies and client companies which use an employee's services will be solidarily liable for the pecuniary obligations towards that employee.

New rules specific to personnel placement agencies and temporary foreign worker recruitment agencies (the "agencies") will soon come into force. Agencies will now have to hold a licence issued by the Commission. The Commission will draw up a list of all agencies holding these licences, will make that list available to the public, and will update it over time. A client company will no longer be able to retain the services of an agency that does not hold such a permit. Contravening these obligations can lead to fines ranging from \$600 to \$12,000.

A transitional measure has been created for personnel placement agencies which will be carrying on their activities on the date of coming into force of the provisions, and will have applied for a licence within 45 days of that date. In these cases, the agency will be able to continue to carry on its activities without holding a licence until the CNESST renders a decision on its application.

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 Commission 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.

It should also be noted that all provisions relating to agencies are not yet in force. They will take effect on the date of the enabling regulation's entry into force, which will eventually be published by the government.

10. Criminal provisions

A director or officer is now presumed to have committed the offence that the corporation, partnership or association is charged with, unless they can establish that they exercised due diligence by taking all necessary precautions to prevent the offence (section 142 of the Act). Previously, this provision provided that an officer, director, employee or agent was deemed to be a party to the offence if he or she prescribed, authorized, consented to or acquiesced in the commission of the offence.

Given that the concept of due diligence is not defined in the Act, we will study future decisions to see how this concept will be interpreted by the courts.

Coming into Force of the Legislative Changes

For the most part, the amendments to the Act are of a significant nature, and more importantly, are in effect now. With certain exceptions, the provisions mentioned above came into force on June 12, 2018 and must be followed by any employer doing business in Québec.

The following provisions will enter into force on January 1, 2019:

- Maximum hours of work (section 59.01.1 of the Act);
- The three weeks of paid annual leave (article 69 of the Act);
- Payment of two days per year in the event of absence for any reasons provided for by section 79.2 of the Act, or for family or parental reasons (section 79.7 of the Act);
- The duration of absences on the occasion of a death or funeral and the payment of certain days (section 80 of the Act);
- The right to be absent with pay in case of birth or adoption, regardless of the length of the employee's continuous service (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 provisions regarding agencies, they will enter into force on the day where the first regulation published by the government regarding agencies will come into force.

Comment

The coming into force of the changes to the Act will require a review of an employer's various practices and policies, hiring letters and employee handbook (if applicable). More specifically, the adoption of a psychological harassment prevention policy will be imperative for all employers in Québec.

We also recommend that all employers strengthen their investigation and evidence preservation practices, given the length of time that may now elapse between the conduct of harassment in the workplace and the filing of a complaint with the CNESST.

¹ Please note that the present section does not describe *all* the legislative changes brought to the Act, just those that we have identified as being significant and/or of most interest to the reader.

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